

HOUSE BILL NO. 4757

April 29, 2021, Introduced by Reps. Anthony, Sabo, Koleszar, Bolden, Hope, Haadsma, Pohutsky, Steckloff, Cavanagh, Hertel, Stone, Brenda Carter, Kuppa, Morse, Rogers, Thanedar, Tyrone Carter, Young, O'Neal, Scott, Breen, Brabec, Weiss, Tate and Cynthia Johnson and referred to the Committee on Workforce, Trades, and Talent.

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~~ **Subject to subsection (11), if an** employer who
2 receives a citation for a serious violation of this act, an order
3 issued pursuant to this act, or a rule or standard promulgated
4 under this act, **the board** shall ~~be assessed~~ **assess the employer** a
5 civil penalty of not more than ~~\$7,000.00~~ **\$13,653.00** for each

1 violation.

2 (2) ~~An~~ **Subject to subsection (11), if an** employer ~~who~~ fails to
 3 correct a violation for which a citation was issued within the
 4 period permitted for its correction, **the board** may ~~be assessed~~
 5 **assess the employer** a civil penalty of not more than ~~\$7,000.00~~
 6 **\$13,653.00** for each day ~~during which~~ the failure or violation
 7 continues. A period permitted for corrections does not begin to run
 8 until the date of the final order of the board if a review
 9 proceeding before ~~a~~ **the** board is initiated by the employer in good
 10 faith and not solely for delay or avoidance of a penalty.

11 (3) ~~An~~ **Subject to subsection (11), if an** employer ~~who~~ receives
 12 a citation for a violation of this act, an order issued pursuant to
 13 this act, or a rule or standard promulgated under this act, ~~which~~
 14 ~~violation is specifically determined not to be of a serious nature,~~
 15 **the board** may ~~be assessed~~ **assess the employer** a civil penalty of
 16 not more than ~~\$7,000.00~~ **\$13,653.00** for each violation **that is**
 17 **specifically determined not to be of a serious nature.**

18 (4) ~~An~~ **Subject to subsection (11), if an** employer ~~who~~
 19 willfully or repeatedly violates this act, an order issued pursuant
 20 to this act, or a rule or standard promulgated under this act, **the**
 21 **board** may ~~be assessed~~ **assess the employer** a civil penalty of not
 22 more than ~~\$70,000.00~~ **\$136,532.00** for each violation, but not less
 23 than ~~\$5,000.00~~ **\$9,753.00** for each willful violation.

24 (5) ~~An~~ **If an** employer ~~who~~ willfully violates this act, an
 25 order issued pursuant to this act, or a rule or standard
 26 promulgated under this act ~~which~~ **and the violation** causes the death
 27 of an employee, **the employer** is guilty of a felony ~~and shall be~~
 28 ~~fined not more than \$10,000.00, or imprisoned~~ **punishable by**
 29 **imprisonment** for not more than 1 year **or a fine of not more than**

1 ~~\$10,000.00, or both. If the conviction is the second under this~~
 2 ~~act, the person shall be fined not more than \$20,000.00, or~~
 3 ~~imprisoned.~~ **A second or subsequent violation under this subsection**
 4 **is punishable by imprisonment** for not more than 3 years **or a fine**
 5 **of not more than \$20,000.00, or both.**

6 (6) ~~An~~ **Subject to subsection (11), if an** employer ~~who~~ violates
 7 a posting requirement prescribed under this act, **the board** shall ~~be~~
 8 ~~assessed~~ **assess the employer** a civil penalty of not more than
 9 ~~\$7,000.00~~ **\$13,653.00** for each violation.

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

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

24 (9) The department of ~~labor or the department of public~~
 25 ~~health, if the employer is a public employer,~~ **labor and economic**
 26 **opportunity,** instead of applying a civil penalty otherwise
 27 applicable to an employer under this section, may request that the
 28 attorney general seek a writ of mandamus in the appropriate circuit
 29 court to compel compliance with a citation, including the terms of

1 abatement.

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

9 (11) ~~The increases in the civil penalties of subsections (1),~~
10 ~~(2), (3), (4), and (6) made pursuant to the 1991 amendatory act~~
11 ~~that added this subsection shall take effect April 1, 1992.~~ **Every**
12 **January beginning January 2022, the state treasurer shall adjust**
13 **the civil penalties then in effect under subsections (1), (2), (3),**
14 **(4), and (6) by an amount determined by the state treasurer at the**
15 **end of the preceding calendar year to reflect the average annual**
16 **percentage change in the Consumer Price Index for the most recent**
17 **5-year period for which data are available. As used in this**
18 **subsection, "Consumer Price Index" means the most comprehensive**
19 **index of consumer prices available for the Midwest region from the**
20 **United States Department of Labor, Bureau of Labor Statistics. The**
21 **Michigan occupational safety and health administration shall post**
22 **the adjusted civil penalties on its website by March 1 of the year**
23 **they are calculated, and the adjusted penalties are effective**
24 **beginning May 1 of that year. The annual increases under this**
25 **subsection must not exceed 3.5%, and the civil penalties in**
26 **subsections (1), (2), (3), (4), and (6) must not be increased to an**
27 **amount greater than the corresponding federal penalty for the**
28 **specified violation under section 17 of the occupational safety and**
29 **health act, 29 USC 666.**

1 Enacting section 1. This amendatory act takes effect October
2 1, 2021.