

# HOUSE BILL No. 5922

September 19, 2012, Introduced by Rep. Bumstead and referred to the Committee on Regulatory Reform.

A bill to amend 1974 PA 154, entitled "Michigan occupational safety and health act," by amending sections 4, 6, 11, 16, 21, and 69 (MCL 408.1004, 408.1006, 408.1011, 408.1016, 408.1021, and 408.1069), section 11 as amended by 1986 PA 80 and sections 16 and 21 as amended by 1991 PA 105; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 4. (1) "Agricultural operations" means the work activity  
2 designated in major groups 01 and 02 of the standard industrial  
3 classification manual, United States bureau of the budget, 1972  
4 edition. Agricultural operations include any practices performed by  
5 a farmer or on a farm as an incident to or in conjunction with  
6 farming operations including preparation for market delivery to  
7 storage or market or to carriers for transportation to market.

1           (2) "Authorized employee representative" or "representative of  
2 employee" means a person designated by a labor organization  
3 certified by the national labor relations board or employment  
4 relations commission as defined in section 2(c) of ~~Act No. 176 of~~  
5 ~~the Public Acts of 1939, as amended, being section 423.2 of the~~  
6 ~~Michigan Compiled Laws, 1939 PA 176, MCL 423.2,~~ as the bargaining  
7 representative for the affected employees. In the absence of  
8 certification, it shall be a person designated by the organization  
9 having a collective bargaining relationship with the employer and  
10 designated as having a collective bargaining relationship with the  
11 employer by the affected employees. If a labor organization has not  
12 been certified, or if no organization has a collective bargaining  
13 relationship with the employer, "authorized employee  
14 representative" or "representative of employee" means a person  
15 designated by the affected employees to represent them for the  
16 purpose of proceedings under this act.

17           (3) "Board" means the board of health and safety compliance  
18 and appeals created in section 46.

19           (4) "Construction operations" means the work activity  
20 designated in major groups 15, 16, and 17 of the standard  
21 industrial classification manual, United States bureau of the  
22 budget, 1972 edition.

23           (5) **"DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF**  
24 **LICENSING AND REGULATORY AFFAIRS.**

25           (6) ~~(5)~~—"Department attorney" means the attorney general or  
26 the authorized representative of the attorney general.

27           (7) ~~(6)~~—"Domestic employment" means that employment involving

1 an employee specifically employed by a householder to engage in  
2 work or an activity relating to the operation of a household and  
3 its surroundings, whether or not the employee resides in the  
4 household.

5 (8) ~~(7)~~—"Mines", except as provided in subdivision (d), means  
6 all of the following:

7 (a) An area of land from which minerals are extracted in  
8 nonliquid form, or if in liquid form, are extracted with workers  
9 underground.

10 (b) Private ways and roads appurtenant to an area of land  
11 described in subdivision (a).

12 (c) Lands, excavations, underground passageways, shafts,  
13 slopes, tunnels and workings, structures, facilities, equipment,  
14 machines, tools, or other property, including impoundments,  
15 retention dams, and tailings ponds, on the surface or underground,  
16 used in, or to be used in, or resulting from, the work of  
17 extracting minerals from their natural deposits in nonliquid form,  
18 or if in liquid form, with workers underground, or used in, or to  
19 be used in, the milling of minerals, or the work of preparing coal  
20 or other minerals, and includes custom coal preparation facilities.

21 (d) This subsection does not include industrial borrow pits,  
22 or sand, gravel, or crushed and dimension stone quarrying  
23 operations, or surface construction operations.

24 Sec. 6. (1) "Place of employment" means a factory, plant,  
25 establishment, construction site or other similar area, workplace,  
26 or environment where an employee is permitted to work.

27 (2) "Political subdivision" means a city, village, township,

1 county, school district, intermediate school district, or state or  
 2 local government authorized or supported agency, authority, or  
 3 institution.

4 (3) "Rule" means a rule as defined by ~~IN~~ section 7 of ~~Act No.~~  
 5 ~~306 of the Public Acts of 1969, being section 24.207 of the~~  
 6 ~~Michigan Compiled Laws~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**  
 7 **1969 PA 306, MCL 24.207.** A rule may only be promulgated by the  
 8 director ~~of labor or director of health~~ except as otherwise  
 9 specifically prescribed in this act.

10 (4) "Serious violation" means a violation of this act, an  
 11 order issued pursuant to this act, or a rule or standard  
 12 promulgated under this act or adopted by reference pursuant to this  
 13 act for which a substantial probability exists that death or  
 14 serious physical harm could result from the violation or from a  
 15 practice, means, method, operation, or process ~~which~~ **THAT** is in  
 16 use, unless the employer did not and could not, with the exercise  
 17 of reasonable diligence, know of the presence of the violation.

18 (5) "Standard" means a health or safety standard ~~which~~ **THAT**  
 19 specifies conditions, or the adoption or use of 1 or more  
 20 practices, means, methods, operations, or processes necessary to  
 21 provide safe and healthful employment in places of employment.

22 ~~Except as otherwise specifically prescribed in this act, only the:~~

23 ~~—— (a) General industry safety standards commission may~~  
 24 ~~promulgate a standard relative to occupational safety.~~

25 ~~—— (b) Construction safety standards commission may promulgate a~~  
 26 ~~standard relative to construction safety.~~

27 ~~—— (c) Occupational health standards commission may promulgate a~~

1 ~~standard relative to occupational health.~~

2 ~~—— (6) "Standards promulgation commission" means the general~~  
3 ~~industry safety standards commission, the construction safety~~  
4 ~~standards commission, or the occupational health standards~~  
5 ~~commission.~~

6 (6) ~~(7)~~—"Trade secret" means a confidential process, formula,  
7 pattern, device, or compilation of information ~~which~~ **THAT** is used  
8 in the employer's business and ~~which~~ **THAT** gives ~~him~~ **THE BUSINESS** an  
9 opportunity to obtain an advantage over competitors who do not know  
10 or use it.

11 (7) ~~(8)~~—"Wilful", for the purpose of criminal prosecutions,  
12 means the intent to do an act knowingly and purposely by an  
13 individual who, having a free will and choice, either intentionally  
14 disregards a requirement of this act, or a rule or standard  
15 promulgated pursuant to this act, or is knowingly and purposely  
16 indifferent to a requirement of this act, or a rule or standard  
17 promulgated pursuant to this act. An omission or failure to act is  
18 wilful if it is done knowingly and purposely. Wilful does not  
19 require a showing of moral turpitude, evil purpose, or criminal  
20 intent provided the individual is shown to have acted or to have  
21 failed to act knowingly and purposely.

22 (8) ~~(9)~~—"Working day" means any day other than a Saturday,  
23 Sunday, or state legal holiday.

24 Sec. 11. An employer shall:

25 (a) Furnish to each employee, employment and a place of  
26 employment ~~which~~ **THAT** is free from recognized hazards that are  
27 causing, or are likely to cause, death or serious physical harm to

1 the employee.

2 (b) Comply with this act and with the rules and standards  
3 promulgated and the orders issued pursuant to this act.

4 (c) Post notices and use other appropriate means to keep his  
5 or her employees informed of their protections and obligations  
6 under this act, including applicable rules and standards.

7 (d) Provide personal protective equipment at the employer's  
8 expense when it is specifically required to be provided at the  
9 employer's expense in a rule or a standard promulgated ~~by a~~  
10 ~~standards promulgating commission.~~ **UNDER THIS ACT.** When  
11 promulgating a rule or a standard concerning personal protective  
12 equipment, the ~~standards promulgating commission~~ **DIRECTOR** shall use  
13 at least the following criteria in determining who should pay for  
14 the equipment:

15 (i) Whether the equipment is transferable between employees.

16 (ii) Whether the equipment is maintained by the employer.

17 (iii) Whether the equipment generally remains at the work site  
18 after the work activity has been completed.

19 (iv) The amount of personal use involved with the equipment.

20 ~~— (v) Any other criteria deemed applicable by the standards~~  
21 ~~promulgating commission.~~

22 Sec. 16. ~~(1) The general industry safety standards commission~~  
23 **THE DIRECTOR** may promulgate standards in accordance with this act  
24 to prevent accidents in places of employment and to protect the  
25 life and safety of employees. ~~Where~~ **IF** another state agency has  
26 rules promulgated before the effective date of this act ~~which~~ **THAT**  
27 regulate a place of employment relative to the safety of the

1 public, the rules of the other state agency apply only to the  
2 safety of the public. If practicable, the standards promulgated  
3 shall be expressed in terms of objective criteria and of the  
4 performance desired.

5 ~~—— (2) Until April 1, 1992, adoption of a standard shall be by a~~  
6 ~~majority of the members present if a quorum is present. Beginning~~  
7 ~~April 1, 1992, any action taken by the general industry safety~~  
8 ~~standards commission requires an affirmative vote of not less than~~  
9 ~~4 members of the commission, including at least 1 representative of~~  
10 ~~labor and 1 representative of management.~~

11       Sec. 21. (1) Standards promulgated by the **FORMER** general  
12 industry safety standards commission ~~under the authority of former~~  
13 ~~Act No. 282 of the Public Acts of 1967, and standards promulgated~~  
14 ~~by the **FORMER** construction safety standards commission under the~~  
15 ~~authority of former Act No. 89 of the Public Acts of 1963, which~~  
16 ~~are in effect on January 1, 1975~~ **THIS ACT THAT ARE IN EFFECT ON THE**  
17 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT REPEALED SECTION 15 OF**  
18 **THIS ACT** are continued under section 31 of the administrative  
19 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, as~~  
20 ~~amended, being section 24.231 of the Michigan Compiled Laws.1969 PA~~  
21 **306, MCL 24.231.**

22 ~~—— (2) Before a proposed standard, except an emergency standard,~~  
23 ~~is promulgated, the appropriate commission director shall appoint~~  
24 ~~and consult with an advisory committee which shall be~~  
25 ~~representative of the major interests affected by the proposed~~  
26 ~~standard. The members of an advisory committee shall be selected on~~  
27 ~~the basis of their experience and competence in the subject of the~~

1 ~~proposed standard. At least 1 member of each advisory committee~~  
2 ~~shall be a person who devotes a major portion of time to safety~~  
3 ~~functions.~~

4 ~~—— (3) The per diem compensation and the schedule for~~  
5 ~~reimbursement of expenses of members of the general industry safety~~  
6 ~~standards advisory committees and the construction safety standards~~  
7 ~~advisory committees shall be established annually by the~~  
8 ~~legislature.~~

9 (2) ~~(4)~~—The director ~~of labor~~ shall promulgate an emergency  
10 **SAFETY** standard in compliance with section 48 of ~~Act No. 306 of the~~  
11 ~~Public Acts of 1969, as amended, being section 24.248 of the~~  
12 ~~Michigan Compiled Laws~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**  
13 **1969 PA 306, MCL 24.248,** ~~when~~ **IF** the emergency **SAFETY** standard is  
14 necessary to protect employees. If the director ~~of labor is~~  
15 ~~promulgating~~ **PROMULGATES** an emergency standard on a matter  
16 addressed by a federal standard, the director ~~of labor~~ shall  
17 promulgate a standard that is substantially similar to the federal  
18 standard unless he or she determines and certifies that the federal  
19 standard is clearly inconsistent with the criteria set forth in  
20 section 9, 16, or 19, or a combination thereof.

21 (3) ~~(5)~~—Except for a standard adopted by reference pursuant to  
22 section 14, a standard approved by the ~~appropriate commission~~  
23 director pursuant to section 16 or 19 shall be promulgated pursuant  
24 to ~~Act No. 306 of the Public Acts of 1969, as amended, being~~  
25 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws.~~ **THE**  
26 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**  
27 **24.328.**



1           Sec. 69. (1) ~~The department of labor and the department of~~  
 2 ~~health~~**DIRECTOR** may promulgate, amend, and rescind rules pursuant  
 3 to the ~~provisions of Act No. 306 of the Public Acts of 1969, as~~  
 4 ~~amended~~**ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL**  
 5 **24.201 TO 24.328**, with respect to matters necessary for the  
 6 administration of this act.

7           ~~(2) The commissions established pursuant to this act may~~  
 8 ~~promulgate, amend, and rescind rules of procedure pursuant to Act~~  
 9 ~~No. 306 of the Public Acts of 1969, as amended, for the conduct of~~  
 10 ~~their proceedings.~~

11           (2) ~~(3)~~Declaratory rulings ~~which~~**THAT** concern the application  
 12 of occupational safety and health standards ~~,~~promulgated pursuant  
 13 to this act ~~,~~to specific facts shall be made solely by the  
 14 director ~~of labor~~ or his **OR HER** authorized representative with  
 15 respect to occupational safety standards or ~~the director of public~~  
 16 ~~health or his authorized representative with respect to~~  
 17 occupational health standards, pursuant to section 63 of ~~Act No.~~  
 18 ~~306 of the Public Acts of 1969.~~**THE ADMINISTRATIVE PROCEDURES ACT OF**  
 19 **1969, 1969 PA 306, MCL 24.263.**

20           (3) ~~(4)~~Any occupational safety or health standard adopted by  
 21 reference pursuant to section 14, promulgated pursuant to this act,  
 22 or continued in effect pursuant to sections 21(1) and ~~24(2)~~ shall  
 23 ~~be deemed~~**24(1) IS CONSIDERED** to supersede any occupational safety  
 24 or health standard or rule promulgated pursuant to any other law of  
 25 this state. However, ~~where~~**IF** another state agency has authority to  
 26 promulgate standards or rules applicable to the public safety or  
 27 health, the rules and standards promulgated pursuant to this act

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1 ~~shall not be deemed to DO NOT~~ supersede ~~such THOSE~~ other agency  
2 rules or standards but ~~shall be deemed to~~ have concurrent  
3 applicability with ~~such THOSE~~ rules and standards.

4 Enacting section 1. Section 15 of the Michigan occupational  
5 safety and health act, 1974 PA 154, MCL 408.1015, is repealed.

6 Enacting section 2. This amendatory act does not take effect  
7 unless all of the following bills of the 96th Legislature are  
8 enacted into law:

9 [(a) Senate Bill No. 1335.

10 (b) Senate Bill No. 1336.

11 (c) House Bill No. 5917.

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