

REIMBURSEMENT OF CIVIL PENALTIES FOR CERTAIN EMERGENCY STANDARD VIOLATIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4501 as reported from committee

Sponsor: Rep. Timothy Beson

Committee: Government Operations

Complete to 5-24-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4501 would amend the Michigan Occupational Safety and Health Act to prohibit the Department of Labor and Economic Opportunity (LEO) from assessing an employer a civil penalty for violating an emergency standard under certain conditions. The bill also would require LEO to reimburse an employer that paid a civil penalty assessed for violating a gubernatorial executive order dealing with COVID-19 that the Michigan Supreme Court determines to be void or unconstitutional. This provision would apply retroactively regardless of when the civil penalty was assessed.

Sections 21 and 24 of the act require the director of LEO to promulgate an emergency safety standard if the standard is necessary to protect employees (section 21) or if the director finds that the standard is necessary to protect employees from substances or agents they are being exposed to that have been determined to be toxic or physically harmful (section 24).

The bill would prohibit LEO from assessing an employer a civil penalty for violating an emergency standard that addresses COVID-19 if the violation is the employer's first violation of that standard and the employer takes action to correct the violation.

In addition, LEO would have to reimburse an employer for the amount of a civil penalty paid by the employer that was assessed for violating an executive order issued by the governor that deals with COVID-19 if the executive order is determined to be unconstitutional or otherwise void by the supreme court. The reimbursement would have to be made within 30 days after the effective date of the supreme court order or 30 days after the effective date of the bill, whichever was later. The bill states that this provision would be retroactive and apply regardless of whether the civil penalty was assessed before the bill's effective date.

Proposed MCL 408.38

FISCAL IMPACT:

House Bill 4501 would have a significant fiscal impact on the Michigan Occupational Safety and Health Administration (MIOSHA) within the Department of Labor and Economic Opportunity. By preventing MIOSHA from assessing civil penalties, the bill could decrease revenues for violations that are currently being adjudicated. The bill could also create liabilities for the state by requiring the reimbursement of certain civil penalties. The exact magnitude of the fiscal impact would depend on the amount of assessments that could no longer be pursued and the amount of reimbursements that would be required under the bill, which are presently indeterminate and would be contingent on the number of cases that satisfy the criteria

established under the bill. For reference, according to the publicly accessible dashboard on LEO's webpage, as of May 24 there were 96 cases closed related to COVID-19 violations, with total fines of approximately \$259,200. There are 112 cases that are classified as "open," involving approximately \$364,200 in fines; 29 cases are currently under appeal, involving approximately \$119,300 in fines.

POSITIONS:

The National Federation of Independent Business indicated support for the bill. (5-20-21)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.