

HOUSE BILL NO. 4031

January 27, 2021, Introduced by Reps. Kahle, Bellino, Yaroach, Rendon, Cambensy, Witwer, Garza, Eisen and Filler and referred to the Committee on Agriculture.

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

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

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

14 (4) An employer who willfully or repeatedly violates this act,
 15 an order issued pursuant to this act, or a rule or standard
 16 promulgated under this act may be assessed a civil penalty of not
 17 more than \$70,000.00 for each violation, but not less than
 18 \$5,000.00 for each willful violation.

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

29 (6) An employer who violates a posting requirement prescribed

1 under this act shall be assessed a civil penalty of not more than
2 \$7,000.00 for each violation.

3 (7) A person who knowingly makes a false statement,
4 representation, or certification in an application, record, report,
5 plan, or other document filed or required to be maintained pursuant
6 to this act, or, **except as otherwise provided in this subsection,**
7 who fails to maintain or transmit a record or report as required
8 under section 61, is guilty of a misdemeanor ~~and shall be fined~~
9 **punishable by imprisonment for not more than 6 months or a fine of**
10 **not more than \$10,000.00, or imprisoned for not more than 6 months,**
11 **or both. If a death or injury occurs on a family farm, or if a**
12 **death or injury occurs to a family member of an individual who is**
13 **required to report the death or injury, and the employer fails to**
14 **report the death or injury within 7 days after the death or injury,**
15 **the employer shall be assessed a civil penalty of not more than**
16 **\$500.00. The department shall not promulgate or enforce a rule that**
17 **requires an employer to report a death or injury in less than 7**
18 **days if the death or injury occurs on a family farm or to a family**
19 **member of the individual required to report the death or injury.**

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

27 (9) The department of labor **and economic opportunity** or the
28 department of ~~public health~~ **, and human services,** if the employer
29 is a public employer, instead of applying a civil penalty otherwise

1 applicable to an employer under this section, may request that the
 2 attorney general seek a writ of mandamus in the appropriate circuit
 3 court to compel compliance with a citation, including the terms of
 4 abatement.

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

12 (11) The increases in the civil penalties of subsections (1),
 13 (2), (3), (4), and (6) made pursuant to the 1991 amendatory act
 14 that added this subsection ~~shall~~ take effect April 1, 1992.

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

16 (a) "Family farm" means a farm in which the majority of the
 17 business is owned by the operator and his or her family members, or
 18 a farm that is organized as a sole proprietorship, partnership, or
 19 family corporation. Family farm does not include a farm that is
 20 organized as a nonfamily corporation or cooperation, or a farm with
 21 a hired manager that is not a family member of the operator.

22 (b) "Family member" means a member of the family as that term
 23 is defined in section 4946 of the internal revenue code of 1986, 26
 24 USC 4946.