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BILL ANALYSIS

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House Bill 4502 (Substitute H-2 as reported without amendment)

Sponsor: Representative Fran Amos

House Committee: Agriculture

Senate Committee: Agriculture, Forestry and Tourism

Date Completed: 4-4-06

RATIONALE

Michigan has approximately 5,100 retail gas stations, selling about 5.0 billion gallons of gas and 1.2 billion gallons of diesel fuel each year. The accuracy of fuel pumps in the State is regulated under the Weights and Measures Act, which establishes criminal penalties for misrepresenting the volume of fuel dispensed. Consumers who suspect a problem with the gas they have purchased may notify the Michigan Department of Agriculture (MDA), which is responsible for enforcing compliance with the Act, as well as monitoring the quality of fuel sold in the State. A complaint hotline number is posted on all fuel pumps in the State and on the MDA website.

The MDA received 1,002 formal complaints related to the accuracy of fuel pumps in 2004, according to the 2004 annual report of the MDA Laboratory Division's Consumer Protection Section. Department inspectors reportedly investigate all complaints, performing inspections that include testing the accuracy of the fuel pump meter, examining the physical pump, and checking other areas of the facility for signs of tampering or devices that could be used to divert fuel or alter the meter's reading. Because of staffing shortages at the Department, most of its inspections are in response to complaints only, although with the recent addition of 10 new employees, the MDA evidently has expanded its routine audits of fuel stations as well.

According to the 2004 annual report, the Department inspected 953 gas stations over the course of about three months in 2004, from Memorial Day to Labor Day. Quantity violations were found at 115 stations, or

12% of sites. (The MDA also found problems with the quality of gasoline at some sites.) In the report, the Department cautioned that these percentages could be artificially high because the inspectors focused on consumer complaints and problem sites, rather than conducting a random sample of gas stations across the State. Complaints during that three month period were reportedly 60% higher than during the same period the previous year, although actual cases of noncompliance reportedly have been decreasing over the past several years, and there has been only one felony conviction related to fuel pump tampering in the past five years. While the extent of the problem is uncertain, as gasoline prices rise and consumers become more concerned about the issue, some believe that penalties should be expanded to deter owners from intentionally defrauding customers.

CONTENT

The bill would amend the Weights and Measures Act to establish civil fines for an owner of a motor fuel delivery facility who intentionally delivered less fuel to a customer than the fuel pump meter indicated.

Under the Act, a person who sells, offers, or exposes for sale less than the represented quantity of a commodity, thing, or service (or commits other violations) is guilty of a misdemeanor and may be fined between \$1,000 and \$10,000, or imprisoned for up to one year, or both. The Act also prescribes felony penalties for intentional violations.

The bill provides that, in addition to any other applicable penalties, an owner of a motor fuel delivery facility that had intentionally delivered less fuel to a retail customer than indicated by the fuel pump meter would be responsible for the following civil fines:

- For a first offense, \$5,000.
- For a second offense, \$10,000.
- For a third offense or any subsequent offense, \$25,000.

Under the bill, "intentional" would mean the presence of additional piping, electronic switches, or any other device or act designed to reduce the volume of motor fuel delivered as compared to the stated volume on the pump meter.

The MDA would have to inspect motor fuel facilities with three or more violations at least annually, and could close any facility that was responsible for a violation described above until the owner could demonstrate that the problem was corrected.

Any civil fines or recovery of any economic benefits associated with a violation of the Act that were collected under these provisions would have to be paid to the General Fund and credited to the MDA for enforcement of the Act. Any civil fines could be embodied in a consent order as provided under Section 31a of the Act.

(Section 31a permits the MDA Director, upon determining that a person has violated the

Act or rules promulgated under it, to enter into a consent agreement with the person. Under a consent agreement, the Director may assess the following fines plus the amount of any economic benefit associated with the violation:

- For a first violation, between \$50 and \$1,000.
- For a second violation within two years, between \$100 and \$5,000, plus the actual costs of the investigation.
- For a third violation within two years of the first violation, between \$500 and \$10,000, plus the actual costs of the investigation.

If a person does not enter into a written consent agreement, the MDA Director may

initiate a criminal prosecution or commence an administrative hearing or civil violation proceeding.)

The bill states that it would be the intention of the Legislature that the MDA establish periodic inspection and testing of fuel delivery systems and that owners of fuel delivery systems calibrate them periodically.

MCL 290.631

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Because individuals are not in a position to tell whether they have received the correct amount of gas, they depend on the accuracy of fuel pumps and the honesty of gas station owners when refueling their cars. Many take for granted that the amount of fuel displayed on the pump is the actual amount they have received, but unscrupulous owners have been known to install pipes that divert some fuel after it passes the meter, or switches or other devices that deliver less gas to the customer than is shown on the pump. In addition, computer software reportedly has been used to alter the display in order to defraud consumers.

According to the 2004 annual report by the MDA Laboratory Division, customer complaints had risen over previous years. The report stated that investigations of complaints resulted in confirmed violations about 20% of the time, and that 12% of all pump measuring devices tested failed to meet the established standards for accuracy. Although complaints evidently have declined since the report was written, with the cost of gasoline and diesel fuel rising recently, consumers are increasingly concerned that they may not be getting all the fuel they are purchasing.

Violations of the standards are not always the result of intentional fraud or deception; lack of proper maintenance or calibration of the pumps also can lead to inaccuracies. In addition, most gas station owners are honest, and provide accurate gas pumps for their customers. Those who intentionally do not would face additional penalties under the bill, and repeat offenders would face annual

inspections or could even be shut down. The bill would help to restore consumer confidence in the accuracy of fuel pumps in the State, and discourage owners from tampering with pumps and defrauding customers.

Response: The Department should be provided with additional resources to inspect fuel stations and enforce the law. Currently, the MDA has little ability to perform random audits of stations around the State. Adequate enforcement and inspections would encourage stations to comply with the law and could help identify additional problems.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The proposed new fines under the bill would result in additional State revenue credited to the General Fund and dedicated to enforcement of the Act. It is unknown how much additional revenue would be generated. In FY 2003-04, the MDA assessed \$311,850 in fines and penalties under the current provisions of the Act.

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.