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BILL ANALYSIS

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Senate Bills 49 and 50 (as introduced 2-4-25)
Sponsor: Senator John Cherry
Committee: Labor

Date Completed: 10-22-25

CONTENT

Senate Bill 49 would amend the Michigan Occupational Safety and Health Act to do the following:

-- **Transfer the powers, duties, and responsibilities of the Act to the Department of Labor and Economic Opportunity (LEO) in accordance with Executive Order 2019-13 (see BACKGROUND).**
-- **Exempt from disclosure under the Freedom of Information Act (FOIA) reports that LEO created or otherwise obtained in connection with an employer's request for consultation with LEO.**
-- **Align State penalties for violations of the Act with their equivalent Federal penalties.**
-- **Repeal Section 1035a of the Act, which prescribes civil and criminal penalties for violations of the Act that would take effect only if the requirement that Federal occupational safety and health standards be promulgated were found unconstitutional.**

Senate Bill 50 would delete sentencing guidelines in the Code of Criminal Procedure in accordance with the repeal of Section 1035a of the Michigan Occupational Safety and Health Act as proposed by Senate Bill 49.

Senate Bill 49

General Transfer of Act Powers and Duties to LEO

Generally, the Michigan Occupational Safety and Health Act governs working conditions in the State and prescribes the powers and duties of the Department of Licensing and Regulatory Affairs (LARA) and the Department of Health and Human Services (DHHS) in administering and enforcing the Act. The bill would transfer these powers and duties solely to LEO in accordance with Executive Order 2019-13. Unless otherwise specified, LEO would assume the authorities and responsibilities generally described below.

Rulemaking Authority

Currently, the standards concerning occupational safety and health, hazard communication, and field sanitation that the United States Department of Labor (DoL) have adopted under the Occupational Safety and Health Act are incorporated by reference and have the same force and effect as a rule promulgated pursuant to the Michigan Occupational Safety and Health Act. The Department of Licensing and Regulatory Affairs and the DHHS must make copies of these standards available to the public at a cost. The Act also requires LARA to initiate the promulgation of subsequent standards that the DoL adopts within 10 days of the

DoL's adoption unless LARA determines that the standards are inconsistent with rulemaking authority prescribed by the Act.

Chemical Education, Certification, and Signage

Under the Act, to educate employers, employees, and the public about the hazards of exposure to hazardous chemicals and the requirements of the occupational safety and health hazard communication standard referenced above, LARA periodically must distribute public service announcements to newspapers and television and radio stations throughout Michigan.

The Act also requires the Department of Agriculture and Rural Development (MDARD) at least annually to certify to LARA a list of chemicals regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, Part 83 (Pesticide Control) of the Natural Resources and Environmental Protection Act, and any rules or regulations promulgated under either of those two Acts.

Currently, an employer subject to the hazardous chemical standards prescribed by the Michigan Occupational Safety and Health Act must post signs throughout the workplace advising employees of certain information. Among other information, the signage must advise employees that as an alternative to requesting the employer for a safety data sheet for a hazardous chemical in the workplace the employee may obtain a copy of the safety data sheet from LARA. The sign must include the address and phone number of the division of LARA responsible for responding to such requests.

Agricultural Standards

Additionally, an agricultural employer must provide, at no cost to the agricultural employee, potable water in locations that are readily accessible to all agricultural employees. Also, an agricultural employer that employs fewer than 11 agricultural employees must ensure that an available toilet facility and hand-washing facility is either provided or available. The DHHS must make copies of these requirements available to the public at cost.

Variances

The Act allows the DHHS to grant variances from standards under certain circumstances, such as if the employer cannot comply because of a lack of professional or technical personnel, a lack of material and equipment, or a need to participate in an experiment approved by the DHHS designed to demonstrate new techniques for safeguarding health and safety.

An affected employer may apply to the appropriate department for a rule or an order for a variance from a standard. The appropriate department must issue a rule or an order if it determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those that would prevail if the employer complied with the standard. The rule or order must prescribe the conditions that the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and use to the extent they differ from the standard in question.

The Act allows a rule or order to be modified or revoked upon application by an employer, employees, their representatives, or by the appropriate department on its own motion at any time after six months from its issuance. Instead, under the bill, LEO could modify or revoke a rule or order at any time after six months after the date the rule or order was issued if one of the following applied:

-- The employer, employees, or representative of the employees requested that the rule be modified or rescinded.
-- The Department made its own motion to modify or rescind the rule or order.

Inspections

Currently, an employee or employee representative who believes that a violation of a standard exists that threatens physical harm to an employee may request an inspection by giving written notice of the condition to the appropriate department. If an employee or employee representative believes that a condition exists which may present an imminent danger to a person, the employee or employee representative may notify the appropriate department in the most expedient manner without regard to a written notice.

The appropriate department must establish procedures for informal review of any decision resulting from a request or notice to inspect for an alleged violation and furnish the employees or representative of employees requesting a review a written statement of the final disposition of the notice or complaint and reasons for the disposition.

A department representative may enter without delay a place of employment to physically inspect or investigate conditions of employment. The appropriate department may require the attendance and testimony of witnesses and the production of evidence under oath. The appropriate department may apply to a court to issue an order requiring a person to appear and produce evidence or give testimony relating to the matter under investigation or in question.

In the performance of duties in the administration and enforcement of the Act, a department representative or an employee of the appropriate department is not personally liable for damages sustained by an action on the representative's or employee's part, except for wanton and willful negligence.

If, as the result of an inspection or investigation, the department representative believes that an employer has violated the Act, an order issued under the Act, or a rule or standard promulgated under the Act, the department representative must issue a citation immediately or within 90 days after the completion of the physical inspection or investigation. The citation must be in writing and must describe with particularity the nature of the violation. The citation must state a reasonable time by which the violation is to be abated with due regard to the seriousness of the hazard and the difficulty of abating it. The citation and the proposed penalty must be sent to the employer, and a copy must be filed at the time of issuance with the appropriate department. The employer must notify the appropriate department of compliance with the Act. The Act also requires the appropriate department to issue notices instead of citations in specified instances and vacate citations upon an employer's remediation.

Citation Appeals

Currently, within 15 working days after receipt of a citation and proposed penalty, if any, an employer may petition the appropriate department for a grant of additional time for compliance, modification, or dismissal of the citation and a proposed penalty. Similarly, an employee or employee representative may petition the appropriate department alleging the period of time fixed in the citation for the abatement of the violation is unreasonable. When a petition is submitted to the department by the employer, the employer must transmit a copy immediately to the affected employees or the employee representative. When a petition is submitted to the department by an employee or employee representative, the department must submit a copy of the petition immediately to the employer after deleting the name of

the employee or employee representative, if so requested by the employee or employee representative.

Upon receipt of a petition, the appropriate department may modify the time schedule for compliance, modify the citation, dismiss the citation, or dismiss or modify any proposed penalty.

Board of Health and Safety Compliance and Appeals Meeting Location

Currently, the Board of Health and Safety Compliance and Appeals must meet as necessary to discharge its duties under the Act and must hold regular quarterly meetings in Lansing. The bill would delete the requirement for the Board to hold its regular quarterly meetings in Lansing.

Occupational Health Education and Training Program

The DHHS must conduct an occupational health education and training program with employees and employers for the prevention of occupational health hazards, to achieve long-range solutions to occupational health problems, and to train persons in the recognition and control of occupational health hazards.

Annual Reporting Requirement

Currently, LEO and the DHHS must report annually by January 31 in writing to the Senate and House Labor Committees and the Senate and House Health Policy Committees specifying the provisions of the Act in which LEO and the DHHS's authorities overlap, as well as all agreements and administrative procedures to coordinate joint enforcement of the Act.

The bill would delete this requirement.

Parity with the Equivalent Federal Penalty

Currently, the Board of Health and Safety Compliance and Appeals must assess an employer a civil penalty of up to $7,000 for the following:

-- If an employer receives a citation for a serious violation of the Act, an order issued under the Act, or a rule or standard promulgated under the Act, for each violation.
-- If an employer violates a posting requirement prescribed under the Act, for each violation.

Additionally, the Board may assess an employer a civil penalty of up to $7,000 for the following:

-- If the employer fails to correct a violation for which a citation was issued within the period permitted for its correction, for each day during which the failure or violation continues.
-- If an employer receives a citation for a violation of the Act, an order issued under the Act, or a rule or standard promulgated under the Act, for each violation that is specifically determined not to be of a serious nature.

Under the bill, instead of the civil penalties of up to $7,000, the penalty would be the equivalent Federal penalty as the penalty existed on the bill's effective date or the penalty established by the Director of LEO as described below, as applicable.

Finally, if an employer willfully or repeatedly violates the Act, an order issued pursuant to the Act, or a rule or standard promulgated under the Act, the Board may assess the employer a

civil penalty of not more than $70,000 for each violation, but not less than $5,000 for each willful violation.

Under the bill, instead of the $5,000 to $70,000 civil penalty, the penalty would be the equivalent Federal penalty as the equivalent Federal penalty existed on the bill's effective date or the penalty established by the Director of LEO as described below, as applicable.

"Equivalent Federal penalty" would mean the Federal penalty for the Federal violation that is the equivalent of or most equivalent to a violation of the Act or a rule or standard promulgated under the Act. "Federal penalty" would mean the penalty for a Federal violation. "Federal violation" would mean a violation of the Federal Occupational Safety and Health Act or an occupational safety and health standard adopted or promulgated by the DoL under the Federal Occupational Safety and Health Act.

Under the bill, beginning on the bill's effective date, the Director of LEO would have to initiate the processing of an administrative rule that changed a penalty to be equal to the equivalent Federal penalty within 10 working days after the date that a Federal penalty was changed.

Expansion of Exemptions to Disclosure

Currently, information reported to or otherwise obtained by a department from an employee in connection with an inspection, investigation, or proceeding under the Michigan Occupational Safety and Health Act must be made available to the public pursuant to FOIA; however, the identity of an employee or any information that may lead to the identification of an employee, who provides information pertaining to a possible violation or violations of the Act is exempt from disclosure.

In addition, the bill would exempt from disclosure reports that LEO created and information reported to or otherwise obtained by LEO regarding an employer's request for consultation from LEO.

Repealed Section

The bill would repeal Section 1035a of the Act.[1]

Senate Bill 50

The bill would delete the following sentencing guidelines for violations established by Section 1035a of Michigan Occupational Safety and Health Act:

-- A violation causing employee death.
-- A subsequent violation causing employee death.

MCL 408.1004 et al. (S.B. 49)
777.14b (S.B. 50)

BACKGROUND

Effective August 11, 2019, Governor Whitmer's Executive Order 2019-13 created LEO and reorganized various functions of State departments. Among other reorganizations, the Order

[1] Section 1035a of the Act has not taken effect. Enacting Section 5 of Public Act 105 of 1991 required Section 35 of the Act to be repealed for Section 35a to take effect. Section 35 has not been repealed so Section 35a still has not taken effect.

transferred Michigan Occupational Safety and Health Administration from LARA to LEO, along with LARA's authorities, powers, duties, functions, and responsibilities under the Michigan Occupational Safety and Health Act.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 49 and 50 are reintroductions of Senate Bills 830 and 829, respectively. Senate Bills 830 and 829 passed the Senate and were reported by the House Committee on Labor but saw no further action.

FISCAL IMPACT

Senate Bill 49

The bills would have an indeterminate fiscal impact on the State and no fiscal impact on local units of government. It is unknown how Michigan Occupational Safety and Health Act (MiOSHA) civil fine revenue would be affected by moving from the current statute rate to the Federal guidelines. The Federal guidelines for penalties are based on the severity of the violation, the size of the employer, the good faith efforts of the employer, and the previous violations of the employer. It is unknown how these guidelines would differ from the current civil penalty fines charged to employers that violate MiOSHA guidelines. Additionally, by setting the civil penalty fine to the Federal level, future changes at the Federal level could further affect civil fine revenue, which is impossible to predict. Civil penalty fine revenue from MiOSHA is credited to the General Fund, and so any impact to MiOSHA civil penalty fine revenue would affect the General Fund.

The bill would have no fiscal impact on courts or the Attorney General.

Senate Bill 50

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.