

WEIGHTS AND MEASURES ACT AMENDMENTS

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House Bill 5893 as introduced
Sponsor: Rep. Angela Witwer
Committee: Agriculture
Revised 5-3-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5893 would amend the Weights and Measures Act to exempt cottage food products produced in compliance with the Food Law from product labeling requirements under certain conditions, add reasons for which a registered service agency or registered serviceperson could be subject to an enforcement action by the Michigan Department of Agriculture and Rural Development (MDARD), add standards for electric vehicle fueling systems beginning in 2023, and amend provisions concerning penalties and fines for violating the act, among other changes described below.

Enforcement actions

Currently under the act, the director of MDARD can initiate an enforcement action against a *registered service agency* or *registered serviceperson* for specifically listed reasons. The bill would add to this list the following:

- Placing a device in service without having the proper certification as required by law.
- Failure to comply with a request for documents or other information related directly to a *registration audit*.
- Failure to submit a placed-in-service report for a weighing and measuring device found in an out-of-tolerance condition and returned to a condition as close to zero as practicable.
- Failure to properly seal a device.
- Failure to employ the use of an approved security seal that contains a unique identifying mark that is approved and is registered with MDARD.

Registered service agency would mean an agency, firm, company, or corporation that installs, services, repairs, reconditions, *or places into service* commercial weights and measures and that holds a registration issued by the director of MDARD. [The term is currently defined in the act. The bill would add the italicized phrase.]

Registered serviceperson would mean an individual who installs, services, repairs, reconditions, *or places into service* commercial weights and measures and who holds a registration issued by the director of MDARD. [The term is currently defined in the act. The bill would add the italicized phrase.]

Registration audit would mean an official inspection of a registered service agency's or registered serviceperson's accounts, paperwork, and offices.

Labeling under the Food Law

The bill also would exempt a cottage food operation from having to include the address of the operation on a packaging label if the cottage food product is produced in accordance with

section 4102 of the Food Law *and* the operation is registered with and is issued a registration number by the MSU Product Center. (These provisions are related to changes to the Food Law proposed by bills currently under consideration by the House.¹)

Electric vehicle fueling systems

The bill would add that, effective January 1, 2023, electric vehicle fueling systems must comply with the “Electric Vehicle Fueling Systems – Tentative Code,” as proposed to be adopted in the 2022 edition of the National Institute of Standards and Technology (NIST) handbook 44.²

Scanning device security measures

Currently, if a pump for dispensing motor fuel for sale at a roadside retail location includes a scanning device for reading customer payment at the pump, the pump must include a security measure to restrict the unauthorized access of customer payment card information. The security measure must include one or more listed security measures, including pressure-sensitive security tape that is imprinted with a customized graphic and placed over the panel opening leading to the scanning device so as to restrict unauthorized opening of the panel. Under the bill, this security measure would meet the act’s requirements only through December 21, 2023.

Violations and penalties

With some exceptions, the bill would generally amend the sections of the act that provide penalties for specified violations by replacing the term “*person*” with “individual,” so that the penalties would apply only to individuals who engage in the prohibited acts. (The bill would still prohibit an individual from engaging in those acts as a servant or agent of another *person*, but the penalties would not appear to apply to the person the individual was the servant or agent of, unless that person were also an individual.)

Person means an individual, partnership, corporation, association, governmental entity, or other legal entity.

In addition, it is currently a felony for a person to add to or modify commercial weights and measures by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or the falsification of the weights and measures.

Under the bill, it would also be a felony for an individual to be in possession of such a device or instrument.

Consent agreements

The act currently authorizes the director of MDARD, upon determination that a person has violated the act or its rules, to enter into a consent agreement for the assessment of a civil fine that is based on the number of repeat violations within a two-year period.

The bill would authorize the MDARD director to enter into such a consent agreement only with an individual and would provide that the fines assessed are *for each violation*. (As written, it is not entirely clear what would distinguish a “first violation” from a “second violation”

¹ House Bills 5671 and 5704 <http://legislature.mi.gov/doc.aspx?2022-HB-5671>

² <https://www.nist.gov/system/files/documents/2021/12/06/Handbook-44e2022.pdf>

under the bill, given that a “first violation,” “second violation,” “third violation,” etc., could each apparently include more than one violation.)

The act further provides that if a person alleged to have violated the act does not enter into a written consent agreement, the MDARD director (as an alternative to initiating a criminal prosecution) may do either of the following:

- If the person is a registrant, commence an administrative hearing under the Administrative Procedures Act.
- If the person is not a registrant, commence a civil violation proceeding in court.

Upon finding a violation as a result of either action described above, the MDARD director must assess an administrative fine or a civil fine of up to \$10,000 plus investigation costs and the amount of the economic benefit of the violation.

The bill instead would require, upon finding a violation as a result of either action described above, that the *court* must assess a civil fine of up to \$10,000 *for each violation* plus investigation costs and the amount of the economic benefit of the violation. (Italics indicate changes proposed by the bill.)

Other provisions

The bill would disallow the use of terms such as “approximate” to qualify units of weight, measure, or count in commodity packaging and advertising.

The bill would add applicable test and calibration data to the documents that must be mailed to MDARD within five business days after a device is placed in service or returned to service.

The bill would change provisions that refer to, and incorporate by reference, the 2014 edition of the NIST handbook 44, to instead refer to and incorporate by reference the 2022 edition of the NIST handbook 44.

The bill would make several other revisions of an editorial nature and to update language to align the act with current standards.

MCL 290.602 et seq.

FISCAL IMPACT:

House Bill 5893 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, it would be a felony for an individual to be in possession of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or falsification of weights and measures. The number of convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2021, the average cost of prison incarceration in a state facility was roughly \$44,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,600 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

Also under the bill, “first violation,” “second violation,” and “third violation” could each include more than one violation and, upon finding a violation, the court must assess a civil fine of up to \$10,000 for each violation. To the extent that this leads to an increase in civil fine revenues, the department would benefit from any such revenue. Under section 31a of the Weights and Measures Act, any civil fine revenue collected must be paid to the state’s general fund and then credited to the department for enforcement.

The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

MDARD representatives indicate that the bill would not have a material impact on department responsibilities under the act and would thus have no material impact on department costs.

In addition, the bill does not change fees under the act and would not have a material impact on department fee revenue.

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