

HOUSE BILL No. 5644

February 7, 2006, Introduced by Reps. Robertson, Shaffer, Gosselin, Vander Veen, Drolet, Marleau, Sheen, Ball, Pastor, Garfield, Baxter and Farhat and referred to the Committee on Commerce.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) If, as the result of an inspection or
2 investigation, the department representative believes that an
3 employer has violated this act, an order issued ~~pursuant to~~ **UNDER**
4 this act, or a rule or standard promulgated ~~pursuant to~~ **UNDER**
5 this act, he or she shall issue a citation immediately or within 90
6 days after the completion of the physical inspection or

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

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

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

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

1 **SECTION 35.**

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

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

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

1 **VIOLATION.**

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

12 (3) ~~An~~ **IF AN** employer ~~who~~ receives a citation for a
13 violation of this act, an order issued ~~pursuant to~~ **UNDER** this
14 act, or a rule or standard promulgated under this act, ~~which~~ **AND**
15 **THE** 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 \$7,000.00 for each violation. **THE EMPLOYER MAY APPLY THE CIVIL**
18 **PENALTY AMOUNT ASSESSED UNDER THIS SUBSECTION TO THE COSTS OF**
19 **CORRECTING THE VIOLATION.**

20 (4) An employer who willfully or repeatedly violates this act,
21 an order issued ~~pursuant to~~ **UNDER** this act, or a rule or standard
22 promulgated under this act may be assessed a civil penalty of not
23 more than \$70,000.00 for each violation, but not less than
24 \$5,000.00 for each willful violation. **FOR EACH VIOLATION DESCRIBED**
25 **IN THIS SUBSECTION THAT IS NOT WILLFUL, THE EMPLOYER MAY APPLY THE**
26 **CIVIL PENALTY AMOUNT ASSESSED UNDER THIS SUBSECTION TO THE COSTS OF**
27 **CORRECTING THAT VIOLATION.**

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

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

13 (7) A person who knowingly makes a false statement,
14 representation, 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 transmit a
17 record or report as required under section 61, is guilty of a
18 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 from
22 the appropriate director or the designee of the director is guilty
23 of a misdemeanor and shall be fined not more than \$1,000.00, or
24 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 under

1 this section, **THE DEPARTMENT OF LABOR AND ECONOMIC GROWTH OR, IF**
2 **THE EMPLOYER IS A PUBLIC EMPLOYER, THE DEPARTMENT OF COMMUNITY**
3 **HEALTH** may request that the attorney general seek a writ of
4 mandamus in the ~~appropriate~~ circuit court **FOR THE COUNTY IN WHICH**
5 **VENUE IS APPROPRIATE** to compel compliance with a citation,
6 including the terms of abatement.

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

14 ~~—— (11) The increases in the civil penalties of subsections (1),~~
15 ~~(2), (3), (4), and (6) made pursuant to the 1991 amendatory act~~
16 ~~that added this subsection shall take effect April 1, 1992.~~

17 Sec. 36. (1) The board shall assess civil penalties,
18 considering the size of the business, the seriousness of the
19 violation, the good faith efforts of the employer, and the history
20 of previous citations, and may establish a schedule of civil
21 penalties. **IN ASSESSING CIVIL PENALTIES OR ESTABLISHING A SCHEDULE**
22 **OF CIVIL PENALTIES, THE BOARD SHALL NOT CONSIDER A PRIOR VIOLATION**
23 **THAT WAS CORRECTED WITHIN 14 DAYS AFTER THE CITATION OR DE MINIMIS**
24 **NOTICE OF VIOLATION WAS ISSUED.**

25 (2) ~~Beginning April 1, 1992, the~~ **THE** department of labor **AND**
26 **ECONOMIC GROWTH** and the department of ~~public~~ **COMMUNITY** health
27 shall administer and enforce the assessment of civil penalties in a

1 manner that is consistent with the administration and enforcement
2 of civil penalties by the federal occupational safety and health
3 administration.

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

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

20 (5) If the penalty remains unpaid following the period
21 specified in subsection (4), the appropriate department shall
22 transmit 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 to
26 collect the amount assessed as a civil penalty **AS DESCRIBED IN**
27 **SUBSECTION (4) AFTER RECEIVING THE INFORMATION DESCRIBED IN**

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

9 Enacting section 1. (1) Section 35a of the Michigan
10 occupational safety and health act, 1974 PA 154, MCL 408.1035a, is
11 repealed.

12 (2) Section 4 of 1991 PA 105 is repealed.