

SUBSTITUTE FOR
HOUSE BILL NO. 4771

A bill to amend 1974 PA 154, entitled
"Michigan occupational safety and health act,"
by amending sections 4, 35, and 36 (MCL 408.1004, 408.1035, and
408.1036), section 4 as amended by 2012 PA 416 and sections 35 and
36 as amended by 1991 PA 105.

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,~~ **Standard Industrial Classification Manual,**
4 United States ~~bureau~~ **Bureau** of the ~~budget,~~ **Budget,** 1972 edition.
5 Agricultural operations include any practices performed by a farmer
6 or on a farm as an incident to or in conjunction with farming
7 operations including preparation for market **or** delivery to storage

1 or market or to carriers for transportation to market.

2 (2) "Asbestos" means a group of naturally occurring minerals
3 that separate into fibers, including chrysotile, amosite,
4 crocidolite, anthophyllite, tremolite, and actinolite.

5 (3) "Asbestos-related violation" means a violation of this
6 act, an order issued under this act, or a rule of standard
7 promulgated under this act that involves the demolition,
8 renovation, encapsulation, removal, or handling of friable asbestos
9 material or otherwise involves the exposure of an individual to
10 friable asbestos material.

11 (4) ~~(2)~~—"Authorized employee representative" or
12 "representative of employee" means a person designated by a labor
13 organization certified by the ~~national labor relations board~~
14 **National Labor Relations Board** or employment relations commission
15 as defined in section 2(c) of 1939 PA 176, MCL 423.2, as the
16 bargaining representative for the affected employees. In the
17 absence of certification, it shall be a person designated by the
18 organization having a collective bargaining relationship with the
19 employer and designated as having a collective bargaining
20 relationship with the employer by the affected employees. If a
21 labor organization has not been certified, or if no organization
22 has a collective bargaining relationship with the employer,
23 "authorized employee representative" or "representative of
24 employee" means a person designated by the affected employees to
25 represent them for the purpose of proceedings under this act.

26 (5) ~~(3)~~—"Board" means the board of health and safety
27 compliance and appeals created in section 46.

28 (6) ~~(4)~~—"Construction operations" means the work activity
29 designated in major groups 15, 16, and 17 of the ~~standard~~

1 ~~industrial classification manual, Standard Industrial~~
 2 **Classification Manual**, United States ~~bureau~~ **Bureau** of the ~~budget,~~
 3 **Budget**, 1972 edition.

4 (7) ~~(5)~~—"Director" means the director of the department of
 5 ~~licensing and regulatory affairs.~~ **labor and economic opportunity.**

6 (8) ~~(6)~~—"Department attorney" means the attorney general or
 7 the authorized representative of the attorney general.

8 (9) **"Friable asbestos material" means any material that**
 9 **contains more than 1% asbestos by weight and that can be crumbled,**
 10 **pulverized, or reduced to powder when dry, by hand pressure.**

11 (10) ~~(7)~~—"Domestic employment" means that employment involving
 12 an employee specifically employed by a householder to engage in
 13 work or an activity relating to the operation of a household and
 14 its surroundings, whether or not the employee resides in the
 15 household.

16 (11) ~~(8)~~—"Mines", except as provided in ~~subdivision (d),~~
 17 **subsection (12)**, means all of the following:

18 (a) An area of land from which minerals are extracted in
 19 nonliquid form, or if in liquid form, are extracted with workers
 20 underground.

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

23 (c) Lands, excavations, underground passageways, shafts,
 24 slopes, tunnels and workings, structures, facilities, equipment,
 25 machines, tools, or other property, including impoundments,
 26 retention dams, and tailings ponds, on the surface or underground,
 27 used in, or to be used in, or resulting from, the work of
 28 extracting minerals from their natural deposits in nonliquid form,
 29 or if in liquid form, with workers underground, or used in, or to

1 be used in, the milling of minerals, or the work of preparing coal
2 or other minerals, and includes custom coal preparation facilities.

3 (12) ~~(d) This subsection~~ "**Mines**" does not include industrial
4 borrow pits, or sand, gravel, or crushed and dimension stone
5 quarrying operations, or surface construction operations.

6 Sec. 35. (1) ~~An~~ **If an** employer ~~who~~ receives a citation for a
7 serious violation of this act, an order issued pursuant to this
8 act, or a rule or standard promulgated under this act, **the board**
9 shall ~~be assessed~~ **assess the employer** a civil penalty of not more
10 than \$7,000.00 for each violation.

11 (2) ~~An~~ **If an** employer ~~who~~ fails to correct a violation for
12 which a citation was issued within the period permitted for its
13 correction, **the board** may ~~be assessed~~ **assess the employer** a civil
14 penalty of not more than \$7,000.00 for each day during which the
15 failure or violation continues. A period permitted for corrections
16 does not begin to run until the date of the final order of the
17 board if a review proceeding before ~~a~~ **the** board is initiated by the
18 employer in good faith and not solely for delay or avoidance of a
19 penalty.

20 (3) ~~An~~ **If an** employer ~~who~~ receives a citation for a violation
21 of this act, an order issued pursuant to this act, or a rule or
22 standard promulgated under this act, ~~which~~ **and the** violation is
23 specifically determined not to be of a serious nature, **the board**
24 may ~~be assessed~~ **assess the employer** a civil penalty of not more
25 than \$7,000.00 for each violation.

26 (4) ~~An~~ **If an** employer ~~who~~ willfully or repeatedly violates
27 this act, an order issued pursuant to this act, or a rule or
28 standard promulgated under this act, **the board** may ~~be assessed~~
29 **assess the employer** a civil penalty of not more than \$70,000.00 for

1 each violation, but not less than \$5,000.00 for each willful
2 violation. **As used in this subsection:**

3 (a) "Case closing date", with respect to an asbestos-related
4 violation, means the first date that all of the following are met:

5 (i) The citation for the violation is a final order.

6 (ii) Satisfactory abatement documentation for the violation is
7 received by the board.

8 (iii) All civil penalties related to the violation are timely
9 paid, or the department of labor and economic opportunity complies
10 with section 36(6).

11 (b) "Repeatedly violates", with respect to an asbestos-related
12 violation, means commits an asbestos related violation within 5
13 years after the case closing date of an asbestos-related violation.

14 (5) ~~An~~ **If an** employer ~~who~~ willfully violates this act, an
15 order issued pursuant to this act, or a rule or standard
16 promulgated under this act ~~which~~ **and the violation** causes the death
17 of an employee, **the employer** is guilty of a felony ~~and shall be~~
18 ~~fined not more than \$10,000.00, or imprisoned~~ **punishable by**
19 **imprisonment** for not more than 1 year **or a fine of not more than**
20 **\$10,000.00**, or both. ~~If the conviction is the second under this~~
21 ~~act, the person shall be fined not more than \$20,000.00, or~~
22 ~~imprisoned~~ **A second and any subsequent violation under this**
23 **subsection is punishable by imprisonment** for not more than 3 years
24 **or a fine of \$20,000.00**, or both.

25 (6) ~~An~~ **If an** employer ~~who~~ violates a posting requirement
26 prescribed under this act, **the board** shall ~~be assessed~~ **assess the**
27 **employer** a civil penalty of not more than \$7,000.00 for each
28 violation.

29 (7) ~~A~~ **If a** person ~~who~~ knowingly makes a false statement,

1 representation, or certification in an application, record, report,
2 plan, or other document filed or required to be maintained pursuant
3 to this act, or ~~who~~ fails to maintain or transmit a record or
4 report as required under section 61, **the person** is guilty of a
5 misdemeanor and ~~shall be fined not more than \$10,000.00, or~~
6 ~~imprisoned~~ **punishable by imprisonment** for not more than 6 months **or**
7 **a fine of not more than \$10,000.00**, or both.

8 (8) ~~A~~ ~~If a person who~~ gives advance notice of an investigation
9 or an inspection to be conducted under this act without authority
10 from the appropriate director or the designee of the director, **the**
11 **person** is guilty of a misdemeanor and ~~shall be fined not more than~~
12 ~~\$1,000.00, or imprisoned~~ **punishable by imprisonment** for not more
13 than 6 months **or a fine of not more than \$1,000.00**, or both.

14 (9) ~~The~~ **For a public employer, the** department of ~~labor or the~~
15 ~~department of public health, if the employer is a public employer,~~
16 **labor and economic opportunity**, instead of applying a civil penalty
17 otherwise applicable to an employer under this section, may request
18 that the attorney general seek a writ of mandamus in the
19 appropriate circuit court to compel compliance with a citation,
20 including the terms of abatement.

21 (10) A person shall not assault a department representative or
22 other person charged with enforcement of this act in the
23 performance of that person's legal duty to enforce this act. A
24 person who violates this subsection is guilty of a misdemeanor. A
25 prosecuting attorney having jurisdiction of ~~this~~ **the** matter ~~and or~~
26 the attorney general ~~knowing of a violation of this section may~~
27 prosecute the violator.

28 ~~(11) The increases in the civil penalties of subsections (1),~~
29 ~~(2), (3), (4), and (6) made pursuant to the 1991 amendatory act~~

1 ~~that added this subsection shall take effect April 1, 1992.~~

2 Sec. 36. (1) The board shall assess civil penalties,
3 considering the size of the business, the seriousness of the
4 violation, the ~~good faith~~ **good-faith** efforts of the employer, and
5 the history of previous citations, and may establish a schedule of
6 civil penalties. **Subject to subsection (2), for a civil penalty**
7 **that was assessed as the result of an asbestos-related violation,**
8 **the board shall not reduce the civil penalty by more than a total**
9 **of 95% or by more than the corresponding percentage for each of the**
10 **following:**

11 (a) In considering the size of the business, 70%.

12 (b) In considering the good-faith efforts of the employer,
13 25%.

14 (c) In considering the history of previous citations, 10%.

15 (2) The board may issue an order for a reduction of a civil
16 penalty if the order is consistent with a dismissal or
17 reclassification of an asbestos-related violation contained in a
18 hearing officer's report submitted to the board following an
19 administrative hearing held under section 42 or 44. For an
20 asbestos-related violation that has been reclassified by a hearing
21 officer, the board shall not reduce the civil penalty that
22 corresponds to the reclassified violation by more than is
23 prescribed under subsection (1).

24 (3) ~~(2) Beginning April 1, 1992, the~~ **The** department of labor
25 ~~and the department of public health~~ **labor and economic opportunity**
26 shall administer and enforce the assessment of civil penalties in a
27 manner that is consistent with the administration and enforcement
28 of civil penalties by the federal ~~occupational safety and health~~
29 ~~administration.~~ **Occupational Safety and Health Administration.**

1 (4) ~~(3)~~—A civil penalty owed under this act ~~shall~~**must** be paid
2 to the department of ~~labor or the department of public health,~~
3 ~~whichever is appropriate,~~**labor and economic opportunity** within 15
4 working days after the date the penalty becomes a final order of
5 the board, not subject to further agency or judicial review.
6 ~~Beginning April 1, 1992, a~~**A** civil penalty ~~shall~~**must** be credited
7 to the state general fund.

8 (5) ~~(4)~~—If a civil penalty remains unpaid beyond the period of
9 time specified in subsection ~~(3),~~**(4)**, the department of ~~labor or~~
10 ~~the department of public health, whichever is appropriate,~~**labor**
11 **and economic opportunity** shall issue a letter to the employer
12 demanding payment within 20 days after the date of the letter.

13 (6) ~~(5)~~—If the penalty remains unpaid following the period
14 specified in subsection ~~(4),~~**(5)**, the ~~appropriate~~ department **of**
15 **labor and economic opportunity** shall transmit information on the
16 amount of the penalty and the name and address of the employer
17 owing the penalty to the department of treasury.

18 (7) ~~(6)~~—The department of treasury shall institute proceedings
19 to collect the amount assessed as a civil penalty. The department
20 of treasury shall offset the amount of the penalty against money
21 owed by the state to the employer. The department of treasury shall
22 request that the attorney general recover the amount of the penalty
23 remaining unpaid, after offsets, by instituting a civil action in
24 the circuit court for the county in which the violation occurred or
25 in the circuit court for the county in which the employer owing the
26 penalty has its principal place of business.

27 Enacting section 1. This amendatory act takes effect 90 days
28 after the date it is enacted into law.