

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senators Patterson and Kuipers

ENROLLED SENATE BILL No. 647

AN ACT to amend 1974 PA 154, entitled "An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal certain acts and parts of act on specific dates," by amending sections 6 and 29 (MCL 408.1006 and 408.1029) and by adding sections 17 and 32.

The People of the State of Michigan enact:

Sec. 6. (1) "Place of employment" means a factory, plant, establishment, construction site or other similar area, workplace, or environment where an employee is permitted to work.

(2) "Political subdivision" means a city, village, township, county, school district, intermediate school district, or state or local government authorized or supported agency, authority, or institution.

(3) "Rule" means a rule as defined by section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207. A rule may only be promulgated by the director of the department of labor and economic growth except as otherwise specifically prescribed in this act.

(4) "Serious violation" means a violation of this act, an order issued under this act, or a rule or standard promulgated under this act or adopted by reference under this act for which a substantial probability exists that death or serious physical harm could result from the violation or from a practice, means, method, operation, or process that is in use, unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

(5) "Standard" means a health or safety standard which specifies conditions, or the adoption or use of 1 or more practices, means, methods, operations, or processes necessary to provide safe and healthful employment in places of employment. Except as otherwise specifically prescribed in this act, standard includes only the following:

- (a) General industry safety standards commission may promulgate a standard relative to occupational safety.
- (b) Construction safety standards commission may promulgate a standard relative to construction safety.
- (c) Occupational health standards commission may promulgate a standard relative to occupational health.

(6) "Standards promulgation commission" means the general industry safety standards commission, the construction safety standards commission, or the occupational health standards commission.

(7) "Trade secret" means a confidential process, formula, pattern, device, or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(8) "Wilful" means the following:

(a) For the purpose of criminal prosecutions, 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 this act or a rule or a standard adopted under this act or is knowingly and purposely indifferent to a requirement of this act or a rule or a standard adopted under this act. An omission or failure to act is wilful if it is done knowingly and purposely. Wilful does not require a showing of moral turpitude, evil purpose, or criminal intent provided the individual is shown to have acted or to have failed to act knowingly and purposely.

(b) For purposes of an administrative action under this act, an action performed with knowledge of the hazardous condition and action with a knowing and purposeful intentional disregard of this act, rule, or standard despite that knowledge. Wilful shall be established by factual demonstration of the following:

(i) Whether the employer had knowledge that the condition was hazardous and did not abate the hazard.

(ii) Whether the employer was aware of the standard established by this act or by rule.

(iii) Whether the employer knew that the condition at issue violated a standard established by this act or by rule.

(iv) Whether the employer had taken steps to comply with the standard established by this act or rule.

(v) How the employer intentionally and deliberately disregarded his or her responsibilities under a specific provision of this act or a rule or standard adopted under this act.

(9) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

Sec. 17. The department of labor and economic growth and any board or commission created under this act shall not promulgate any rules regarding workplace ergonomics.

Sec. 29. (1) To implement this act, a department representative, upon presenting appropriate credentials, may enter without delay and at reasonable times a place of employment to physically inspect or investigate conditions of employment and all pertinent conditions, equipment, and materials in the place of employment and may question privately the employer, owner, operator, agent, or an employee with respect to safety or health. The inspection or investigation shall be conducted without unreasonably disrupting the employer's operations.

(2) If permission to enter a place of employment is denied, the department may apply to the proper judicial officer for a warrant commanding the sheriff or a peace officer to aid the department in the conduct of an inspection or investigation to determine if there is a violation of this act or a rule promulgated under this act.

(3) During an interview or partial interview conducted as part of an inspection, investigation, or violation proceeding, the interviewee has, and shall be made aware of, the following rights:

(a) The right to decline an interview.

(b) The right to have the interview conducted in private.

(c) The right to have present a representative of the interviewee. In such a case, the interview shall be conducted on a date and in a location mutually agreed upon by all of the parties to the interview.

(4) The department may conduct a partial interview where it is necessary to ask certain questions in order to establish a violation of this act or a rule or standard adopted under this act. An employer shall not direct an employee to select a particular interview option.

(5) In the conduct of inspections and investigations, the appropriate department may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the circuit courts. In case of a contumacy, failure, or a refusal of a person to obey an order, the circuit court within the jurisdiction of which the investigation is conducted, or where the person is found or resides or transacts business, or the circuit court for the county of Ingham, upon application of the appropriate department, may issue an order requiring the person to appear and produce evidence or give testimony relating to the matter under investigation or in question. Failure to obey the order of the court may be punished as a contempt.

(6) All statements relative to a violation proceeding under this act or a rule or standard adopted under this act that are generated by an interview or partial interview shall be in writing and shall have the signature of the interviewee.

(7) A representative of the employer and a representative authorized by the employees shall be given the opportunity to accompany the department representative during the inspection or investigation of a place of employment to aid the inspection or investigation, subject to rules promulgated by the department. In case of controversy, the department representative, at the time he or she goes into an establishment, shall determine who may walk around as employer and employee representatives. If a representative authorized by the employee does not participate, the department representative shall consult with a reasonable number of employees concerning matters of safety or health in the place of employment. The right of accompaniment may be denied by the department representative to a person whose conduct interferes with a fair and orderly inspection or investigation.

(8) In conducting or preparing to conduct an inspection or investigation, advance notice of the inspection or investigation shall not be given except in the following situations:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

(b) In circumstances where the inspection most effectively can be conducted after regular business hours or where special preparations are necessary for an inspection.

(c) If necessary to assure the presence of representatives of the employer and employees, or the appropriate personnel needed to aid in the inspection.

(d) In other circumstances where the department determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(9) Advance notice in any of the situations described in subsection (8) shall not be given more than 24 hours before the inspection or investigation is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(10) During the conduct of an inspection or an investigation, the department representative may conduct tests and gather samples of materials and substances as are necessary to aid in the evaluation of the place of employment. In implementing this subsection, the confidentiality of trade secrets shall be protected as prescribed in this act.

(11) Subject to rules promulgated by the departments, following the completion of an inspection or investigation, an opportunity for a conference shall be afforded the employer; the employee or employee representative; and the employer and the employee or employee representative if a joint conference is requested.

(12) In the performance of duties in the administration and enforcement of this act, a department representative or an employee of the appropriate department shall not be personally liable for damages sustained by an action on his or her part, except for wanton and wilful negligence.

(13) An employee or the authorized representative of an employee who participates in an inspection or investigation, as provided in subsection (7), or the conference provided in subsection (11), as provided in this section, or the rules promulgated under this section, shall not suffer a loss of wages or fringe benefits, or be discriminated against in any manner, for time spent participating in the inspection, investigation, or conference. An employee or the authorized representative of an employee who suffers a loss of wages or fringe benefits, or is discriminated against in any manner, for participation in an inspection, investigation, or conference, may file a discrimination complaint, and the department of labor may order appropriate relief, as provided in section 65. As used in this subsection and section 31(2), "wages" and "fringe benefits" mean those terms as defined in section 1 of 1978 PA 390, MCL 408.471.

Sec. 32. (1) In determining the existence of a wilful violation of this act that would subject an employer to the penalties in section 35, the department representative shall, during the inspection concerning such a citation, carefully develop and obtain or record all evidence indicating that the employer had knowledge of the hazardous condition and acted knowingly and purposefully with intentional disregard of the act or a rule or standard adopted under this act despite that knowledge.

(2) In determining whether a wilful violation citation should issue, the department representative shall document and retain all facts establishing the criteria described in section 6(8)(b) for consideration by the trier-of-fact in any appeal proceeding relative to a contested citation of a wilful violation.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved _____

Governor