

**Mary Bach Testimony Before the Senate Consumer Protection and Professional Licensure
Committee (April 14, 2010)**

Good morning, Senator Tomlinson, Senator Boscola, and members of the committee. My name is Mary Bach and I am here today as a member of AARP's Pennsylvania Executive Council representing our almost two million members, aged 50 and older in the Commonwealth. I am also a long-time independent consumer advocate with lots of direct involvement in both weights and measure issues and in dialogues with the Department of Agriculture on these issues.

In 1999 I was named National Consumer of the Year in a ceremony at the National Press Club in Washington, D.C., having been nominated by Attorney General Mike Fisher, for my activism on retail price accuracy issues associated with scanning technology. Former Agriculture Secretary Wolff appointed me to two state-wide committees and I served actively with enthusiasm.

On two occasions I have been honored by the Pennsylvania Association of Weights and Measures as their Consumer of the Year. In 2006, they named their annual consumer award after me, "The Mary Bach Consumer of the Year Award", and I'm not even dead yet.

I presently serve as Vice-President of the "Scanning Certification Program" (The SCP) for the Pennsylvania Food Merchants Association (PFMA), and have since 1992. The SCP, which I helped to develop, subsequently became the prototype for scanner price accuracy inspections nationwide and was adopted by the National Conference on Weights and Measures (NCWM). The SCP is much tougher and quite different from any other known self-inspection program in Pennsylvania.

Senators, I implore you to be decisively opposed to the currently proposed expansion of privatization and self-inspection of devices under the jurisdiction of Agriculture's Division of Weights and Measures. Let me tell you why.

Self-inspections truly represent the proverbial "fox in the henhouse" scenario. AARP and I strongly believe that privatization would be detrimental for the over twelve million consumers in Pennsylvania, as well as the millions of visitors to Pennsylvania each year. We must not lose sight of the fact that not only individuals are consumers, but so are our businesses, schools, farmers, and even our government entities. Allowing private inspections would put us all at much greater risk of fraud and related unfair practices.

From the onset of formal consumer protection by the Commonwealth under law, we have had a corps of well trained, dedicated, and unbiased professional weights and measures inspectors overseeing the accuracy and legality of commercial measuring devices and related processes. These weights and measures officials also investigate thousands of consumer complaints each year. Of course, the numbers might be less if I would quit complaining to them. These weights and measures personnel also oversee the provisions related to standards, under law, governing the method of sale and the labeling of packages, violations of which I have personally reported to them and had resolved by them.

When a consumer gets a bad meal or a dog bites their child, they know it immediately, but if they are shorted two-tenths of a gallon on a fuel fill-up or are purchasing items that are short-weighted, or of short-count, they typically don't know. Weights and measures issues are mundane, not sexy. Most consumers are unaware of the terminology and they don't think about weights and measures issues that might cheat them on the actual value of the product that they are buying. Those consumers trust that the laws that would prevent them from being cheated on weight, count or standardized process are linked to appropriate and professional oversight by their government and not to unaccountable representatives of the businesses that sell to them.

As it exists presently in Pennsylvania, our Division of Weights and Measures is essentially a stealth organization.

You may be aware that there is presently one area of privatized inspections operated under the Pennsylvania Division of Weights and Measures. It is known as "price verification" and it relates to the oversight of scanning checkout registers at thousands of retail stores. Although the program has been in place for more than ten years and, supposedly, is in full operation, it is a program which is in total disarray within the Division and its Harrisburg offices at Agriculture where it is administered. The Division that now proposes to divest itself of more inspections, after ten years of Act 155 operations, has not yet developed a database of where all the scanning devices to be inspected are located in Pennsylvania. Agriculture Deputy Secretary Kilgore and Director John Dillabaugh will candidly tell you that this is correct. Many stores are, therefore, not being routinely inspected annually, as required by law and it is highly likely that some stores may not have ever been inspected.

Problems with price verification inspections are evident by examining the data in Weights and Measures own Annual Report. By the way, that report, which is supposed to be made available on or before March 1st each year, has not yet been released this year and today is April 14th. But going back to 2008 and before, I have found blatant inadequacies.

Because of the lack of oversight of scanners by Weights and Measures along with the so called "private price verification" programs, I have ultimately had to independently and personally sue to win lawsuits against major national retailers for overcharging me, including several multiple times for repeated violations. I have been successful against individual locations in chains such as Walmart, K-Mart, CVS, Radio Shack and a number of others. What is ironically a sad commentary on these actions, which I had to take directly, is that I have won more lawsuits against retailers for misrepresenting their prices and overcharging their customers, than the entire Division of Weights and Measures has since the implementation of Act 155.

In one 2008 case, I sued the Delmont, Pennsylvania Walmart for repetitive overcharging. At the time Walmart was listed as having a private "price verification" program with self-inspection. Preparing for court, I called the Division in Harrisburg and asked for the most recent "price verification" inspection results filed for that store, as required under Act 155. The information actually provided to me by the Division turned out to be about small scale inspection results at the store and not their scanner "price verification" inspection. I subsequently learned that Walmart's Pennsylvania manager of their private "price verification" program had been dead for more than four years and that no one in the Weights and Measures office, that is, the people officially overseeing the scanner "price verification" program at the state level, knew of his death or even so

much as missed the required reports from Walmart during that time. The relevance here is that 156 Walmart locations and all Sams Clubs in Pennsylvania, doing mega-billions of dollars worth of business, hadn't been inspected by anyone. I won the 2008 lawsuit and three others against that same store.

Now, Secretary Redding would have us believe that consumers are supposed to trust that self-inspections are a good thing and that privatization should be rapidly moved forward to many other device inspections, when Weights and Measures cannot even properly administer and oversee the current "price verification" program.

Skeptics of Agriculture's plans, and I include myself, are also being told that private inspectors will be given appropriate and adequate formal training by the Division in order to license them as "Certified Examiners", which is necessary under the program's requirements. Senators, I am presently a Division trained "price verification" program inspector, having attended similar training, at my own expense, in July, 2009, because my earlier inspection certificate had expired. Let me tell you about that training and what might be the implications and expectations for required "Certified Examiner" training that would be requisite to any expansion of privatization.

According to the National Conference on Weights and Measures (NCWM), "price verification" training should be held over a minimum two day period, culminating with a passing grade on a test of the subject matter. Pennsylvania has always ignored that standard for "price verification" training, and has instead offered a one day training with no testing requirement, whether for initial training or a renewal. Simple attendance earns one a "price verification" inspector's official ID card even if that attendee sleeps through the training or frequently visits the restroom to read a newspaper or to use a cell phone.

My training in Reading lasted less than three hours and was what I would consider to be a total waste of time. The facilitator, a Weights and Measures Region Supervisor, read to the class from NCWM Handbook 130 after making excuses that he had been called upon at the last minute and had been unable to prepare adequately. As an attendee with a truly deep background in scanning inspections from my two decades with the "Scanning Certification Program", I would respectfully offer that this training was nothing short of a disaster. The five retailers who shared this training with me and gained their "price verification" inspector's ID card just for being in the room, could not possibly know how to conduct a proper inspection. It won't matter. They now have official inspector IDs. I also contend that even with an effective and proper training (which wasn't provided) that their new status as official Pennsylvania "price verification" inspectors might still not oblige them to flunk their store's performance if it did fail, but rather to defer to their bosses desires by passing the store. Foxes in henhouses typically enjoy the chicken.

Why don't the "powers that be" at the Division of Weights and Measures concentrate on getting their "price verification" training right, and their task of gathering the large amounts of needed data to adequately provide program oversight, before they move forward with a program that will ultimately just provide the foxes with bromides for overeating at the cost of protecting Pennsylvania's consumers from device mismanagement and potential fraud. I am only one woman and I cannot spend enormous amounts of my time suing more retailers to highlight the Division of Weights and Measures inadequacies with self-inspection programs.

Privatization compromises our Commonwealth's commitment, under law, to protect our consumers from unscrupulous retail and wholesale thievery. We need properly trained and dedicated professional weights and measures inspectors as the best form of independent third party arbiter for our marketplace.

The Division has never operated the private "price verification" program properly, nor has it ever chosen to litigate against known violating retailers, even repeat offenders. Such actions might actually serve to fund the Division. The Division is known, however, of only warning retailers who violate the law, and this they do repeatedly. This lets retailers know that they can continue to cheat consumers in Pennsylvania until the Division threatens to litigate. I know of what I speak because I was the one who pressured the Division to take Eckerd Drug to court for repeated violations against me. The Division garnered \$10,000 in fines the first time and when problems continued, \$4000 the second time. It was the only litigation ever done by the Harrisburg office for a "price verification" offense.

The Division's desire to expand privatization to other devices is disingenuous and not credible and will, if implemented, only exacerbate the consumer problems we now encounter.

AARP and I urge you to revisit Act 155 of 1996 to clarify and modify the sections that define the Certified Examiners of Weights and Measures (CEWM). There should be some plan or requirement for devices to be registered or disclosed, in an official manner, so that Weights and Measures could create a comprehensive database for every device type requiring inspection.

I maintain that self-inspection of devices is a very bad idea for Pennsylvania. I have been told that it has failed in all the states where it has been attempted. The current track record of self-inspection performance in Pennsylvania leads to a natural conclusion that a more comprehensive and inclusive program of privatization is doomed to fail. Not only will we be outsourcing the work under such expanded plan, we will also be outsourcing the Commonwealth's responsibility and accountability for consumer protection, sadly making the past our prologue for the future.

In closing, I believe that I represent an overwhelming majority of AARP's membership and all other consumers in Pennsylvania when I simply say that I don't want my gas station inspecting the accuracy of its own dispensing pumps or my grocery store calibrating the accuracy of its own scales. Consumers look to our Commonwealth to be the responsible party for assuring basic consumer protections, actions and responsibilities that cannot be outsourced as burdensome or too costly, no more so than the important decisions that our elected officials make, including those of the Senators on this committee, can be outsourced.

Thank you all for the opportunity to let me speak today. I truly appreciate your interest, your time, and your personal involvement in an important matter that will have major impact on every consumer in Pennsylvania. I would be most happy to answer any questions you may have.