

HOUSE BILL No. 5597

February 20, 2018, Introduced by Reps. Sowerby, Chang, VanSingel, Maturen, Inman, Rabhi, Garrett, Cambensy, Peterson, Geiss, Crawford, Wentworth, VanderWall, Yarocho, Marino, Pagan, Bellino and Faris and referred to the Committee on Natural Resources.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) ~~An~~**IF AN** employer ~~who~~ receives a citation for a
2 serious violation of this act, an order issued pursuant to this
3 act, or a rule or standard promulgated under this act, **THE BOARD**
4 shall ~~be assessed~~**ASSESS THE EMPLOYER** a civil penalty of not more
5 than \$7,000.00 for each violation.

6 (2) ~~An~~**IF AN** employer ~~who~~ fails to correct a violation for
7 which a citation was issued within the period permitted for its
8 correction, **THE BOARD** may ~~be assessed~~**ASSESS THE EMPLOYER** a civil

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

7 (3) ~~An~~**IF AN** employer ~~who~~ receives a citation for a violation
8 of this act, an order issued pursuant to this act, or a rule or
9 standard promulgated under this act ~~, which~~**AND THE** violation is
10 specifically determined not to be of a serious nature, **THE BOARD**
11 ~~may be assessed~~**ASSESS THE EMPLOYER** a civil penalty of not more
12 than \$7,000.00 for each violation.

13 (4) ~~An~~**IF AN** employer ~~who~~ willfully or repeatedly violates
14 this act, an order issued pursuant to this act, or a rule or
15 standard promulgated under this act, **THE BOARD** ~~may be assessed~~
16 **ASSESS THE EMPLOYER** a civil penalty of not more than \$70,000.00 for
17 each violation, but not less than \$5,000.00 for each willful
18 violation. **AS USED IN THIS SUBSECTION, "REPEATEDLY VIOLATES" MEANS**
19 **COMMITTING A VIOLATION WITHIN 5 YEARS AFTER THE DATE OF RECEIVING A**
20 **CITATION FOR A VIOLATION.**

21 (5) ~~An~~**IF AN** employer ~~who~~ willfully violates this act, an
22 order issued pursuant to this act, or a rule or standard
23 promulgated under this act ~~which~~**AND THE VIOLATION** causes the death
24 of an employee, **THE EMPLOYER** is guilty of a felony ~~and shall be~~
25 ~~finned not more than \$10,000.00, or imprisoned~~**PUNISHABLE BY**
26 **IMPRISONMENT** for not more than 1 year **OR A FINE OF NOT MORE THAN**
27 **\$10,000.00**, or both. ~~If the conviction is the second under this~~

1 ~~act, the person shall be fined not more than \$20,000.00, or~~
2 ~~imprisoned~~ **A SECOND OR SUBSEQUENT VIOLATION UNDER THIS SUBSECTION**
3 **IS PUNISHABLE BY IMPRISONMENT** for not more than 3 years **OR A FINE**
4 **OF \$20,000.00**, or both.

5 (6) ~~An~~ **IF AN** employer ~~who~~ violates a posting requirement
6 prescribed under this act, **THE BOARD** shall ~~be assessed~~ **ASSESS THE**
7 **EMPLOYER** a civil penalty of not more than \$7,000.00 for each
8 violation.

9 (7) ~~A~~ **IF A** person ~~who~~ knowingly makes a false statement,
10 representation, or certification in an application, record, report,
11 plan, or other document filed or required to be maintained pursuant
12 to this act, or ~~who~~ fails to maintain or transmit a record or
13 report as required under section 61, **THE PERSON** is guilty of a
14 misdemeanor ~~and shall be fined not more than \$10,000.00, or~~
15 ~~imprisoned~~ **PUNISHABLE BY IMPRISONMENT** for not more than 6 months **OR**
16 **A FINE OF NOT MORE THAN \$10,000.00**, or both.

17 (8) ~~A~~ **IF A** person ~~who~~ gives advance notice of an investigation
18 or an inspection to be conducted under this act without authority
19 from the appropriate director or the designee of the director, **THE**
20 **PERSON** is guilty of a misdemeanor ~~and shall be fined not more than~~
21 ~~\$1,000.00, or imprisoned~~ **PUNISHABLE BY IMPRISONMENT** for not more
22 than 6 months **OR A FINE OF NOT MORE THAN \$1,000.00**, or both.

23 (9) ~~The~~ **FOR A PUBLIC EMPLOYER, THE** department of ~~labor or the~~
24 ~~department of public health, if the employer is a public employer,~~
25 **LICENSING AND REGULATORY AFFAIRS**, instead of applying a civil
26 penalty otherwise applicable to an employer under this section, may
27 request that the attorney general seek a writ of mandamus in the

1 appropriate circuit court to compel compliance with a citation,
2 including the terms of abatement.

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

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

13 Sec. 36. (1) The board shall assess civil penalties,
14 considering the size of the business, the seriousness of the
15 violation, the good faith efforts of the employer, and the history
16 of previous citations, and may establish a schedule of civil
17 penalties. **HOWEVER, THE BOARD SHALL NOT REDUCE A CIVIL PENALTY THAT**
18 **WAS ASSESSED AS THE RESULT OF AN ASBESTOS-RELATED VIOLATION BY AN**
19 **AMOUNT OR PERCENTAGE THAT IS GREATER THAN WHAT IS PRESCRIBED BY THE**
20 **FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION. AS USED IN**
21 **THIS SUBSECTION:**

22 (A) "ASBESTOS" MEANS A GROUP OF NATURALLY OCCURRING MINERALS
23 THAT SEPARATE INTO FIBERS, INCLUDING CHRYSOTILE, AMOSITE,
24 CROCIDOLITE, ANTHOPHYLLITE, TREMOLITE, AND ACTINOLITE.

25 (B) "ASBESTOS-RELATED VIOLATION" MEANS A VIOLATION OF THIS
26 ACT, AN ORDER ISSUED PURSUANT TO THIS ACT, OR A RULE OF STANDARD
27 PROMULGATED UNDER THIS ACT THAT INVOLVES THE DEMOLITION,

1 RENOVATION, ENCAPSULATION, REMOVAL, OR HANDLING OF FRIABLE ASBESTOS
2 MATERIAL OR OTHERWISE INVOLVES THE EXPOSURE OF AN INDIVIDUAL TO
3 FRIABLE ASBESTOS MATERIAL.

4 (C) "FRIABLE ASBESTOS MATERIAL" MEANS ANY MATERIAL THAT
5 CONTAINS MORE THAN 1% ASBESTOS BY WEIGHT AND THAT CAN BE CRUMBLED,
6 PULVERIZED, OR REDUCED TO POWDER WHEN DRY, BY HAND PRESSURE.

7 ~~(2) Beginning April 1, 1992, the~~ **THE** department of labor and
8 ~~the department of public health~~ **LICENSING AND REGULATORY AFFAIRS**
9 shall administer and enforce the assessment of civil penalties in a
10 manner that is consistent with the administration and enforcement
11 of civil penalties by the federal occupational safety and health
12 administration.

13 (3) A civil penalty owed under this act ~~shall~~ **MUST** be paid to
14 the department of labor ~~or the department of public health,~~
15 ~~whichever is appropriate,~~ **LICENSING AND REGULATORY AFFAIRS** within
16 15 working days after the date the penalty becomes a final order of
17 the board, not subject to further agency or judicial review.
18 ~~Beginning April 1, 1992, a~~ **A** civil penalty ~~shall~~ **MUST** be credited
19 to the state general fund.

20 (4) If a civil penalty remains unpaid beyond the period of
21 time specified in subsection (3), the department of labor ~~or the~~
22 ~~department of public health, whichever is appropriate,~~ **LICENSING**
23 **AND REGULATORY AFFAIRS** shall issue a letter to the employer
24 demanding payment within 20 days after the date of the letter.

25 (5) If the penalty remains unpaid following the period
26 specified in subsection (4), the ~~appropriate~~ department shall
27 transmit information on the amount of the penalty and the name and

1 address of the employer owing the penalty to the department of
2 treasury.

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

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.