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House Bill 4185 (Substitute H-2 as passed by the House)

Sponsor: Representative Denise Mentzer

House Committee: Natural Resources, Environment, Tourism and Outdoor Recreation

Senate Committee: Energy and Environment

Date Completed: 1-31-24

CONTENT

The bill would amend the Michigan Occupational Safety and Health Act to add criteria under which an employer could be considered to have repeatedly violated the Act regarding asbestos-related violations and to allow a civil fine issued to an employer for an asbestos-related violation to be reduced by up to 95% based on specific considerations.

The bill would take effect 90 days after its enactment.

Among other things, the Act prescribes the duties of employers related to places and conditions of employment. An employer must comply with the Act and rules promulgated under it and protect each employee from recognized hazards that cause, or are likely to cause, death or serious physical harm. The Act also prescribes penalties for various violations and allows the Board of Health and Safety Compliance and Appeals (Board) to assess civil penalties, considering the size of the business, the seriousness of the violation, the good-faith efforts of the employer, and the history of previous citations, and establish a schedule of civil penalties.

Under the bill, for a civil penalty that was assessed as the result of an asbestos-related violation,¹ the Board could not reduce the civil penalty by more than a total of 95% or by more than the corresponding percentage for each of the following:

- In considering the size of the business, 70%.
- In considering the good-faith efforts of the employer, 25%.
- In considering the history of previous citations, 10%.

The Board could issue an order for a reduction of a civil penalty if the order were consistent with a dismissal or reclassification of an asbestos-related violation included in a hearing officer's report submitted to the Board following an administrative hearing. For an asbestos-related violation that had been reclassified by a hearing officer, the Board could not reduce the civil penalty that corresponded to the reclassified violation by more than the percentages outlined above.

Under the bill, "asbestos-related violation" would mean a violation of the Act, an order issued under the Act, or a rule or standard promulgated under the Act that involves the demolition, renovation, encapsulation, removal, or handling of friable asbestos material or otherwise involved the exposure of an individual to friable asbestos material.

¹ Generally, the Act requires the adoption of Federal rules and standards applicable to occupational exposures to asbestos.

"Friable asbestos material" would mean any material that contained more than 1% asbestos by weight and that can be, by hand pressure, crumbled, pulverized, or reduced to powder when dry. "Asbestos" would mean a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

If an employer willfully or repeatedly violates the Act, an order issued pursuant to the Act, or a rule or standard promulgated under the Act, the Board may assess the employer a civil penalty of not more than \$70,000 for each violation. Under the bill, "repeatedly violates", with respect to an asbestos-related violation, would mean committing an asbestos-related violation not later than five years after the case closing date of an asbestos-related violation. "Case closing date", with respect to an asbestos-related violation, would mean the first date that all the following conditions are met:

- The citation for the violation is a final order.
- Satisfactory abatement documentation for the violation is received by the Board.
- All civil penalties related to the violation are timely paid, or the Department of Labor and Economic Opportunity (LEO) transmits information on the amount of the penalty and the name and address of the employer owing the penalty to the Department of Treasury.

Additionally, the bill would change references to the Departments of Labor and Public Health to LEO.

MCL 408.1004 et al.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to House Bill 5051 of the 2019-2020 Legislative Session and House Bill 4771 of the 2021-2022 Legislative Session. Both were passed by the House and referred to the Senate Committee on Environmental Quality during their respective sessions but received no further action.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government and likely little to no fiscal impact on State or local court systems.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.