

SENATE BILL NO. 830

April 16, 2024, Introduced by Senator CHERRY and referred to the Committee on Labor.

A bill to amend 1974 PA 154, entitled "Michigan occupational safety and health act," by amending the title and sections 4, 13, 14, 14a, 14e, 14f, 14j, 14n, 24, 27, 28, 29, 30, 31, 33, 35, 36, 37, 41, 45, 46, 52, 54, 55, 56, 63, 65, and 91 (MCL 408.1004, 408.1013, 408.1014, 408.1014a, 408.1014e, 408.1014f, 408.1014j, 408.1014n, 408.1024, 408.1027, 408.1028, 408.1029, 408.1030, 408.1031, 408.1033, 408.1035, 408.1036, 408.1037, 408.1041, 408.1045, 408.1046, 408.1052, 408.1054, 408.1055, 408.1056, 408.1063, 408.1065, and 408.1091), the title as amended by 1986 PA 147, sections 4, 35, and

36 as amended by 2024 PA 17, section 14 as amended by 2020 PA 143, sections 14a, 14e, 14f, 14j, 24, 31, 54, and 63 as amended by 2012 PA 447, section 14n as amended by 1991 PA 105, section 33 as amended by 1996 PA 87, and section 55 as amended by 1993 PA 197; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prescribe and regulate working conditions; to
 3 prescribe the duties of employers and employees as to places and
 4 conditions of employment; to create certain boards, commissions,
 5 committees, and divisions relative to occupational and construction
 6 health and safety; to prescribe ~~their~~**the** powers and duties ~~and~~
 7 ~~powers and duties of the department of labor and department of~~
 8 ~~public health; to prescribe certain powers and duties of the~~
 9 ~~directors of the departments of labor, public health, and~~
 10 ~~agriculture;~~ **of certain state and local governmental officers and**
 11 **entities;** to impose an annual levy to provide revenue for ~~the~~
 12 ~~safety education and training division;~~ **certain purposes related to**
 13 **occupational safety and health;** to provide remedies and penalties;
 14 to repeal certain acts and parts of acts; and to repeal certain
 15 acts and parts of ~~act~~**acts** on specific dates.

16 Sec. 4. (1) **"Attorney general" means the attorney general or**
 17 **the attorney general's designee.**

18 (2) "Agricultural operations" means the work activity
 19 designated in ~~major groups 01 and 02 of the Standard Industrial~~
 20 ~~Classification Manual, United States Bureau of the Budget, 1972~~
 21 ~~edition.~~ **subsectors 111 and 112 of the North American Industry**
 22 **Classification System, United States, 2022.** Agricultural operations
 23 ~~include any practices~~ **includes a practice** performed by a farmer or

1 on a farm as an incident to or in conjunction with farming
2 operations including preparation for market or delivery to storage
3 or market or to carriers for transportation to market.

4 (3) ~~(2)~~—"Asbestos" means a group of naturally occurring
5 minerals that separate into fibers, including chrysotile, amosite,
6 crocidolite, anthophyllite, tremolite, and actinolite.

7 (4) ~~(3)~~—"Asbestos-related violation" means a violation of this
8 act, an order issued under this act, or a rule or standard
9 promulgated under this act that involves the demolition,
10 renovation, encapsulation, removal, or handling of friable asbestos
11 material or otherwise involves the exposure of an individual to
12 friable asbestos material.

13 (5) ~~(4)~~—"Authorized employee representative" or
14 "representative of employee" means ~~a~~**any of the following, as**
15 **applicable:**

16 (a) A person designated by a labor organization certified by
17 the National Labor Relations Board or the employment relations
18 commission created under section 3 of 1939 PA 176, MCL 423.3, as
19 the bargaining representative for the affected employees. ~~In the~~
20 ~~absence of certification, it shall be a~~

21 (b) **If subdivision (a) does not apply, a** person designated by
22 the organization having a collective bargaining relationship with
23 the employer and designated as having a collective bargaining
24 relationship with the employer by the affected employees.

25 (c) ~~If a labor organization has subdivisions (a) and (b) do~~
26 ~~not been certified, or if no organization has a collective~~
27 ~~bargaining relationship with the employer, "authorized employee~~
28 ~~representative" or "representative of employee" means **apply,** a~~
29 person designated by the affected employees to represent them for

1 the purpose of proceedings under this act.

2 (6) ~~(5)~~—"Board" means the board of health and safety
3 compliance and appeals created in section 46.

4 (7) ~~(6)~~—"Construction operations" means the work activity
5 designated in ~~major groups 15, 16, and 17 of the Standard~~
6 ~~Industrial Classification Manual, United States Bureau of the~~
7 ~~Budget, 1972 edition.~~ **sector 23 of the North American Industry**
8 **Classification System, United States, 2022.**

9 (8) "Department" means, unless the context requires a
10 different meaning, the department of labor and economic
11 opportunity.

12 (9) ~~(7)~~—"Director" means, unless the context requires a
13 different meaning, the director of the department ~~of labor and~~
14 ~~economic opportunity.~~ **or the director's designee.**

15 ~~(8) "Department attorney" means the attorney general or the~~
16 ~~authorized representative of the attorney general.~~

17 (10) ~~(9)~~—"Domestic employment" means ~~that employment involving~~
18 **that involves** an employee specifically employed by a householder to
19 engage in work or an activity ~~relating~~ **that relates** to the
20 operation of a household and its surroundings, whether or not the
21 employee resides in the household.

22 (11) ~~(10)~~—"Friable asbestos material" means any material that
23 contains more than 1% asbestos by weight and that can be, by hand
24 pressure, crumbled, pulverized, or reduced to powder when dry.

25 (12) ~~(11)~~—"Mines", except as provided in subsection ~~(12)~~,
26 (13), means all of the following:

27 (a) An area of land from which minerals are extracted in
28 nonliquid form, or if in liquid form, are extracted with workers
29 underground.

1 (b) Private ways and roads appurtenant to an area of land
2 described in subdivision (a).

3 (c) Lands, excavations, underground passageways, shafts,
4 slopes, tunnels and workings, structures, facilities, equipment,
5 machines, tools, or other property, including impoundments,
6 retention dams, and tailings ponds, on the surface or underground,
7 used in, or to be used in, or resulting from, the work of
8 extracting minerals from ~~their~~**the mineral's** natural deposits in
9 nonliquid form, or if in liquid form, with workers underground, or
10 used in, or to be used in, the milling of minerals, or the work of
11 preparing coal or other minerals, and includes custom coal
12 preparation facilities.

13 **(13)** ~~(12)~~—"Mines" does not include industrial borrow pits, or
14 sand, gravel, or crushed and dimension stone quarrying operations,
15 or surface construction operations.

16 Sec. 13. ~~(1)~~The department ~~of labor~~ shall administer and
17 enforce ~~the provisions of this act. relative to occupational~~
18 ~~safety.~~

19 ~~(2) The department of public health shall administer and~~
20 ~~enforce the provisions of this act relative to occupational health.~~

21 ~~(3) The department of labor and department of public health~~
22 ~~shall report annually by January 31 in writing to the committees on~~
23 ~~labor and public health of the house of representatives and~~
24 ~~committees on labor and health, social services and retirement of~~
25 ~~the senate specifying the provisions of this act where the~~
26 ~~authority of the departments overlap, and all agreements and~~
27 ~~administrative procedures to coordinate joint enforcement of the~~
28 ~~act. Any changes in these agreements or administrative procedures~~
29 ~~must be reported in writing to the committees on labor and public~~

1 ~~health of the house of representatives and committees on labor and~~
2 ~~health, social services and retirement of the senate within 15 days~~
3 ~~of the changes.~~

4 Sec. 14. (1) Except as otherwise provided in subsection (3),
5 the occupational safety and health standards that have been adopted
6 or promulgated by the United States Department of Labor under the
7 occupational safety and health act of 1970, Public Law 91-596, 84
8 Stat 1590, and that are in effect on January 1, 1975 are
9 incorporated by reference and have the same force and effect as a
10 rule promulgated pursuant to this act. A standard that is
11 incorporated by reference pursuant to this subsection remains in
12 effect until either of the following conditions occurs:

13 (a) A standard is promulgated pursuant to this act that covers
14 the same or a similar subject.

15 (b) The standard is rescinded by rule promulgated pursuant to
16 this act.

17 (2) If a rule or standard that is continued pursuant to
18 section 24(1) conflicts with or covers the same or similar subject
19 as a standard incorporated by reference pursuant to subsection (1),
20 the federal standard incorporated by reference governs and the
21 state rule or standard continued pursuant to section 24(1) ~~shall be~~
22 **is** rescinded.

23 (3) If a rule or standard that is continued in effect under
24 this act pursuant to section 21(1) covers the same subject as a
25 federal standard, subsection (1) does not apply.

26 (4) ~~The department of licensing and regulatory affairs shall~~
27 make copies of the standards incorporated by reference pursuant to
28 subsection (1) available to the public at cost.

29 (5) ~~Beginning April 1, 1992, not~~ **Not** later than 10 working

1 days after the date that the United States Department of Labor
2 adopts or promulgates an occupational safety and health standard
3 under the occupational safety and health act of 1970, Public Law
4 91-596, 84 Stat 1590, the director shall initiate the processing of
5 an administrative rule that is substantially similar to the federal
6 occupational safety and health standard. The **director shall present**
7 **the** proposed administrative rule ~~shall be presented~~ to the joint
8 committee on administrative rules unless the director determines
9 that the federal standard is clearly inconsistent with the criteria
10 set forth in section 9, 16, 19, or 24.

11 (6) ~~Beginning April 1, 1992, a~~ **A** proposed administrative rule
12 that would address a matter not addressed by 1 or more federal
13 standards ~~shall~~ **must** not be processed and presented to the joint
14 committee on administrative rules unless the director determines
15 that there is a clear and convincing need for the standard to meet
16 the criteria set forth, as appropriate, in sections 9, 16, 19, and
17 24. The director shall include a statement of the specific facts
18 that establish the clear and convincing need when processing and
19 presenting the administrative rule. The statement ~~shall either~~ **must**
20 explain the unique characteristics of industry in this state that
21 necessitate the standard or demonstrate that the standard was
22 requested by a broad consensus of union and nonunion employers and
23 employees in the specific industry affected by the standard.

24 (7) The administrative rules described in subsections (5) and
25 (6) ~~shall~~ **must** be promulgated pursuant to the administrative
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

27 (8) This section does not apply to section 14r.

28 Sec. 14a. (1) The occupational safety and health hazard
29 communication standard that has been adopted or promulgated by the

1 United States ~~department of labor~~ **Department of Labor** and has been
2 codified at 29 CFR 1910.1200 as of May 25, 2012 is incorporated by
3 reference and has the same force and effect as a rule promulgated
4 under this act. In addition to the standard incorporated by
5 reference in this subsection, sections 14b to 14l apply to an
6 employer subject to this act. The applicability of the standard
7 incorporated by reference in this subsection and of sections 14b to
8 14l is subject to subsections (4), (5), (6), and (7).

9 (2) If a rule or standard that is continued pursuant to
10 section 24(1) is in conflict with or covers the same or similar
11 subject as a standard incorporated by reference pursuant to
12 subsection (1), the federal standard ~~se~~ incorporated by reference
13 governs and the state rule or standard continued pursuant to
14 section 24(1) is rescinded.

15 (3) The department ~~of licensing and regulatory affairs~~ shall
16 administer and enforce the provisions of the standard incorporated
17 by reference in subsection (1) in a manner that is consistent with
18 the administration and enforcement of the standard by the federal
19 occupational safety and health administration.

20 (4) ~~Beginning November 25, 1985, employers~~ **Employers** who are
21 chemical manufacturers in a classification provided by ~~sector 31-33~~
22 ~~—manufacturing, sectors 31 to 33~~ of the North American ~~industry~~
23 ~~classification system, Industry Classification System~~, United
24 States, 1997, published by the office of management and budget or
25 in a standard industrial classification of 20 ~~through~~ **to** 39 of the
26 standard industrial classification code published by the federal
27 department of management and budget, importers, and distributors
28 shall label containers of hazardous chemicals leaving their
29 workplaces, provide safety data sheets with initial shipments, and

1 otherwise comply with ~~any~~**an** applicable provision of the standard
2 incorporated by reference pursuant to subsection (1) and of
3 sections 14b to 14/. A chemical manufacturer, importer, or
4 distributor subject to this subsection shall provide a safety data
5 sheet and an appropriately labeled container to each employer in
6 this state, regardless of the employer's standard industrial
7 classification in the standard industrial classification code, who
8 purchases a hazardous chemical.

9 (5) ~~Beginning May 25, 1986, an~~**An** employer in a classification
10 provided by ~~sector 31-33 — manufacturing,~~**sectors 31 to 33** of the
11 North American ~~industry classification system,~~**Industry**
12 **Classification System**, United States, 1997, published by the office
13 of management and budget or in a standard industrial classification
14 of 20 ~~through~~**to** 39 of the standard industrial classification code
15 published by the federal department of management and budget shall
16 comply with the requirements of the standard incorporated by
17 reference pursuant to subsection (1) and with sections 14b to 14/
18 with respect to the use of hazardous chemicals in the workplace.

19 (6) ~~Beginning February 25, 1987, an~~**An** employer who is subject
20 to this act but who is not otherwise specifically described in
21 subsections (4) or (5) shall comply with the standard incorporated
22 by reference pursuant to subsection (1) and with sections 14b to 14/
23 with respect to the use of hazardous chemicals in the workplace.
24 However, instead of complying with ~~any~~**a** conflicting provision of
25 the standard incorporated by reference in subsection (1), an
26 employer ~~who is~~ described in this subsection shall do both of the
27 following:

28 (a) Provide information and training to employees who are
29 exposed to hazardous chemicals in the normal course of employment

1 or who are likely to be exposed to hazardous chemicals in ~~the event~~
 2 ~~of an~~ emergency.

3 (b) ~~In the case where~~ **If** a hazardous chemical is mixed or
 4 combined with ~~any other~~ **another** chemical or **a** hazardous chemical by
 5 the employer, maintain and provide a safety data sheet for each
 6 constituent hazardous chemical and maintain a material
 7 identification system that identifies to employees the appropriate
 8 safety data sheets.

9 (7) The standard incorporated by reference in subsection (1),
 10 this section, and sections 14b to 14l ~~shall~~ **must** not be construed to
 11 require an employer in a classification provided by sector ~~31-33~~
 12 ~~manufacturing, 31 to 33~~ of the North American ~~industry~~
 13 ~~classification system,~~ **Industry Classification System**, United
 14 States, 1997, published by the office of management and budget or
 15 in a standard industrial classification other than 20 ~~through to~~ 39
 16 of the standard industrial classification code published by the
 17 federal department of management and budget to evaluate chemicals,
 18 to develop labels for containers of hazardous chemicals, or to
 19 develop safety data sheets.

20 Sec. 14e. ~~In order to~~ **To** educate employers, employees, and the
 21 public about the hazards of exposure to hazardous chemicals and the
 22 requirements of the occupational safety and health hazard
 23 communication standard incorporated by reference in section 14a and
 24 the requirements of sections 14b to 14l, the department ~~of licensing~~
 25 ~~and regulatory affairs~~ shall distribute periodically public service
 26 announcements to newspapers and television and radio stations
 27 throughout this state.

28 Sec. 14f. (1) An employer engaged in agricultural operations
 29 is not required to comply with the standard incorporated by

1 reference in section 14a or sections 14b to 14l for a hazardous
2 chemical that is regulated under **any of the following:**

3 (a) **The** federal insecticide, fungicide, and rodenticide act,
4 ~~chapter 125, 86 Stat. 973, 7 USC 136 to 136i and 136j to 136y. ~~or~~~~
5 ~~part~~

6 (b) **Part** 83 ~~(pesticide control)~~ of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.8301 to
8 324.8336. ~~and any rules~~

9 (c) **A rule** or ~~regulations~~ **regulation** promulgated under ~~these~~
10 ~~acts~~ **an act described in subdivision (a) or (b).**

11 (2) The director of the department of agriculture and rural
12 development at least annually shall certify to the department ~~of~~
13 ~~licensing and regulatory affairs~~ a list of chemicals regulated by
14 the ~~acts~~ **laws** described in subsection (1).

15 Sec. 14j. An employer subject to the standard incorporated by
16 reference in section 14a and to sections 14b to 14l shall post signs
17 throughout the workplace advising employees of all of the
18 following:

19 (a) The location of the safety data sheets for the hazardous
20 chemicals produced or used in the workplace and the name of the
21 person from whom to obtain the sheets.

22 (b) That the employer is prohibited from discharging or
23 discriminating against an employee who exercises the rights
24 regarding information about hazardous chemicals in the workplace
25 afforded by the standard incorporated by reference in section 14a
26 and by sections 14b to 14l.

27 (c) That, as an alternative to requesting the employer for a
28 safety data sheet for a hazardous chemical in the workplace, the
29 employee may obtain a copy of the safety data sheet from the

1 department. ~~of licensing and regulatory affairs.~~ The sign shall
 2 **must** include the address and telephone number of the division of
 3 the department ~~of licensing and regulatory affairs~~ that has the
 4 responsibility of responding to ~~such~~-**these** requests.

5 Sec. 14n. (1) Except as provided in subsections (2) and (3),
 6 the occupational safety and health field sanitation standard that
 7 has been adopted or promulgated by the United States ~~department of~~
 8 ~~labor~~-**Department of Labor** and has been codified at 29 C.F.R. ~~CFR~~
 9 1928.110 as of April 1, 1991 is incorporated by reference and
 10 supersedes the occupational health field sanitation standard as
 11 prescribed in R 325.61751 to R 325.61757 of the Michigan
 12 administrative code, and has the same force and effect as a rule
 13 promulgated ~~pursuant to~~-**under** this act.

14 (2) An agricultural employer shall provide, at no cost to ~~the~~
 15 **an** agricultural employee, potable water in locations that are
 16 readily accessible to all agricultural employees.

17 (3) An agricultural employer ~~employing less~~-**that employs fewer**
 18 than 11 agricultural employees shall ensure that an available
 19 toilet facility and hand-washing facility is either provided by the
 20 agricultural employer or available to the agricultural employee.

21 (4) The department ~~of public health~~ shall administer and
 22 enforce the standard incorporated by reference in subsection (1) in
 23 a manner that is consistent with the administration and enforcement
 24 of the standard by the federal occupational safety and health
 25 administration.

26 (5) The department ~~of public health~~ shall make copies of the
 27 standard described in subsection (1) and the requirements of
 28 subsections (2) and (3) available to the public at cost.

29 Sec. 24. (1) Standards ~~governing~~-**that govern** occupational

1 health promulgated by the director ~~of public health~~ that are in
 2 effect on ~~the effective date of the amendatory act that repealed~~
 3 ~~section 23 of this act~~ **December 27, 2012** are continued under
 4 section 31 of the administrative procedures act of 1969, 1969 PA
 5 306, MCL 24.231.

6 (2) The director shall promulgate an occupational health
 7 standard pursuant to the administrative procedures act of 1969,
 8 1969 PA 306, MCL 24.201 to 24.328, except for standards adopted by
 9 reference ~~pursuant to~~ **under** section 14.

10 (3) When ~~promulgating~~ **the director promulgates an** occupational
 11 health ~~standards,~~ **standard,** the director shall promulgate a
 12 standard that most adequately ~~assures,~~ **ensures,** to the extent
 13 feasible and on the basis of the best available evidence, that an
 14 employee will not suffer material impairment of health or
 15 functional capacity, even if the employee has regular exposure to a
 16 hazard dealt with by the standard for the period of ~~his or her~~ **the**
 17 **employee's** working life.

18 (4) The director shall promulgate an emergency standard
 19 ~~pursuant to~~ **in accordance with** section 48 of the administrative
 20 procedures act of 1969, 1969 PA 306, MCL 24.248, if the director
 21 finds that employees are exposed to substances or agents determined
 22 to be toxic or physically harmful and the emergency standard is
 23 necessary to protect employees from that danger. If the director
 24 promulgates an emergency standard on a matter addressed by a
 25 federal standard, the director shall promulgate a standard that is
 26 substantially similar to the federal standard unless ~~he or she~~ **the**
 27 **director** determines and certifies that the federal standard is
 28 clearly inconsistent with the criteria ~~set forth~~ **provided** in
 29 section 9 or 24.

1 (5) An occupational health standard ~~shall~~**must** prescribe
2 appropriate forms of warning that are necessary to ~~insure~~**ensure**
3 that employees are apprised of health hazards to which ~~they~~**the**
4 **employees** are exposed, relevant symptoms, and the conditions and
5 precautions for safe use or exposure, including appropriate
6 emergency treatment. If appropriate, a standard ~~shall~~**must**
7 prescribe suitable protective equipment, control, or technological
8 procedures to be used and ~~shall~~require an employer to monitor or
9 measure employee exposure, to allow employees or ~~their~~**the**
10 **employees'** representatives to observe the monitoring and have
11 access to the records of the monitoring, and to conduct the
12 monitoring in a manner that is necessary for the protection of the
13 employees' health. ~~Former employees shall~~**A former employee must**
14 have access to the records indicating ~~their~~**the employee's** exposure
15 to toxic materials and harmful physical agents.

16 (6) If appropriate, the director shall prescribe by standard
17 that medical examinations or tests are made available, at the
18 employer's cost, to employees to determine if they are adversely
19 affected by exposure to health hazards. If the examination is
20 performed by a physician other than a physician who is retained for
21 that purpose by the employer, the employer is responsible only for
22 the reasonable costs of the examination, and only for costs related
23 to the performance of the examination required by the standard. The
24 results of the examinations or tests ~~shall~~**must** be furnished to the
25 employer, the employee, and, ~~upon request of~~**if requested by** the
26 employee, ~~to~~the employee's personal physician. ~~Upon request of the~~
27 ~~director, the~~**The** employer shall furnish **the** results of the
28 examinations or tests to the director **if the director requests the**
29 **results**. However, this act does not authorize or require medical

1 examinations, immunizations, or treatments for those **individuals**
 2 who object to them on religious grounds, except if necessary for
 3 the protection of the health or safety of others.

4 Sec. 27. (1) An employer may apply to the department ~~of labor~~
 5 ~~or the department of public health~~ for a temporary order granting a
 6 variance from a standard or a provision ~~thereof. A~~ **of a standard.**
 7 **The department shall not grant a** temporary order ~~shall be granted~~
 8 ~~only if~~ **unless** the employer files an application ~~which~~ **that** meets
 9 the requirements of subsection (2) and establishes that the
 10 employer is unable to comply with a standard by its effective date
 11 because of unavailability of professional or technical personnel or
 12 of materials and equipment needed to come into compliance with the
 13 standard or because necessary construction or alteration of
 14 facilities cannot be completed by the effective date, that the
 15 employer is taking all available steps to safeguard ~~his~~ **its**
 16 employees against the hazards covered by the standard, and that the
 17 employer has an effective program for complying with the standard
 18 as quickly as practicable. A temporary order issued under this
 19 subsection ~~shall~~ **must** prescribe the practices, means, methods,
 20 operations, and processes ~~which~~ **that** the employer ~~shall~~ **must** adopt
 21 and use while the order is in effect, and state in detail the
 22 employer's program for complying with the standard. A temporary
 23 order may be granted only after notice to employees and an
 24 opportunity for a hearing. However, the department ~~of labor or the~~
 25 ~~department of public health~~ may issue an interim order ~~to be~~ **that**
 26 **is** effective until a decision is made on the basis of the hearing.
 27 A temporary order may not be in effect for longer than the period
 28 needed by the employer to achieve compliance with the standard or 1
 29 year, whichever is ~~lesser, except that~~ **sooner. However,** the order

1 may be renewed not more than twice ~~so long as~~ **if** the requirements
 2 of this subsection are met and if an application for renewal is
 3 filed not less than 90 days before the expiration date of the
 4 order. An interim renewal of an order may not remain in effect for
 5 longer than 180 days.

6 (2) An application for a temporary order under this section
 7 ~~shall~~ **must** contain **all of the following:**

8 (a) A specification of the standard or portion ~~thereof~~ **of the**
 9 **standard** from which the employer seeks a variance.

10 (b) A statement by the employer that ~~he~~ **the employer** is unable
 11 to comply with the standard or portion ~~thereof~~ **of the standard** and
 12 a detailed statement of the reasons ~~therefor~~ **why**.

13 (c) A statement of the steps the employer has taken and will
 14 take, with specific dates, to protect employees against the hazard
 15 covered by the standard.

16 (d) A statement of when the employer ~~shall~~ **will** comply with
 17 the standard and what steps the employer has taken and will take,
 18 with dates specified, to comply with the standard.

19 (e) A certification that the employer has informed ~~his~~ **its**
 20 employees of the application by giving a copy ~~thereof~~ **of the**
 21 **application** to ~~their~~ **the** authorized representative **of the**
 22 **employees**, posting a statement giving a summary of the application,
 23 and specifying where a copy may be examined at the place or places
 24 where notices to employees are normally posted and by other
 25 appropriate means. ~~A~~ **The certification must include a** description
 26 of how employees were informed. ~~shall be contained in the~~
 27 ~~certification.~~ The information to employees ~~shall~~ **must** also inform
 28 the employees of their right to petition the department ~~of labor or~~
 29 ~~the department of public health~~ for a hearing.

1 (3) The department ~~of labor or the department of public health~~
 2 may grant a variance from a standard or a portion ~~thereof when it~~
 3 **of a standard if the department** determines that the variance is
 4 necessary to ~~permit~~**allow** an employer to participate in an
 5 experiment approved by ~~it~~**the department that is** designed to
 6 demonstrate or validate new and improved techniques to safeguard
 7 the health or safety of workers.

8 (4) An affected employer may apply to the ~~appropriate~~
 9 department for a rule or an order for a variance from a standard.
 10 ~~Affected employees~~**An affected employee** or ~~their representatives~~
 11 ~~shall~~**the employee's representative must** be given notice of each
 12 application and an opportunity to participate in a hearing. The
 13 ~~appropriate~~ department shall issue a rule or an order if ~~it~~**the**
 14 **department** determines on the record, after opportunity for an
 15 inspection where appropriate and a hearing, that the proponent of
 16 the variance has demonstrated by a preponderance of the evidence
 17 that the conditions, practices, means, methods, operations, or
 18 processes used or proposed to be used by an employer will provide
 19 employment and places of employment to ~~his~~**the employer's** employees
 20 ~~which~~**that** are as safe and healthful as those ~~which~~**that** would
 21 prevail if ~~he~~**the employer** complied with the standard. The rule or
 22 order issued ~~shall~~**must** prescribe the conditions the employer ~~shall~~
 23 **must** maintain and the practices, means, methods, operations, and
 24 processes ~~which he shall~~**that the employer must** adopt and utilize
 25 to the extent they differ from the standard in question. The
 26 **department may modify or revoke a** rule or ~~the order may be modified~~
 27 ~~or revoked upon application by an employer, employees, their~~
 28 ~~representatives, or by the appropriate department on its own motion~~
 29 ~~under this subsection~~ at any time after 6 months ~~from its~~

1 ~~issuance~~ after the date the rule or order is issued if 1 of the
 2 following applies:

3 (a) The employer, employees, or representative of the
 4 employees requests that the rule be modified or rescinded.

5 (b) The department makes its own motion to modify or rescind
 6 the rule or order.

7 Sec. 28. (1) An employee or employee representative ~~who~~
 8 believes that a violation of a standard exists that threatens
 9 physical harm to an employee ~~may~~ request an inspection by giving
 10 written notice of the condition to the ~~appropriate~~ department. The
 11 notice ~~shall set forth~~ **must**, with reasonable detail, **state** the
 12 grounds for the request and ~~shall~~ be signed by the employee or
 13 employee representative giving the notice. ~~Upon~~ **On** receipt of a
 14 complaint, and if the department determines there are reasonable
 15 grounds for the complaint, the department shall conduct an
 16 inspection. A copy of the request ~~shall~~ **must** be provided **to** the
 17 employer or the employer's agent not later than the time of the
 18 inspection. ~~Upon~~ **On** the request of the person giving the notice,
 19 ~~his or her~~ **the person's** name and the names of employees referred to
 20 in the notice ~~shall~~ **must** not appear in the copy or on a record
 21 ~~which~~ **that** is published, released, or made available. If the
 22 department determines that there are not reasonable grounds to
 23 believe that an inspection should be conducted, ~~it~~ **the department**
 24 shall notify, in writing, the complainant of ~~its~~ **the department's**
 25 determination.

26 (2) If an employee or employee representative believes that a
 27 condition exists ~~which~~ **that** may present an imminent danger to a
 28 person, the employee or employee representative may notify ~~either~~
 29 the department ~~of labor or the department of public health~~ in the

1 most expedient manner without regard to a written notice. ~~Upon~~**On**
 2 notification of an alleged imminent danger, the department shall
 3 cause an immediate inspection to be made or take other action that
 4 ~~it~~**the department** finds necessary to abate the danger.

5 (3) Before or during an inspection of a place of employment,
 6 an employee ~~or a~~ representative of employees ~~may~~ notify the
 7 department representative responsible for conducting the
 8 inspection, in writing, of a violation of this act or of a rule
 9 promulgated under this act ~~which~~**that** the employee or employee
 10 representative believes exists in the place of employment. If the
 11 department determines, after an inspection or investigation
 12 conducted ~~upon~~**based on** a written notification from an employee or
 13 employee representative of an alleged violation, that there are not
 14 reasonable grounds to believe that the alleged violation exists, ~~it~~
 15 **the department** shall notify, in writing, the complainant and the
 16 employer of its determination. ~~Upon~~**On the** request of the person
 17 giving the notice, ~~that~~**the** person's name and the names of
 18 employees referred to in the notice ~~shall~~**must** not appear in the
 19 copy or on a record ~~which~~**that** is published, released, or made
 20 available to the employer or ~~any other person~~**another person**.

21 (4) The department ~~of labor and the department of public~~
 22 ~~health~~ shall establish procedures for informal review of ~~any a~~
 23 decision ~~resulting~~**that results** from a request or notice, **made**
 24 under this section, to inspect for an alleged violation. The
 25 ~~appropriate~~ department shall furnish the employees or
 26 representative of **the** employees requesting a review a written
 27 statement of the final disposition of the notice or complaint and
 28 reasons for the disposition.

29 (5) An employee or the representative of the employee ~~shall~~

1 **must** be afforded an opportunity, with or without compensation, to
2 attend all meetings between the department ~~of labor or the~~
3 ~~department of public health~~ and an employer relative to ~~that~~ **the**
4 department's decision concerning a citation, abatement period, or
5 proposed penalty.

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

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

22 (3) In the conduct of inspections and investigations, the
23 ~~appropriate~~ department may require the attendance and testimony of
24 witnesses and the production of evidence under oath. Witnesses
25 ~~shall~~ **must** be paid the same fees and mileage that are paid
26 witnesses in the circuit courts. ~~In case of~~ **If there is** a
27 contumacy, failure, or ~~a~~ refusal of a person to obey an order, the
28 circuit court within the jurisdiction of which the investigation is
29 conducted, or where the person is found or resides or transacts

1 business, or the circuit court ~~for the county~~ of Ingham **County**,
 2 ~~upon~~ **on** application of the ~~appropriate~~ department, may issue an
 3 order ~~requiring~~ **that requires** the person to appear and produce
 4 evidence or give testimony relating to the matter under
 5 investigation or in question. ~~, and a~~ **A** failure to obey the order
 6 of the court may be punished as a contempt.

7 (4) A representative of the employer and a representative
 8 authorized by the employees ~~shall~~ **must** be given the opportunity to
 9 accompany the department representative during the inspection or
 10 investigation of a place of employment to aid the inspection or
 11 investigation, subject to rules promulgated by the department. ~~In~~
 12 ~~ease of~~ **If there is a** controversy, the department representative,
 13 ~~at the time he or she~~ **when the department representative** goes into
 14 an establishment, shall determine who may walk around as employer
 15 and employee representatives. If a representative authorized by the
 16 employee does not participate, the department representative shall
 17 consult with a reasonable number of employees concerning matters of
 18 safety or health in the place of employment. The **department**
 19 **representative may deny the** right of accompaniment ~~may be denied by~~
 20 ~~the department representative to~~ a person whose conduct interferes
 21 with a fair and orderly inspection or investigation.

22 (5) In conducting or preparing to conduct an inspection or
 23 investigation, advance notice of the inspection or investigation
 24 ~~shall~~ **must** not be given except in **each of** the following situations:

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

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

1 (c) If necessary to ~~assure~~**ensure** the presence of
 2 representatives of the employer and employees ~~,~~ or the appropriate
 3 personnel needed to aid in the inspection.

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

7 (6) Advance notice in ~~any of the situations~~**a situation**
 8 described in subsection (5) ~~shall~~**must** not be given more than 24
 9 hours before the inspection or investigation is scheduled to be
 10 conducted, except in apparent imminent danger situations and in
 11 other unusual circumstances.

12 (7) During the conduct of an inspection or an investigation,
 13 the department representative may conduct tests and gather samples
 14 of materials and substances ~~as that~~ are necessary to aid in the
 15 evaluation of the place of employment. In implementing this
 16 subsection, the confidentiality of trade secrets ~~shall~~**must** be
 17 protected as prescribed in this act.

18 (8) Subject to rules promulgated by the ~~departments,~~
 19 **department**, following the completion of an inspection or
 20 investigation, an opportunity for a conference ~~shall~~**must** be
 21 afforded the employer, ~~the~~ employee or ~~employee~~ representative **of**
 22 **the employee**, ~~and, if a joint conference is requested,~~ the
 23 employer and the employee or ~~employee~~ representative ~~if a joint~~
 24 ~~conference is requested.~~ **of the employee.**

25 (9) In the performance of duties in the administration and
 26 enforcement of this act, a department representative or an employee
 27 of the ~~appropriate~~ department ~~shall~~**is** not be personally liable for
 28 damages sustained by an action on ~~his or her~~ **the representative's**
 29 **or employee's** part, except for wanton and ~~wilful~~**willful**

1 negligence.

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

19 Sec. 30. (1) The department ~~of labor~~ shall provide a full-time
 20 safety and health inspector at the site where a tunnel, shaft,
 21 caisson, or cofferdam is constructed or repaired under pressurized
 22 conditions. ~~The~~**Both of the following apply to an inspector**
 23 ~~shall:~~**described in this subsection:**

24 (a) **The inspector must meet all of the following requirements:**

25 (i) ~~(a)~~ Have training and experience in, and knowledge of,
 26 pressurized tunnel construction.

27 (ii) ~~(b)~~ Have training and experience in, and an understanding
 28 of, ventilation systems.

29 (iii) ~~(c)~~ Have training and experience in, and knowledge of, the

1 safety and health standards relating to pressurized tunnel
2 construction.

3 **(b) The inspector shall do all of the following:**

4 **(i)** ~~(d)~~ Maintain a complete and detailed log of construction
5 activity.

6 **(ii)** ~~(e)~~ Test, monitor, and record the air quality in all work
7 areas and unoccupied areas of the completed work.

8 **(iii)** ~~(f)~~ Report immediately to the employer and affected
9 employees the existence of an imminent danger or serious violation.

10 **(iv)** ~~(g)~~ Conduct investigations and enforce this act and rules
11 promulgated and orders issued under this act.

12 (2) The contracting party for whom a tunnel is constructed or
13 repaired under pressurized conditions shall pay the cost of the
14 safety and health inspector's wages and fringe benefits. The cost
15 shall ~~must~~ be paid to the department ~~of labor~~ to the credit of the
16 general fund. ~~of the state.~~ The department ~~of labor~~ shall advise
17 contracting parties, ~~upon~~ **on** request, and publish regularly the
18 regular and overtime rates for ~~the~~ **a** safety and health inspector
19 required by this section.

20 (3) If the tunnel construction activity exceeds 60 hours per
21 week, the department shall provide a full-time safety and health
22 inspector for each 60 hours of tunnel construction activity or
23 portion thereof. **of tunnel construction activity.**

24 (4) This section shall ~~does~~ not diminish ~~the~~ **an** employer's
25 responsibility under this act.

26 Sec. 31. (1) When and as soon as a department representative
27 determines that an imminent danger exists in a place of employment,
28 the department representative shall inform the employer and the
29 affected employees of a determination of the imminent danger. The

1 department representative immediately shall recommend to the
2 director that an order be issued to require that steps be taken as
3 may be necessary to avoid, correct, or remove the imminent danger.
4 After receiving authorization for the issuance of an order from the
5 director, the department representative shall apply a tag to the
6 equipment or process that is the source of the imminent danger
7 identifying that an imminent danger exists. ~~The tag shall be~~
8 ~~removed only by~~ **Only** the department representative **may remove the**
9 **tag**. At **the** request of the employer, an area supervisor shall,
10 ~~within not later than~~ 24 hours after a request, make an ~~on-site on-~~
11 **site** review of ~~any~~ tagging and recommend continuance or removal.
12 The order ~~shall~~ **must** prohibit the employment or presence of an
13 individual in locations or under conditions where imminent danger
14 exists, except individuals whose presence is necessary to avoid,
15 correct, or remove the imminent danger in a safe and orderly
16 manner. In tagging the equipment or process that is the source of
17 imminent danger and in issuing the order, consideration ~~shall~~ **must**
18 be given to ~~any~~ **the** necessity to maintain the capacity of a
19 continuous process operation and to the reestablishment of normal
20 operations without a complete cessation of operations.

21 (2) An employer shall not permit an employee, other than an
22 employee whose presence is necessary to avoid, correct, or remove
23 the imminent danger, to operate equipment or engage in a process
24 that has been tagged by the department and that is the subject of
25 an order issued by the department identifying that an imminent
26 danger exists. An employee who suffers a loss of wages or fringe
27 benefits or is in any manner discriminated against for refusing to
28 operate equipment or engage in a process that has been tagged by
29 the department and that is the subject of an order issued by the

1 department, as provided in this section, may file a discrimination
 2 complaint ~~, with the department~~ and the department ~~of licensing and~~
 3 ~~regulatory affairs~~ may order appropriate relief as provided in
 4 section 65. This section does not prohibit an employer from
 5 assigning an employee to an operation not affected by the imminent
 6 danger situation, subject to ~~any~~ a collective bargaining agreement.

7 (3) ~~Upon failure of the~~ **If the** employer ~~to~~ **does not** promptly
 8 comply with a department order ~~,~~ as described in subsection (1),
 9 the department shall petition the circuit court ~~having~~ **that has**
 10 jurisdiction to restrain a condition or practice in a place of
 11 employment that the department has determined to cause the imminent
 12 danger.

13 (4) If the department arbitrarily or capriciously fails to
 14 seek relief under this section, an employee who may be injured by
 15 reason of the failure, or the representative of those employees,
 16 may bring action against the department in the circuit court ~~having~~
 17 **that has** jurisdiction for a writ of mandamus to compel the
 18 department to seek an order and for further relief, as may be
 19 appropriate.

20 (5) The department ~~of licensing and regulatory affairs~~ shall
 21 respond ~~within~~ **not later than** 24 hours after receipt of an imminent
 22 danger complaint concerning an unknown and unlabeled container of
 23 chemicals or an imminent danger complaint concerning a container of
 24 hazardous chemicals that is not labeled or for which a safety data
 25 sheet is not available as required by the standard incorporated by
 26 reference in section 14a and by sections 14b to 14l.

27 (6) Before a department representative seeks authorization to
 28 issue an order ~~pursuant to the procedures prescribed in~~ **under**
 29 subsection (1), an employer ~~shall~~ **must** be given a reasonable

1 opportunity to identify, label, or provide the safety data sheet
 2 for the container that is the subject of the imminent danger
 3 determination.

4 Sec. 33. (1) If, as the result of an inspection or
 5 investigation, the department representative believes that an
 6 employer has violated this act, an order issued pursuant to this
 7 act, or a rule or standard promulgated pursuant to this act, ~~he or~~
 8 ~~she~~ **the department representative** shall issue a citation
 9 immediately or ~~within~~ **not later than** 90 days after the completion
 10 of the **conference for the** physical inspection or investigation
 11 **described in section 29(8)**. The citation ~~shall~~ **must** be in writing
 12 and ~~shall~~ **must** describe with particularity the nature of the
 13 violation, including a reference to the provision of this act, ~~or~~
 14 an order issued or a rule or standard promulgated ~~pursuant to~~ **under**
 15 this act, alleged to have been violated. The citation ~~shall~~ **must**
 16 state a reasonable time by which the violation is to be abated. The
 17 citation ~~shall~~ **must** state on its face that it is an allegation of a
 18 violation. The date ~~shall~~ **must** be set with ~~due~~ regard to the
 19 seriousness of the hazard and the difficulty of abating it. The
 20 citation and the proposed penalty, if any, may be presented to and
 21 ~~shall, must,~~ in each case, be sent by ~~registered~~ **certified** mail to
 22 the employer, and a copy ~~shall~~ **must** be filed at the time of
 23 issuance with the ~~appropriate~~ department.

24 (2) The employer shall post a copy of the citation at or near
 25 the place of the violation, and the citation copy ~~shall~~ **must** remain
 26 posted at that site until compliance is achieved or for 3 working
 27 days, whichever is later.

28 (3) The employer ~~upon~~ **on** whom a citation is served shall
 29 notify the ~~appropriate~~ department of compliance with this act, an

1 order issued ~~pursuant to~~**under** this act, or a rule or standard
 2 promulgated ~~pursuant to~~**under** this act.

3 (4) If an employer fails to correct a violation for which a
 4 citation was issued within the period permitted for its correction,
 5 the department shall notify the employer by ~~registered~~**certified**
 6 mail of that failure and of the penalty proposed to be assessed
 7 under section 35 for the failure.

8 (5) If ~~it is determined upon~~**the department determines, after**
 9 **conducting an** inspection or investigation, that a violation of this
 10 act, an order issued pursuant to this act, or a rule or standard
 11 promulgated pursuant to this act exists, but that the conditions
 12 that constitute the violation have no direct or immediate
 13 relationship to the safety or health of workers, the department may
 14 issue a notice in place of a citation. A notice issued under this
 15 subsection ~~shall~~**must** be referred to as a "de minimis notice of
 16 violation". The employer shall post a copy of the de minimis notice
 17 of violation at or near the place of violation for 3 working days.
 18 The department shall promulgate all necessary rules for
 19 administering the de minimis notice of violation.

20 (6) ~~A~~**The department shall vacate a** citation for an alleged
 21 violation of this act, an order issued pursuant to this act, or a
 22 rule or standard promulgated pursuant to this act ~~shall be vacated~~
 23 if it is shown that the employer has provided the equipment or
 24 training, educated employees regarding use of the equipment or
 25 implementation of the training, and taken reasonable steps
 26 including, ~~where~~**if** appropriate, disciplinary action to ~~assure~~
 27 **ensure** that employees utilize the equipment and comply with the
 28 training as referenced in this section.

29 Sec. 35. (1) If an employer receives a citation for a serious

1 violation of this act, an order issued pursuant to this act, or a
 2 rule or standard promulgated under this act, the board shall assess
 3 the employer a civil penalty of not more than ~~\$7,000.00~~**the**
 4 **equivalent federal penalty as the equivalent federal penalty**
 5 **existed on the effective date of the amendatory act that added**
 6 **subsection (12) or the penalty established under subsection (11),**
 7 **as applicable,** for each violation.

8 (2) If an employer fails to correct a violation for which a
 9 citation was issued within the period permitted for its correction,
 10 the board may assess the employer a civil penalty of not more than
 11 ~~\$7,000.00~~**the equivalent federal penalty as the equivalent federal**
 12 **penalty existed on the effective date of the amendatory act that**
 13 **added subsection (12) or the penalty established under subsection**
 14 **(11), as applicable,** for each day during which the failure or
 15 violation continues. A period permitted for corrections does not
 16 begin to run until the date of the final order of the board if a
 17 review proceeding before the board is initiated by the employer in
 18 good faith and not solely ~~for to~~ delay or ~~avoidance of~~ **avoid** a
 19 penalty.

20 (3) If an employer receives a citation for a violation of this
 21 act, an order issued pursuant to this act, or a rule or standard
 22 promulgated under this act, the board may assess the employer a
 23 civil penalty of not more than ~~\$7,000.00~~**the equivalent federal**
 24 **penalty as the equivalent federal penalty existed on the effective**
 25 **date of the amendatory act that added subsection (12) or the**
 26 **penalty established under subsection (11), as applicable,** for each
 27 violation that is specifically determined not to be of a serious
 28 nature.

29 (4) If an employer willfully or repeatedly violates this act,

1 an order issued pursuant to this act, or a rule or standard
2 promulgated under this act, the board may assess the employer a
3 civil penalty of not more than ~~\$70,000.00 for each violation, but~~
4 not less than ~~\$5,000.00~~ **the equivalent federal penalty as the**
5 **equivalent federal penalty existed on the effective date of the**
6 **amendatory act that added subsection (12) or the penalty**
7 **established under subsection (11), as applicable,** for each willful
8 **or repeated** violation. As used in this subsection:

9 (a) "Case closing date", with respect to an asbestos-related
10 violation, means the first date that all of the following
11 conditions are met:

12 (i) The citation for the violation is a final order.

13 (ii) Satisfactory abatement documentation for the violation is
14 received by the board.

15 (iii) All civil penalties related to the violation are timely
16 paid, or the department of labor and economic opportunity complies
17 with section 36(6).

18 (b) "Repeatedly violates", with respect to an asbestos-related
19 violation, means commits an asbestos related violation not later
20 than 5 years after the case closing date of an asbestos-related
21 violation.

22 (5) If an employer willfully violates this act, an order
23 issued pursuant to this act, or a rule or standard promulgated
24 under this act and the violation causes the death of an employee,
25 the employer is guilty of a felony punishable by imprisonment for
26 not more than 1 year, a fine of not more than \$10,000.00, or both.
27 A second and any subsequent violation under this subsection is
28 punishable by imprisonment for not more than 3 years, a fine of
29 \$20,000.00, or both.

1 (6) If an employer violates a posting requirement prescribed
2 under this act, the board shall assess the employer a civil penalty
3 of not more than ~~\$7,000.00~~ **the equivalent federal penalty as the**
4 **equivalent federal penalty existed on the effective date of the**
5 **amendatory act that added subsection (12) or the penalty**
6 **established under subsection (11), as applicable,** for each
7 violation.

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

15 (8) If a person gives advance notice of an investigation or an
16 inspection to be conducted under this act without authority from
17 the ~~appropriate director, or the designee of the director,~~ the
18 person is guilty of a misdemeanor punishable by imprisonment for
19 not more than 6 months, a fine of not more than \$1,000.00, or both.

20 (9) For a public employer, the department, ~~of labor and~~
21 ~~economic opportunity,~~ instead of applying a civil penalty otherwise
22 applicable to an employer under this section, may request that the
23 attorney general seek a writ of mandamus in the appropriate circuit
24 court to compel compliance with a citation, including the terms of
25 abatement.

26 (10) A person shall not assault a department representative or
27 other person charged with enforcement of this act in the
28 performance of that person's legal duty to enforce this act. A
29 person who violates this subsection is guilty of a misdemeanor. A

1 prosecuting attorney having jurisdiction of the matter or the
2 attorney general may prosecute the violator.

3 (11) Beginning on the effective date of the amendatory act
4 that added subsection (12), the director shall, not later than 10
5 working days after the date that a federal penalty is changed,
6 initiate the processing of an administrative rule that changes a
7 penalty under this section to be equal to the equivalent federal
8 penalty.

9 (12) As used in this section:

10 (a) "Equivalent federal penalty" means the federal penalty for
11 the federal violation that is the equivalent of or most equivalent
12 to a violation of this act or a rule or standard promulgated under
13 this act.

14 (b) "Federal penalty" means the penalty for a federal
15 violation.

16 (c) "Federal violation" means a violation of either of the
17 following:

18 (i) The occupational safety and health act of 1970, Public Law
19 91-596.

20 (ii) An occupational safety and health standard adopted or
21 promulgated by the United States Department of Labor under the
22 occupational safety and health act of 1970, Public Law 91-596.

23 Sec. 36. (1) The board shall assess civil penalties,
24 considering the size of the business, the seriousness of the
25 violation, the good-faith efforts of the employer, and the history
26 of previous citations, and may establish a schedule of civil
27 penalties. Subject to subsection (2), for a civil penalty that was
28 assessed as the result of an asbestos-related violation, the board
29 shall not reduce the civil penalty by more than a total of 95% or

1 by more than the corresponding percentage for each of the
2 following:

3 (a) In considering the size of the business, 70%.

4 (b) In considering the good-faith efforts of the employer,
5 25%.

6 (c) In considering the history of previous citations, 10%.

7 (2) The board may issue an order for a reduction of a civil
8 penalty if the order is consistent with a dismissal or
9 reclassification of an asbestos-related violation included in a
10 hearing officer's report submitted to the board following an
11 administrative hearing held under section 42 or 44. For an
12 asbestos-related violation that has been reclassified by a hearing
13 officer, the board shall not reduce the civil penalty that
14 corresponds to the reclassified violation by more than is
15 prescribed under subsection (1).

16 (3) The department ~~of labor and economic opportunity~~ shall
17 administer and enforce the assessment of civil penalties in a
18 manner that is consistent with the administration and enforcement
19 of civil penalties by the federal Occupational Safety and Health
20 Administration.

21 (4) A civil penalty owed under this act must be paid to the
22 department ~~of labor and economic opportunity~~ not later than 15
23 working days after the date the penalty becomes a final order of
24 the board, not subject to further agency or judicial review. A
25 civil penalty must be credited to the state general fund.

26 (5) If a civil penalty remains unpaid beyond the period of
27 time specified in subsection (4), the department ~~of labor and~~
28 ~~economic opportunity~~ shall issue a letter to the employer ~~demanding~~
29 **that demands the employer to, not later than 20 days after the date**

1 **of the letter, make the** payment. ~~not later than 20 days after the~~
2 ~~date of the letter.~~

3 (6) If the penalty remains unpaid following the period
4 specified in subsection (5), the department ~~of labor and economic~~
5 ~~opportunity~~ shall transmit information on the amount of the penalty
6 and the name and address of the employer owing the penalty to the
7 department of treasury.

8 (7) The department of treasury shall institute proceedings to
9 collect the amount assessed as a civil penalty. The department of
10 treasury shall offset the amount of the penalty against money owed
11 by ~~the~~ **this** state to the employer. The department of treasury shall
12 request that the attorney general recover the amount of the penalty
13 remaining unpaid, after offsets, by instituting a civil action in
14 the circuit court for the county in which the violation occurred or
15 in the circuit court for the county in which the employer ~~owing~~
16 **that owes** the penalty has its principal place of business.

17 Sec. 37. The department shall turn over evidence of a criminal
18 violation of this act to the ~~department~~ attorney **general** and shall
19 assist in the investigation of a criminal violation.

20 Sec. 41. ~~Within~~ **Not later than** 15 working days after receipt
21 of a citation and proposed penalty, if any, an employer may
22 petition the ~~appropriate~~ department for a grant of additional time
23 for compliance, modification, or dismissal of the citation and a
24 proposed penalty. ~~Within~~ **Not later than** 15 working days after the
25 employer has received a citation, an employee or employee
26 representative may petition the department ~~of labor or the~~
27 ~~department of public health, whichever is appropriate,~~ alleging the
28 period of time fixed in the citation for the abatement of the
29 violation is unreasonable. ~~When~~ **If** a petition is submitted to the

1 department by the employer, the employer shall transmit a copy
2 immediately to the affected employees or the employee
3 representative. ~~When~~**If** a petition is submitted to the department
4 by an employee or employee representative, the department shall
5 submit a copy of the petition immediately to the employer after
6 deleting the name of the employee or employee representative, if ~~so~~
7 requested by the employee or employee representative. If the
8 employer, employee, or employee representative does not petition
9 the department ~~within~~**not later than** the 15 working days after
10 receipt of the citation and proposed penalty, if any, the citation
11 or proposed penalty ~~shall be~~**is** considered a final order of the
12 board. ~~Upon~~**On** receipt of a petition, ~~the department of public~~
13 ~~health or the department of labor, whichever is appropriate,~~ may
14 modify the time schedule for compliance, modify the citation,
15 dismiss the citation, or dismiss or modify ~~any~~**a** proposed penalty.
16 The ~~appropriate~~ department shall notify the employer of its
17 decision ~~within~~**not later than** 15 working days after receipt of the
18 petition. If the department meets with the employer regarding the
19 employer's petition, the department shall notify the employee or
20 employee representative that a meeting will be held and allow the
21 attendance of the employee or employee representative. The employer
22 shall promptly post the notice of the department's decision
23 ~~together with~~**and** the appropriate citation. The decision of the
24 department ~~of labor or the department of public health shall become~~
25 **becomes** final 15 working days after receipt of the decision. ~~Within~~
26 **Not later than** 15 working days after receipt of the ~~department of~~
27 ~~labor's or the department of public health's decision,~~ **department's**
28 **decision,** an employer may appeal the decision to the board. ~~Within~~
29 **Not later than** 15 working days after the employer ~~has received~~

1 **receives** the decision of the director, ~~of labor or the director of~~
 2 ~~public health, whichever is appropriate,~~ an employee or employee
 3 representative may appeal the decision to the board with respect to
 4 the violation abatement period, classification of citation, or
 5 proposed penalty.

6 Sec. 45. If an employer ~~fails to~~ **does not** comply with a final
 7 order of the board, the department may issue an order directing the
 8 employer to cease operating or render inoperable, in accordance
 9 with the order of the department, so much of ~~his~~ **the employer's**
 10 operation as is necessary to eliminate the hazard ~~which~~ **that** is the
 11 subject of the order. ~~When~~ **If** a cease operation order is not
 12 appropriate or not obeyed, the department shall refer the matter to
 13 the ~~department~~ attorney **general**. ~~who~~ **The attorney general** shall
 14 promptly institute proceedings in the circuit court for the county
 15 in which the violation exists to enforce the department's orders.

16 Sec. 46. (1) A board of health and safety compliance and
 17 appeals is created within the department. ~~of labor.~~ The board of
 18 health and safety compliance and appeals consists of 7 members
 19 appointed by the governor by and with the advice and consent of the
 20 senate for terms of 4 years or until ~~their successors are a~~
 21 **member's successor is** appointed and qualified. Of the members first
 22 appointed 2 ~~shall~~ **must** be appointed for 1 year, 2 ~~shall~~ **must** be
 23 appointed for 2 years, 2 ~~shall~~ **must** be appointed for 3 years, and 1
 24 ~~shall~~ **must** be appointed for 4 years. The first ~~chairman~~ **chairperson**
 25 of the board of health and safety compliance and appeals ~~shall have~~
 26 **has** a 4-year term. Vacancies ~~shall~~ **must** be filled in the same
 27 manner as the original appointments except that a vacancy ~~occurring~~
 28 **that occurs** during a term of office ~~shall~~ **must** be filled by
 29 appointment for the unexpired term. ~~Of those appointed to the~~ **The**

1 ~~board of health and safety compliance and appeals~~ **must consist of**
 2 **the following members:**

3 (a) Three ~~shall~~**that** represent labor and, ~~shall,~~ individually
 4 or jointly, represent each of the following areas in which they
 5 ~~shall~~ **must** be actively engaged: ~~(i) general industry; (ii)~~
 6 ~~construction; and (iii) health.~~

7 (i) **General industry.**

8 (ii) **Construction.**

9 (iii) **Health.**

10 (b) Three ~~shall~~**that** represent management and ~~shall,~~**that,**
 11 individually or jointly, represent each of the following areas in
 12 which they ~~shall~~ **must** be actively engaged: ~~(i) general industry; (ii)~~
 13 ~~construction; and (iii) health.~~

14 (i) **General industry.**

15 (ii) **Construction.**

16 (iii) **Health.**

17 (c) One ~~shall represent~~**that represents** the general public and
 18 ~~serve~~**that serves** as ~~chairman~~**the chairperson.**

19 (2) The board's authority ~~shall apply~~**applies** to all safety
 20 and health citations, orders, and appeals.

21 (3) The board shall meet as necessary to discharge its duties
 22 under this act and shall hold regular quarterly meetings. ~~in~~
 23 ~~Lansing.~~ Interim meetings may be called at any time by the
 24 ~~chairman,~~**chairperson,** the director, ~~of labor, the director of~~
 25 ~~public health, or by~~ **4 or more** members thereof. **of the board.** A
 26 majority of the members of the board constitutes a quorum and
 27 official action can be taken only on the affirmative vote of a
 28 majority of the members. The **legislature shall, annually, establish**
 29 **the** per diem compensation of the board and the schedule for

1 reimbursement of expenses. ~~shall be established annually by the~~
2 ~~legislature.~~

3 (4) The board may order testimony to be taken at a hearing or
4 by deposition in proceedings pending before ~~it~~ **the board** at any
5 stage of the proceedings. A person may be compelled to appear and
6 depose, and to produce books, papers, or documents in a proceeding
7 under consideration by the board. Witnesses ordered to appear in
8 ~~any~~ **a** proceeding pending before the board or whose depositions are
9 taken under this subsection ~~and~~ and the person taking the depositions
10 ~~shall be~~ **are** entitled to the same fees as paid for like services in
11 circuit court.

12 (5) The board shall promulgate rules of procedure for the
13 conduct of hearings or in response to appeals. ~~which~~ **The** rules
14 ~~shall provide for~~ **must require** a hearing officer to make a
15 determination ~~upon~~ **on** a proceeding before the board.

16 (6) In construing or applying ~~any~~ **a** state occupational safety
17 or health standard which is identical to a federal occupational
18 safety and health standard promulgated ~~pursuant to 29 U.S.C.~~
19 ~~section 651 et seq.,~~ **under 29 USC 651 to 678**, the board shall
20 construe and apply the state standard in a manner ~~which~~ **that** is
21 consistent with ~~any~~ **a** federal construction or application by the
22 occupational safety and health review commission created ~~pursuant~~
23 ~~to 29 U.S.C. section 661.~~ **under 29 USC 661.**

24 Sec. 52. (1) The ~~department~~ **attorney general** shall represent
25 the department ~~of labor, the department of public health,~~ and the
26 board and commissions established under this act in ~~any~~ litigation
27 under this act.

28 (2) The board shall not be considered to be a party in a
29 judicial review proceeding brought ~~pursuant to~~ **under** this act.

1 Sec. 54. (1) A ~~safety-consultation~~ education and training
2 division is created within the department. ~~of licensing and~~
3 ~~regulatory affairs.~~

4 (2) The functions of the ~~safety-consultation~~ education and
5 training division shall include **all of the following:**

6 (a) The development and application of a statewide ~~safety~~
7 **consultation** education and training program to familiarize
8 employers, supervisors, employees, and union leaders with
9 techniques of accident investigation and prevention.

10 (b) The development and utilization of consultative
11 educational techniques to achieve long-range solutions to
12 occupational safety problems.

13 (c) The development of training programs for the department
14 safety compliance staff.

15 (d) The acquisition, development, and distribution of
16 occupational safety pamphlets, booklets, brochures, and other
17 appropriate safety media as may be useful to accomplish the
18 objectives of the ~~safety-consultation~~ education and training
19 division.

20 (e) The conduct of other activities as necessary for the
21 implementation of an effective ~~safety-consultation~~ education and
22 training program.

23 (f) The development and administration of a program for
24 employers, with special emphasis on small business employers,
25 providing technical and educational assistance.

26 (g) The development and implementation of a training and
27 education program for department staff engaged in the
28 administration and enforcement of this act.

29 (3) The department shall publish a newsletter at least

1 quarterly.

2 (4) ~~When~~**If** the director promulgates a standard or a rule or
 3 issues an order, **the director shall include** a brief statement ~~shall~~
 4 ~~be included indicating that indicates~~ the reasons for the action. ~~,~~
 5 ~~which shall be published~~**The director shall include the statement**
 6 in the newsletter published under subsection (3).

7 Sec. 55. (1) A ~~safety~~**consultation** education and training fund
 8 is created. Except as provided in subsection ~~(2),~~**(3)**, the fund
 9 ~~shall~~**must** be used to accomplish the objectives ~~outlined~~**described**
 10 in sections 54 and 56. The state treasurer ~~shall be~~**is** custodian of
 11 the fund and may invest the surplus of the fund in investments ~~as~~
 12 **that**, in the state treasurer's judgment, are in the best interest
 13 of ~~the~~**this** state. Earnings from those investments ~~shall~~**must** be
 14 credited to the fund. The state treasurer shall notify the director
 15 of labor, ~~the director of public health,~~ and the legislature of
 16 interest credited and the balance of the ~~safety education and~~
 17 ~~training~~ fund as of December 31 of each year.

18 ~~(2) On October 1, 1991, \$2,300,000.00 is transferred from the~~
 19 ~~safety education and training fund to the state general fund for~~
 20 ~~the operation of the programs specified in this act.~~

21 **(2)** ~~(3)~~The director ~~of labor~~ shall supervise and administer
 22 the fund. Except as provided in this section, the director shall
 23 annually assess a levy based on the total annual worker's
 24 disability compensation losses, excluding medical payments, paid in
 25 the immediately preceding calendar year by employers under the
 26 worker's disability compensation act of 1969, ~~Act No. 317 of the~~
 27 ~~Public Acts of 1969, as amended, being sections~~ **1969 PA 317, MCL**
 28 **418.101 to 418.941.** ~~of the Michigan Compiled Laws.~~ Except as
 29 provided in this section, each year the director shall assess ~~upon~~

1 and collect from each carrier and self-insured employer a sum equal
 2 to that proportion of 50% of the current fiscal year appropriation
 3 of ~~safety-consultation~~ education and training funds ~~which-that~~ the
 4 total worker's disability compensation benefits, exclusive of
 5 medical payments, paid by each carrier or each self-insured
 6 employer bears to the total of the compensation benefits paid by
 7 all carriers and self-insured employers during the immediately
 8 preceding calendar year. However, the total amount levied annually
 9 ~~shall-must~~ not exceed ~~3/4 of 1%~~ **0.75%** of the total of the
 10 compensation benefits paid by all carriers and self-insured
 11 employers during the immediately preceding calendar year. Funds
 12 that are unexpended at the end of each fiscal year ~~shall-must~~ be
 13 returned to the ~~safety education and training~~ fund.

14 **(3)** ~~(4)~~ If, at any time during the fiscal year in which the
 15 assessment required by subsection ~~(3)~~ **(2)** is made, the balance of
 16 ~~money in the safety education and training fund~~ is less than
 17 \$1,500,000.00, the assessment ~~shall-must~~ equal the total fiscal
 18 year appropriation of ~~safety-consultation~~ education and training
 19 funds.

20 **(4)** ~~(5)~~ ~~Notice~~ **The director shall send notice** of the
 21 assessments ~~shall be sent by the director of labor~~ by mail to each
 22 carrier. Payment of assessments ~~shall-must~~ be received in the
 23 principal office of the department ~~of labor~~ before a date specified
 24 uniformly in the notice, but not less than 90 days after the date
 25 of mailing.

26 **(5)** ~~(6)~~ The levy assessments ~~shall constitute~~ **are** an element
 27 of loss for the purpose of establishing rates for worker's
 28 disability compensation insurance. Funds derived from this levy
 29 ~~shall-must~~ be deposited in the ~~safety-consultation~~ education and

1 training fund and ~~shall~~**must** be appropriated by the legislature for
2 the operation of this program.

3 (6) ~~(7)~~To enable full and complete legislative review of the
4 assessment process, the department, ~~of labor,~~ not later than
5 September 30 of each year, shall submit to the regulatory
6 subcommittees of the house **of representatives** and senate
7 appropriations committees and the house **of representatives** and
8 senate committees that consider labor matters a written report on
9 the status of the ~~safety~~**consultation** education and training
10 assessment required by this section. The report ~~shall~~**must** include,
11 but is not limited to, information on the amount of the assessment,
12 the percentage of the assessment as compared to losses, an
13 explanation of all expenditures from the ~~safety education and~~
14 ~~training fund,~~ and the balance of ~~money in the safety education and~~
15 ~~training fund.~~

16 Sec. 56. The department ~~of public health~~ shall conduct an
17 occupational health education and training program with employees
18 and employers for the prevention of occupational health hazards, to
19 achieve long-range solutions to occupational health problems, and
20 to train persons in the recognition and control of occupational
21 health hazards.

22 Sec. 63. (1) Information reported to or otherwise obtained by
23 the department ~~of licensing and regulatory affairs~~ in connection
24 with an inspection, investigation, or proceeding under this act
25 that contains or that might reveal a trade secret, including
26 information required to be made available under sections 14a
27 ~~through to 14l~~ and section 24(5) and (6) ~~shall be~~**is** considered
28 confidential. In a proceeding under this act, the director shall
29 promulgate rules for the purpose of protecting trade secrets

1 regarding information required to be made available under sections
 2 14a ~~through to~~ 14/ and section 24(5) and (6), and the department,
 3 the board, or the court shall issue orders as may be appropriate to
 4 protect the confidentiality of trade secrets and to carry out the
 5 objectives of this act.

6 (2) Except as otherwise provided by this subsection, ~~and~~
 7 ~~subsection (1),~~ information reported to or otherwise obtained by a
 8 department from an employee in connection with an inspection,
 9 investigation, or proceeding under this act ~~shall~~ **must** be made
 10 available to the public ~~pursuant to~~ **in accordance with** the freedom
 11 of information act, 1976 PA 442, MCL 15.231 to 15.246. ~~The~~ **All of**
 12 **the following are exempt from disclosure under the freedom of**
 13 **information act, 1976 PA 442, MCL 15.231 to 15.246:**

14 (a) **The information described in subsection (1).**

15 (b) **The** identity of an employee, or ~~any~~ information that may
 16 lead to the identification of an employee, who provides information
 17 pertaining to a possible violation ~~or violations~~ of this act. ~~is~~
 18 ~~exempt from disclosure.~~

19 (c) **Reports that the department creates and information**
 20 **reported to or otherwise obtained by the department regarding an**
 21 **employer's request for consultation from the department. As used in**
 22 **this subdivision, "consultation" means that term as defined in 29**
 23 **CFR 1908.2.**

24 Sec. 65. (1) A person shall not discharge an employee or in
 25 any manner discriminate against an employee because the employee
 26 filed a complaint, ~~or~~ instituted or caused to be instituted a
 27 proceeding under or regulated by this act, ~~or~~ has testified or is
 28 about to testify in ~~such~~ a proceeding **regulated by this act,** or
 29 because ~~of the exercise by~~ the employee **exercises a right afforded**

1 **by this act** on behalf of ~~himself or herself~~ **the employee** or others
 2 ~~of a right afforded by this act.~~ **another person.**

3 (2) ~~An~~ **If an** employee ~~who~~ believes that ~~he or she~~ **the employee**
 4 was discharged or otherwise discriminated against by a person in
 5 violation of this section, **the employee** may, **not later than 30 days**
 6 **after the date of the alleged violation**, file a complaint with the
 7 department ~~of labor~~ alleging the discrimination. ~~within 30 days~~
 8 ~~after the violation occurs.~~ ~~Upon~~ **On** receipt of the complaint, the
 9 department ~~of labor~~ shall ~~cause an investigation to be made~~
 10 **investigate the complaint** as ~~it~~ **the department** considers
 11 appropriate. ~~If, upon the investigation,~~ **After the investigation,**
 12 **if** the department determines that this section was violated, the
 13 department shall order all appropriate relief, including ~~rehiring~~
 14 **the rehire** or reinstatement of an employee to ~~his or her~~ **the**
 15 **employee's** former position with back pay.

16 (3) The director, ~~of labor,~~ **within not later than** 90 days
 17 after the receipt of a complaint filed under this section, shall
 18 notify the complainant of the determination under subsection (2).

19 (4) The employer or employee may, **not later than 15 working**
 20 **days after the notification is issued**, request a review of the
 21 department's determination ~~within 15 working days after~~
 22 ~~notification is issued.~~ **in accordance with the procedures**
 23 **prescribed in the notification.** **If the department does not receive**
 24 a request for a review by ~~either the employer or employee is not~~
 25 ~~received by the department within 15 working days,~~ ~~in the absence~~
 26 ~~of~~ **in this time period, absent** a showing of good cause for a late
 27 request, the department's determination is final. The employee,
 28 employer, and the department ~~shall~~ **must** be parties to a proceeding
 29 before a hearings officer brought pursuant to this section.

1 (5) The director shall appoint hearings officers to make
 2 determinations in proceedings brought ~~pursuant to~~ **under** this
 3 section. All proceedings in a hearing ~~shall~~ **must** be conducted
 4 ~~pursuant to~~ **in accordance with** the procedures applicable to the
 5 trial of contested cases under ~~Act No. 306 of the Public Acts of~~
 6 ~~1969, as amended.~~ **the administrative procedures act of 1969, 1969**
 7 **PA 306, MCL 24.201 to 24.328.** The hearings officer shall affirm,
 8 modify, or rescind the order of the department and may order an
 9 employer who violates this section to pay attorney costs, hearing
 10 costs, and transcript costs. The hearings officer shall issue a
 11 determination ~~which constitutes a final disposition of the~~
 12 ~~proceedings to each party within~~ **not later than** 30 working days
 13 after the conclusion of the hearing. The determination of the
 14 hearings officer ~~shall become~~ **is the final disposition of the**
 15 **proceedings and becomes** the final agency order ~~upon~~ **on** receipt by
 16 the parties.

17 (6) A party to the proceeding may, **not later than 60 days**
 18 **after receipt of the determination of the hearings officer,** obtain
 19 judicial review ~~within 60 days after receipt of the determination~~
 20 ~~of the hearings officer pursuant to Act No. 306 of the Public Acts~~
 21 ~~of 1969, as amended.~~ **of the determination as provided for in the**
 22 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
 23 **24.328.** Venue for an appeal under this act ~~shall be~~ **is** only in the
 24 circuit where the employee is a resident, where the employment
 25 occurred, or where the employer has a principal place of business.

26 (7) In absence of an appeal by an employer who has not
 27 complied with the determination of the hearings officer, the
 28 director ~~of labor~~ shall initiate, in the county where the violation
 29 occurred, in ~~the county of~~ **Ingham County,** or in the county where

1 the employer has its principal office, the civil action necessary
2 to enforce an order of the department ~~which~~**that** has become a final
3 agency order as prescribed in this act.

4 (8) For the purpose of an investigation or proceeding under
5 this section, the director ~~of labor or an authorized representative~~
6 ~~of the director~~ may administer oaths and affirmations, subpoena
7 witnesses, compel ~~their~~**a witness's** attendance, take evidence, and
8 require the production of records or other documents ~~which~~**that** the
9 department considers relevant or material to the inquiry.

10 Sec. 91. ~~Any~~**A** proceeding pending before the department ~~of~~
11 ~~labor or the department of health shall~~**must** be continued, and be
12 conducted, and determined by the ~~appropriate~~ department ~~in~~
13 ~~accordance with~~**according to** the statutes governing the
14 proceedings.

15 Enacting section 1. Section 1035a of the Michigan occupational
16 safety and health act, 1974 PA 154, MCL 408.1035a, is repealed.