

Act No. 447
Public Acts of 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Colbeck

ENROLLED SENATE BILL No. 1336

AN ACT to amend 1974 PA 154, entitled "An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal certain acts and parts of act on specific dates," by amending sections 5, 14a, 14b, 14d, 14e, 14f, 14h, 14j, 14k, 14l, 24, 31, 54, and 63 (MCL 408.1005, 408.1014a, 408.1014b, 408.1014d, 408.1014e, 408.1014f, 408.1014h, 408.1014j, 408.1014k, 408.1014l, 408.1024, 408.1031, 408.1054, and 408.1063), sections 5, 31, and 63 as amended and sections 14a, 14b, 14d, 14e, 14h, 14j, 14k, and 14l as added by 1986 PA 80, section 14f as amended by 1996 PA 70, and section 24 as amended by 1991 PA 105; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 5. (1) "Employee" means a person permitted to work by an employer.

(2) "Employer" means an individual or organization, including the state or a political subdivision, which employs 1 or more persons.

(3) "Imminent danger" means a condition or practice in a place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided. A container of an unknown and unlabeled chemical or a container of hazardous chemicals that is not labeled or for which a safety data sheet is not available as required by the standard incorporated by reference in section 14a shall be considered an imminent danger after meeting the provisions of section 31.

(4) "Inspection" means the examination or survey of a place of employment to detect the presence of an existing or potential occupational safety or health hazard or to determine compliance with this act, rules or standards promulgated, or orders issued pursuant to this act.

(5) "Investigation" means the detailed evaluation or study of working conditions, including equipment, processes, substances, air contaminants, or physical agents with respect to the actual or potential occurrence of occupational accidents, illnesses, or diseases.

Sec. 14a. (1) The occupational safety and health hazard communication standard that has been adopted or promulgated by the United States department of labor and has been codified at 29 CFR 1910.1200 as of May 25, 2012 is incorporated by reference and has the same force and effect as a rule promulgated under this act. In addition to the standard incorporated by reference in this subsection, sections 14b to 14l apply to an employer subject to this act. The applicability of the standard incorporated by reference in this subsection and of sections 14b to 14l is subject to subsections (4), (5), (6), and (7).

(2) If a rule or standard that is continued pursuant to section 24(1) is in conflict with or covers the same or similar subject as a standard incorporated by reference pursuant to subsection (1), the federal standard so incorporated by reference governs and the state rule or standard continued pursuant to section 24(1) is rescinded.

(3) The department of licensing and regulatory affairs shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) in a manner that is consistent with the administration and enforcement of the standard by the federal occupational safety and health administration.

(4) Beginning November 25, 1985, employers who are chemical manufacturers in a classification provided by sector 31-33 — manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget or in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget, importers, and distributors shall label containers of hazardous chemicals leaving their workplaces, provide safety data sheets with initial shipments, and otherwise comply with any applicable provision of the standard incorporated by reference pursuant to subsection (1) and of sections 14b to 14l. A chemical manufacturer, importer, or distributor subject to this subsection shall provide a safety data sheet and an appropriately labeled container to each employer in this state, regardless of the employer's standard industrial classification in the standard industrial classification code, who purchases a hazardous chemical.

(5) Beginning May 25, 1986, an employer in a classification provided by sector 31-33 — manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget or in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace.

(6) Beginning February 25, 1987, an employer who is subject to this act but who is not otherwise specifically described in subsections (4) or (5) shall comply with the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace. However, instead of complying with any conflicting provision of the standard incorporated by reference in subsection (1), an employer who is described in this subsection shall do both of the following:

(a) Provide information and training to employees who are exposed to hazardous chemicals in the normal course of employment or who are likely to be exposed to hazardous chemicals in the event of an emergency.

(b) In the case where a hazardous chemical is mixed or combined with any other chemical or hazardous chemical by the employer, maintain and provide a safety data sheet for each constituent hazardous chemical and maintain a material identification system that identifies to employees the appropriate safety data sheets.

(7) The standard incorporated by reference in subsection (1), this section, and sections 14b to 14l shall not be construed to require an employer in a classification provided by sector 31-33 — manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget or in a standard industrial classification other than 20 through 39 of the standard industrial classification code published by the federal department of management and budget to evaluate chemicals, to develop labels for containers of hazardous chemicals, or to develop safety data sheets.

Sec. 14b. In nonemergency situations, a chemical manufacturer, importer, or employer claiming a trade secret, upon request, shall disclose a specific chemical identity, percentage composition, or both, otherwise permitted to be withheld under the standard incorporated by reference in section 14a, in addition to a health professional as specified in 29 CFR 1910.1200(i)(3), to an occupational health nurse providing medical or other occupational health services to exposed employees, to an authorized employee representative of an exposed employee, and to an exposed employee, if the occupational health nurse, the representative, and the employee comply with the requirements described in 29 CFR 1910.1200(i)(3) and (4).

Sec. 14d. (1) Upon request of the director, an employer who claims a trade secret under the standard incorporated by reference by section 14a shall support the trade secret claim. Subject to subsection (2), the director shall consider the following factors in determining whether a specific chemical identity may be withheld as a trade secret:

(a) The extent to which the information is known outside the employer's business.

(b) The extent to which it is known by employees and others involved in the employer's business.

(c) The extent of measures taken by the employer to guard the secrecy of the information.

(d) The value of the information to the employer and the employer's competitors.

(e) The amount of effort and money expended by the employer in developing the information.

(f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

(2) The determination made by the director under subsection (1) shall not uphold as a trade secret any chemical identity information that is readily discoverable through reverse engineering.

(3) This section shall not be construed to require the prior approval of trade secret claims by the director.

(4) An exposed employee, a health professional providing medical or other occupational health services to exposed employees, or an authorized employee representative of an exposed employee may petition the director to review a denial of a written request for disclosure of a specific chemical identity. This review shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and shall be confidential.

The director shall review the assertion of trade secrecy and make a determination in accordance with the principles provided in this section and the standard incorporated by reference in section 14a. In preparing the final order, the director shall consider and require any prudent measures necessary to protect the health of employees or the public in general while maintaining the confidentiality of any trade secrets.

(5) The director may revoke any order entered under subsection (4) upholding a trade secret claim after a hearing involving the parties of interest upon showing that a party has not complied with an order issued pursuant to subsection (4).

(6) Records and information obtained by any department, commission, or public agency related to a review by the director under subsection (4) and to information determined by the director to be a trade secret in that review is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Notwithstanding that information has been claimed as a trade secret pursuant to 29 CFR 1910.1200(i) or has been upheld by the director as a trade secret under this section, a chemical manufacturer, importer, or employer shall provide the specific chemical identity and percentage composition of a hazardous chemical to the director when the director requests that information in the discharge of the director's duties under this act.

Sec. 14e. In order to educate employers, employees, and the public about the hazards of exposure to hazardous chemicals and the requirements of the occupational safety and health hazard communication standard incorporated by reference in section 14a and the requirements of sections 14b to 14l, the department of licensing and regulatory affairs shall distribute periodically public service announcements to newspapers and television and radio stations throughout this state.

Sec. 14f. (1) An employer engaged in agricultural operations is not required to comply with the standard incorporated by reference in section 14a or sections 14b to 14l for a hazardous chemical that is regulated under the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 USC 136 to 136i and 136j to 136y, or part 83 (pesticide control) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8301 to 324.8336, and any rules or regulations promulgated under those acts.

(2) The director of the department of agriculture and rural development at least annually shall certify to the department of licensing and regulatory affairs a list of chemicals regulated by the acts described in subsection (1).

Sec. 14h. An employer engaged in construction operations may satisfy the requirements of the standard incorporated in section 14a and sections 14b to 14l that a safety data sheet be maintained for each hazardous chemical in the workplace by maintaining safety data sheets in 1 or more central locations at a jobsite.

Sec. 14j. An employer subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall post signs throughout the workplace advising employees of all of the following:

(a) The location of the safety data sheets for the hazardous chemicals produced or used in the workplace and the name of the person from whom to obtain the sheets.

(b) That the employer is prohibited from discharging or discriminating against an employee who exercises the rights regarding information about hazardous chemicals in the workplace afforded by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(c) That, as an alternative to requesting the employer for a safety data sheet for a hazardous chemical in the workplace, the employee may obtain a copy of the safety data sheet from the department of licensing and regulatory affairs. The sign shall include the address and telephone number of the division of the department of licensing and regulatory affairs that has the responsibility of responding to such requests.

Sec. 14k. (1) An employer who is subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall organize the safety data sheets for the hazardous chemicals in the workplace in a systematic and consistent manner and shall train employees in locating particular safety data sheets.

(2) Not later than 5 working days after receipt of a new or a revised safety data sheet, the employer shall post for a period of 10 working days a notice of the existence of the new or revised sheet and directions for locating the new or revised sheet according to the method used by the employer for organizing safety data sheets.

Sec. 14l. The failure of an employer who is subject to the standard incorporated by reference in section 14a and to this section and sections 14b to 14k to provide an exposed employee with access to the most current safety data sheet available to the employer shall not be considered by the department as a violation for which a de minimis notice of violation may be issued under section 33(5). The department may consider the violation to be a serious violation or a violation not of a serious nature for which a citation may be issued under section 35.

Sec. 24. (1) Standards governing occupational health promulgated by the director of public health that are in effect on the effective date of the amendatory act that repealed section 23 of this act are continued under section 31 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.231.

(2) The director shall promulgate an occupational health standard pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, except for standards adopted by reference pursuant to section 14.

(3) When promulgating occupational health standards, the director shall promulgate a standard that most adequately assures, to the extent feasible and on the basis of the best available evidence, that an employee will not suffer material impairment of health or functional capacity, even if the employee has regular exposure to a hazard dealt with by the standard for the period of his or her working life.

(4) The director shall promulgate an emergency standard pursuant to section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248, if the director finds that employees are exposed to substances or agents determined to be toxic or physically harmful and the emergency standard is necessary to protect employees from that danger. If the director promulgates an emergency standard on a matter addressed by a federal standard, the director shall promulgate a standard that is substantially similar to the federal standard unless he or she determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in section 9 or 24.

(5) An occupational health standard shall prescribe appropriate forms of warning that are necessary to insure that employees are apprised of health hazards to which they are exposed, relevant symptoms, and the conditions and precautions for safe use or exposure, including appropriate emergency treatment. If appropriate, a standard shall prescribe suitable protective equipment, control, or technological procedures to be used and shall require an employer to monitor or measure employee exposure, to allow employees or their representatives to observe the monitoring and have access to the records of the monitoring, and to conduct the monitoring in a manner that is necessary for the protection of the employees' health. Former employees shall have access to the records indicating their exposure to toxic materials and harmful physical agents.

(6) If appropriate, the director shall prescribe by standard that medical examinations or tests are made available, at the employer's cost, to employees to determine if they are adversely affected by exposure to health hazards. If the examination is performed by a physician other than a physician who is retained for that purpose by the employer, the employer is responsible only for the reasonable costs of the examination, and only for costs related to the performance of the examination required by the standard. The results of the examinations or tests shall be furnished to the employer, the employee, and upon request of the employee, to the employee's personal physician. Upon request of the director, the employer shall furnish results of the examinations or tests to the director. However, this act does not authorize or require medical examinations, immunizations, or treatments for those who object to them on religious grounds, except if necessary for the protection of the health or safety of others.

Sec. 31. (1) When and as soon as a department representative determines that an imminent danger exists in a place of employment, the department representative shall inform the employer and the affected employees of a determination of the imminent danger. The department representative immediately shall recommend to the director that an order be issued to require that steps be taken as may be necessary to avoid, correct, or remove the imminent danger. After receiving authorization for the issuance of an order from the director, the department representative shall apply a tag to the equipment or process that is the source of the imminent danger identifying that an imminent danger exists. The tag shall be removed only by the department representative. At request of the employer, an area supervisor shall, within 24 hours after a request, make an on site review of any tagging and recommend continuance or removal. The order shall prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger in a safe and orderly manner. In tagging the equipment or process that is the source of imminent danger and in issuing the order, consideration shall be given to any necessity to maintain the capacity of a continuous process operation and to the reestablishment of normal operations without a complete cessation of operations.

(2) An employer shall not permit an employee, other than an employee whose presence is necessary to avoid, correct, or remove the imminent danger, to operate equipment or engage in a process that has been tagged by the department and that is the subject of an order issued by the department identifying that an imminent danger exists. An employee who suffers a loss of wages or fringe benefits or is in any manner discriminated against for refusing to operate equipment or engage in a process that has been tagged by the department and that is the subject of an order issued by the department, as provided in this section, may file a discrimination complaint, and the department of licensing and regulatory affairs may order appropriate relief as provided in section 65. This section does not prohibit an employer from assigning an employee to an operation not affected by the imminent danger situation, subject to any collective bargaining agreement.

(3) Upon failure of the employer to promptly comply with a department order, as described in subsection (1), the department shall petition the circuit court having jurisdiction to restrain a condition or practice in a place of employment that the department has determined to cause the imminent danger.

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

(5) The department of licensing and regulatory affairs shall respond within 24 hours after receipt of an imminent danger complaint concerning an unknown and unlabeled container of chemicals or an imminent danger complaint concerning a container of hazardous chemicals that is not labeled or for which a safety data sheet is not available as required by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(6) Before a department representative seeks authorization to issue an order pursuant to the procedures prescribed in subsection (1), an employer shall be given a reasonable opportunity to identify, label, or provide the safety data sheet for the container that is the subject of the imminent danger determination.

Sec. 54. (1) A safety education and training division is created within the department of licensing and regulatory affairs.

(2) The functions of the safety education and training division shall include:

(a) The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees, and union leaders with techniques of accident investigation and prevention.

(b) The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety problems.

(c) The development of training programs for the department safety compliance staff.

(d) The acquisition, development, and distribution of occupational safety pamphlets, booklets, brochures, and other appropriate safety media as may be useful to accomplish the objectives of the safety education and training division.

(e) The conduct of other activities as necessary for the implementation of an effective safety education and training program.

(f) The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance.

(g) The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this act.

(3) The department shall publish a newsletter at least quarterly.

(4) When the director promulgates a standard or a rule or issues an order, a brief statement shall be included indicating the reasons for the action, which shall be published in the newsletter published under subsection (3).

Sec. 63. (1) Information reported to or otherwise obtained by the department of licensing and regulatory affairs in connection with an inspection, investigation, or proceeding under this act that contains or that might reveal a trade secret, including information required to be made available under sections 14a through 14l and section 24(5) and (6) shall be considered confidential. In a proceeding under this act, the director shall promulgate rules for the purpose of protecting trade secrets regarding information required to be made available under sections 14a through 14l and section 24(5) and (6), and the department, the board, or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets and to carry out the objectives of this act.

(2) Except as otherwise provided by this subsection and subsection (1), information reported to or otherwise obtained by a department from an employee in connection with an inspection, investigation, or proceeding under this act shall be made available to the public pursuant to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The identity of an employee or any information that may lead to the identification of an employee who provides information pertaining to a possible violation or violations of this act is exempt from disclosure.

Enacting section 1. Section 23 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1023, is repealed.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) House Bill No. 5922.

(b) House Bill No. 5917.

(c) Senate Bill No. 1335.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor