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BILL ANALYSIS

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Senate Bill 647 (as introduced 7-17-03)  
Sponsor: Senator Bruce Patterson  
Committee: Commerce and Labor

Date Completed: 2-3-04

### **CONTENT**

**The bill would amend the Michigan Occupational Safety and Health Act to do all of the following:**

- Require a Department of Labor and Economic Growth (LEG) representative to keep certain records in an investigation of an employer's wilful violation of the Act.**
- Define "wilful" for purposes of an administrative action.**
- Specify the rights of a person interviewed as part of an inspection, investigation, or violation proceeding.**
- Allow a LEG representative to conduct a partial interview to establish a violation of the Act.**

#### Wilful Violation

The bill specifies that, in determining the existence of a wilful violation of the Act that would subject an employer to civil and/or criminal penalties, during the inspection concerning a citation the LEG representative carefully would have to develop and obtain or record all evidence indicating that the employer knew of the hazardous condition and acted knowingly and purposefully with intentional disregard of the Act, or a rule or standard adopted under it, despite that knowledge.

In determining whether a wilful violation citation should be issued, the LEG representative would have to document and retain all facts establishing the proposed criteria for a wilful violation that would result in an administrative action. Those facts would have to be documented and retained for consideration by the trier-of-fact in any appeal proceeding relative to a contested citation of a wilful violation.

Under the Act, for the purpose of criminal prosecutions, "wilful" means the intent to do an act knowingly and purposely by an individual who, having a free will and choice, either intentionally disregards a requirement of the Act or a rule or standard under it or is knowingly and purposely indifferent to a requirement of the Act or a rule or standard under it. An omission or failure to act is considered wilful if done knowingly and purposely.

The bill would add that, for purposes of an administrative action under the Act, "wilful" would mean an action performed with knowledge of the hazardous condition and action with a knowing and purposeful intentional disregard of the Act, a rule, or standard, despite that knowledge. "Wilful", for purposes of an administrative action, would be established by factual demonstration of the following:

- Whether the employer had knowledge that the condition was hazardous and did not abate the hazard.

- Whether the employer was aware of the standard established by the Act or by rule.
- Whether the employer knew that the condition at issue violated a standard established by the Act or by rule.
- Whether the employer took steps to comply with the standard established by the Act or rule.
- How the nature and extent of the violation constituted the employer's plain indifference to the health and safety of the employees.
- How the employer intentionally and deliberately disregarded his or her responsibilities under a specific provision of the Act or a rule or standard adopted under it.
- The employer's motive for noncompliance with a provision of the Act or a rule or standard adopted under it.

### Interviews

To implement the Act, a LEG representative, upon presenting appropriate credentials, may enter a place of employment to inspect or investigate conditions of employment and all pertinent conditions, equipment, and materials and to question privately the employer, owner, operator, agent, or an employee with respect to safety or health.

The bill specifies that, during an interview or partial interview conducted as part of an inspection, investigation, or violation proceeding, the interviewee would have the following rights, and would have to be made aware of them:

- The right to decline an interview.
- The right to have the interview conducted in private.
- The right to have his or her representative present.

If an interviewee had a representative present, the interview would have to be conducted on a date and in a location mutually agreed upon by all of the parties to the interview.

The Department could conduct a partial interview if it were necessary to ask certain questions in order to establish a violation of the Act or a rule or standard adopted under the Act. An employer could not direct an employee to select a particular interview option.

MCL 408.1006 et al.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Michigan Occupational Safety and Health Agency. The proposed requirement for interviews to be conducted at a mutually agreed upon location would increase the Agency's administrative responsibilities and, according to the Agency, could divert time from existing responsibilities, such as inspections, possibly resulting in a reduction in penalty revenue collections.

Fiscal Analyst: Maria Tyszkiewicz

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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.