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SFA**BILL ANALYSIS**

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Senate Bill 1138 (as introduced 2-27-02)
Sponsor: Senator Valde Garcia
Committee: Human Resources and Labor

Date Completed: 5-15-02

CONTENT

The bill would amend the Michigan Occupational Safety and Health Act (MIOSHA) to allow an employer to apply the amount of a civil penalty assessed for a nonwillful violation to the cost of correcting the violation; and require that an employer be given at least 14 consecutive days to correct a violation.

Currently, an employer who receives a citation for a serious violation of the Act or an order issued or rule or standard promulgated under the Act, may be assessed a civil penalty of up to \$7,000 for each violation. An employer who is cited for a violation that is specifically determined not to be of a serious nature, also may be assessed a maximum civil penalty \$7,000 for each violation. An employer who willfully or repeatedly violates the Act or an order, rule, or standard is subject to a civil penalty of not more than \$70,000 for each violation (and not less than \$5,000 for each willful violation). In addition, an employer who fails to correct a violation within the time allowed may be assessed a fine of \$7,000 for each day the failure or violation continues. The bill would allow an employer to apply the amount of a civil penalty assessed for a serious or nonserious violation, a repeated but not willful violation, or failure to correct a violation, to the cost of correcting the violation.

(The Act also contains a separate penalty section that applies if Section 14 of the Act (which incorporates Federal standards) is found to be unconstitutional. In this case, the maximum civil fine is \$1,000 for a serious or nonserious violation, or failure to correct a violation; or \$10,000 for a willful or repeated violation. The bill also would allow an employer assessed a civil penalty under this section to apply the penalty to the cost of correcting a nonwillful violation.)

Under MIOSHA, if a representative of the Department of Consumer and Industry Services believes that a employer has violated the Act, or an order, rule, or standard promulgated under it, he or she must issue a citation that describes the nature of the violation and states a reasonable time by which the violation is to be abated. Under the bill, the time stated for abating a violation would have to be at least 14 consecutive days.

Currently, if an employer fails to correct a violation for which a citation was issued within the time allowed, the Department must notify the employer of that failure and of the penalty proposed to be assessed. Under the bill, the notice also would have to state the employer's right to apply the penalty to the costs of correcting the violation.

Currently, an employer that violates a posting requirement prescribed by the Act is subject to a maximum civil penalty of \$7,000 for each violation. Under the bill, this penalty would apply for each violation that was not corrected within one day after the employer received notice of the violation.

The Act requires the Board of Health and Safety Compliance and Appeals to assess civil

penalties, considering the size of a business, the seriousness of a violation, the employer's good faith efforts, and the history of previous citations. The Act also permits the Board to establish a schedule of civil penalties. The bill specifies that, in assessing civil penalties or establishing a schedule, the Board could not consider a prior violation that was corrected within 14 days after the issuance of a citation or a de minimus notice of violation (which may be issued if a violation has no relationship to workers' safety or health).

The Act requires civil penalties to be credited to the State General Fund. Under the bill, this would apply to civil penalties that were not applied to the cost of correcting a violation.

MCL 408.1033 et al.

Legislative Analyst: Nobuko Nagata

FISCAL IMPACT

The bill would allow employers to apply the amount of civil penalties that were not the result of willful violations to the cost of correcting their violations. The balance of the fines would continue to be credited to the General Fund. According to the Department, civil fines that were assessed on employees for nonwillful violations totaled \$6.9 million in fiscal year 1999-2000 and \$6.4 million in fiscal year 2000-01.

Fiscal Analyst: Maria Tyszkiewicz