

SENATE BILL No. 1138

February 27, 2002, Introduced by Senators GARCIA, STEIL, SHUGARS and BULLARD and referred to the Committee on Human Resources and Labor.

A bill to amend 1974 PA 154, entitled
"Michigan occupational safety and health act,"
by amending sections 33, 35, 35a, and 36 (MCL 408.1033, 408.1035,
408.1035a, and 408.1036), section 33 as amended by 1996 PA 87 and
sections 35 and 36 as amended and section 35a as added by 1991
PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) If, as the result of an inspection or investi-
2 gation, the department representative believes that an employer
3 has violated this act, an order issued ~~pursuant to~~ UNDER this
4 act, or a rule or standard promulgated ~~pursuant to~~ UNDER this
5 act, he or she shall issue a citation immediately or within 90
6 days after the completion of the physical inspection or
7 investigation. The citation shall be in writing and shall
8 describe with particularity the nature of the violation,

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1 including a reference to the provision of this act, or an order
2 issued or a rule or standard promulgated ~~pursuant to~~ UNDER this
3 act, alleged to have been violated. The citation shall state a
4 reasonable time by which the violation is to be abated, WHICH
5 SHALL NOT BE LESS THAN 14 CONSECUTIVE DAYS. The citation shall
6 state on its face that it is an allegation of a violation. The
7 date shall be set with due regard to the seriousness of the
8 hazard and the difficulty of abating it. The citation and the
9 proposed penalty, if any, may be presented to and shall, in each
10 case, be sent by registered mail to the employer, and a copy
11 shall be filed at the time of issuance with the appropriate
12 department.

13 (2) The employer shall post a copy of the citation at or
14 near the place of the violation, and the citation copy shall
15 remain posted at that site until compliance is achieved or for 3
16 working days, whichever is later.

17 (3) The employer upon whom a citation is served shall notify
18 the appropriate department of compliance with this act, OR COM-
19 PLIANCE WITH an order issued ~~pursuant to this act,~~ or a rule or
20 standard promulgated ~~pursuant to~~ UNDER this act.

21 (4) If an employer fails to correct a violation for which a
22 citation was issued within the period permitted for its correc-
23 tion, the department shall notify the employer by registered mail
24 of that failure, ~~and of~~ the penalty proposed to be assessed
25 under section 35 for the failure, AND THE EMPLOYER'S RIGHT TO
26 APPLY THAT PENALTY TO THE COSTS OF CORRECTING THE VIOLATION UNDER
27 SECTION 35.

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

13 (6) A citation for an alleged violation of this act, an
14 order issued ~~pursuant to~~ UNDER this act, or a rule or standard
15 promulgated ~~pursuant to~~ UNDER this act shall be vacated if it
16 is shown that the employer has provided the equipment or train-
17 ing, educated employees regarding use of the equipment or imple-
18 mentation of the training, and taken reasonable steps including,
19 where appropriate, disciplinary action to assure that employees
20 utilize the equipment and comply with the training as referenced
21 in this section.

22 Sec. 35. (1) An employer who receives a citation for a
23 serious violation of this act, an order issued ~~pursuant to~~
24 UNDER this act, or a rule or standard promulgated under this act
25 shall be assessed a civil penalty of not more than \$7,000.00 for
26 each violation. THE EMPLOYER MAY APPLY THE CIVIL PENALTY AMOUNT

1 ASSESSED UNDER THIS SUBSECTION TO THE COST OF CORRECTING THE
2 SERIOUS 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 \$7,000.00
6 for each day ~~during which~~ THAT the failure or violation
7 continues. A period permitted for corrections does not begin to
8 run until the date of the final order of the board if a review
9 proceeding before a board is initiated by the employer in good
10 faith and not solely for delay or avoidance of a penalty.
11 ADDITIONALLY, THE EMPLOYER MAY APPLY THE CIVIL PENALTY AMOUNT
12 ASSESSED UNDER THIS SUBSECTION TO THE COST OF CORRECTING THE
13 VIOLATION.

14 (3) ~~An~~ IF AN employer ~~who~~ receives a citation for a vio-
15 lation of this act, an order issued ~~pursuant to~~ UNDER this act,
16 or a rule or standard promulgated under this act, ~~which~~ AND THE
17 violation is specifically determined not to be of a serious
18 nature, THE EMPLOYER may be assessed a civil penalty of not more
19 than \$7,000.00 for each violation. THE EMPLOYER MAY APPLY THE
20 CIVIL PENALTY AMOUNT ASSESSED UNDER THIS SUBSECTION TO THE COST
21 OF CORRECTING THE VIOLATION.

22 (4) An employer who willfully or repeatedly violates this
23 act, an order issued ~~pursuant to~~ UNDER this act, or a rule or
24 standard promulgated under this act may be assessed a civil pen-
25 alty of not more than \$70,000.00 for each violation, but not less
26 than \$5,000.00 for each willful violation. FOR EACH VIOLATION
27 DESCRIBED IN THIS SUBSECTION THAT IS NOT WILLFUL, THE EMPLOYER

1 MAY APPLY THE CIVIL PENALTY AMOUNT ASSESSED UNDER THIS SUBSECTION
2 TO THE COST OF CORRECTING THAT VIOLATION.

3 (5) An employer who willfully violates this act, an order
4 issued ~~pursuant to~~ UNDER this act, or a rule or standard
5 promulgated under this act ~~which~~ THAT causes the death of an
6 employee is guilty of a felony and shall be fined not more than
7 \$10,000.00, or imprisoned for not more than 1 year, or both. If
8 the conviction is the second under this act, the person shall be
9 fined not more than \$20,000.00, or imprisoned for not more than 3
10 years, or both.

11 (6) An employer who violates a posting requirement pre-
12 scribed under this act shall be assessed a civil penalty of not
13 more than \$7,000.00 for each violation THAT IS NOT CORRECTED
14 WITHIN 1 DAY AFTER RECEIVING NOTICE OF THAT VIOLATION.

15 (7) A person who knowingly makes a false statement, repre-
16 sentation, or certification in an application, record, report,
17 plan, or other document filed or required to be maintained
18 ~~pursuant to~~ UNDER this act, or who fails to maintain or trans-
19 mit a record or report as required under section 61, is guilty of
20 a misdemeanor and shall be fined not more than \$10,000.00, or
21 imprisoned for not more than 6 months, or both.

22 (8) A person who gives advance notice of an investigation or
23 an inspection to be conducted under this act without authority
24 from the appropriate director or the designee of the director is
25 guilty of a misdemeanor and shall be fined not more than
26 \$1,000.00, or imprisoned for not more than 6 months, or both.

1 (9) ~~The department of labor or the department of public~~
2 ~~health, if the employer is a public employer, instead~~ INSTEAD of
3 applying a civil penalty otherwise applicable to an employer
4 under this section, THE DEPARTMENT OF CONSUMER AND INDUSTRY SERV-
5 ICES, OR IF THE EMPLOYER IS A PUBLIC EMPLOYER, THE DEPARTMENT OF
6 COMMUNITY HEALTH, may request that the attorney general seek a
7 writ of mandamus in the ~~appropriate~~ circuit court HAVING APPRO-
8 PRIATE VENUE to compel compliance with a citation, including the
9 terms of abatement.

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

17 ~~(11) The increases in the civil penalties of subsections~~
18 ~~(1), (2), (3), (4), and (6) made pursuant to the 1991 amendatory~~
19 ~~act that added this subsection shall take effect April 1, 1992.~~

20 Sec 35a. (1) An employer who receives a citation for a
21 serious violation of this act, an order issued ~~pursuant to~~
22 UNDER this act, or a rule or standard promulgated under this act
23 shall be assessed a civil penalty of not more than \$1,000.00 for
24 each violation. THE EMPLOYER MAY APPLY THE CIVIL PENALTY AMOUNT
25 ASSESSED UNDER THIS SUBSECTION TO THE COST OF CORRECTING THE
26 SERIOUS VIOLATION.

1 (2) An employer who fails to correct a violation for which a
2 citation was issued within the period permitted for its
3 correction may be assessed a civil penalty of not more than
4 \$1,000.00 for each day during which the failure or violation
5 continues. A period permitted for corrections does not begin to
6 run until the date of the final order of the board if a review
7 proceeding before a board is initiated by the employer in good
8 faith and not solely for delay or avoidance of a penalty.
9 ADDITIONALLY, THE EMPLOYER MAY APPLY THE CIVIL PENALTY AMOUNT
10 ASSESSED UNDER THIS SUBSECTION TO THE COST OF CORRECTING THE
11 VIOLATION.

12 (3) ~~An~~ IF AN employer ~~who~~ receives a citation for a vio-
13 lation of this act, an order issued ~~pursuant to~~ UNDER this act,
14 or a rule or standard promulgated under this act, ~~which~~ AND THE
15 violation is specifically determined not to be of a serious
16 nature, THE EMPLOYER may be assessed a civil penalty of not more
17 than \$1,000.00 for each violation. THE EMPLOYER MAY APPLY THE
18 CIVIL PENALTY AMOUNT ASSESSED UNDER THIS SUBSECTION TO THE COST
19 OF CORRECTING THE VIOLATION.

20 (4) An employer who willfully or repeatedly violates this
21 act, an order issued ~~pursuant to~~ UNDER this act, or a rule or
22 standard promulgated under this act may be assessed a civil pen-
23 alty of not more than \$10,000.00 for each violation. FOR EACH
24 VIOLATION DESCRIBED IN THIS SUBSECTION THAT IS NOT WILLFUL, THE
25 EMPLOYER MAY APPLY THE CIVIL PENALTY AMOUNT ASSESSED UNDER THIS
26 SUBSECTION TO THE COST OF CORRECTING THAT VIOLATION.

1 (5) An employer ~~who willfully violates~~ WHOSE WILLFUL
2 VIOLATION OF this act, an order issued ~~pursuant to~~ UNDER this
3 act, or a rule or standard promulgated under this act ~~which~~
4 causes the death of an employee is guilty of a felony and shall
5 be fined not more than \$10,000.00, or imprisoned for not more
6 than 1 year, or both. If the conviction is the second under this
7 act, the person shall be fined not more than \$20,000.00, or
8 imprisoned for not more than 3 years, or both.

9 (6) An employer who violates a posting requirement pre-
10 scribed under this act shall be assessed a civil penalty of not
11 more than \$1,000.00 for each violation THAT IS NOT CORRECTED
12 WITHIN 1 DAY AFTER RECEIVING NOTICE OF THAT VIOLATION.

13 (7) A person who knowingly makes a false statement, repre-
14 sentation, or certification in an application, record, report,
15 plan, or other document filed or required to be maintained
16 ~~pursuant to~~ UNDER this act, or who fails to maintain or trans-
17 mit a record or report as required under section 61, is guilty of
18 a misdemeanor and shall be fined not more than \$10,000.00, or
19 imprisoned for not more than 6 months, or both.

20 (8) A person who gives advance notice of an investigation or
21 an inspection to be conducted under this act without authority
22 from the appropriate director or the designee of the director is
23 guilty of a misdemeanor and shall be fined not more than
24 \$1,000.00, or imprisoned for not more than 6 months, or both.

25 (9) ~~The department of labor or the department of public~~
26 ~~health, if the employer is a public employer, instead~~ INSTEAD of
27 applying a civil penalty otherwise applicable to an employer

1 under this section, THE DEPARTMENT OF CONSUMER AND INDUSTRY
2 SERVICES, OR IF THE EMPLOYER IS A PUBLIC EMPLOYER, THE DEPARTMENT
3 OF COMMUNITY HEALTH, may request that the attorney general seek a
4 writ of mandamus in the ~~appropriate~~ circuit court HAVING APPRO-
5 PRIATE VENUE to compel compliance with a citation, including the
6 terms of abatement.

7 (10) A person shall not assault a department representative
8 or other person charged with enforcement of this act in the per-
9 formance of that person's legal duty to enforce this act. A
10 person who violates this subsection is guilty of a misdemeanor.
11 A prosecuting attorney having jurisdiction ~~of~~ OVER this matter
12 ~~and~~ OR the attorney general knowing of a violation of this
13 ~~section~~ SUBSECTION may prosecute the violator.

14 Sec. 36. (1) The board shall assess civil penalties, con-
15 sidering the size of the business, the seriousness of the viola-
16 tion, the good faith efforts of the employer, and the history of
17 previous citations, and may establish a schedule of civil
18 penalties. IN ASSESSING CIVIL PENALTIES OR ESTABLISHING A SCHED-
19 ULE OF CIVIL PENALTIES, THE BOARD SHALL NOT CONSIDER A PRIOR VIO-
20 LATION THAT WAS CORRECTED WITHIN 14 DAYS AFTER ISSUANCE OF A
21 CITATION OR DE MINIMIS NOTICE OF VIOLATION.

22 (2) ~~Beginning~~ SUBJECT TO THIS ACT, AFTER April 1, 1992,
23 the department of ~~labor~~ CONSUMER AND INDUSTRY SERVICES and the
24 department of ~~public~~ COMMUNITY health shall administer and
25 enforce the assessment of civil penalties in a manner that is
26 consistent with the administration and enforcement of civil

1 penalties by the federal occupational safety and health
2 administration.

3 (3) A civil penalty owed under this act AND NOT APPLIED TO
4 THE COST OF CORRECTING A VIOLATION IN ACCORDANCE WITH THIS ACT
5 shall be paid to the department of ~~labor~~ CONSUMER AND INDUSTRY
6 SERVICES or the department of ~~public~~ COMMUNITY health, which-
7 ever is appropriate, within 15 working days after the date the
8 penalty becomes a final order of the board ~~—~~ AND IS not subject
9 to further agency or judicial review. ~~Beginning~~ AFTER April 1,
10 1992, a civil penalty THAT IS NOT APPLIED TO THE COST OF CORRECT-
11 ING A VIOLATION IN ACCORDANCE WITH THIS ACT shall be credited to
12 the state general fund.

13 (4) If a civil penalty THAT IS NOT APPLIED TO THE COST OF
14 CORRECTING A VIOLATION IN ACCORDANCE WITH THIS ACT remains unpaid
15 beyond the period of time specified in subsection (3), the
16 department of ~~labor~~ CONSUMER AND INDUSTRY SERVICES or the
17 department of ~~public~~ COMMUNITY health, whichever is appropri-
18 ate, shall issue a letter to the employer demanding payment
19 within 20 days after the date of the letter.

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

25 (6) The department of treasury shall institute proceedings
26 to collect the amount assessed as a civil penalty AND DESCRIBED
27 IN SUBSECTION (4) AFTER RECEIVING THE INFORMATION DESCRIBED IN

1 SUBSECTION (5). The department of treasury shall offset the
2 amount of the penalty against money owed by the state to the
3 employer. The department of treasury shall request that the
4 attorney general recover the amount of the penalty remaining
5 unpaid, after offsets, by instituting a civil action in the cir-
6 cuit court ~~for~~ IN the county in which the violation occurred or
7 in the circuit court ~~for~~ IN the county in which the employer
8 owing the penalty has its principal place of business.