



SENATE BILL No. 128

January 17, 1995, Introduced by Senator CHERRY
and referred to the Committee on Human Resources,
Labor and Veteran Affairs.

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 and section 35 as amended by Act No. 105 of the Public Acts of 1991, 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 and section 35 as amended by
4 Act No. 105 of the Public Acts of 1991, being sections 408.1028,
5 408.1031, 408.1033, 408.1035, 408.1041, and 408.1065 of the

1 Michigan Compiled Laws, are amended and sections 20, 25, 26, 26a,
2 26b, 39, 40, and 64 are added to read as follows:

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

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

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

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

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

24 (2) IF THERE ARE 4 OR MORE COLLECTIVE BARGAINING UNITS AT A
25 WORKSITE, THE EMPLOYER SHALL PROVIDE FOR A NUMBER OF EMPLOYEE
26 SAFETY AND HEALTH REPRESENTATIVES FROM EACH UNIT IN PROPORTION TO
27 THE NUMBER OF EMPLOYEES IN THE UNIT. UNLESS MODIFIED BY A

1 COLLECTIVE BARGAINING AGREEMENT THAT PROVIDES FOR REPRESENTATION
2 AT LEAST AS EFFECTIVE AS THE REPRESENTATION REQUIRED BY THIS SUB-
3 SECTION, THE NUMBER OF EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES
4 AT A WORKSITE SHALL BE AS FOLLOWS:

5 (A) ONE FOR A WORKSITE WITH 10 TO 49 NONSUPERVISORY
6 EMPLOYEES.

7 (B) TWO FOR A WORKSITE WITH 50 TO 99 NONSUPERVISORY
8 EMPLOYEES.

9 (C) THREE FOR A WORKSITE WITH 100 TO 199 NONSUPERVISORY
10 EMPLOYEES.

11 (D) FOUR FOR A WORKSITE WITH 200 TO 299 NONSUPERVISORY
12 EMPLOYEES.

13 (E) FIVE FOR A WORKSITE WITH 300 TO 399 NONSUPERVISORY
14 EMPLOYEES.

15 (F) SIX FOR A WORKSITE WITH 400 OR MORE NONSUPERVISORY
16 EMPLOYEES.

17 (3) AN EMPLOYER SHALL PROVIDE TRAINING FOR EMPLOYEE SAFETY
18 AND HEALTH REPRESENTATIVES UPON THE APPOINTMENT OF THOSE REPRE-
19 SENTATIVES, AND AT LEAST ONCE ANNUALLY AFTER THE APPOINTMENT.
20 THE TRAINING SHALL INCLUDE, BUT IS NOT LIMITED TO, COVERAGE OF
21 THE CONTENTS OF THIS ACT AND THE RULES PROMULGATED UNDER THIS
22 ACT, THEIR RIGHTS AND RESPONSIBILITIES AS EMPLOYEE SAFETY AND
23 HEALTH REPRESENTATIVES, AND TECHNICAL INFORMATION RELEVANT TO
24 WORKER AND ENVIRONMENTAL PROTECTION.

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

1 (A) WHEN CONDITIONS WARRANT OR IN RESPONSE TO A REQUEST BY
2 AN EMPLOYEE, INSPECT THE PHYSICAL CONDITION OF THE WORKSITE OR
3 THE PART OF THE WORKSITE FOR WHICH HE OR SHE WAS SELECTED TO
4 REPRESENT.

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

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

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

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

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

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

26 (H) REVIEW AND BE PROVIDED WITH COPIES OF ALL INFORMATION
27 RELATED TO PROTECTION OF THE ENVIRONMENT.

1 (I) ATTEND WORKSITE SAFETY AND HEALTH COMMITTEE MEETINGS.

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

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

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

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

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

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

26 (2) THE SAFETY, HEALTH, AND ENVIRONMENT COMMITTEE, AT A
27 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) INVESTIGATE ACCIDENTS AND EXPOSURES THAT HAVE THE POTEN-
6 TIAL TO HARM EMPLOYEES AND THE ENVIRONMENT.

7 (D) RECEIVE AND REVIEW INFORMATION RELEVANT TO THE PROTEC-
8 TION OF EMPLOYEES AND THE ENVIRONMENT.

9 (E) IDENTIFY SITUATIONS THAT MAY BE HAZARDOUS TO EMPLOYEES
10 OR THE ENVIRONMENT.

11 (F) MAKE RECOMMENDATIONS TO THE EMPLOYER AND EMPLOYEES FOR
12 THE IMPROVEMENT OF THE SAFETY AND HEALTH OF EMPLOYEES AND THE
13 PROTECTION OF THE ENVIRONMENT.

14 (G) REVIEW ANNUALLY AND MAKE RECOMMENDATIONS REGARDING THE
15 WORKSITE SAFETY AND HEALTH PLAN REQUIRED IN SECTION 26B.

16 (H) REVIEW AND RECOMMEND EMPLOYEE JOB-RELATED SAFETY,
17 HEALTH, AND ENVIRONMENTAL PROTECTION TRAINING PROGRAMS.

18 (I) REVIEW NEW CHEMICALS, PROCESSES, AND EQUIPMENT BEFORE
19 THEY ARE USED IN THE WORKSITE AND MAKE RECOMMENDATIONS REGARDING
20 THEM FOR THE PROTECTION OF EMPLOYEES AND THE ENVIRONMENT.

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

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

1 (A) MULTIEmployer WORKSITES AND MULTIUNIT OR MULTIUNION
2 WORKSITES.

3 (B) THE SIZE OF THE WORKSITE.

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

5 (D) THE PHYSICAL ARRANGEMENT OF THE WORKSITE.

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

7 (F) THE HAZARDS AND SAFETY HISTORY OF THE INDUSTRY AND THE
8 WORKSITE.

9 (G) THE APPROPRIATE TRAINING FOR EMPLOYEE SAFETY AND HEALTH
10 REPRESENTATIVES.

11 SEC. 26B. EACH EMPLOYER SHALL DEVELOP AND IMPLEMENT A WORK-
12 SITE SAFETY AND HEALTH PLAN. THE PLAN SHALL DO ALL OF THE
13 FOLLOWING:

14 (A) PROVIDE FOR PERIODIC INSPECTIONS OF THE WORKSITE WITH
15 REGARD TO THE SAFETY AND HEALTH OF EMPLOYEES, THE DOCUMENTATION
16 OF HAZARDS IDENTIFIED DURING THESE INSPECTIONS, AND ACTIONS TAKEN
17 TO CORRECT OR REDUCE THESE HAZARDS.

18 (B) SPECIFY EMPLOYER INDUSTRIAL HYGIENE SERVICES, MEDICAL
19 SERVICES, EMERGENCY MEDICAL RESPONSE PROGRAMS, AND FIRST AID
20 PROGRAMS.

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

24 (D) PROVIDE FOR EMPLOYEE JOB-RELATED SAFETY AND HEALTH
25 TRAINING.

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

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

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

8 Sec. 28. (1) An employee or employee representative who
9 believes that a violation of a standard exists that threatens
10 physical harm to an employee may request an inspection by
11 giving written notice of the condition to the appropriate
12 department. The notice shall set forth with reasonable detail
13 the grounds for the request and shall be signed by the employee
14 or employee representative giving the notice. Upon receipt of a
15 complaint, and if the department determines there are reasonable
16 grounds for the complaint, the department shall conduct an
17 inspection. A copy of the request shall be provided TO the
18 employer or the employer's agent not later than the time of the
19 inspection. Upon the request of the person giving the notice,
20 his or her name and the names of employees referred to in the
21 notice shall not appear in the copy or on a record ~~which~~ THAT
22 is published, released, or made available. If the department
23 determines that there are not reasonable grounds to believe that
24 an inspection should be conducted, it shall notify, in writing,
25 the complainant of its determination. AN EMPLOYEE OR AN EMPLOYEE
26 REPRESENTATIVE MAY CONTEST PURSUANT TO SECTION 39 THE

1 DEPARTMENT'S FAILURE TO CONDUCT AN INSPECTION AS REQUESTED UNDER
2 THIS SUBSECTION.

3 (2) If an employee or employee representative believes that
4 a condition exists ~~which~~ THAT may present an imminent danger to
5 a person, the employee or employee representative may notify
6 either the department of labor or the department of public health
7 in the most expedient manner without regard to a written notice.
8 Upon notification of an alleged imminent danger, the department
9 shall cause an immediate inspection to be made or take other
10 action that it finds necessary to abate the danger.

11 (3) Before or during an inspection of a place of employment,
12 an employee , or a representative of employees , may notify
13 the department representative responsible for conducting the
14 inspection, in writing, of a violation of this act or of a rule
15 promulgated under this act ~~which~~ THAT the employee or
16 employee representative believes exists in the place of
17 employment. If the department determines, after an inspection or
18 investigation conducted upon a written notification from an
19 employee or employee representative of an alleged violation, that
20 there are not reasonable grounds to believe that the alleged vio-
21 lation exists, it shall notify, in writing, the complainant and
22 the employer of its determination. Upon request of the person
23 giving the notice, that person's name and the names of employees
24 referred to in the notice shall not appear in the copy or on a
25 record ~~which~~ THAT is published, released, or made available to
26 the employer or any other person. AN EMPLOYEE OR EMPLOYEE

1 REPRESENTATIVE MAY CONTEST PURSUANT TO SECTION 39 THE
2 DEPARTMENT'S FAILURE TO ISSUE A CITATION AFTER AN INSPECTION.

3 ~~(4) The department of labor and the department of public~~
4 ~~health shall establish procedures for informal review of any~~
5 ~~decision resulting from a request or notice, under this section,~~
6 ~~to inspect for an alleged violation. The appropriate department~~
7 ~~shall furnish the employees or representative of employees~~
8 ~~requesting a review a written statement of the final disposition~~
9 ~~of the notice or complaint and reasons for the disposition.~~

10 (4) ~~(5)~~ An employee or the representative of the employee
11 shall be afforded an opportunity, with or without compensation,
12 to attend all meetings between the department of labor or the
13 department of public health and an employer relative to that
14 department's decision concerning a citation, abatement period, or
15 proposed penalty.

16 Sec. 31. (1) BEFORE A DEPARTMENT REPRESENTATIVE DETERMINES
17 THAT AN IMMINENT DANGER EXISTS IN A PLACE OF EMPLOYMENT, AN
18 EMPLOYEE MAY CHOOSE NOT TO PERFORM AN ASSIGNED TASK BECAUSE OF A
19 REASONABLE APPREHENSION OF DEATH OR SERIOUS INJURY, COUPLED WITH
20 A REASONABLE BELIEF THAT NO LESS DRASTIC ALTERNATIVE IS
21 AVAILABLE.

22 (2) ~~(1)~~ When and as soon as a department representative
23 determines that an imminent danger exists in a place of employ-
24 ment, the department representative shall inform the employer and
25 the affected employees of a determination of the imminent
26 danger. The department representative immediately shall
27 recommend to the appropriate department director that an order be

1 issued to require that steps be taken as may be necessary to
2 avoid, correct, or remove the imminent danger. After receiving
3 authorization for the issuance of an order from the appropriate
4 department director, the department representative shall apply a
5 tag to the equipment or process ~~which~~ THAT is the source of the
6 imminent danger identifying that an imminent danger exists. The
7 tag shall be removed only by the department representative. ~~At~~
8 ~~request of the employer, an area supervisor shall, within~~ WITHIN
9 24 hours after a request OF THE EMPLOYER, AN AREA SUPERVISOR
10 SHALL make an on site review of any tagging and recommend contin-
11 uance or removal. The order shall prohibit the employment or
12 presence of an individual in locations or under conditions where
13 imminent danger exists, except individuals whose presence is nec-
14 essary to avoid, correct, or remove the imminent danger in a safe
15 and orderly manner. In tagging the equipment or process ~~which~~
16 THAT is the source of imminent danger and in issuing the order,
17 consideration shall be given to any necessity to maintain the
18 capacity of a continuous process operation and to the reestab-
19 lishment of normal operations without a complete cessation of
20 operations.

21 (3) ~~(2)~~ An employer shall not permit an employee, other
22 than an employee whose presence is necessary to avoid, correct,
23 or remove the imminent danger, to operate equipment or engage in
24 a process ~~which~~ THAT has been tagged by the department and
25 ~~which~~ THAT is the subject of an order issued by the department
26 identifying that an imminent danger exists. An employee who
27 suffers a loss of wages or fringe benefits or is in any manner

1 discriminated against for refusing to operate equipment or engage
2 in a process ~~which~~ THAT has been tagged by the department and
3 ~~which~~ THAT is the subject of an order issued by the department,
4 as provided in this section, may file a discrimination complaint,
5 and the department of labor may order appropriate relief as pro-
6 vided in section 65. This section does not prohibit an employer
7 from assigning an employee to an operation not affected by the
8 imminent danger situation, subject to any collective bargaining
9 agreement.

10 (4) ~~(3)~~ Upon failure of the employer to promptly comply
11 with a department order, as described in subsection ~~(1)~~ (2),
12 the appropriate department shall petition the circuit court
13 having jurisdiction to restrain a condition or practice in a
14 place of employment ~~which~~ THAT the department determines causes
15 the imminent danger.

16 (5) ~~(4)~~ If the department arbitrarily or capriciously
17 fails to seek relief under this section, an employee who may be
18 injured by reason of the failure ~~,~~ or the representative of
19 those employees ~~,~~ may bring AN action against the department in
20 the circuit court having jurisdiction for a writ of mandamus to
21 compel the department to seek an order and for further relief, as
22 may be appropriate.

23 (6) ~~(5)~~ The department of public health or the department
24 of labor, AS APPROPRIATE, shall respond within 24 hours after
25 receipt of an imminent danger complaint concerning an unknown and
26 unlabeled container of chemicals or an imminent danger complaint
27 concerning a container of hazardous chemicals that is not labeled

1 or for which a material safety data sheet is not available as
2 required by the standard incorporated by reference in section 14a
3 and by sections 14b to 14l.

4 (7) ~~(6)~~ Before a department representative seeks authori-
5 zation to issue an order pursuant to the procedures prescribed in
6 subsection ~~(1)~~ (2), an employer shall be given a reasonable
7 opportunity to identify, label, or provide the material safety
8 data sheet for the container ~~which~~ THAT is the subject of the
9 imminent danger determination.

10 Sec. 33. (1) If, as the result of an inspection or investi-
11 gation, the department representative believes that an employer
12 has violated this act, AN order issued pursuant to this act, or A
13 rule or standard promulgated ~~pursuant to~~ UNDER this act, he or
14 she shall issue a citation , at that time , or within 90 days
15 after the completion of the physical inspection or
16 investigation. The citation shall be in writing and shall
17 describe with particularity the nature of the violation, includ-
18 ing a reference to the provision of this act, ~~or an~~ THE order
19 issued PURSUANT TO THIS ACT, or ~~a~~ THE rule or standard promul-
20 gated ~~pursuant to~~ UNDER this act , alleged to have been
21 violated. The citation shall state a reasonable time by which
22 the violation is to be abated. The citation shall contain , on
23 its face , a statement that it is an allegation of a
24 violation. The date shall be set with due regard to the serious-
25 ness of the hazard and the difficulty of abating it. The
26 citation and the proposed penalty, if any, may be presented to
27 and ~~shall,~~ in each case , SHALL be sent by registered mail to

1 the employer, and a copy shall be filed at the time of issuance
2 with the appropriate department.

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

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

10 (4) IF A CITATION IS ISSUED UNDER SUBSECTION (1), AN
11 EMPLOYEE OR AN EMPLOYEE REPRESENTATIVE MAY CONTEST PURSUANT TO
12 SECTION 39 THE DETERMINATION OF THE SERIOUSNESS OF THE HAZARD,
13 THE MEANS OF ABATING IT, OR THE PROPOSED PENALTY, OR A COMBINA-
14 TION THEREOF.

15 (5) ~~(2)~~ The employer shall post a copy of the citation at
16 or near the place of violation which shall remain posted until
17 compliance is achieved or for 3 working days, whichever is
18 later.

19 (6) ~~(3)~~ The employer to whom a citation is served shall
20 notify the appropriate department of compliance with this act, an
21 order issued pursuant to this act, or a rule or standard promul-
22 gated ~~pursuant to~~ UNDER this act.

23 (7) ~~(4)~~ If an employer fails to correct a violation for
24 which a citation was issued within the period permitted for its
25 correction, the department shall notify the employer by regis-
26 tered mail of that failure and of the penalty proposed to be
27 assessed under section 35 for the failure.

1 (8) ~~(5)~~ If it is determined upon inspection or
2 investigation that a violation of this act, an order issued pur-
3 suant to this act, or a rule or standard promulgated ~~pursuant~~
4 ~~to~~ UNDER this act exists, but that the conditions ~~which~~ THAT
5 constitute the violation have no direct or immediate relationship
6 to the safety or health of workers, the department may issue a
7 notice in place of a citation. A notice issued under this sub-
8 section shall be referred to as a "de minimis notice of
9 violation". The employer shall post a copy of the de minimis
10 notice of violation at or near the place of violation for 3 work-
11 ing days. The department shall promulgate, ~~all~~ AS necessary,
12 rules for the purpose of administering the de minimis notice of
13 violation.

14 (9) ~~(6)~~ A citation for an alleged violation of the per-
15 sonal protective equipment standard shall be vacated ~~where~~ IF
16 it is shown that the employer has provided the equipment, edu-
17 cated employees regarding use of the equipment, and taken reason-
18 able steps including, where appropriate, disciplinary action to
19 assure that employees wear personal protective equipment.

20 Sec. 35. (1) An employer who receives a citation for a
21 serious violation of this act, an order issued pursuant to this
22 act, or a rule or standard promulgated under this act shall be
23 assessed a civil ~~penalty~~ FINE of not more than ~~\$7,000.00~~
24 \$10,000.00 for each violation.

25 (2) An employer who fails to correct a violation for which a
26 citation was issued within the period permitted for its
27 correction may be assessed a civil ~~penalty of not more than~~

1 ~~\$7,000.00~~ FINE OF TWICE THE AMOUNT OF THE FINE FOR THE ORIGINAL
2 CITATION for each day during which the failure or violation
3 continues. A period permitted for corrections does not begin to
4 run until the date of the final order of the board if a review
5 proceeding before a board is initiated by the employer in good
6 faith and not solely for delay or avoidance of a penalty.

7 (3) An employer who receives a citation for a violation of
8 this act, an order issued pursuant to this act, or a rule or
9 standard promulgated under this act, which violation is specifi-
10 cally determined not to be of a serious nature, may be assessed a
11 civil ~~penalty~~ FINE of not more than \$7,000.00 for each
12 violation.

13 (4) An employer who willfully or repeatedly violates this
14 act, an order issued pursuant to this act, or a rule or standard
15 promulgated under this act may be assessed a civil ~~penalty~~ FINE
16 of not more than ~~\$70,000.00~~ \$100,000.00 for each violation, but
17 not less than \$5,000.00 for each willful violation. A VIOLATION
18 OF A PROVISION OF THIS ACT, AN ORDER ISSUED UNDER THIS ACT, OR A
19 RULE OR STANDARD PROMULGATED UNDER THIS ACT IS A REPEAT VIOLATION
20 IF THE EMPLOYER PREVIOUSLY VIOLATED THE SAME PROVISION, ORDER,
21 RULE, OR STANDARD AT THE SAME WORKSITE.

22 (5) An employer who willfully OR REPEATEDLY violates this
23 act, an order issued pursuant to this act, or a rule or standard
24 promulgated under this act which causes the death, INJURY, OR
25 MATERIAL IMPAIRMENT TO THE HEALTH OR FUNCTIONAL CAPACITY of an
26 employee is guilty of a felony and shall be fined not more than
27 ~~\$10,000.00~~ \$100,000.00, or imprisoned for not more than 1 year,

1 or both. If the conviction is the second under this act, the
2 person shall be fined not more than ~~-\$20,000.00~~ \$200,000.00, or
3 imprisoned for not more than 3 years, or both.

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

7 (7) A person who knowingly makes a false statement, repre-
8 sentation, or certification in an application, record, report,
9 plan, or other document filed or required to be maintained pursu-
10 ant to this act, or who fails to maintain or transmit a record or
11 report as required under section 61, is guilty of a misdemeanor
12 and shall be fined not more than \$10,000.00, or imprisoned for
13 not more than 6 months, or both.

14 (8) A person who gives advance notice of an investigation or
15 an inspection to be conducted under this act without authority
16 from the appropriate director or the designee of the director is
17 guilty of a misdemeanor and shall be fined not more than
18 \$1,000.00, or imprisoned for not more than 6 months, or both.

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

26 (10) A person shall not assault a department representative
27 or other person charged with enforcement of this act in the

1 performance of that person's legal duty to enforce this act. A
2 person who violates this subsection is guilty of a misdemeanor.
3 A prosecuting attorney having jurisdiction of this matter and the
4 attorney general knowing of a violation of this section may pros-
5 ecute the violator.

6 ~~(11) The increases in the civil penalties of subsections~~
7 ~~(1), (2), (3), (4), and (6) made pursuant to the 1991 amendatory~~
8 ~~act that added this subsection shall take effect April 1, 1992.~~

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

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

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

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

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

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

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

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

11 SEC. 40. (1) UPON RECEIPT FROM AN EMPLOYEE OR EMPLOYEE REP-
12 RESENTATIVE THAT HE OR SHE WISHES TO APPEAL THE DEPARTMENT'S
13 DECISION PURSUANT TO SECTION 39, THE HEARING OFFICER SHALL ISSUE
14 AND SERVE UPON EACH OF THE PARTIES A NOTICE OF HEARING AND PRO-
15 VIDE THE EMPLOYER AND THE AFFECTED EMPLOYEES OR THEIR EMPLOYEE
16 REPRESENTATIVE AN OPPORTUNITY TO PARTICIPATE AS A PARTY TO THE
17 HEARING. A PARTY MAY CALL, EXAMINE, AND CROSS-EXAMINE WITNESSES
18 AND MAY INTRODUCE EVIDENCE INTO THE RECORD.

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

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

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

25 (B) INSPECT THE WORKSITE.

26 (C) DISPOSE OF PROCEDURAL REQUESTS, MOTIONS, OR SIMILAR
27 MATTERS.

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

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

6 (F) GRANT APPLICATIONS FOR SUBPOENAS, SUBPOENA WITNESSES,
7 ADMINISTER OATHS AND AFFIRMATIONS, EXAMINE WITNESSES, RECEIVE
8 RELEVANT TESTIMONY AND EVIDENCE, RULE UPON OFFERS OF PROOF, AND
9 INTRODUCE INTO THE RECORD DOCUMENTARY OR OTHER RELEVANT
10 EVIDENCE.

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

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

15 (I) ORDER A HEARING REOPENED BEFORE ISSUANCE OF HIS OR HER
16 REPORT.

17 (J) TAKE ANY OTHER NECESSARY ACTION.

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

21 (A) A STATEMENT OF FINDINGS OF FACT.

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

23 (C) THE REASONS FOR EACH DECISION.

24 (5) THE REPORT OF THE HEARING OFFICER BECOMES THE FINAL
25 ORDER OF THE BOARD UPON THE EXPIRATION OF 30 DAYS AFTER THE
26 REPORT IS FILED WITH THE BOARD UNLESS A MEMBER OF THE BOARD

1 DIRECTS THAT THE REPORT BE REVIEWED AND ACTED UPON BY THE BOARD
2 AS PROVIDED IN SECTION 44.

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

16 (2) When a petition is submitted to the department by the
17 employer PURSUANT TO SUBSECTION (1), the employer shall transmit
18 a copy immediately to the affected employees or the employee
19 representative. When a petition is submitted to the department
20 by an employee or employee representative PURSUANT TO
21 SUBSECTION (1), the department shall submit a copy of the peti-
22 tion immediately to the employer after deleting the name of the
23 employee or employee representative, if so requested by the
24 employee or employee representative. If the employer, employee,
25 or employee representative does not petition the department
26 within the 15 working days after receipt of the citation and
27 proposed penalty, if any, the citation or proposed penalty ~~shall~~

1 ~~be~~ IS considered a final order of the board. ~~Upon receipt of a~~
2 ~~petition, the department of public health or the department of~~
3 ~~labor, whichever is appropriate, may modify the time schedule for~~
4 ~~compliance, modify the citation, dismiss the citation, or dismiss~~
5 ~~or modify any proposed penalty. The appropriate department shall~~
6 ~~notify the employer of its decision within 15 working days after~~
7 ~~receipt of the petition.~~

8 (3) IF AN EMPLOYER CONTESTS A CITATION PURSUANT TO
9 SUBSECTION (1), THE EMPLOYER SHALL ABATE EACH VIOLATION THAT IS
10 NOT SPECIFICALLY CONTESTED PENDING RESOLUTION OF THE CONTEST. IN
11 ADDITION, WHEN A VIOLATION IS CONTESTED, AN EMPLOYER SHALL
12 PROMPTLY ABATE THE VIOLATION WITHOUT WAITING FOR RESOLUTION OF
13 THE CONTEST IF THE CONTEST CONCERNS EITHER THE SERIOUSNESS OF THE
14 VIOLATION OR THE PENALTY FOR THE VIOLATION.

15 (4) IF AN EMPLOYER FILES A PETITION PURSUANT TO
16 SUBSECTION (1) IN WHICH HE OR SHE REQUESTS STAYING THE ABATEMENT
17 OF A VIOLATION, THE DEPARTMENT REPRESENTATIVE OR AN EMPLOYEE OR
18 EMPLOYEE REPRESENTATIVE GRANTED PARTY STATUS HAS THE RIGHT TO AN
19 EXPEDITED HEARING BEFORE A HEARING OFFICER ON THE ISSUE OF STAY-
20 ING THE ABATEMENT BEFORE RESOLUTION OF THE OTHER ISSUES PRESENTED
21 IN THE PETITION.

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

26 (6) THE DEPARTMENT OF PUBLIC HEALTH OR THE DEPARTMENT OF
27 LABOR, AS APPROPRIATE, MAY MODIFY THE TIME SCHEDULE FOR

1 COMPLIANCE, MODIFY THE CITATION, DISMISS THE CITATION, OR DISMISS
2 OR MODIFY ANY PROPOSED PENALTY ONLY UPON THE WRITTEN AGREEMENT OF
3 THE DEPARTMENT, THE EMPLOYER, AND THE EMPLOYEE OR EMPLOYEE
4 REPRESENTATIVE.

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

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

22 (2) FILING A WORKERS' COMPENSATION CLAIM OR REPORTING A
23 WORK-RELATED INJURY OR ILLNESS IS A PROTECTED ACTIVITY UNDER THIS
24 ACT.

25 (3) IF AN EMPLOYEE IS SUBJECTED TO A DRUG TEST BECAUSE HE OR
26 SHE FILED A WORKERS' COMPENSATION CLAIM OR REPORTED A

1 WORK-RELATED INJURY OR ILLNESS, THAT DRUG TEST IS CONSIDERED
2 DISCRIMINATION UNDER THIS ACT.

3 Sec. 65. (1) A person shall not discharge an employee or in
4 any manner discriminate against an employee OR APPLICANT FOR
5 EMPLOYMENT because the employee OR APPLICANT filed a complaint or
6 instituted or caused to be instituted a proceeding under or regu-
7 lated by this act, ~~or~~ has testified or is about to testify in
8 such a proceeding, or because of the exercise by the employee OR
9 APPLICANT on behalf of himself or herself or others of a right
10 afforded by this act.

11 (2) An employee who believes that he or she was discharged
12 or AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WHO BELIEVES THAT HE
13 OR SHE WAS otherwise discriminated against by a person in viola-
14 tion of this section may file a complaint with the department of
15 labor alleging the discrimination within ~~30 days~~ 6 MONTHS after
16 the violation occurs. Upon receipt of the complaint, the depart-
17 ment of labor shall cause an investigation to be made as it con-
18 siders appropriate. If, upon the investigation, the department
19 determines that this section was violated, the department shall
20 order all appropriate relief, including rehiring or reinstatement
21 of an employee to his or her former position with back pay.

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

25 (4) The employer, ~~or~~ employee, OR APPLICANT FOR EMPLOYMENT
26 may request a review of the department's determination within 15
27 working days after notification is issued. If a request for a

1 review ~~by either the employer or employee~~ is not received by
2 the department within 15 working days, in the absence of a show-
3 ing of good cause for a late request, the department's determina-
4 tion is final. The APPLICANT OR employee, THE employer, and the
5 department shall be parties to a proceeding before a hearings
6 officer brought pursuant to this section.

7 (5) The director shall appoint hearings officers to make
8 determinations in proceedings brought pursuant to this section.
9 All proceedings in a hearing shall be conducted pursuant to the
10 procedures applicable to the trial of contested cases under THE
11 ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public
12 Acts of 1969, ~~as amended~~ BEING SECTIONS 24.201 TO 24.328 OF THE
13 MICHIGAN COMPILED LAWS. The hearings officer shall affirm,
14 modify, or rescind the order of the department and may order an
15 employer who violates this section to pay attorney costs, hearing
16 costs, and transcript costs. The hearings officer shall issue a
17 determination which constitutes a final disposition of the pro-
18 ceedings to each party within 30 working days after the conclu-
19 sion of the hearing. The determination of the hearings officer
20 ~~shall become~~ BECOMES the final agency order upon receipt by the
21 parties.

22 (6) A party to the proceeding may obtain judicial review
23 within 60 days after receipt of the determination of the hearings
24 officer pursuant to Act No. 306 of the Public Acts of 1969. ~~—~~
25 ~~as amended.~~ Venue for an appeal under this act shall be only in
26 the circuit ~~where~~ IN WHICH the employee OR APPLICANT FOR
27 EMPLOYMENT is a resident, ~~where~~ IN WHICH the employment

1 occurred, or ~~where~~ IN WHICH the employer has a principal place
2 of business.

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

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