

HOUSE BILL NO. 5893

March 10, 2022, Introduced by Reps. Witwer, Alexander and Glenn and referred to the Committee on Agriculture.

A bill to amend 1964 PA 283, entitled "Weights and measures act," by amending sections 2, 9a, 9b, 24, 27, 28c, 28e, 28f, 31, and 31a (MCL 290.602, 290.609a, 290.609b, 290.624, 290.627, 290.628c, 290.628e, 290.628f, 290.631, and 290.631a), sections 2, 9a, and 9b as amended by 2012 PA 253, section 28c as amended by 2016 PA 464, section 28e as amended by 2012 PA 469, section 28f as added by 2017 PA 168, and sections 31 and 31a as amended by 2012 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

1 (a) "Automatic checkout system" means an electronic device,
2 computer, or machine that determines the price of a consumer item
3 by using a product identity code and may, but is not required to,
4 include an optical scanner.

5 (b) "Certificate of conformance" means a document issued by
6 the NCWM based on testing by a participating laboratory that
7 constitutes evidence of conformance of a type.

8 (c) "Commodity in package form" means a commodity put up or
9 packaged in any manner in advance of sale in units suitable for
10 either wholesale or retail sale including an individual item or lot
11 of any commodity not in a form as described in this subdivision but
12 upon which there is marked a selling price based on an established
13 price per unit of weight or ~~of~~ measure. Commodity in package form
14 does not include an auxiliary shipping container enclosing packages
15 that conform to the requirements of this act.

16 (d) "Commercial weighing and measuring device" means any
17 weights and measures or weighing and measuring device, including
18 any accessory attached to or used in connection with the weighing
19 or measuring device that is designed or installed in a manner that
20 its operation affects or may affect the accuracy of the device,
21 used or employed in commerce for any of the following:

22 (i) Establishing the size, quantity, extent, area, or
23 measurement of any commodity sold, offered, or submitted for hire.

24 (ii) Computing any basic charge or payment for services
25 rendered on the basis of weight, measure, or count.

26 (iii) Establishing eligibility for any award.

27 (e) "Consumer package" means a package that is customarily
28 produced or distributed for sale through retail sales agencies or
29 instrumentalities for consumption or use by individuals for the

1 purposes of personal care or in performance of services ordinarily
2 rendered in or about the household or in connection with personal
3 possessions.

4 (f) "Department" means the department of agriculture and rural
5 development.

6 (g) "Director" means the director of the department or his or
7 her designee.

8 (h) "Inspector" means an employee or agent of the department
9 authorized to enforce this act.

10 (i) "NCWM" means the national conference on weights and
11 measures, inc.

12 (j) "Net weight" means the weight of a commodity excluding any
13 materials, substances, or items not considered to be part of the
14 commodity. Materials, substances, or items not considered to be
15 part of the commodity include containers, conveyances, bags,
16 wrappers, packaging materials, labels, individual piece coverings,
17 decorative accompaniments, prizes, coupons, and, in the case of
18 edible commodities, anything that is nonedible.

19 (k) "NIST" means the United States ~~department of commerce,~~
20 ~~national institute~~ **Department of Commerce, National Institute** of
21 ~~standards~~ **Standards** and ~~technology.~~ **Technology.**

22 (l) "NTEP" means the national type evaluation program
23 administered by the NCWM, in cooperation with the states, the
24 private sector, and the NIST for determining on a uniform basis
25 conformance of a type.

26 (m) "Nonconsumer package" means a package other than a
27 consumer package and includes, but is not limited to, a package
28 intended solely for industrial or institutional use or for
29 wholesale distribution.

1 (n) "Participating laboratory" means a state measurement
2 laboratory that ~~has been~~**is** accredited by NCWM to conduct a type
3 evaluation under the NTEP and determined otherwise acceptable to
4 the director.

5 (o) "Person" means ~~any~~**an** individual, partnership,
6 corporation, association, governmental entity, or other legal
7 entity.

8 (p) "Placed-in-service report" means the approved form issued
9 to registered servicepersons and registered service agencies for
10 their use in accordance with the requirements of section 9b.

11 (q) "Registered service agency" means ~~any~~**an** agency, firm,
12 company, or corporation that installs, services, repairs, ~~or~~
13 reconditions, **or places into service** commercial weights and
14 measures and that holds a registration issued by the director.

15 (r) "Registered serviceperson" means an individual who
16 installs, services, repairs, ~~or~~reconditions, **or places into**
17 **service** commercial weights and measures and who holds a
18 registration issued by the director.

19 (s) **"Registration audit" means an official inspection of a**
20 **registered service agency's or registered serviceperson's accounts,**
21 **paperwork, and offices.**

22 (t) ~~(s)~~"Rule" means an administrative rule promulgated
23 pursuant to the administrative procedures act of 1969, 1969 PA 306,
24 MCL 24.201 to 24.328.

25 (u) ~~(t)~~"Sell" or "sale" means sale, barter, or exchange.

26 (v) ~~(u)~~"Type" means a model or models of a particular device
27 measurement system, instrument, element, or a field standard that
28 positively identifies the design and that may vary in its
29 measurement ranges, size, performance, and operating

1 characteristics as specified in the certificate of conformance.

2 **(w)** ~~(v)~~—"Type evaluation" means the testing, examination, and
3 evaluation of a type by a participating laboratory under the NTEP.

4 **(x)** ~~(w)~~—"Weight", in connection with any commodity or service,
5 means net weight.

6 **(y)** ~~(x)~~—"Weights and measures" means weights and measures of
7 every kind, instruments and devices for weighing and measuring,
8 grain moisture meters, and any appliances and accessories
9 associated with any or all of those instruments and devices.
10 Weights and measures include automatic checkout systems. Weights
11 and measures do not include meters for the measurement of
12 electricity, natural or manufactured gas, water, or the usage of
13 communications services when any of these meters are regulated and
14 tested as part of a public utilities system.

15 **(z)** ~~(y)~~—"Weighing and measuring device" means all instruments
16 and devices of every kind used to determine the quantity of any
17 commodity and includes weights and measures and any appliance and
18 accessories associated with any of these instruments and devices,
19 except meters, appliances, and accessories that are part of a
20 public utility regulated by the Michigan public service commission.

21 **(aa)** ~~(z)~~—"Weighing and measuring establishment" means a
22 location with 1 or more commercial weighing and measuring devices
23 or any operation that employs commercial weighing and measuring
24 devices that are mobile.

25 Sec. 9a. (1) A weighing device placed in service after January
26 1, 1988 ~~shall~~**must** have valid certificates of conformance before
27 use for commercial or law enforcement purposes. ~~However, a~~**A** non-
28 NTEP ~~measuring~~**weighing** device for special use may be used for
29 products for which an NTEP ~~measuring~~**weighing** device is not readily

1 available, if all of the following conditions are met:

2 (a) The device owner receives written approval from the
3 director.

4 (b) The device is tested on an annual basis by a registered
5 service agency.

6 (c) The registered service agency records all testing data and
7 the records are retained on site and made available to the
8 department ~~upon~~**on** request.

9 (2) A measuring device placed in service on or after October
10 29, 2002, ~~shall~~**must** have valid certificates of conformance before
11 use for commercial or law enforcement purposes. ~~However, a~~**A** non-
12 NTEP measuring device for special use may be used for products for
13 which an NTEP measuring device is not readily available, if all of
14 the following conditions are met:

15 (a) The device owner receives written approval from the
16 director.

17 (b) The device is tested on an annual basis by a registered
18 service agency.

19 (c) The registered service agency records all testing data and
20 the records are retained on site and made available to the
21 department ~~upon~~**on** request.

22 (3) The director may operate a participating laboratory as
23 part of NTEP. The director may charge and collect fees pursuant to
24 section 10b for services rendered by the participating laboratory.

25 Sec. 9b. (1) The director shall issue a registration for
26 servicepersons and service agencies seeking registration under this
27 section in accordance with the standards described in section 28c.
28 Registration with the director under this section is voluntary.

29 (2) A person may apply for initial and renewal registration as

1 a serviceperson or service agency in specific competency areas.
2 Competence in a subject matter area may be demonstrated by scoring
3 at least 80% on a department-approved competency test for that area
4 in compliance with the standards described in section 28c. A
5 registrant shall retake the department-approved competency test
6 every 4 years or as otherwise required by law.

7 (3) The term of registration is 2 years from the date of
8 issuance. A registration may be transferred to a different
9 registered service agency if the registration is retained by the
10 original serviceperson and the new service agency pays the service
11 agency registration fee.

12 (4) The fee for registration under this section ~~shall~~**must** be
13 established in accordance with section 10b(1).

14 (5) Certification of standards used by the registered
15 serviceperson or registered service agency ~~shall~~**must** be
16 accomplished by the registrant at least biennially. The
17 certification of standards may be done at any approved laboratory.
18 The registrant shall submit documentation of international
19 standards traceable calibration reports with the registration or
20 renewal application.

21 (6) Within 5 business days after a device is returned to
22 service or placed in service, the original of a properly executed
23 placed-in-service report, ~~together with~~**all applicable test or**
24 **calibration data, and** any official department rejection tag removed
25 from the device, ~~shall~~**must** be mailed to the director at an
26 address indicated on the tag.

27 (7) The director may deny, suspend, or revoke a registration
28 for a violation of this act or rules promulgated under this act.
29 Enforcement actions include, but are not limited to, the following:

- 1 (a) Written warning.
- 2 (b) Conference with the director.
- 3 (c) Suspension of the registration.
- 4 (d) Revocation of the registration.

5 (8) Before the suspension or revocation of a registration, the
6 director shall notify the registrant in writing stating the reasons
7 for the registration being subject to suspension or revocation and
8 advising that the registration ~~shall~~**must** be suspended or revoked
9 15 days after the sending of the notice unless the registrant files
10 a request for a hearing with the department within that 15-day
11 period. If a written request for a hearing is not filed within the
12 15-day period, the department shall suspend or revoke the
13 registration.

14 (9) A notice under subsection (8) is considered properly
15 served when it is personally delivered to the registrant or when it
16 is sent by registered or certified mail, return receipt requested,
17 to the registrant's last known address.

18 (10) Except as otherwise provided for in this act, the
19 director may initiate an enforcement action against a registered
20 serviceperson or registered service agency for any or all of the
21 following:

22 (a) Failure of a weighing or measuring device during an
23 official inspection within 30 days after being placed in service
24 following an initial installation.

25 (b) Failure of a weighing or measuring device during an
26 official inspection within 30 days after being placed in service
27 following a major overhaul or repair that may or may not have been
28 the result of an official condemnation by a weights and measures
29 official.

1 (c) The return to commercial use of a device tagged "not
2 sealed".

3 (d) Placing a device in service with improper or insufficient
4 standards.

5 (e) Falsifying a placed-in-service report or test report.

6 (f) Placing in service or allowing to remain in service,
7 without notifying the director, an incorrect weighing or measuring
8 device.

9 (g) Failure to provide placed-in-service reports or other
10 documentation as required by this section.

11 (h) **Placing a device in service without having the proper
12 certification as required by law.**

13 (i) **Failure to comply with a request for documents or other
14 information related directly to a registration audit.**

15 (j) **Failure to submit a placed-in-service report for a
16 weighing and measuring device found in an out-of-tolerance
17 condition and returned to a condition as close to zero as
18 practicable.**

19 (k) **Failure to properly seal a device.**

20 (l) **Failure to employ the use of an approved security seal that
21 contains a unique identifying mark that is approved and is
22 registered with the department.**

23 Sec. 24. **(1)** Except as otherwise provided in this act, any
24 commodity in package form kept for the purpose of sale, or offered
25 or exposed for sale, ~~shall~~**must** bear on the outside of the package
26 ~~such~~ definite, plain, legible, and conspicuous declarations of ~~(1)~~
27 ~~the~~**all of the following:**

28 (a) **The** identity of the commodity in the package, unless the
29 ~~same~~**commodity** can easily be identified through the wrapper or

1 container. ~~,(2)~~

2 (b) **Except as otherwise provided in this act,** the net quantity
3 of the contents in terms of weight, measure, or count. ~~,but the~~
4 **The** term "when packed" or any words of similar import, or any term
5 qualifying a unit of weight, measure, or count, such as "jumbo",
6 "giant", "full", ~~or~~ **"approximate", and** the like ~~,that tend~~ **tends**
7 to exaggerate the amount of commodity in a package, ~~shall~~ **must** not
8 be used. ~~,and (3) the~~

9 (c) **The** name and place of business of the manufacturer, packer
10 or distributor in the case of any package kept, offered or exposed
11 for sale, or sold any place other than on the premises where packed
12 as may be prescribed by regulation promulgated by the director.

13 (2) The director shall, by regulation, establish reasonable
14 variations to be allowed ~~,which that~~ may include variations below
15 the declared weight or measure caused by ordinary and customary
16 exposure to conditions that normally occur in good distribution
17 practice and that unavoidably result in decreased weight or
18 measure. ~~Such~~ **The** regulations ~~shall~~ **must** provide for exemptions for
19 small packages and for commodities put up in variable weights or
20 sizes for sale intact and either customarily not sold as individual
21 units or customarily weighed or measured at time of sale to the
22 consumer.

23 Sec. 27. Whenever a commodity in package form is advertised in
24 any manner and the retail price of the package is stated in the
25 advertisement, there ~~shall~~ **must** be closely and conspicuously
26 associated with ~~such~~ **the** statement of price a declaration of the
27 basic quantity of contents of the package as is required by law or
28 regulation to appear on the package, except that this section ~~shall~~
29 **must** not apply to products for agricultural or horticultural use

1 where the custom is to state the number of objects or amount of
2 area ~~which~~**that** can be treated per package unit and the number or
3 area is ~~so~~ stated. Where the law or regulation requires the
4 declaration of net quantity to appear on the package in terms of
5 more than 1 unit of weight or measure, only the smallest unit of
6 weight or measure need be stated in the advertisement. In
7 connection with the declaration the qualifying term "when packaged"
8 or any other words of similar import, or any term qualifying a unit
9 of weight, measure or count, for example, "jumbo", "giant", "full",
10 **"approximate"**, and the like that tends to exaggerate the amount of
11 commodity in the package, ~~shall~~**must** not be used.

12 Sec. 28c. (1) Except as otherwise provided for in this
13 subsection, the method of sale of a commodity sold in this state
14 ~~shall~~**must** conform to the "uniform regulation for the method of
15 sale of commodities" published in the ~~2014~~**2022** edition of the NIST
16 handbook 130, which is incorporated by reference, except as
17 otherwise provided in this section or where modified by rule.
18 Section ~~2.20.1~~**2.21** of the "uniform regulation for the method of
19 sale of commodities" **published in the 2022 edition of the NIST**
20 **handbook 130** is not adopted. The buying and selling of liquefied
21 petroleum gas may also be conducted by a flat rate price, if the
22 price rate is clearly and conspicuously posted for potential
23 customer viewing. This subsection applies only to tanks of 100
24 pounds or less.

25 (2) ~~The~~**Except as otherwise provided in this subsection, the**
26 packaging and labeling requirements for commodities sold in this
27 state ~~shall~~**must** conform to the "uniform packaging and labeling
28 regulation" published in the ~~2014~~**2022** edition of the NIST handbook
29 130, which is incorporated by reference, except for section 13 of

1 that publication or except as otherwise modified by rule. **A cottage**
2 **food operation does not have to include the address of the cottage**
3 **food operation on a label if both of the following conditions are**
4 **met:**

5 (a) **The cottage food product is produced in accordance with**
6 **section 4102 of the food law, 2000 PA 92, MCL 289.4102.**

7 (b) **The cottage food operation is registered with and is**
8 **issued a registration number by the MSU Product Center in**
9 **accordance with section 4102(8) of the food law, 2000 PA 92, MCL**
10 **289.4102.**

11 (3) A certificate of conformance for a type ~~shall~~**must** comply
12 with the requirements of NCWM publication 14, "national type
13 evaluation program technical policy, checklists and test
14 procedures", and the ~~2014~~**2022** edition of the NIST handbook 44,
15 "specifications, tolerances, and other technical requirements for
16 weighing and measuring devices", which is incorporated by
17 reference.

18 (4) The determination for a uniform basis conformance for a
19 type ~~shall~~**must** comply with NCWM publication 14, "national type
20 evaluation program technical policy, checklists and test
21 procedures", and the ~~2014~~**2022** edition of the NIST handbook 44,
22 "specifications, tolerances, and other technical requirements for
23 weighing and measuring devices", which is incorporated by
24 reference. **Electric vehicle fueling systems must comply with**
25 **section 3.40, "Electric Vehicle Fueling Systems - Tentative Code",**
26 **as proposed to be adopted in the 2022 edition of the NIST handbook**
27 **44, effective January 1, 2023.**

28 (5) The specifications, tolerances, and regulations for
29 commercial weights and measures ~~shall~~**must** be in compliance with

1 the standards contained in the ~~2014~~**2022** edition of the NIST
2 handbook 44, which is incorporated by reference.

3 (6) Registration for servicepersons and service agencies and
4 competency tests ~~shall~~**must** be in compliance with the standards
5 contained in the ~~2014~~**2022** edition of the NIST handbook 130,
6 "uniform regulation for the voluntary registration of
7 servicepersons and service agencies for commercial weighing and
8 measuring devices", which is incorporated by reference, and the
9 ~~2014~~**2022** edition of the NIST handbook 44, which is incorporated by
10 reference.

11 (7) For purposes of implementing the ~~2014~~**2022** edition of the
12 NIST handbook 44 and the ~~2014~~**2022** edition of the NIST handbook
13 130, "ton" means a weight of 2,000 pounds avoirdupois and "gross
14 ton" means a weight of 2,240 pounds avoirdupois.

15 (8) Notwithstanding any other provision of this act, a motor
16 vehicle repair facility registered under the motor vehicle service
17 and repair act, 1974 PA 300, MCL 257.1301 to 257.1340, is subject
18 to the oversight of the secretary of state under that act. If the
19 secretary of state believes that a motor vehicle repair facility
20 may have violated section 2.33, "**Oil**", **of the** "uniform regulation
21 for the method of sale of commodities", of the ~~2014~~**2022** edition of
22 the NIST handbook 130, which is incorporated by reference, the
23 secretary of state may refer the matter to the department. A motor
24 vehicle repair facility is not subject to oversight by the
25 department under this act for a violation of section 2.33, "**Oil**",
26 **of the** "uniform regulation for the method of sale of commodities",
27 of the ~~2014~~**2022** edition of the NIST handbook 130 unless the matter
28 has been referred to the department by the secretary of state as
29 provided for in this subsection.

1 Sec. 28e. (1) Beginning July 2, 2013, if motor fuel is sold at
2 a roadside retail location, the roadside advertising ~~shall~~**must**
3 comply with all of the following:

4 (a) The price advertised ~~shall~~**must** be clearly and completely
5 posted in full, including any fractional prices, to the tenth of a
6 cent.

7 (b) The price advertised ~~shall~~**must** include the grade of fuel
8 being sold, with the following abbreviations allowed:

9 (i) Regular gasoline: "Regular", "Reg.", or "Reg,".

10 (ii) Midgrade gasoline: "Midgrade", "Mid.", or "Mid,".

11 (iii) Premium gasoline: "Premium", "Prem.", or "Prem,".

12 (iv) Diesel fuel: "Diesel", "Dsl.", or "Dsl,".

13 (v) Kerosene fuel: "Kerosene", "Ker.", or "Ker,".

14 (vi) E85 fuel ethanol: "E85".

15 (c) All prices ~~shall~~**must** be capable of being displayed at the
16 pump, but only the unit price of the selected product ~~shall~~**must** be
17 displayed during the transaction. All indications on the pump
18 display ~~shall~~**must** calculate the correct total price of the
19 purchase.

20 (d) ~~Subject to subsection (3), if~~**If** the advertised price of
21 the motor fuel is subject to 1 or more conditions for sale at that
22 price, ~~other than payment by cash or credit card,~~ the retailer
23 shall post the conditions immediately adjacent to the sales price
24 with equal illumination in lettering of the same style and of at
25 least 1/2 the size that is used to post the sale price.

26 (e) If the unit price for the same grade of motor fuel
27 differs, and the sign will not accommodate displaying all prices in
28 lettering of the same style and size, the highest price ~~shall~~**must**
29 be displayed in lettering using the largest size of the prices that

1 are displayed.

2 (2) Subsection (1)(b) does not preclude the owner or operator
3 of a business selling motor fuel at a roadside retail location from
4 using a proprietary fuel name.

5 ~~(3) Beginning July 2, 2017, the requirement of subsection~~
6 ~~(1)(d) also applies to conditions regarding payment by cash or~~
7 ~~credit card.~~

8 Sec. 28f. (1) If a pump for dispensing motor fuel for sale at
9 a roadside retail location includes a scanning device for reading a
10 customer payment card as an integral part of the pump, the pump
11 must include a security measure to restrict the unauthorized access
12 of customer payment card information. The security measure must
13 include 1 or more of the following:

14 (a) ~~Pressure-sensitive~~ **Until December 31, 2023, a pressure-**
15 **sensitive** security tape that is imprinted with a customized graphic
16 and placed over the panel opening leading to the scanning device so
17 as to restrict unauthorized opening of the panel.

18 (b) A device or system to render the pump or the scanning
19 device inoperable if the panel is opened without proper
20 authorization.

21 (c) A means for encrypting the customer payment card
22 information in the scanning device.

23 (d) A device to replace a manufacturer-supplied standard lock.

24 (e) Any other measure approved by the department.

25 (2) If the owner or agent of the owner of a pump required to
26 have a security measure under subsection (1) receives a written
27 notice of noncompliance, he or she shall bring the pump into
28 compliance. If the violation is not corrected within 5 days after
29 receipt of the notice of noncompliance, the department may prohibit

1 the use of the pump until a properly functioning security measure
2 is installed on the device.

3 (3) As used in this section:

4 (a) "Customer payment card" means a credit or debit card or
5 other card encoded to provide an electronic means for initiating a
6 fund transfer from the customer's deposit account or for initiating
7 electronic billing.

8 (b) "Pump" means a device for measuring and dispensing motor
9 fuel used to propel vehicles on the highways of this state.

10 (c) "Scanning device" means a scanner, reader, or any other
11 electronic device that is used to access, read, scan, obtain,
12 memorize, or store, temporarily or permanently, information encoded
13 on the magnetic strip or stripe of a customer payment card.

14 Sec. 31. (1) ~~A person~~ **An individual** who, by himself or herself
15 or by the ~~person's~~ **individual's** servant or agent, or as the servant
16 or agent of another person, engages in any of the following acts is
17 guilty of a misdemeanor ~~and may be fined~~ **punishable by imprisonment**
18 **for not more than 1 year or a fine of** not less than \$1,000.00 or
19 ~~not more than \$10,000.00~~, plus the amount of any economic benefit
20 realized as a result of the violation, ~~or imprisonment for not more~~
21 ~~than 1 year, or both:~~

22 (a) Use or have in possession for the purpose of using for any
23 commercial purpose specified in section 10, sell, offer, expose for
24 sale or hire, or have in possession for the purpose of selling or
25 hiring, incorrect weights and measures or any device or instrument
26 used or calculated to falsify any weights and measures.

27 (b) Use or have in possession for current use in the buying or
28 selling of any commodity or thing, for hire or award, or in the
29 computation of any basic charge or payment for services rendered on

1 the basis of weights and measures or in the determination of
2 weights and measures, when a charge is made for the determination,
3 weights and measures that have not been tested and sealed by the
4 appropriate authority, unless 1 or more of the following conditions
5 are met:

6 (i) A properly executed and completed placed-in-service report
7 has been delivered to the director as notification that the weights
8 and measures have been placed in service by a registered
9 serviceperson.

10 (ii) Permission to use the weights and measures has been
11 received from the appropriate authority.

12 (iii) The weights and measures have been exempted from sealing
13 or testing requirements by section 10 or by rule of the director
14 promulgated under section 8.

15 (c) Dispose of rejected or condemned weights and measures in a
16 manner contrary to law or rule.

17 (d) Remove from weights and measures, contrary to law or rule,
18 a tag, seal, or mark placed on the weights and measures by the
19 appropriate authority.

20 (e) Sell, offer, or expose for sale less than the quantity he
21 or she represents of a commodity, thing, or service.

22 (f) Take more than the quantity he or she represents of a
23 commodity, thing, or service when, as buyer, he or she furnishes
24 the weight of the commodity, thing, or service or the measure of
25 the commodity, thing, or service by means of which the amount of
26 the commodity, thing, or service is determined.

27 (g) Advertise, offer, expose for sale, or sell a commodity,
28 thing, or service in a condition or manner contrary to law.

29 (h) Use in retail trade, except in the preparation of packages

1 put up in advance of sale and of medical prescriptions, weights and
2 measures that are not so positioned that their indications may be
3 accurately read and the weighing or measuring operation observed
4 from some position which may reasonably be occupied by a customer.

5 (i) Violate a provision of this act or of a rule promulgated
6 under this act for which a specific penalty has not been
7 prescribed.

8 (j) Sell, offer, or expose for sale to licensed wholesale
9 distributors and dealers gasoline or any middle distillate
10 petroleum product on any basis other than a U.S. gallon of 231
11 cubic inches or metric equivalent unless freely requested to do so
12 in writing by a licensed wholesale distributor, dealer, or end user
13 for an annual period of time or for the length of the contract.
14 This subdivision does not apply to the sale or offer for sale of
15 number 4, 5, or 6 petroleum fuels as described as having American
16 petroleum institute gravity at 60°F of 28 or less, a specific
17 gravity greater than .8871 and does not apply to the sale or
18 exchange of gasoline or any middle distillate petroleum product
19 among petroleum refiners.

20 (k) Deliver or issue a weight quantity determination or a
21 measure quantity determination upon which a commercial transaction
22 is, or is intended to be, computed without the use of weights and
23 measures.

24 (l) Fail to pay a fee or fine imposed under this act.

25 (2) ~~A person~~ **An individual** who, by himself or herself or by
26 the ~~person's~~ **individual's** servant or agent, or as a servant or
27 agent of another person, fails to disclose to the department any
28 knowledge of information relating to, or observation of, any device
29 or instrument added to or modifying any weight or modifying any

1 measure for the purpose of selling, offering, or exposing for sale
 2 less than the quantity represented of a commodity or calculated to
 3 falsify the weight or measure, if the ~~person~~**individual** is an owner
 4 or employee of an entity involved in the installation, repair,
 5 sale, or inspection of weights and measures, is guilty of a
 6 misdemeanor ~~and may be fined~~**punishable by imprisonment for not**
 7 **more than 90 days or a fine of** not more than \$1,000.00, ~~or~~
 8 ~~imprisoned for not more than 90 days,~~ or both.

9 (3) ~~A person~~**An individual** who, by himself or herself or by
 10 the ~~person's~~**individual's** servant or agent, or as a servant or
 11 agent of another person, performs any of the following acts is
 12 guilty of a felony punishable by a fine of not less than \$5,000.00
 13 or more than \$20,000.00, by a fine of not more than twice the
 14 amount of any money gained for each day on which a violation has
 15 been found, by imprisonment for not more than 5 years, or by any
 16 combination of these penalties:

17 (a) ~~Adds~~**Is in possession of or adds** to or modifies commercial
 18 weights and measures by the addition of a device or instrument that
 19 would allow the sale, or the offering or exposure for sale, of less
 20 than the quantity represented of a commodity or the falsification
 21 of the weights and measures.

22 (b) Intentionally commits any of the acts listed in subsection
 23 (1) or (2).

24 (c) Violates this section within 24 months after 2 previous
 25 violations of this section that resulted in convictions.

26 (4) When a violation results in a conviction under this act,
 27 the court may assess against the defendant or his or her agent the
 28 costs of investigation and the money ~~shall~~**must** be paid to the
 29 agency that incurred the expense.

1 (5) In addition to any other applicable penalties prescribed
2 in this act, the department may assess the owner of a motor fuel
3 delivery facility that has intentionally delivered less fuel to a
4 retail customer than indicated by the gas pump metering device the
5 following civil fines:

6 (a) For a first violation, a civil fine of \$5,000.00.

7 (b) For a second violation, a civil fine of \$10,000.00.

8 (c) For a third or subsequent violation, a civil fine of
9 \$25,000.00.

10 (6) The department may close any facility that is responsible
11 for a violation described in subsection (5) until the owner can
12 demonstrate to the department that the problem is corrected.

13 (7) The department shall inspect motor fuel facilities with 3
14 or more violations under subsection (5) at least annually, and all
15 inspection costs ~~shall~~**must** be assessed to the owner of the weights
16 and measures establishment for a period of not more than 2 years.

17 (8) Any of the fines described in subsection (5) may be
18 embodied in a consent order under section 31a.

19 (9) Any civil fines or recovery of any economic benefits
20 associated with a violation of this act and collected under this
21 section ~~shall~~**must** be paid to the general fund and credited to the
22 department for the enforcement of this act.

23 Sec. 31a. (1) The director, upon determination that ~~a person~~
24 **an individual** who, by himself or herself, his or her agent or
25 employee, or as the agent or employee of another, has violated this
26 act or rules promulgated under this act, may enter into a consent
27 agreement for the assessment of a civil fine as follows:

28 (a) For a first violation, not less than \$150.00 and not more
29 than \$2,500.00 **for each violation** plus the actual cost of the

1 investigation and the amount of any economic benefit associated
2 with the violation.

3 (b) For a second violation within 2 years of the first
4 violation, not less than \$500.00 or not more than \$5,000.00 **for**
5 **each violation** plus actual costs of the investigation and twice the
6 amount of any economic benefit associated with the violation.

7 (c) For a third violation within 2 years from the date of the
8 first violation, not less than \$500.00 or not more than \$10,000.00
9 **for each violation** plus actual costs of the investigation and 3
10 times the amount of any economic benefit associated with the
11 violation.

12 (2) If a person alleged to have violated this act or rules
13 promulgated under this act does not enter into a written consent
14 agreement as described in subsection (1) within 15 days of the date
15 of the consent agreement, the director may do either of the
16 following:

17 (a) Initiate a criminal prosecution.

18 (b) Commence an administrative hearing conducted pursuant to
19 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
20 to 24.328, in the case of a person holding a registration under
21 this act, or commence a civil violation proceeding in a court of
22 competent jurisdiction regarding any other person.

23 (3) Upon finding a violation of any provision of this act or
24 rules promulgated under this act as a result of the commencement of
25 an action under subsection (2) (b), the ~~director~~ **court** shall assess
26 ~~an administrative fine or~~ a civil fine of not more than \$10,000.00
27 **for each violation** plus **the** actual costs of the investigation ~~plus~~
28 **and** the amount of any economic benefit associated with the
29 violation as prescribed in subsection (1).

1 (4) The decision of the director pursuant to a proceeding
2 under this section is subject to appropriate judicial review as
3 provided by law.

4 (5) The director shall advise the attorney general of the
5 failure of any person to pay ~~an administrative fine or a~~ civil fine
6 imposed under this section. The attorney general shall bring an
7 action in ~~a court of competent jurisdiction~~ to recover the fine.

8 (6) Any civil fines or recovery of any economic benefits that
9 are recovered for a violation of this act and collected under this
10 section ~~shall~~ **must** be paid to the general fund and credited to the
11 department for the enforcement of this act.