

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4031**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) An employer who fails to correct a violation for which a
6 citation was issued within the period permitted for its correction
7 may be assessed a civil penalty of not more than \$7,000.00 for each
8 day during which the failure or violation continues. A period
9 permitted for corrections does not begin to run until the date of

1 the final order of the board if a review proceeding before ~~a~~**the**
 2 board is initiated by the employer in good faith and not solely for
 3 delay or avoidance of a penalty.

4 (3) An employer who receives a citation for a violation of
 5 this act, an order issued pursuant to this act, or a rule or
 6 standard promulgated under this act ~~, which violation is~~
 7 ~~specifically determined not to be of a serious nature,~~ may be
 8 assessed a civil penalty of not more than \$7,000.00 for each
 9 violation **specifically determined not to be of a serious nature.**

10 (4) An employer who willfully or repeatedly violates this act,
 11 an order issued pursuant to this act, or a rule or standard
 12 promulgated under this act may be assessed a civil penalty of not
 13 more than \$70,000.00 for each violation, but not less than
 14 \$5,000.00 for each willful violation.

15 (5) An employer who willfully violates this act, an order
 16 issued pursuant to this act, or a rule or standard promulgated
 17 under this act ~~which causes~~**causing** the death of an employee is
 18 guilty of a felony ~~and shall be fined~~**punishable by imprisonment**
 19 **for not more than 1 year or a fine of** not more than \$10,000.00, ~~or~~
 20 ~~imprisoned for not more than 1 year,~~ or both. If the conviction is
 21 the second under this act, the person ~~shall be fined~~**is guilty of a**
 22 **felony punishable by imprisonment for not more than 3 years or a**
 23 **fine of** not more than \$20,000.00, ~~or imprisoned for not more than 3~~
 24 ~~years,~~ or both.

25 (6) An employer who violates a posting requirement prescribed
 26 under this act shall be assessed a civil penalty of not more than
 27 \$7,000.00 for each violation.

28 (7) A person who knowingly makes a false statement,
 29 representation, or certification in an application, record, report,

plan, or other document filed or required to be maintained pursuant to this act, or, **except as otherwise provided in this subsection**, who fails to maintain or transmit a record or report as required under section 61, is guilty of a misdemeanor ~~and shall be fined~~ **punishable by imprisonment for not more than 6 months or a fine of** not more than \$10,000.00, ~~or imprisoned for not more than 6 months,~~ or both. **If a death or injury occurs on a family farm to the owner of the family farm or a family member of the owner, and if the employer fails to report the death or injury within the time period prescribed under this act or a rule promulgated under this act, a civil penalty or fine assessed against the employer under this subsection must be reduced by the maximum amount allowed under this act or a rule promulgated under this act.**

(8) ~~A person~~ **An individual** who gives advance notice of an investigation or an inspection to be conducted under this act without authority from the appropriate director or ~~the~~ designee of the director is guilty of a misdemeanor ~~and shall be fined~~ **punishable by imprisonment for not more than 6 months or a fine of** not more than \$1,000.00, ~~or imprisoned for not more than 6 months,~~ or both.

(9) The department of labor **and economic opportunity** or the department of ~~public health~~ **and human services**, if the employer is a public employer, instead of applying a civil penalty otherwise applicable to an employer under this section, may request that the attorney general seek a writ of mandamus in the appropriate circuit court to compel compliance with a citation, including the terms of abatement.

(10) ~~A person~~ **An individual** shall not assault a department representative or other ~~person~~ **individual** charged with enforcement

1 of this act in the performance of that ~~person's~~**individual's** legal
2 duty to enforce this act. ~~A person~~**An individual** who violates this
3 subsection is guilty of a misdemeanor. A prosecuting attorney
4 having jurisdiction of this matter and the attorney general knowing
5 of a violation of this section may prosecute the violator.

6 (11) The increases in the civil penalties of subsections (1),
7 (2), (3), (4), and (6) made pursuant to the 1991 amendatory act
8 that added this subsection ~~shall~~ take effect April 1, 1992.

9 (12) **As used in this section:**

10 (a) "Family farm" means a farming operation, including, but
11 not limited to, a sole proprietorship, partnership, or family
12 corporation, that meets all of the following conditions:

13 (i) The farming operation is wholly owned by the operator or
14 the operator's family members.

15 (ii) During the immediately preceding 12-month period, all of
16 the following conditions were met:

17 (A) More than 50% of the employees of the farming operation
18 were family members of the owner or operator of the farming
19 operation.

20 (B) The farming operation did not employ, at any 1 time, more
21 than 9 employees who were not family members of the owner or
22 operator of the farming operation.

23 (C) The farming operation did not operate a temporary labor
24 camp.

25 (b) Family farm does not include either of the following:

26 (i) A farming operation that is organized as a nonfamily
27 corporation or cooperation.

28 (ii) A farming operation with a hired manager who is not a
29 family member of the owner or operator of the farming operation.

1 (c) "Family member" means a member of the family as that term
2 is defined in section 4946 of the internal revenue code of 1986, 26
3 USC 4946.