

Legislative Analysis



AGRICULTURE PENALTIES

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House Bill 6018 (Substitute H-1)

House Bill 6019 (Substitute H-1)

Sponsor: Rep. Fran Amos

Committee: Agriculture and Resource Management

First Analysis (6-30-04)

BRIEF SUMMARY: The bills would increase the penalties for multiple violations of the Motor Fuels Quality Act and the Weights and Measures Act.

FISCAL IMPACT: House Bill 6018 would double the fines for a violation of the Motor Fuels Quality Act. Based on the number of violations in 2002, the increase in annual fine revenue could be as much as \$34,000, or total annual revenue could be \$68,000. There would be no fiscal impact on local governmental units. House Bill 6019 could generate an additional \$38,000 in annual fine income. There would be no fiscal impact on local governmental units.

THE APPARENT PROBLEM:

Together the Weights and Measures Act and the Motor Fuels Quality Act ensure that consumers of gasoline sold in the state is of the quality and quantity advertised. Uniform standards for weights and measures under the Weights and Measures Act govern the specifications of gasoline pumps, among other products used in everyday life. In addition, the Motor Fuels Quality Act establishes standards for the quality and purity of gasoline sold or offered for sale in the state.

The two acts are necessary to protect consumers from unscrupulous businesses seeking to take advantage of them. With gas prices around \$2 per gallon, many believe that steps should be taken to crack down on gas station owners and others within the industry who “gas gouge” and otherwise cheat gasoline consumers through poor quality fuel and incorrect amounts of fuel. Legislation to increase the penalties individuals who violate the Weights and Measures Act and Motor Fuels Quality Act on multiple occasions has been introduced.

THE CONTENT OF THE BILL:

House Bill 6018 (Motor Fuels Quality Act)

Under the Motor Fuels Quality Act, any person who violates the act or any rule promulgated under to the act is subject to an administrative fine levied by the Department of Agriculture, in addition to actual investigation costs and twice the economic benefit associated with the violation. For a first violation, the fine is between \$100 and \$500. For a second violation occurring within five years after the first violation, the

administrative fine is between \$500 and \$1,000. For a third violation occurring within five years after the first violation, the administrative penalty is between \$1,000 and \$4,000. The bill would double the administrative fine for the second and third violations.

In addition, the act provides that a person who does any of the following is guilty of a misdemeanor punishable by no more than 90 days imprisonment and/or a fine between \$1,000 and \$2,000: (1) harms part of a stage 1 or 2 vapor-recovery system; (2) makes a false representation; (3) fails to disclose information relating to the harm of a stage 1 or 2 vapor-recovery system; (4) falsifies records, (5) removes a seal placed on a dispenser; or (6) violates the act or rules for which a penalty is not otherwise specified. If a person commits an above violation within two years of a prior violation that results in a conviction, or impersonates the director or an inspector of the Department of Agriculture, the person is guilty of a misdemeanor subject to 90 days imprisonment and/or a fine between \$2,000 and \$10,000. The bill would increase the allowable fine levied against a person who commits the subsequent violation or who impersonates the director or inspector, to between \$5,000 and \$15,000.

MCL 290.644 et al.

House Bill 6019 (Weights and Measures Act)

Under the Weights and Measures Act, the director of the Department of Agriculture may enter into a consent agreement with a person who has violated the act or associated rules to assess a civil fine and the costs of the economic benefit associated with the violation. For a first violation, the fine is between \$50 and \$1,000. For a second violation within two years of the first violation, the fine is between \$100 and \$5,000, in addition to actual investigation costs. Finally, for a third violation within two years of the first violation, the fine is between \$500 and \$10,000, in addition to actual investigation costs.

The bill would increase the fines for second and third violations to between \$1,000 and \$7,500 for a second violation, and between \$2,000 and \$10,000 for a third violation.

Incidentally, the act further specifies that if a person who has allegedly violated the act or any associated rule does not enter into a consent agreement, the director may initiate a criminal prosecution; or commence an administrative hearing if the person possesses a registration, or a civil violation proceeding for any other person. Upon a finding that a violation has occurred, the director must assess an administrative fine of not more than \$10,000, plus actual investigation costs and the amount of any economic benefit associated with the violation. The director's decision is subject to judicial review. Additionally, the director must also advise the attorney general of any person who fails to pay an administrative or civil fine, and the attorney general must bring an action against that person. Any administrative fine or economic benefit recovered is paid to the general fund and credit to the Department of Agriculture for the enforcement of the act.

MCL 290.631a

BACKGROUND INFORMATION:

Individuals believing that they have purchased adulterated fuel or an incorrect amount of fuel may call the Department of Agriculture at 1-800-MDA-FUEL, which is also required to be posted on every gasoline pump.

In addition, the state is maintaining a website at <http://www.michigan.gov/gasprices>. The website permits individuals to check average gas prices and look-up gas stations across the state, file a complaint in the case of gas gouging, learn consumer tips for buying gasoline, employ certain driving techniques to improve fuel economy, find alternatives to driving, and discover in-state travel destinations.

ARGUMENTS:

For:

The Department of Agriculture notes on its web site that, “[c]onsumers have a lot at stake when they pull up to a gasoline pump. The average family sedan costs \$22,000 and uses over 750 gallons of gasoline each year. Just one purchase of poor quality could result in thousands of dollars of damage or premature engine wear to the consumer’s engine. Increased fuel prices make gasoline fraud a more lucrative proposition for the unscrupulous gasoline marketer. Gasoline fraud also negatively impacts [the] industry by creating an [uneven] playing field.” Increasing the penalties imposed on chronic violators will deter future violations of the acts, and protect consumers.

Against:

Most profits on the sale of gasoline are not earned by service station dealers and retailers, but by the oil companies themselves. The increased penalties unfairly target small businesses, not the larger companies with greater control over the costs of motor fuel and greater ability to absorb the increase penalties should a violation occur. In addition, many of these fines were set only a few years ago.

Response:

The bills increase penalties for multiple violations of the two acts. This does not affect the small business that may unwittingly violate the law. Rather, this bill targets those businesses that willfully and repeatedly violate the state’s consumer protection laws.

Rebuttal:

The bill should clarify penalties for willful violations and unintentional violations. While the bill purports to target repeated, willful violations, the language itself does not make the same distinction.

POSITIONS:

The Department of Agriculture supports the bills. (6-29-04)

The Michigan Petroleum Association opposes the bills (6-29-04)

The Associated Petroleum Industries of Michigan has indicated opposition the bills. (6-22-04)

The Service Station Dealers Association of Michigan opposes the bills. (6-22-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.