

HOUSE BILL No. 4484

March 6, 1991, Introduced by Reps. Emerson, Murphy, Jonker, Scott, Gubow, Berman, Hollister, Anthony, Gilmer, Perry Bullard, Gire, Jondahl and DeMars and referred to the Committee on Labor.

A bill to amend sections 35, 36, and 55 of Act No. 154 of the Public Acts of 1974, entitled as amended "Michigan occupational safety and health act," sections 36 and 55 as amended by Act No. 24 of the Public Acts of 1986, being sections 408.1035, 408.1036, and 408.1055 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 35, 36, and 55 of Act No. 154 of the
2 Public Acts of 1974, sections 36 and 55 as amended by Act No. 24
3 of the Public Acts of 1986, being sections 408.1035, 408.1036,
4 and 408.1055 of the Michigan Compiled Laws, are amended to read
5 as follows:

6 Sec. 35. (1) 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 ~~pursuant to~~ UNDER this

1 act shall be assessed a civil penalty of not more than
2 ~~\$1,000.00~~ \$7,000.00 for each violation.

3 (2) An employer who fails to correct a violation for which a
4 citation was issued within the period permitted for its correc-
5 tion may be assessed a civil penalty of not more than ~~\$1,000.00~~
6 \$7,000.00 for each day during which the failure or violation
7 continues. A period permitted for corrections shall not begin to
8 run until the date of the final order of the board ~~—~~ if a
9 review proceeding before a board is initiated by the employer in
10 good faith and not solely for delay or avoidance of a penalty.

11 (3) An employer who receives a citation for a violation of
12 this act, an order issued pursuant to this act, or a rule or
13 standard promulgated ~~pursuant to~~ UNDER this act, which viola-
14 tion is specifically determined not to be of a serious nature,
15 may be assessed a civil penalty of not more than ~~\$1,000.00~~
16 \$7,000.00 for each violation.

17 (4) An employer who ~~wilfully~~ WILLFULLY or repeatedly vio-
18 lates this act, an order issued pursuant to this act, or a rule
19 or standard promulgated ~~pursuant to~~ UNDER this act may be
20 assessed a civil penalty of not more than ~~\$10,000.00~~ \$70,000.00
21 for each violation, BUT NOT LESS THAN \$5,000.00 FOR EACH WILLFUL
22 VIOLATION.

23 (5) An employer who ~~wilfully~~ WILLFULLY violates this act,
24 an order issued PURSUANT TO THIS ACT, or rule or standard promul-
25 gated ~~pursuant to~~ UNDER this act, which causes the death of an
26 employee, is guilty of a felony and shall be fined not more than
27 ~~\$10,000.00~~ \$70,000.00 OR LESS THAN \$5,000.00, or imprisoned FOR

1 not more than 1 year, or both. If the conviction is the second
2 under this act, the person shall be fined not more than
3 ~~\$20,000.00~~ \$140,000.00 OR LESS THAN \$10,000.00, or imprisoned
4 FOR not more than 3 years, or both.

5 (6) An employer who violates a posting requirement pre-
6 scribed under this act ~~—~~ shall be assessed a civil penalty of
7 not more than ~~\$1,000.00~~ \$7,000.00 for each violation.

8 (7) A person who knowingly makes a false statement,
9 representation, or certification in an application, record,
10 report, plan, or other document filed or required to be main-
11 tained pursuant to this act, or fails to maintain or transmit
12 records or reports as required under section 61, ~~shall be~~ IS
13 guilty of a misdemeanor and shall be fined not more than
14 ~~\$10,000.00~~ \$70,000.00 OR LESS THAN \$5,000.00, or imprisoned FOR
15 not more than 6 months, or both.

16 (8) A person who gives advance notice of an investigation or
17 an inspection to be conducted under this act, without authority
18 from the appropriate director or the designee of the director, is
19 guilty of a misdemeanor and shall be punished by a fine of not
20 more than ~~\$1,000.00~~ \$7,000.00, or imprisoned FOR not more than
21 6 months, or both.

22 (9) The department of labor or the department of public
23 health, if the employer is a public employer, instead of applying
24 a civil penalty otherwise applicable to an employer under this
25 section, may request that the attorney general seek a writ of
26 mandamus in the appropriate circuit court to compel compliance
27 with a citation, including the terms of abatement.

1 (10) A person shall not assault a department representative
2 or other person charged with enforcement of this act in the per-
3 formance of that person's legal duty to enforce this act. A
4 person who violates this subsection is guilty of a misdemeanor.
5 A prosecuting attorney having jurisdiction of this matter and the
6 attorney general knowing of a violation of this section may pros-
7 ecute the violator.

8 Sec. 36. (1) The board shall assess civil penalties, con-
9 sidering the size of the business, the seriousness of the viola-
10 tion, and the history of previous citations, and may establish a
11 schedule of civil penalties.

12 (2) A civil penalty owed under this act shall be paid to the
13 department of labor or the department of public health, whichever
14 is appropriate, within 15 working days after the date the penalty
15 becomes a final order of the board, not subject to further agency
16 or judicial review. A civil penalty shall be credited to the
17 ~~safety education and training~~ STATE GENERAL fund.

18 (3) If a civil penalty remains unpaid beyond the period of
19 time specified in subsection (2), the department of labor or the
20 department of public health, whichever is appropriate, shall
21 issue a letter to the employer demanding payment within 20 days
22 after the date of the letter.

23 (4) If the penalty remains unpaid following the period spec-
24 ified in subsection (3), the appropriate department shall trans-
25 mit information on the amount of the penalty and the name and
26 address of the employer owing the penalty to the department of
27 treasury.

1 (5) The department of treasury shall institute proceedings
2 to collect the amount assessed as a civil penalty. The depart-
3 ment of treasury shall offset the amount of the penalty against
4 money owed by the state to the employer. The department of trea-
5 sury shall request that the attorney general recover the amount
6 of the penalty remaining unpaid, after offsets, by instituting a
7 civil action in the circuit court for the county in which the
8 violation occurred or in the circuit court for the county in
9 which the employer owing the penalty has its principal place of
10 business.

11 Sec. 55. (1) ~~To accomplish the objectives outlined in sec-~~
12 ~~tion 54, a~~ A safety education and training fund is created.
13 EXCEPT AS PROVIDED IN SUBSECTION (2), THE FUND SHALL BE USED TO
14 ACCOMPLISH THE OBJECTIVES OUTLINED IN SECTIONS 54 AND 56. The
15 state treasurer shall be custodian of the fund and may invest the
16 surplus of the fund in investments as in the state treasurer's
17 judgment are in the best interest of the state. Earnings from
18 those investments shall be credited to the fund. The state trea-
19 surer shall notify the director of ~~the department of~~ labor, THE
20 DIRECTOR OF PUBLIC HEALTH, and the legislature of interest cred-
21 ited and the balance of the safety education and training fund as
22 of December 31 of each year.

23 (2) ON APRIL 1, 1991, AN AMOUNT AS NECESSARY TO REPLACE THE
24 GENERAL FUND REVENUE DECREASE TO PROGRAMS DESCRIBED IN THIS ACT
25 IS TRANSFERRED FROM THE SAFETY EDUCATION AND TRAINING FUND TO THE
26 STATE GENERAL FUND, THUS ALLOWING THE PROGRAMS TO OPERATE THROUGH
27 SEPTEMBER 30, 1991, THE REMAINDER OF THE FISCAL YEAR.

1 (3) ~~(2)~~ The director of ~~the department of~~ labor shall
2 supervise and administer the fund. The director shall annually
3 assess a levy based on the total annual worker's disability com-
4 pensation losses, excluding medical payments, paid in the
5 ~~previous~~ IMMEDIATELY PRECEDING calendar year by employers under
6 the worker's disability compensation act of 1969, Act No. 317 of
7 the Public Acts of 1969, as amended, being sections 418.101 to
8 418.941 of the Michigan Compiled Laws. As soon as practicable
9 after January 1, 1986, and each year thereafter, the director,
10 except as provided in this subsection and subsection ~~(3)~~ (4),
11 shall assess upon and collect from each carrier, self-insured
12 employer, and the state accident fund a sum equal to that propor-
13 tion of 50% of the current fiscal year appropriation of safety
14 education and training funds which the total worker's disability
15 compensation benefits, exclusive of medical payments, paid by
16 each carrier, the state accident fund, or each self-insured
17 employer bears to the total of the compensation benefits paid by
18 all carriers, self-insured employers, and the state accident fund
19 during the ~~previous~~ IMMEDIATELY PRECEDING calendar year, except
20 the total amount levied annually shall not exceed 3/4 of 1% of
21 the total of the compensation benefits paid by all carriers,
22 self-insured employers, and the state accident fund during the
23 ~~previous~~ IMMEDIATELY PRECEDING calendar year. Funds ~~which~~
24 THAT are unexpended at the end of each fiscal year shall be
25 returned to the safety education and training fund.

26 (4) ~~(3)~~ If at any time during the fiscal year in which the
27 assessment required by subsection ~~(2)~~ (3) is made the balance

1 of money in the safety education and training fund ~~would be~~ IS
2 less than \$1,500,000.00, the assessment shall equal the total
3 fiscal year appropriation of safety education and training
4 funds.

5 (5) ~~(4)~~ Notice of the assessments shall be sent by the
6 director of ~~the department of~~ labor by mail to each carrier.
7 Payment of assessments shall be received in the principal office
8 of the department of labor before a date specified uniformly in
9 the notice, but not less than 90 days after the date of mailing.

10 (6) ~~(5)~~ The levy assessments shall constitute an element
11 of loss for the purpose of establishing rates for worker's dis-
12 ability compensation insurance. Funds derived from this levy
13 shall be deposited in the safety education and training fund and
14 shall be appropriated by the legislature for the operation of
15 this program.

16 (7) ~~(6)~~ To enable full and complete legislative review of
17 the assessment process, the department of labor, not later than
18 September 30, 1991, shall submit to the legislature and the house
19 and senate committees that consider labor matters a written
20 report on the status of the safety education and training assess-
21 ment required by this section. The report shall include, but IS
22 not ~~be~~ limited to, information on the amount of the assessment,
23 the percentage of the assessment as compared to losses, and the
24 balance of money in the safety education and training fund.

25 Section 2. This amendatory act shall take effect April 1,
26 1991.