

# HOUSE BILL NO. 5051

October 08, 2019, Introduced by Reps. Sowerby, Howell, Sneller, Garrett, VanSingel, Sabo, Pohutsky, Rabhi, LaGrand, Guerra, Hoadley and Yaroach and referred to the Committee on Natural Resources and Outdoor Recreation.

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,**



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1 United States ~~bureau~~ **Bureau** of the ~~budget,~~ **Budget**, 1972 edition.  
 2 Agricultural operations include any practices performed by a farmer  
 3 or on a farm as an incident to or in conjunction with farming  
 4 operations including preparation for market **or** delivery to storage  
 5 or market or to carriers for transportation to market.

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

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

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



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

(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.

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

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

(10) ~~(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.

(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,



1 retention dams, and tailings ponds, on the surface or underground,  
 2 used in, or to be used in, or resulting from, the work of  
 3 extracting minerals from their natural deposits in nonliquid form,  
 4 or if in liquid form, with workers underground, or used in, or to  
 5 be used in, the milling of minerals, or the work of preparing coal  
 6 or other minerals, and includes custom coal preparation facilities.

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

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

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

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



(4) ~~An If an employer who~~ willfully or repeatedly violates this act, an order issued pursuant to this act, or a rule or standard promulgated under this act, **the board** may ~~be assessed~~ **assess the employer** a civil penalty of not more than \$70,000.00 for each violation, but not less than \$5,000.00 for each willful violation. **As used in this subsection:**

(a) "Case closing date" means the first date that all of the following are met:

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

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

(iii) All civil penalties related to the violation are timely paid, or the department of licensing and regulatory affairs complies with section 36(5).

(b) "Repeatedly violates", with respect to an asbestos-related violation, means commits an asbestos related violation within 5 years after the case closing date of an asbestos-related violation.

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

(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 **or**  
11 **a 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 **or 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 **licensing and regulatory affairs,** instead of applying a civil  
21 penalty otherwise applicable to an employer under this section, may  
22 request 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~~



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

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

6 Sec. 36. (1) The board shall assess civil penalties,  
7 considering the size of the business, the seriousness of the  
8 violation, the ~~good faith~~ **good-faith** efforts of the employer, and  
9 the history of previous citations, and may establish a schedule of  
10 civil penalties. **Subject to subsection (2), for a civil penalty**  
11 **that was assessed as the result of an asbestos-related violation,**  
12 **the board shall not reduce the civil penalty by more than the**  
13 **following:**

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

15 (b) In considering the good-faith efforts of the employer,  
16 25%.

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

18 (2) The board may issue an order for a reduction of a civil  
19 penalty that is in adherence with a dismissal or reclassification  
20 of an asbestos-related violation contained in a hearing officer's  
21 report submitted to the board following an administrative hearing  
22 held under section 42. For an asbestos-related violation that has  
23 been reclassified by a hearing officer, the board shall not reduce  
24 the civil penalty that corresponds to the reclassified violation by  
25 more than is prescribed under subsection (1).

26 (3) ~~(2) Beginning April 1, 1992, the~~ **The** department of labor  
27 ~~and the department of public health~~ **licensing and regulatory**  
28 **affairs** shall administer and enforce the assessment of civil  
29 penalties in a manner that is consistent with the administration



1 and enforcement of civil penalties by the federal ~~occupational~~  
 2 ~~safety and health administration.~~ **Occupational Safety and Health**  
 3 **Administration.**

4 (4) ~~(3)~~ A civil penalty owed under this act shall ~~shall~~ **must** be paid  
 5 to the department of ~~labor or the department of public health,~~  
 6 ~~whichever is appropriate,~~ **licensing and regulatory affairs** within  
 7 15 working days after the date the penalty becomes a final order of  
 8 the board, not subject to further agency or judicial review.

9 ~~Beginning April 1, 1992, a~~ A civil penalty shall ~~shall~~ **must** be credited  
 10 to the state general fund.

11 (5) ~~(4)~~ If a civil penalty remains unpaid beyond the period of  
 12 time specified in subsection ~~(3),~~ **(4)**, the department of ~~labor or~~  
 13 ~~the department of public health, whichever is appropriate,~~  
 14 **licensing and regulatory affairs** shall issue a letter to the  
 15 employer demanding payment within 20 days after the date of the  
 16 letter.

17 (6) ~~(5)~~ If the penalty remains unpaid following the period  
 18 specified in subsection ~~(4),~~ **(5)**, the ~~appropriate~~ department of  
 19 **licensing and regulatory affairs** shall transmit information on the  
 20 amount of the penalty and the name and address of the employer  
 21 owing the penalty to the department of treasury.

22 (7) ~~(6)~~ The department of treasury shall institute proceedings  
 23 to collect the amount assessed as a civil penalty. The department  
 24 of treasury shall offset the amount of the penalty against money  
 25 owed by the state to the employer. The department of treasury shall  
 26 request that the attorney general recover the amount of the penalty  
 27 remaining unpaid, after offsets, by instituting a civil action in  
 28 the circuit court for the county in which the violation occurred or  
 29 in the circuit court for the county in which the employer owing the





- 1 penalty has its principal place of business.
- 2 Enacting section 1. This amendatory act takes effect 90 days
- 3 after the date it is enacted into law.

