

SENATE BILL No. 647

July 17, 2003, Introduced by Senators PATTERSON, BARCIA and KUIPERS and referred to the Committee on Commerce and Labor.

A bill to amend 1974 PA 154, entitled "Michigan occupational safety and health act," by amending sections 6 and 29 (MCL 408.1006 and 408.1029) and by adding section 32.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

9 (3) "Rule" means a rule as defined by section 7 of ~~Act~~
10 ~~No. 306 of the Public Acts of 1969, being section 24.207 of the~~

1 ~~Michigan Compiled Laws~~ **the administrative procedures act of**
2 **1969, 1969 PA 306, MCL 24.207.** A rule may only be promulgated by
3 the director of ~~labor~~ **the department of consumer and industry**
4 **services** or director of **the department of community** health except
5 as otherwise specifically prescribed in this act.

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

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

21 (a) General industry safety standards commission may
22 promulgate a standard relative to occupational safety.

23 (b) Construction safety standards commission may promulgate
24 a standard relative to construction safety.

25 (c) Occupational health standards commission may promulgate
26 a standard relative to occupational health.

27 (6) "Standards promulgation commission" means the general

1 industry safety standards commission, the construction safety
2 standards commission, or the occupational health standards
3 commission.

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

8 (8) "Wilful" ~~, for~~ **means the following:**

9 (a) **For** the purpose of criminal prosecutions, ~~means~~ the
10 intent to do an act knowingly and purposely by an individual who,
11 having a free will and choice, either intentionally disregards a
12 requirement of this act ~~,~~ or a rule or **a standard promulgated**
13 ~~pursuant to~~ **adopted under** this act ~~,~~ or is knowingly and
14 purposely indifferent to a requirement of this act ~~,~~ or a rule
15 or **a standard promulgated pursuant to** ~~adopted under~~ this act.
16 An omission or failure to act is wilful if it is done knowingly
17 and purposely. Wilful does not require a showing of moral
18 turpitude, evil purpose, or criminal intent provided the
19 individual is shown to have acted or to have failed to act
20 knowingly and purposely.

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

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

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

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

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

7 (v) How the nature and extent of the violation constituted
8 plain indifference of the employer to the health and safety of
9 the employees.

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

14 (vii) The employer's motive for noncompliance with a
15 provision of this act or a rule or standard adopted under this
16 act.

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

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

1 operations.

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

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

12 (a) The right to decline an interview.

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

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

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

23 (5) ~~(3)~~ In the conduct of inspections and investigations,
24 the appropriate department may require the attendance and
25 testimony of witnesses and the production of evidence under
26 oath. Witnesses shall be paid the same fees and mileage that are
27 paid witnesses in the circuit courts. In case of a contumacy,

1 failure, or a refusal of a person to obey an order, the circuit
2 court within the jurisdiction of which the investigation is
3 conducted, or where the person is found or resides or transacts
4 business, or the circuit court for the county of Ingham, upon
5 application of the appropriate department, may issue an order
6 requiring the person to appear and produce evidence or give
7 testimony relating to the matter under investigation or in
8 question. ~~—and a failure—~~ **Failure** to obey the order of the
9 court may be punished as a contempt.

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

14 **(7) —(4)—** A representative of the employer and a
15 representative authorized by the employees shall be given the
16 opportunity to accompany the department representative during the
17 inspection or investigation of a place of employment to aid the
18 inspection or investigation, subject to rules promulgated by the
19 department. In case of controversy, the department
20 representative, at the time he or she goes into an establishment,
21 shall determine who may walk around as employer and employee
22 representatives. If a representative authorized by the employee
23 does not participate, the department representative shall consult
24 with a reasonable number of employees concerning matters of
25 safety or health in the place of employment. The right of
26 accompaniment may be denied by the department representative to a
27 person whose conduct interferes with a fair and orderly

1 inspection or investigation.

2 **(8)** ~~—(5)—~~ In conducting or preparing to conduct an inspection
3 or investigation, advance notice of the inspection or
4 investigation shall not be given except in the following
5 situations:

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

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

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

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

17 **(9)** ~~—(6)—~~ Advance notice in any of the situations described
18 in subsection ~~—(5)—~~ **(8)** shall not be given more than 24 hours
19 before the inspection or investigation is scheduled to be
20 conducted, except in apparent imminent danger situations and in
21 other unusual circumstances.

22 **(10)** ~~—(7)—~~ During the conduct of an inspection or an
23 investigation, the department representative may conduct tests
24 and gather samples of materials and substances as are necessary
25 to aid in the evaluation of the place of employment. In
26 implementing this subsection, the confidentiality of trade
27 secrets shall be protected as prescribed in this act.

1 (11) ~~-(8)-~~ Subject to rules promulgated by the departments,
2 following the completion of an inspection or investigation, an
3 opportunity for a conference shall be afforded the employer; the
4 employee or employee representative; and the employer and the
5 employee or employee representative if a joint conference is
6 requested.

7 (12) ~~-(9)-~~ In the performance of duties in the administration
8 and enforcement of this act, a department representative or an
9 employee of the appropriate department shall not be personally
10 liable for damages sustained by an action on his or her part,
11 except for wanton and wilful negligence.

12 (13) ~~-(10)-~~ An employee or the authorized representative of
13 an employee who participates in an inspection or investigation,
14 as provided in subsection ~~-(4)-~~ (7), or the conference provided
15 in subsection ~~-(8)-~~ (11), as provided in this section, or the
16 rules promulgated under this section, shall not suffer a loss of
17 wages or fringe benefits, or be discriminated against in any
18 manner, for time spent participating in the inspection,
19 investigation, or conference. An employee or the authorized
20 representative of an employee who suffers a loss of wages or
21 fringe benefits, or is discriminated against in any manner, for
22 participation in an inspection, investigation, or conference, may
23 file a discrimination complaint, and the department of labor may
24 order appropriate relief, as provided in section 65. As used in
25 this subsection and section 31(2), "wages" and "fringe benefits"
26 ~~means~~ **mean** those terms as defined in section 1 of ~~Act No. 390~~
27 ~~of the Public Acts of 1978, being section 408.471 of the Michigan~~

1 ~~Compiled Laws~~ 1978 PA 390, MCL 408.471.

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

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