

HOUSE BILL No. 5974

June 25, 1992, Introduced by Reps. Murphy, DeMars, Clack, Varga, Jonker, Wallace, Perry Bullard, Wozniak, Pitoniak, Bennane, Byrum, Kilpatrick, Emerson, Dobronski, Gagliardi, Yokich, Saunders, Harrison, Profit, Harder, Gubow, O'Neill and Palamara and referred to the Committee on Labor.

A bill to amend sections 28, 31, 33, 35, 41, and 65 of Act No. 154 of the Public Acts of 1974, entitled as amended "Michigan occupational safety and health act," section 31 as amended by Act No. 80 of the Public Acts of 1986, being sections 408.1028, 408.1031, 408.1033, 408.1035, 408.1041, and 408.1065 of the Michigan Compiled Laws; and to add sections 20, 25, 26, 26a, 26b, 39, 40, and 64.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 28, 31, 33, 35, 41, and 65 of Act
2 No. 154 of the Public Acts of 1974, section 31 as amended by Act
3 No. 80 of the Public Acts of 1986, being sections 408.1028,
4 408.1031, 408.1033, 408.1035, 408.1041, and 408.1065 of the
5 Michigan Compiled Laws, are amended and sections 20, 25, 26, 26a,
6 26b, 39, 40, and 64 are added to read as follows:

1 SEC. 20. (1) IF EMPLOYEES OF A CONSTRUCTION CONTRACTOR WORK
2 AT A WORKSITE GENERALLY GOVERNED BY GENERAL INDUSTRY SAFETY
3 STANDARDS, BOTH GENERAL INDUSTRY SAFETY STANDARDS AND CONSTRUC-
4 TION SAFETY STANDARDS APPLY TO THOSE EMPLOYEES.

5 (2) IF EMPLOYEES OF AN EMPLOYER AT A WORKSITE GENERALLY GOV-
6 ERNED BY GENERAL INDUSTRY SAFETY STANDARDS PERFORM CONSTRUCTION
7 WORK, BOTH GENERAL INDUSTRY SAFETY STANDARDS AND CONSTRUCTION
8 SAFETY STANDARDS APPLY TO THOSE EMPLOYEES.

9 SEC. 25. (1) AT EACH WORKSITE WHERE THE NUMBER OF EMPLOYEES
10 REGULARLY EXCEEDS 10, AN EMPLOYER SHALL PROVIDE FOR EMPLOYEE
11 SAFETY AND HEALTH REPRESENTATIVES WHO SHALL BE SELECTED AS
12 FOLLOWS:

13 (A) IF THERE IS A LABOR ORGANIZATION CERTIFIED BY THE
14 NATIONAL LABOR RELATIONS BOARD OR THE EMPLOYMENT RELATIONS COM-
15 MISSION AS DEFINED IN SECTION 2(C) OF ACT NO. 176 OF THE PUBLIC
16 ACTS OF 1939, BEING SECTION 423.2 OF THE MICHIGAN COMPILED LAWS,
17 THAT LABOR ORGANIZATION SHALL SELECT THE EMPLOYEE SAFETY AND
18 HEALTH REPRESENTATIVES.

19 (B) IF THERE IS NOT A CERTIFIED LABOR ORGANIZATION AS
20 DESCRIBED IN SUBDIVISION (A), THE NONSUPERVISORY EMPLOYEES SHALL
21 ANNUALLY SELECT THE EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

22 (2) IF THERE ARE 4 OR MORE COLLECTIVE BARGAINING UNITS AT A
23 WORKSITE, THE EMPLOYER SHALL PROVIDE FOR A NUMBER OF EMPLOYEE
24 SAFETY AND HEALTH REPRESENTATIVES FROM EACH UNIT IN PROPORTION TO
25 THE NUMBER OF EMPLOYEES IN THE UNIT. UNLESS MODIFIED BY A COL-
26 LECTIVE BARGAINING AGREEMENT THAT PROVIDES FOR REPRESENTATION AT
27 LEAST AS EFFECTIVE AS THE REPRESENTATION REQUIRED BY THIS

1 SUBSECTION, THE NUMBER OF EMPLOYEE SAFETY AND HEALTH
2 REPRESENTATIVES AT A WORKSITE SHALL BE AS FOLLOWS:

3 (A) ONE FOR A WORKSITE WITH 10 TO 49 NONSUPERVISORY
4 EMPLOYEES.

5 (B) TWO FOR A WORKSITE WITH 50 TO 99 NONSUPERVISORY
6 EMPLOYEES.

7 (C) THREE FOR A WORKSITE WITH 100 TO 199 NONSUPERVISORY
8 EMPLOYEES.

9 (D) FOUR FOR A WORKSITE WITH 200 TO 299 NONSUPERVISORY
10 EMPLOYEES.

11 (E) FIVE FOR A WORKSITE WITH 300 TO 399 NONSUPERVISORY
12 EMPLOYEES.

13 (F) SIX FOR A WORKSITE WITH 400 OR MORE NONSUPERVISORY
14 EMPLOYEES.

15 (3) AN EMPLOYER SHALL PROVIDE TRAINING FOR EMPLOYEE SAFETY
16 AND HEALTH REPRESENTATIVES UPON APPOINTMENT AND THEREAFTER NOT
17 LESS THAN ANNUALLY. THE TRAINING SHALL INCLUDE, BUT IS NOT
18 LIMITED TO, COVERAGE OF THE CONTENTS OF THIS ACT AND THE RULES
19 PROMULGATED UNDER THIS ACT, THEIR RIGHTS AND RESPONSIBILITIES AS
20 EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES, AND TECHNICAL INFOR-
21 MATION RELEVANT TO WORKER AND ENVIRONMENTAL PROTECTION.

22 (4) AN EMPLOYEE SAFETY AND HEALTH REPRESENTATIVE MAY DO ALL
23 OF THE FOLLOWING:

24 (A) WHEN CONDITIONS WARRANT OR IN RESPONSE TO A REQUEST BY
25 AN EMPLOYEE, INSPECT THE PHYSICAL CONDITION OF THE WORKSITE OR
26 THE PART OF THE WORKSITE FOR WHICH HE OR SHE WAS SELECTED TO
27 REPRESENT.

1 (B) AS PROMPTLY AS PRACTICAL, INSPECT THE LOCATION WHERE AN
2 EMPLOYEE WAS KILLED, A SERIOUS ACCIDENT OCCURRED, OR A SUBSTAN-
3 TIAL CHEMICAL RELEASE WITH POTENTIAL EXPOSURE TO WORKERS OR THE
4 COMMUNITY OCCURRED.

5 (C) ACCOMPANY MICHIGAN OCCUPATIONAL SAFETY AND HEALTH
6 INSPECTORS ON INSPECTIONS OF THE WORKSITE.

7 (D) ACCOMPANY ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT OF
8 NATURAL RESOURCES, COUNTY, CITY, AND OTHER GOVERNMENTAL INSPEC-
9 TION PERSONNEL CONCERNED WITH AIR, WATER, SOLID AND HAZARDOUS
10 WASTE, OR TOXIC USE REDUCTION ON TOURS OF THE WORKSITE.

11 (E) ACCOMPANY MANAGEMENT SAFETY, HEALTH, OR ENVIRONMENTAL
12 STAFF, INCLUDING, BUT NOT LIMITED TO, CONSULTANTS, INSURANCE COM-
13 PANY REPRESENTATIVES, AND CONTRACTORS ON INSPECTIONS AND EVALU-
14 ATIONS OF THE WORKSITE.

15 (F) ACCOMPANY A LOCAL EMERGENCY PLANNING COMMITTEE SUBCOM-
16 MITTEE ON AN INSPECTION OF THE WORKSITE.

17 (G) REVIEW AND BE PROVIDED WITH COPIES OF ALL INFORMATION
18 RELEVANT TO THE PROTECTION OF EMPLOYEES FROM SAFETY AND HEALTH
19 HAZARDS. THIS INFORMATION INCLUDES, BUT IS NOT LIMITED TO, ACCI-
20 DENT REPORTS, INDUSTRIAL HYGIENE DATA, VENDOR SAFETY INFORMATION,
21 AND ANALYSES OF MEDICAL AND EXPOSURE RECORDS.

22 (H) REVIEW AND BE PROVIDED WITH COPIES OF ALL INFORMATION
23 RELATED TO PROTECTION OF THE ENVIRONMENT. THIS INFORMATION
24 INCLUDES, BUT IS NOT LIMITED TO, A FACILITY ENVIRONMENTAL FILE
25 REQUIRED BY SECTION 6 OF THE COMMUNITY RIGHT TO ACT ON TOXIC HAZ-
26 ARDS ACT.

(I) ATTEND WORKSITE SAFETY AND HEALTH COMMITTEE MEETINGS.

(J) ATTEND AN OFF WORKSITE PROCEEDING THAT IS HELD AFTER A GOVERNMENTAL INSPECTION. THIS TYPE OF PROCEEDING MAY INCLUDE, BUT IS NOT LIMITED TO, A FORMAL OR INFORMAL CONTEST OF A CITATION ISSUED UNDER THIS ACT AND A HEARING ON AN ENVIRONMENTAL MATTER.

(K) OBSERVE AND PARTICIPATE IN EMPLOYEE JOB-RELATED SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION TRAINING PROGRAMS.

(L) PERFORM ANY ADDITIONAL DUTY AS SPECIFIED IN A COLLECTIVE BARGAINING AGREEMENT.

(5) AN EMPLOYEE SAFETY AND HEALTH REPRESENTATIVE MAY TAKE TIME OFF FROM WORK AS NECESSARY TO PERFORM DUTIES REQUIRED OR PERMITTED BY THIS ACT OR RULES PROMULGATED UNDER THIS ACT. TIME SPENT ON THESE DUTIES IS CONSIDERED WORK TIME.

(6) IN THE PERFORMANCE OF HIS OR HER DUTIES UNDER THIS ACT, AN EMPLOYEE SAFETY AND HEALTH REPRESENTATIVE IS NOT PERSONALLY LIABLE FOR DAMAGES SUSTAINED BY AN ACTION ON HIS OR HER PART, EXCEPT FOR WANTON AND WILLFUL NEGLIGENCE.

SEC. 26. (1) AN EMPLOYER SHALL ESTABLISH A WORKSITE LABOR-MANAGEMENT SAFETY, HEALTH, AND ENVIRONMENT COMMITTEE. THE COMMITTEE SHALL CONSIST OF THE EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES SELECTED PURSUANT TO SECTION 25 AND NOT MORE THAN AN EQUAL NUMBER OF MANAGEMENT EMPLOYEES SELECTED BY THE EMPLOYER. AN EMPLOYER REPRESENTATIVE AND AN EMPLOYEE REPRESENTATIVE, BOTH SELECTED BY THE EMPLOYEE MEMBERS OF THE COMMITTEE, SHALL SERVE AS CO-CHAIRS OF THE COMMITTEE.

(2) THE SAFETY, HEALTH, AND ENVIRONMENT COMMITTEE, AT A MINIMUM, SHALL DO ALL OF THE FOLLOWING:

1 (A) MEET NOT LESS THAN QUARTERLY AND KEEP WRITTEN MINUTES OF
2 THE MEETINGS.

3 (B) INSPECT THE WORKSITE AT LEAST MONTHLY FOR EXISTING OR
4 POTENTIAL SAFETY, HEALTH, AND ENVIRONMENTAL PROBLEMS.

5 (C) MEET NOT LESS THAN QUARTERLY WITH THE COMMUNITY SUBCOM-
6 MITTEE, IF ANY, OF THE LOCAL EMERGENCY PLANNING COMMITTEE
7 DESCRIBED IN SECTION 7 OF THE COMMUNITY RIGHT TO ACT ON TOXIC
8 HAZARDS ACT FOR THE PURPOSE OF DISCUSSING THE FINDINGS OF THE
9 SUBCOMMITTEE'S WORKSITE INSPECTIONS.

10 (D) INVESTIGATE ACCIDENTS AND EXPOSURES THAT HAVE THE POTEN-
11 TIAL TO HARM EMPLOYEES AND THE ENVIRONMENT.

12 (E) RECEIVE AND REVIEW INFORMATION RELEVANT TO THE PROTEC-
13 TION OF EMPLOYEES AND THE ENVIRONMENT.

14 (F) IDENTIFY SITUATIONS THAT MAY BE HAZARDOUS TO EMPLOYEES
15 OR THE ENVIRONMENT.

16 (G) MAKE RECOMMENDATIONS TO THE EMPLOYER AND EMPLOYEES FOR
17 THE IMPROVEMENT OF THE SAFETY AND HEALTH OF EMPLOYEES AND THE
18 PROTECTION OF THE ENVIRONMENT.

19 (H) REVIEW ANNUALLY AND MAKE RECOMMENDATIONS REGARDING THE
20 WORKSITE SAFETY AND HEALTH PLAN REQUIRED IN SECTION 26B.

21 (I) REVIEW ANNUALLY AND MAKE RECOMMENDATIONS REGARDING THE
22 TOXIC USE REDUCTION PLAN REQUIRED BY THE COMMUNITY RIGHT TO ACT
23 ON TOXIC HAZARDS ACT.

24 (J) REVIEW AND RECOMMEND EMPLOYEE JOB-RELATED SAFETY,
25 HEALTH, AND ENVIRONMENTAL PROTECTION TRAINING PROGRAMS.

1 (K) REVIEW NEW CHEMICALS, PROCESSES, AND EQUIPMENT BEFORE
2 THEY ARE USED IN THE WORKSITE AND MAKE RECOMMENDATIONS REGARDING
3 THEM FOR THE PROTECTION OF EMPLOYEES AND THE ENVIRONMENT.

4 (3) THIS SECTION DOES NOT LIMIT ANY SAFETY, HEALTH, OR ENVI-
5 RONMENTAL PROTECTION PROVISION OF A COLLECTIVE BARGAINING
6 AGREEMENT.

7 SEC. 26A. IN PROMULGATING RULES FOR THE IMPLEMENTATION OF
8 SECTIONS 25 AND 26 PURSUANT TO SECTION 69, THE DEPARTMENT OF
9 LABOR AND THE DEPARTMENT OF PUBLIC HEALTH SHALL CONSIDER, AT A
10 MINIMUM, ALL OF THE FOLLOWING:

11 (A) MULTIEMPLOYER WORKSITES AND MULTIUNIT OR MULTIUNION
12 WORKSITES.

13 (B) THE SIZE OF THE WORKSITE.

14 (C) THE NATURE OF THE WORK BEING DONE.

15 (D) THE PHYSICAL ARRANGEMENT OF THE WORKSITE.

16 (E) THE WORK SCHEDULE OF THE EMPLOYEES AT THE WORKSITE.

17 (F) THE HAZARDS AND SAFETY HISTORY OF THE INDUSTRY AND THE
18 WORKSITE.

19 (G) THE APPROPRIATE TRAINING FOR EMPLOYEE SAFETY AND HEALTH
20 REPRESENTATIVES.

21 SEC. 26B. EACH EMPLOYER SHALL DEVELOP AND IMPLEMENT A WORK-
22 SITE SAFETY AND HEALTH PLAN. THE PLAN SHALL DO ALL OF THE
23 FOLLOWING:

24 (A) PROVIDE FOR PERIODIC INSPECTIONS OF THE WORKSITE WITH
25 REGARD TO THE SAFETY AND HEALTH OF EMPLOYEES, THE DOCUMENTATION
26 OF HAZARDS IDENTIFIED DURING THESE INSPECTIONS, AND ACTIONS TAKEN
27 TO CORRECT OR REDUCE THESE HAZARDS.

1 (B) SPECIFY EMPLOYER INDUSTRIAL HYGIENE SERVICES, MEDICAL
2 SERVICES, EMERGENCY MEDICAL RESPONSE PROGRAMS, AND FIRST AID
3 PROGRAMS.

4 (C) SPECIFY AND PROVIDE FOR ADEQUATE SAFETY, MEDICAL, AND
5 INDUSTRIAL HYGIENE PERSONNEL TO IMPLEMENT THE SERVICES AND PRO-
6 GRAMS REQUIRED BY SUBDIVISION (B).

7 (D) PROVIDE FOR EMPLOYEE JOB-RELATED SAFETY AND HEALTH
8 TRAINING.

9 (E) DESIGNATE AN EMPLOYER REPRESENTATIVE WITH OVERALL
10 RESPONSIBILITY FOR THE EMPLOYER'S SAFETY AND HEALTH PROGRAM.

11 (F) DESIGNATE A PERSON WHO IS QUALIFIED BY TRAINING AND
12 EXPERIENCE TO IDENTIFY SAFETY AND HEALTH HAZARDS IN THE WORKSITE
13 AND THE CORRECTIVE MEASURES NEEDED TO BE TAKEN, AND WHO HAS THE
14 AUTHORITY TO IMPLEMENT THOSE CORRECTIONS.

15 (G) DESCRIBE PROCEDURES IN PLACE THAT ASSURE THAT CONTRAC-
16 TORS AT THE WORKSITE FOLLOW SAFETY AND HEALTH PROCEDURES THAT
17 APPLY AND ARE SUITED TO THAT WORKSITE.

18 Sec. 28. (1) An employee or employee representative ~~—~~ who
19 believes that a violation of a standard exists that threatens
20 physical harm to an employee ~~—~~ may request an inspection by
21 giving written notice of the condition to the appropriate
22 department. The notice shall set forth with reasonable detail
23 the grounds for the request and shall be signed by the employee
24 or employee representative giving the notice. Upon receipt of a
25 complaint, and if the department determines there are reasonable
26 grounds for the complaint, the department shall conduct an
27 inspection. A copy of the request shall be provided TO the

1 employer or the employer's agent not later than the time of the
2 inspection. Upon the request of the person giving the notice,
3 his or her name and the names of employees referred to in the
4 notice shall not appear in the copy or on a record ~~which~~ THAT
5 is published, released, or made available. If the department
6 determines that there are not reasonable grounds to believe that
7 an inspection should be conducted, it shall notify, in writing,
8 the complainant of its determination. AN EMPLOYEE OR AN EMPLOYEE
9 REPRESENTATIVE MAY CONTEST PURSUANT TO SECTION 39 THE
10 DEPARTMENT'S FAILURE TO CONDUCT AN INSPECTION AS REQUESTED UNDER
11 THIS SUBSECTION.

12 (2) If an employee or employee representative believes that
13 a condition exists ~~which~~ THAT may present an imminent danger to
14 a person, the employee or employee representative may notify
15 either the department of labor or the department of public health
16 in the most expedient manner without regard to a written notice.
17 Upon notification of an alleged imminent danger, the department
18 shall cause an immediate inspection to be made or take other
19 action that it finds necessary to abate the danger.

20 (3) Before or during an inspection of a place of employment,
21 an employee ~~—~~ or a representative of employees ~~—~~ may notify
22 the department representative responsible for conducting the
23 inspection, in writing, of a violation of this act or of a rule
24 promulgated under this act ~~— which~~ THAT the employee or
25 employee representative believes exists in the place of
26 employment. If the department determines, after an inspection or
27 investigation conducted upon a written notification from an

1 employee or employee representative of an alleged violation, that
2 there are not reasonable grounds to believe that the alleged vio-
3 lation exists, it shall notify, in writing, the complainant and
4 the employer of its determination. Upon request of the person
5 giving the notice, that person's name and the names of employees
6 referred to in the notice shall not appear in the copy or on a
7 record ~~which~~ THAT is published, released, or made available to
8 the employer or any other person. AN EMPLOYEE OR EMPLOYEE REPRESENTATIVE MAY CONTEST PURSUANT TO SECTION 39 THE DEPARTMENT'S
9 FAILURE TO ISSUE A CITATION AFTER AN INSPECTION.

11 ~~(4) The department of labor and the department of public~~
12 ~~health shall establish procedures for informal review of any~~
13 ~~decision resulting from a request or notice, under this section,~~
14 ~~to inspect for an alleged violation. The appropriate department~~
15 ~~shall furnish the employees or representative of employees~~
16 ~~requesting a review a written statement of the final disposition~~
17 ~~of the notice or complaint and reasons for the disposition.~~

18 (4) ~~(5)~~ An employee or the representative of the employee
19 shall be afforded an opportunity, with or without compensation,
20 to attend all meetings between the department of labor or the
21 department of public health and an employer relative to that
22 department's decision concerning a citation, abatement period, or
23 proposed penalty.

24 Sec. 31. (1) BEFORE A DEPARTMENT REPRESENTATIVE DETERMINES
25 THAT AN IMMINENT DANGER EXISTS IN A PLACE OF EMPLOYMENT, AN
26 EMPLOYEE MAY CHOOSE NOT TO PERFORM AN ASSIGNED TASK BECAUSE OF A
27 REASONABLE APPREHENSION OF DEATH OR SERIOUS INJURY, COUPLED WITH

1 A REASONABLE BELIEF THAT NO LESS DRASTIC ALTERNATIVE IS
2 AVAILABLE.

3 (2) ~~(1)~~ When and as soon as a department representative
4 determines that an imminent danger exists in a place of employ-
5 ment, the department representative shall inform the employer and
6 the affected employees of a determination of the imminent
7 danger. The department representative immediately shall recom-
8 mend to the appropriate department director that an order be
9 issued to require that steps be taken as may be necessary to
10 avoid, correct, or remove the imminent danger. After receiving
11 authorization for the issuance of an order from the appropriate
12 department director, the department representative shall apply a
13 tag to the equipment or process ~~which~~ THAT is the source of the
14 imminent danger identifying that an imminent danger exists. The
15 tag shall be removed only by the department representative. ~~At~~
16 ~~request of the employer, an area supervisor shall, within~~ WITHIN
17 24 hours after a request OF THE EMPLOYER, AN AREA SUPERVISOR
18 SHALL make an on site review of any tagging and recommend contin-
19 uance or removal. The order shall prohibit the employment or
20 presence of an individual in locations or under conditions where
21 imminent danger exists, except individuals whose presence is nec-
22 essary to avoid, correct, or remove the imminent danger in a safe
23 and orderly manner. In tagging the equipment or process ~~which~~
24 THAT is the source of imminent danger and in issuing the order,
25 consideration shall be given to any necessity to maintain the
26 capacity of a continuous process operation and to the

1 reestablishment of normal operations without a complete cessation
2 of operations.

3 (3) ~~-(2)-~~ An employer shall not permit an employee, other
4 than an employee whose presence is necessary to avoid, correct,
5 or remove the imminent danger, to operate equipment or engage in
6 a process ~~-which-~~ THAT has been tagged by the department and
7 ~~-which-~~ THAT is the subject of an order issued by the department
8 identifying that an imminent danger exists. An employee who suf-
9 fers a loss of wages or fringe benefits or is in any manner dis-
10 criminated against for refusing to operate equipment or engage in
11 a process ~~-which-~~ THAT has been tagged by the department and
12 ~~-which-~~ THAT is the subject of an order issued by the department,
13 as provided in this section, may file a discrimination complaint,
14 and the department of labor may order appropriate relief as pro-
15 vided in section 65. This section does not prohibit an employer
16 from assigning an employee to an operation not affected by the
17 imminent danger situation, subject to any collective bargaining
18 agreement.

19 (4) ~~-(3)-~~ Upon failure of the employer to promptly comply
20 with a department order, as described in subsection ~~-(1)-~~ (2),
21 the appropriate department shall petition the circuit court
22 having jurisdiction to restrain a condition or practice in a
23 place of employment ~~-which-~~ THAT the department determines causes
24 the imminent danger.

25 (5) ~~-(4)-~~ If the department arbitrarily or capriciously
26 fails to seek relief under this section, an employee who may be
27 injured by reason of the failure ~~-~~ or the representative of

1 those employees ~~—~~ may bring AN action against the department in
 2 the circuit court having jurisdiction for a writ of mandamus to
 3 compel the department to seek an order and for further relief, as
 4 may be appropriate.

5 (6) ~~—(5)—~~ The department of public health or the department
 6 of labor, AS APPROPRIATE, shall respond within 24 hours after
 7 receipt of an imminent danger complaint concerning an unknown and
 8 unlabeled container of chemicals or an imminent danger complaint
 9 concerning a container of hazardous chemicals that is not labeled
 10 or for which a material safety data sheet is not available as
 11 required by the standard incorporated by reference in section 14a
 12 and by sections 14b to 14l.

13 (7) ~~—(6)—~~ Before a department representative seeks authori-
 14 zation to issue an order pursuant to the procedures prescribed in
 15 subsection ~~—(1)—~~ (2), an employer shall be given a reasonable
 16 opportunity to identify, label, or provide the material safety
 17 data sheet for the container ~~—which—~~ THAT is the subject of the
 18 imminent danger determination.

19 Sec. 33. (1) If, as the result of an inspection or investi-
 20 gation, the department representative believes that an employer
 21 has violated this act, AN order issued pursuant to this act, or A
 22 rule or standard promulgated ~~—pursuant to—~~ UNDER this act, he or
 23 she shall issue a citation ~~—~~ at that time ~~—~~ or within 90 days
 24 after the completion of the physical inspection or
 25 investigation. The citation shall be in writing and shall
 26 describe with particularity the nature of the violation,
 27 including a reference to the provision of this act, ~~—or an—~~ THE

1 order issued PURSUANT TO THIS ACT, or ~~or~~ THE rule or standard
2 promulgated ~~pursuant to~~ UNDER this act ~~or~~ alleged to have been
3 violated. The citation shall state a reasonable time by which
4 the violation is to be abated. The citation shall contain ~~or~~ on
5 its face ~~or~~ a statement that it is an allegation of a
6 violation. The date shall be set with due regard to the serious-
7 ness of the hazard and the difficulty of abating it. The
8 citation and the proposed penalty, if any, may be presented to
9 and ~~shall,~~ in each case ~~or~~ SHALL be sent by registered mail to
10 the employer, and a copy shall be filed at the time of issuance
11 with the appropriate department.

12 (2) A DEPARTMENT REPRESENTATIVE MAY CITE AS A SEPARATE VIO-
13 LATION OF A STANDARD EACH OCCASION WHEN THE STANDARD IS VIOLATED
14 OR AN EMPLOYEE IS EXPOSED TO A HAZARD ARISING FROM THAT
15 VIOLATION.

16 (3) AT A MULTIEMPLOYER WORKSITE, A DEPARTMENT REPRESENTATIVE
17 MAY CITE 1 OR MORE EMPLOYERS FOR HAZARDS TO WHICH EMPLOYEES OF
18 OTHER EMPLOYERS ARE EXPOSED.

19 (4) IF A CITATION IS ISSUED UNDER SUBSECTION (1), AN
20 EMPLOYEE OR AN EMPLOYEE REPRESENTATIVE MAY CONTEST PURSUANT TO
21 SECTION 39 THE DETERMINATION OF THE SERIOUSNESS OF THE HAZARD,
22 THE MEANS OF ABATING IT, OR THE PROPOSED PENALTY, OR A COMBINA-
23 TION THEREOF.

24 (5) ~~(2)~~ The employer shall post a copy of the citation at
25 or near the place of violation which shall remain posted until
26 compliance is achieved or for 3 working days, whichever is
27 later.

1 (6) ~~-(3)-~~ The employer to whom a citation is served shall
2 notify the appropriate department of compliance with this act, an
3 order issued pursuant to this act, or a rule or standard promul-
4 gated ~~pursuant to~~ UNDER this act.

5 (7) ~~-(4)-~~ If an employer fails to correct a violation for
6 which a citation was issued within the period permitted for its
7 correction, the department shall notify the employer by regis-
8 tered mail of that failure and of the penalty proposed to be
9 assessed under section 35 for the failure.

10 (8) ~~-(5)-~~ If it is determined upon inspection or investiga-
11 tion that a violation of this act, an order issued pursuant to
12 this act, or a rule or standard promulgated ~~pursuant to~~ UNDER
13 this act exists, but that the conditions ~~which~~ THAT constitute
14 the violation have no direct or immediate relationship to the
15 safety or health of workers, the department may issue a notice in
16 place of a citation. A notice issued under this subsection shall
17 be referred to as a "de minimis notice of violation". The
18 employer shall post a copy of the de minimis notice of violation
19 at or near the place of violation for 3 working days. The
20 department shall promulgate, ~~all~~ AS necessary, rules for the
21 purpose of administering the de minimis notice of violation.

22 (9) ~~-(6)-~~ A citation for an alleged violation of the per-
23 sonal protective equipment standard shall be vacated ~~where~~ IF
24 it is shown that the employer has provided the equipment, edu-
25 cated employees regarding use of the equipment, and taken reason-
26 able steps including, where appropriate, disciplinary action to
27 assure that employees wear personal protective equipment.

1 Sec. 35. (1) An employer who receives a citation for a
2 serious violation of this act, an order issued pursuant to this
3 act, or a rule or standard promulgated ~~pursuant to~~ UNDER this
4 act shall be assessed a civil penalty of not more than
5 ~~\$1,000.00~~ \$10,000.00 for each violation.

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

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

22 (4) An employer who ~~wilfully~~ WILLFULLY or repeatedly vio-
23 lates this act, an order issued pursuant to this act, or a rule
24 or standard promulgated ~~pursuant to~~ UNDER this act may be
25 assessed a civil penalty of not more than ~~\$10,000.00~~
26 \$100,000.00 for each violation. A PENALTY FOR A REPEAT VIOLATION
27 SHALL BE ASSESSED IF AN EMPLOYER HAS VIOLATED AT THE SAME

1 WORKSITE THE SAME PROVISION OF THIS ACT, THE SAME ORDER ISSUED
2 UNDER THIS ACT, OR THE SAME RULE OR STANDARD PROMULGATED UNDER
3 THIS ACT.

4 (5) An employer who ~~wilfully~~ WILLFULLY OR REPEATEDLY vio-
5 lates this act, an order issued PURSUANT TO THIS ACT, or A rule
6 or standard promulgated ~~pursuant to~~ UNDER this act ~~—~~ which
7 causes the death, INJURY, OR MATERIAL IMPAIRMENT TO THE HEALTH OR
8 FUNCTIONAL CAPACITY of an employee ~~—~~ is guilty of a felony and
9 shall be fined not more than ~~\$10,000.00~~ \$100,000.00, or impris-
10 oned not more than 1 year, or both. If the conviction is the
11 second under this act, the person shall be fined not more than
12 ~~\$20,000.00~~ \$200,000.00, or imprisoned not more than 3 years, or
13 both.

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

17 (7) A person who knowingly makes a false statement,
18 representation, or certification in an application, record,
19 report, plan, or other document filed or required to be main-
20 tained pursuant to this act, or WHO fails to maintain or transmit
21 ~~records or reports~~ A RECORD OR REPORT as required under section
22 61, ~~shall be~~ IS guilty of a misdemeanor and shall be fined not
23 more than \$10,000.00, or imprisoned not more than 6 months, or
24 both.

25 (8) A person who gives advance notice of an investigation or
26 an inspection to be conducted under this act ~~—~~ without
27 authority from the appropriate director or the designee of the

1 director ~~—~~ is guilty of a misdemeanor and shall be ~~punished by~~
2 ~~a fine of~~ FINED not more than \$1,000.00, or imprisoned FOR not
3 more than 6 months, or both.

4 (9) The department of labor or the department of public
5 health, if the employer is a public employer THAT IS INSOLVENT OR
6 IN RECEIVERSHIP, instead of applying a civil penalty otherwise
7 applicable to an employer under this section, may request that
8 the attorney general seek a writ of mandamus in the appropriate
9 circuit court to compel compliance with a citation, including the
10 terms of abatement.

11 (10) A person shall not assault a department representative
12 or other person charged with enforcement of this act in the per-
13 formance of that person's legal duty to enforce this act. A
14 person who violates this subsection is guilty of a misdemeanor.
15 A prosecuting attorney having jurisdiction of this matter and the
16 attorney general knowing of a violation of this section may pros-
17 ecute the violator.

18 SEC. 39. (1) BY FILING A WRITTEN COMPLAINT WITH THE DEPART-
19 MENT OF LABOR OR THE DEPARTMENT OF PUBLIC HEALTH, AS APPROPRIATE,
20 AN EMPLOYEE OR EMPLOYEE REPRESENTATIVE MAY CONTEST ALL OF THE
21 FOLLOWING:

22 (A) AS PROVIDED IN SECTION 28(1), THE FAILURE OF THE DEPART-
23 MENT OF LABOR OR THE DEPARTMENT OF PUBLIC HEALTH TO CONDUCT AN
24 INSPECTION.

25 (B) AS PROVIDED IN SECTION 28(3), THE FAILURE OF THE DEPART-
26 MENT OF LABOR OR THE DEPARTMENT OF PUBLIC HEALTH TO ISSUE A
27 CITATION AFTER AN INSPECTION HAS BEEN CONDUCTED.

1 (C) AS PROVIDED IN SECTION 33(4), THE DETERMINATION BY THE
2 DEPARTMENT OF LABOR OR THE DEPARTMENT OF PUBLIC HEALTH WHEN A
3 CITATION IS ISSUED OF THE SERIOUSNESS OF THE IDENTIFIED HAZARD,
4 THE MEANS OF ABATING IT, OR THE PROPOSED PENALTY, OR A COMBINA-
5 TION THEREOF.

6 (2) WITHIN 15 DAYS AFTER RECEIPT OF A COMPLAINT FILED UNDER
7 SUBSECTION (1), THE DEPARTMENT OF LABOR OR THE DEPARTMENT OF
8 PUBLIC HEALTH, AS APPROPRIATE, SHALL DO EITHER OF THE FOLLOWING:

9 (A) INSPECT OR REINSPECT THE WORKSITE AND, BASED ON THAT
10 INSPECTION, GRANT OR DENY THE COMPLAINT, GIVING, IN WRITING, THE
11 REASONS FOR THE GRANT OR DENIAL.

12 (B) WITHOUT CONDUCTING AN INSPECTION, DENY THE COMPLAINT,
13 GIVING, IN WRITING, THE REASONS FOR THE DENIAL.

14 (3) WITHIN 15 DAYS AFTER RECEIPT OF A DENIAL OF A COMPLAINT
15 UNDER SUBSECTION (2), AN EMPLOYEE OR EMPLOYEE REPRESENTATIVE MAY
16 APPEAL THE DECISION OF THE DEPARTMENT TO A HEARING OFFICER. IF
17 NO APPEAL IS MADE WITHIN THE 15-DAY PERIOD, THE DECISION OF THE
18 DEPARTMENT IS FINAL.

19 SEC. 40. (1) UPON RECEIPT FROM AN EMPLOYEE OR EMPLOYEE REP-
20 RESENTATIVE THAT HE OR SHE WISHES TO APPEAL THE DEPARTMENT'S
21 DECISION PURSUANT TO SECTION 39, THE HEARING OFFICER SHALL ISSUE
22 AND SERVE UPON EACH OF THE PARTIES A NOTICE OF HEARING AND PRO-
23 VIDE THE EMPLOYER AND THE AFFECTED EMPLOYEES OR THEIR EMPLOYEE
24 REPRESENTATIVE AN OPPORTUNITY TO PARTICIPATE AS A PARTY TO THE
25 HEARING. A PARTY MAY CALL, EXAMINE, AND CROSS-EXAMINE WITNESSES
26 AND MAY INTRODUCE EVIDENCE INTO THE RECORD.

1 (2) A HEARING OFFICE SHALL INQUIRE FULLY INTO EACH MATTER
2 THAT IS NECESSARY TO ENABLE HIM OR HER TO MAKE A DECISION ON THE
3 MATTER IN DISPUTE.

4 (3) A HEARING OFFICER MAY DO ALL OF THE FOLLOWING:

5 (A) HOLD 1 OR MORE PREHEARING CONFERENCES FOR SETTLEMENT OR
6 CLARIFICATION OF THE ISSUES IN DISPUTE.

7 (B) INSPECT THE WORKSITE.

8 (C) DISPOSE OF PROCEDURAL REQUESTS, MOTIONS, OR SIMILAR
9 MATTERS.

10 (D) TAKE OFFICIAL NOTICE OF GENERALLY RECOGNIZED FACTS. A
11 FACT FINDER SHALL NOTIFY EACH PARTY EITHER BEFORE OR DURING THE
12 HEARING OF THE MATERIAL THAT IS NOTICED, AND EACH PARTY SHALL BE
13 AFFORDED AN OPPORTUNITY TO CONTEST THE FACTS THAT ARE NOTICED.

14 (E) TAKE OR CAUSE DEPOSITIONS TO BE TAKEN.

15 (F) GRANT APPLICATIONS FOR SUBPOENAS, SUBPOENA WITNESSES,
16 ADMINISTER OATHS AND AFFIRMATIONS, EXAMINE WITNESSES, RECEIVE
17 RELEVANT TESTIMONY AND EVIDENCE, RULE UPON OFFERS OF PROOF, AND
18 INTRODUCE INTO THE RECORD DOCUMENTARY OR OTHER RELEVANT
19 EVIDENCE.

20 (G) REGULATE THE COURSE OF A HEARING AND, IF APPROPRIATE OR
21 NECESSARY, EXCLUDE PERSONS OR COUNSEL FROM THE HEARING FOR CON-
22 TEMPTUOUS CONDUCT.

23 (H) CONTINUE OR ADJOURN A HEARING TO A LATER DATE.

24 (I) ORDER A HEARING REOPENED BEFORE ISSUANCE OF HIS OR HER
25 REPORT.

26 (J) TAKE ANY OTHER NECESSARY ACTION.

1 (4) AFTER THE CLOSE OF THE HEARING, THE HEARING OFFICER
2 SHALL PREPARE AND DELIVER TO THE BOARD AND EACH PARTY A REPORT
3 THAT CONTAINS THE FOLLOWING:

4 (A) A STATEMENT OF FINDINGS OF FACT.

5 (B) A DECISION WITH RESPECT TO EACH ISSUE IN DISPUTE.

6 (C) THE REASONS FOR EACH DECISION.

7 (5) THE REPORT OF THE HEARING OFFICER BECOMES THE FINAL
8 ORDER OF THE BOARD UPON THE EXPIRATION OF 30 DAYS AFTER THE
9 REPORT IS FILED WITH THE BOARD UNLESS A MEMBER OF THE BOARD
10 DIRECTS THAT THE REPORT BE REVIEWED AND ACTED UPON BY THE BOARD
11 AS PROVIDED IN SECTION 44.

12 Sec. 41. (1) Within 15 working days after receipt of a
13 citation and proposed penalty, if any, an employer may petition
14 the appropriate department for a grant of additional time for
15 compliance, modification, or dismissal of the citation and a pro-
16 posed penalty. HOWEVER, AN EMPLOYER MUST CERTIFY IN THE PETITION
17 THAT NO EMPLOYEE IS EXPOSED TO AN INCREASED HAZARD AS A RESULT OF
18 TOLLING THE ABATEMENT PERIOD IN ORDER TO STAY ABATEMENT PENDING
19 RESOLUTION OF A FORMAL CONTEST. Within 15 working days after the
20 employer has received a citation, an employee or employee repre-
21 sentative may petition the department of labor or the department
22 of public health, whichever is appropriate, alleging the period
23 of time fixed in the citation for the abatement of the violation
24 is unreasonable.

25 (2) When a petition is submitted to the department by the
26 employer PURSUANT TO SUBSECTION (1), the employer shall transmit
27 a copy immediately to the affected employees or the employee

1 representative. When a petition is submitted to the department
2 by an employee or employee representative PURSUANT TO
3 SUBSECTION (1), the department shall submit a copy of the peti-
4 tion immediately to the employer after deleting the name of the
5 employee or employee representative, if so requested by the
6 employee or employee representative. If the employer, employee,
7 or employee representative does not petition the department
8 within the 15 working days after receipt of the citation and pro-
9 posed penalty, if any, the citation or proposed penalty ~~shall~~
10 ~~be~~ IS considered a final order of the board. ~~Upon receipt of a~~
11 ~~petition, the department of public health or the department of~~
12 ~~labor, whichever is appropriate, may modify the time schedule for~~
13 ~~compliance, modify the citation, dismiss the citation, or dismiss~~
14 ~~or modify any proposed penalty. The appropriate department shall~~
15 ~~notify the employer of its decision within 15 working days after~~
16 ~~receipt of the petition.~~

17 (3) IF AN EMPLOYER CONTESTS A CITATION PURSUANT TO
18 SUBSECTION (1), THE EMPLOYER SHALL ABATE EACH VIOLATION THAT IS
19 NOT SPECIFICALLY CONTESTED PENDING RESOLUTION OF THE CONTEST. IN
20 ADDITION, WHEN A VIOLATION IS CONTESTED, AN EMPLOYER SHALL
21 PROMPTLY ABATE THE VIOLATION WITHOUT WAITING FOR RESOLUTION OF
22 THE CONTEST IF THE CONTEST CONCERNS EITHER THE SERIOUSNESS OF THE
23 VIOLATION OR THE PENALTY FOR THE VIOLATION.

24 (4) IF AN EMPLOYER FILES A PETITION PURSUANT TO
25 SUBSECTION (1) IN WHICH HE OR SHE REQUESTS STAYING THE ABATEMENT
26 OF A VIOLATION, THE DEPARTMENT REPRESENTATIVE OR AN EMPLOYEE OR
27 EMPLOYEE REPRESENTATIVE GRANTED PARTY STATUS HAS THE RIGHT TO AN

1 EXPEDITED HEARING BEFORE A HEARING OFFICER ON THE ISSUE OF
2 STAYING THE ABATEMENT BEFORE RESOLUTION OF THE OTHER ISSUES
3 PRESENTED IN THE PETITION.

4 (5) If the department meets with the employer regarding the
5 employer's petition, the department shall notify the employee or
6 employee representative that a meeting will be held and allow the
7 attendance of the employee or employee representative. ~~The~~

8 (6) THE DEPARTMENT OF PUBLIC HEALTH OR THE DEPARTMENT OF
9 LABOR, AS APPROPRIATE, MAY MODIFY THE TIME SCHEDULE FOR COMPLI-
10 ANCE, MODIFY THE CITATION, DISMISS THE CITATION, OR DISMISS OR
11 MODIFY ANY PROPOSED PENALTY ONLY UPON THE WRITTEN AGREEMENT OF
12 THE DEPARTMENT, THE EMPLOYER, AND THE EMPLOYEE OR EMPLOYEE
13 REPRESENTATIVE.

14 (7) UPON ISSUANCE OF THE DEPARTMENT'S DECISION, THE employer
15 shall promptly post the notice of the ~~department's~~ decision,
16 together with the appropriate citation. The decision of the
17 department of labor or the department of public health, ~~shall~~
18 ~~become~~ AS APPROPRIATE, BECOMES final 15 working days after
19 receipt of the decision. ~~Within 15 working days after receipt~~
20 ~~of the department of labor's or the department of public health's~~
21 ~~decision, an employer may appeal the decision to the board.~~
22 ~~Within 15 working days after the employer has received the deci-~~
23 ~~sion of the director of labor or the director of public health,~~
24 ~~whichever is appropriate, an employee or employee representative~~
25 ~~may appeal the decision to the board with respect to the viola-~~
26 ~~tion abatement period, classification of citation, or proposed~~
27 ~~penalty.~~

1 SEC. 64. (1) AN EMPLOYER SHALL NOT REQUEST INFORMATION ON
2 PREVIOUS WORKERS' COMPENSATION CLAIMS OF AN EMPLOYEE OR APPLICANT
3 FOR EMPLOYMENT.

4 (2) FILING A WORKERS' COMPENSATION CLAIM OR REPORTING A
5 WORK-RELATED INJURY OR ILLNESS IS A PROTECTED ACTIVITY UNDER THIS
6 ACT.

7 (3) IF AN EMPLOYEE IS SUBJECTED TO A DRUG TEST BECAUSE HE OR
8 SHE FILED A WORKERS' COMPENSATION CLAIM OR REPORTED A
9 WORK-RELATED INJURY OR ILLNESS, THAT DRUG TEST IS CONSIDERED DIS-
10 CRIMINATION UNDER THIS ACT.

11 Sec. 65. (1) A person shall not discharge an employee or in
12 any manner discriminate against an employee OR APPLICANT FOR
13 EMPLOYMENT because the employee OR APPLICANT filed a complaint or
14 instituted or caused to be instituted a proceeding under or regu-
15 lated by this act, ~~or~~ has testified or is about to testify in
16 such a proceeding, or because of the exercise by the employee OR
17 APPLICANT on behalf of himself or herself or others of a right
18 afforded by this act.

19 (2) An employee who believes that he or she was discharged
20 or AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WHO BELIEVES THAT HE
21 OR SHE WAS otherwise discriminated against by a person in viola-
22 tion of this section may file a complaint with the department of
23 labor alleging the discrimination within ~~30 days~~ 6 MONTHS after
24 the violation occurs. Upon receipt of the complaint, the depart-
25 ment of labor shall cause an investigation to be made as it con-
26 siders appropriate. If, upon the investigation, the department
27 determines that this section was violated, the department shall

1 order all appropriate relief, including rehiring or reinstatement
2 of an employee to his or her former position with back pay.

3 (3) The director of labor, within 90 days after the receipt
4 of a complaint filed under this section, shall notify the com-
5 plainant of the determination under subsection (2).

6 (4) The employer, ~~or~~ employee, OR APPLICANT FOR EMPLOYMENT
7 may request a review of the department's determination within 15
8 working days after notification is issued. If a request for a
9 review ~~by either the employer or employee~~ is not received by
10 the department within 15 working days, in the absence of a show-
11 ing of good cause for a late request, the department's determina-
12 tion is final. The APPLICANT OR employee, THE employer, and the
13 department shall be parties to a proceeding before a hearings
14 officer brought pursuant to this section.

15 (5) The director shall appoint hearings officers to make
16 determinations in proceedings brought pursuant to this section.
17 All proceedings in a hearing shall be conducted pursuant to the
18 procedures applicable to the trial of contested cases under THE
19 ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public
20 Acts of 1969, as amended, BEING SECTIONS 24.201 TO 24.328 OF THE
21 MICHIGAN COMPILED LAWS. The hearings officer shall affirm,
22 modify, or rescind the order of the department and may order an
23 employer who violates this section to pay attorney costs, hearing
24 costs, and transcript costs. The hearings officer shall issue a
25 determination which constitutes a final disposition of the pro-
26 ceedings to each party within 30 working days after the
27 conclusion of the hearing. The determination of the hearings

1 officer ~~shall become~~ BECOMES the final agency order upon
2 receipt by the parties.

3 (6) A party to the proceeding may obtain judicial review
4 within 60 days after receipt of the determination of the hearings
5 officer pursuant to Act No. 306 of the Public Acts of 1969, as
6 amended. Venue for an appeal under this act shall be only in the
7 circuit ~~where~~ IN WHICH the employee OR APPLICANT FOR EMPLOYMENT
8 is a resident, ~~where~~ IN WHICH the employment occurred, or
9 ~~where~~ IN WHICH the employer has a principal place of business.

10 (7) In absence of an appeal by an employer who has not com-
11 plied with the determination of the hearings officer, the direc-
12 tor of labor shall initiate, in the county ~~where~~ IN WHICH the
13 violation occurred, in the county of Ingham, or in the county
14 ~~where~~ IN WHICH the employer has its principal office, the civil
15 action necessary to enforce an order of the department ~~which~~
16 THAT has become a final agency order as prescribed in this act.

17 (8) For the purpose of an investigation or proceeding under
18 this section, the director of labor or an authorized representa-
19 tive of the director may administer oaths and affirmations, sub-
20 poena witnesses, compel their attendance, take evidence, and
21 require the production of records or other documents ~~which~~ THAT
22 the department considers relevant or material to the inquiry.