

Senate Bill 459 as passed by the Senate
Sponsor: Senator Dave Honigman
Senate Committee: Labor
House Committee: Labor

Complete to 9-23-91

A SUMMARY OF SENATE BILL 459 AS PASSED BY THE SENATE

The bill would amend the Michigan Occupational Safety and Health Act (MIOSHA) to do the following: increase fines and penalties to prescribed federal levels and credit fine revenue to the general fund, rather than the safety education and training fund; create a presumption for use of federal standards in rules promulgated under MIOSHA in the future; transfer \$2.3 million from the Safety Education and Training Fund (SET fund) to the general fund on October 1, 1991, with the money going to the operation of MIOSHA programs; require agricultural employers to provide potable water and toilet facilities (similar requirements are at present limited to enterprises employing more than 10 workers); and delete language requiring employers to allow employees to inspect their health records and general health surveys of workplace conditions. The bill would take effect October 1, 1991. A more detailed explanation follows.

Fines and Penalties. Consistent with the federal Omnibus Budget Reconciliation Act of 1990, the bill would increase maximum civil fines sevenfold, from current levels of \$1,000 for various lesser violations and \$10,000 for more serious violations, to \$7,000 and \$70,000 respectively. The bill would in addition impose a minimum penalty of \$5,000 per willful violation when an employer willfully and repeatedly violated the act, or a rule or standard promulgated under it. New civil penalties would take effect April 1, 1992, at which time revenue from them would begin going into the general fund, instead of the safety education and training fund as is done now. Criminal penalties would remain unchanged.

The Board of Health and Safety Compliance and Appeals assesses civil penalties, considering the size of the business, the seriousness of the violation, and the history of previous citations; starting when the bill took effect, the board also would consider the good faith efforts of the employer. Beginning April 1, 1992, the Department of Labor and the Department of Public Health would administer and enforce the assessment of civil penalties in a manner that was consistent with the administration and enforcement of civil penalties by the federal Occupational Safety and Health Administration.

Standards, commission actions. Beginning on April 1, 1992, when the federal government adopted a new occupational safety and health standard, the Department of Labor or the Department of Public Health would initiate the process for adoption of an administrative rule that was substantially similar to the federal standard. The proposed rule would be presented to the joint committee on administrative rules unless one of the standards commissions (general industry safety, construction safety, occupational health) determined that the federal standard was clearly inconsistent with MIOSHA criteria. Also

beginning April 1, 1992, a proposed administrative rule addressing a matter not covered by federal rules could not be processed and presented to the joint committee unless the appropriate standards commission certified a clear and convincing need for the standard.

Beginning April 1, 1992, any action taken by a standards commission (each of which has nine voting members) would require an affirmative vote of at least four members, including at least one labor member and one management member. Until then, adoption of a standard would continue to be by a majority of members present, providing a quorum was present.

Starting when the bill took effect, if the director of the Department of Labor or of Public Health was promulgating an emergency standard on a matter addressed by a federal standard, the state standard would have to be substantially similar to the federal standard, unless the director determined that the federal standard to be clearly inconsistent with MIOSHA criteria.

Constitutional issues. If some aspect of the proposed use of federal rules and restrictions on state rules was held unconstitutional, the civil penalties proposed by the bill would be rescinded and current penalties would again apply.

Funds transfer. On October 1, 1991, \$2.3 million would be transferred from the SET fund to the general fund, to be used for the operation of MIOSHA programs. (Under the provisions of Public Act 6 of 1991, enrolled House Bill 4484, \$1.3 million was similarly transferred for the current fiscal year.)

Safety education and training fund. As noted above, revenue from civil penalties would go into the general fund, rather than the SET fund (this fund supports labor department safety education and training programs). The fund thus would be supported solely by the assessments levied on workers compensation insurers and self-insured employers; those assessments are based on the amount appropriated in a fiscal year. The bill would delete language suspending the assessments for the 1990-91 fiscal year. The bill also would provide for a report on the fund, due September 30 of this year, to be issued annually, and to include an explanation of all expenditures from the fund.

Agricultural employees. Public Act 6 of 1991 replaced state standards on the provision of water and toilet facilities to agricultural workers with similar federal standards; however, former state standards basically applied to all agricultural employers (with some relaxation of standards granted to small employers), while the federal standards exempted those with fewer than eleven employees. The bill would retain federal standards as a basis, except as follows: (1) an agricultural employer would have to provide at no cost to the employee, potable water in locations that are readily accessible to all agricultural employees; and (2) an agricultural employer with fewer than 11 employees would have ensure that agricultural employees had an available toilet and hand-washing facility.

Right to know. The bill would delete provisions requiring employers to allow employees to inspect and copy medical records, health data, and general health surveys in accordance with the Bullard-Plawecki Employee Right to Know Act.

Asbestos regulation. Existing law calls for the repeal of asbestos abatement provisions when asbestos abatement rules, now being developed, take effect. The bill would provide for asbestos standards to be promulgated under the new procedures proposed by the bill.