

SUBSTITUTE FOR
HOUSE BILL NO. 4185

A bill to amend 1974 PA 154, entitled
"Michigan occupational safety and health act,"
by amending sections 4, 35, and 36 (MCL 408.1004, 408.1035, and
408.1036), section 4 as amended by 2012 PA 416 and sections 35 and
36 as amended by 1991 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Agricultural operations" means the work activity
2 designated in major groups 01 and 02 of the ~~standard industrial~~
3 ~~classification manual~~, **Standard Industrial Classification Manual**,
4 United States ~~bureau~~ **Bureau** of the ~~budget~~, **Budget**, 1972 edition.
5 Agricultural operations include any practices performed by a farmer
6 or on a farm as an incident to or in conjunction with farming
7 operations including preparation for market **or** delivery to storage

1 or market or to carriers for transportation to market.

2 (2) "Asbestos" means a group of naturally occurring minerals
3 that separate into fibers, including chrysotile, amosite,
4 crocidolite, anthophyllite, tremolite, and actinolite.

5 (3) "Asbestos-related violation" means a violation of this
6 act, an order issued under this act, or a rule or standard
7 promulgated under this act that involves the demolition,
8 renovation, encapsulation, removal, or handling of friable asbestos
9 material or otherwise involves the exposure of an individual to
10 friable asbestos material.

11 (4) ~~(2)~~—"Authorized employee representative" or
12 "representative of employee" means a person designated by a labor
13 organization certified by the ~~national labor relations board~~
14 **National Labor Relations Board** or ~~the~~ employment relations
15 commission ~~as defined in section 2(c)~~ **created under section 3** of
16 1939 PA 176, MCL ~~423.2, 423.3~~, as the bargaining representative for
17 the affected employees. In the absence of certification, it shall
18 be a person designated by the organization having a collective
19 bargaining relationship with the employer and designated as having
20 a collective bargaining relationship with the employer by the
21 affected employees. If a labor organization has not been certified,
22 or if no organization has a collective bargaining relationship with
23 the employer, "authorized employee representative" or
24 "representative of employee" means a person designated by the
25 affected employees to represent them for the purpose of proceedings
26 under this act.

27 (5) ~~(3)~~—"Board" means the board of health and safety
28 compliance and appeals created in section 46.

29 (6) ~~(4)~~—"Construction operations" means the work activity

designated in major groups 15, 16, and 17 of the ~~standard~~
~~industrial classification manual~~, **Standard Industrial**
Classification Manual, United States ~~bureau~~ **Bureau** of the ~~budget~~,
Budget, 1972 edition.

(7) ~~(5)~~—"Director" means the director of the department of
~~licensing and regulatory affairs~~. **labor and economic opportunity**.

(8) ~~(6)~~—"Department attorney" means the attorney general or
the authorized representative of the attorney general.

(9) ~~(7)~~—"Domestic employment" means that employment involving
an employee specifically employed by a householder to engage in
work or an activity relating to the operation of a household and
its surroundings, whether or not the employee resides in the
household.

(10) **"Friable asbestos material" means any material that**
contains more than 1% asbestos by weight and that can be, by hand
pressure, crumbled, pulverized, or reduced to powder when dry.

(11) ~~(8)~~—"Mines", except as provided in ~~subdivision (d)~~,
subsection (12), means all of the following:

(a) An area of land from which minerals are extracted in
nonliquid form, or if in liquid form, are extracted with workers
underground.

(b) Private ways and roads appurtenant to an area of land
described in subdivision (a).

(c) Lands, excavations, underground passageways, shafts,
slopes, tunnels and workings, structures, facilities, equipment,
machines, tools, or other property, including impoundments,
retention dams, and tailings ponds, on the surface or underground,
used in, or to be used in, or resulting from, the work of
extracting minerals from their natural deposits in nonliquid form,

1 or if in liquid form, with workers underground, or used in, or to
 2 be used in, the milling of minerals, or the work of preparing coal
 3 or other minerals, and includes custom coal preparation facilities.

4 (12) ~~(d) This subsection~~ **"Mines"** does not include industrial
 5 borrow pits, or sand, gravel, or crushed and dimension stone
 6 quarrying operations, or surface construction operations.

7 Sec. 35. (1) ~~An~~ **If an** employer ~~who~~ receives a citation for a
 8 serious violation of this act, an order issued pursuant to this
 9 act, or a rule or standard promulgated under this act, **the board**
 10 shall ~~be assessed~~ **assess the employer** a civil penalty of not more
 11 than \$7,000.00 for each violation.

12 (2) ~~An~~ **If an** employer ~~who~~ fails to correct a violation for
 13 which a citation was issued within the period permitted for its
 14 correction, **the board** may ~~be assessed~~ **assess the employer** a civil
 15 penalty of not more than \$7,000.00 for each day during which the
 16 failure or violation continues. A period permitted for corrections
 17 does not begin to run until the date of the final order of the
 18 board if a review proceeding before ~~a~~ **the** board is initiated by the
 19 employer in good faith and not solely for delay or avoidance of a
 20 penalty.

21 (3) ~~An~~ **If an** employer ~~who~~ receives a citation for a violation
 22 of this act, an order issued pursuant to this act, or a rule or
 23 standard promulgated under this act, ~~which violation is~~
 24 ~~specifically determined not to be of a serious nature,~~ **the board**
 25 may ~~be assessed~~ **assess the employer** a civil penalty of not more
 26 than \$7,000.00 for each violation **that is specifically determined**
 27 **not to be of a serious nature.**

28 (4) ~~An~~ **If an** employer ~~who~~ willfully or repeatedly violates
 29 this act, an order issued pursuant to this act, or a rule or

1 standard promulgated under this act, ~~the board~~ may ~~be assessed~~
2 **assess the employer** a civil penalty of not more than \$70,000.00 for
3 each violation, but not less than \$5,000.00 for each willful
4 violation. **As used in this subsection:**

5 (a) "Case closing date", with respect to an asbestos-related
6 violation, means the first date that all of the following
7 conditions are met:

8 (i) The citation for the violation is a final order.

9 (ii) Satisfactory abatement documentation for the violation is
10 received by the board.

11 (iii) All civil penalties related to the violation are timely
12 paid, or the department of labor and economic opportunity complies
13 with section 36(6).

14 (b) "Repeatedly violates", with respect to an asbestos-related
15 violation, means commits an asbestos related violation not later
16 than 5 years after the case closing date of an asbestos-related
17 violation.

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

29 (6) ~~An~~ **If an employer who** violates a posting requirement

1 prescribed under this act, **the board** shall ~~be assessed~~ **assess the**
2 **employer** a civil penalty of not more than \$7,000.00 for each
3 violation.

4 (7) ~~A~~ **If a person** ~~who~~ knowingly makes a false statement,
5 representation, or certification in an application, record, report,
6 plan, or other document filed or required to be maintained pursuant
7 to this act, or ~~who~~ fails to maintain or transmit a record or
8 report as required under section 61, **the person** is guilty of a
9 misdemeanor ~~and shall be fined not more than \$10,000.00, or~~
10 ~~imprisoned~~ **punishable by imprisonment** for not more than 6 months, **a**
11 **fine of not more than \$10,000.00**, or both.

12 (8) ~~A~~ **If a person** ~~who~~ gives advance notice of an investigation
13 or an inspection to be conducted under this act without authority
14 from the appropriate director or the designee of the director, **the**
15 **person** is guilty of a misdemeanor ~~and shall be fined not more than~~
16 ~~\$1,000.00, or imprisoned~~ **punishable by imprisonment** for not more
17 than 6 months, **a fine of not more than \$1,000.00**, or both.

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

25 (10) A person shall not assault a department representative or
26 other person charged with enforcement of this act in the
27 performance of that person's legal duty to enforce this act. A
28 person who violates this subsection is guilty of a misdemeanor. A
29 prosecuting attorney having jurisdiction of ~~this~~ **the** matter ~~and or~~

the attorney general ~~knowing of a violation of this section~~ may prosecute the violator.

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

Sec. 36. (1) The board shall assess civil penalties, considering the size of the business, the seriousness of the violation, the ~~good faith~~ **good-faith** efforts of the employer, and the history of previous citations, and may establish a schedule of civil penalties. **Subject to subsection (2), for a civil penalty that was assessed as the result of an asbestos-related violation, the board shall not reduce the civil penalty by more than a total of 95% or by more than the corresponding percentage for each of the following:**

(a) In considering the size of the business, 70%.

(b) In considering the good-faith efforts of the employer, 25%.

(c) In considering the history of previous citations, 10%.

(2) The board may issue an order for a reduction of a civil penalty if the order is 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 held under section 42 or 44. For an asbestos-related violation that has been reclassified by a hearing officer, the board shall not reduce the civil penalty that corresponds to the reclassified violation by more than is prescribed under subsection (1).

(3) ~~(2) Beginning April 1, 1992, the~~ **The** department of labor and the department of public health **labor and economic opportunity**

1 shall administer and enforce the assessment of civil penalties in a
 2 manner that is consistent with the administration and enforcement
 3 of civil penalties by the federal ~~occupational safety and health~~
 4 ~~administration.~~ **Occupational Safety and Health Administration.**

5 (4) ~~(3)~~ A civil penalty owed under this act ~~shall~~ **must** be paid
 6 to the department of ~~labor or the department of public health,~~
 7 ~~whichever is appropriate, within~~ **labor and economic opportunity not**
 8 **later than** 15 working days after the date the penalty becomes a
 9 final order of the board, not subject to further agency or judicial
 10 review. ~~Beginning April 1, 1992, a~~ **A** civil penalty ~~shall~~ **must** be
 11 credited to the state general fund.

12 (5) ~~(4)~~ If a civil penalty remains unpaid beyond the period of
 13 time specified in subsection ~~(3),~~ **(4)**, the department of ~~labor or~~
 14 ~~the department of public health, whichever is appropriate,~~ **labor**
 15 **and economic opportunity** shall issue a letter to the employer
 16 demanding payment ~~within~~ **not later than** 20 days after the date of
 17 the letter.

18 (6) ~~(5)~~ If the penalty remains unpaid following the period
 19 specified in subsection ~~(4),~~ **(5)**, the ~~appropriate~~ department **of**
 20 **labor and economic opportunity** shall transmit information on the
 21 amount of the penalty and the name and address of the employer
 22 owing the penalty to the department of treasury.

23 (7) ~~(6)~~ The department of treasury shall institute proceedings
 24 to collect the amount assessed as a civil penalty. The department
 25 of treasury shall offset the amount of the penalty against money
 26 owed by the state to the employer. The department of treasury shall
 27 request that the attorney general recover the amount of the penalty
 28 remaining unpaid, after offsets, by instituting a civil action in
 29 the circuit court for the county in which the violation occurred or

1 in the circuit court for the county in which the employer owing the
2 penalty has its principal place of business.

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