

Act No. 416
Public Acts of 2012
Approved by the Governor
December 20, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Bumstead

ENROLLED HOUSE BILL No. 5922

AN ACT to amend 1974 PA 154, entitled "An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal certain acts and parts of act on specific dates," by amending sections 4, 6, 11, 16, 21, and 69 (MCL 408.1004, 408.1006, 408.1011, 408.1016, 408.1021, and 408.1069), section 11 as amended by 1986 PA 80 and sections 16 and 21 as amended by 1991 PA 105; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 4. (1) "Agricultural operations" means the work activity designated in major groups 01 and 02 of the standard industrial classification manual, United States bureau of the budget, 1972 edition. Agricultural operations include any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations including preparation for market delivery to storage or market or to carriers for transportation to market.

(2) "Authorized employee representative" or "representative of employee" means a person designated by a labor organization certified by the national labor relations board or employment relations commission as defined in section 2(c) of 1939 PA 176, MCL 423.2, as the bargaining representative for the affected employees. In the absence of certification, it shall be a person designated by the organization having a collective bargaining relationship with the employer and designated as having a collective bargaining relationship with the employer by the affected employees. If a labor organization has not been certified, or if no organization has a collective bargaining relationship with the employer, "authorized employee representative" or "representative of employee" means a person designated by the affected employees to represent them for the purpose of proceedings under this act.

(3) "Board" means the board of health and safety compliance and appeals created in section 46.

(4) "Construction operations" means the work activity designated in major groups 15, 16, and 17 of the standard industrial classification manual, United States bureau of the budget, 1972 edition.

(5) "Director" means the director of the department of licensing and regulatory affairs.

(6) "Department attorney" means the attorney general or the authorized representative of the attorney general.

(7) "Domestic employment" means that employment involving an employee specifically employed by a householder to engage in work or an activity relating to the operation of a household and its surroundings, whether or not the employee resides in the household.

(8) "Mines", except as provided in subdivision (d), means all of the following:

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

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

(c) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

(d) This subsection does not include industrial borrow pits, or sand, gravel, or crushed and dimension stone quarrying operations, or surface construction operations.

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

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

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

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

(5) "Standard" means a health or safety standard that specifies conditions, or the adoption or use of 1 or more practices, means, methods, operations, or processes necessary to provide safe and healthful employment in places of employment.

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

(7) "Wilful", for the purpose of criminal prosecutions, means the intent to do an act knowingly and purposely by an individual who, having a free will and choice, either intentionally disregards a requirement of this act, or a rule or standard promulgated pursuant to this act, or is knowingly and purposely indifferent to a requirement of this act, or a rule or standard promulgated pursuant to this act. An omission or failure to act is wilful if it is done knowingly and purposely. Wilful does not require a showing of moral turpitude, evil purpose, or criminal intent provided the individual is shown to have acted or to have failed to act knowingly and purposely.

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

Sec. 11. An employer shall:

(a) Furnish to each employee, employment and a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.

(b) Comply with this act and with the rules and standards promulgated and the orders issued pursuant to this act.

(c) Post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act, including applicable rules and standards.

(d) Provide personal protective equipment at the employer's expense when it is specifically required to be provided at the employer's expense in a rule or a standard promulgated under this act. When promulgating a rule or a standard concerning personal protective equipment, the director shall use at least the following criteria in determining who should pay for the equipment:

(i) Whether the equipment is transferable between employees.

(ii) Whether the equipment is maintained by the employer.

(iii) Whether the equipment generally remains at the work site after the work activity has been completed.

(iv) The amount of personal use involved with the equipment.

Sec. 16. The director may promulgate standards in accordance with this act to prevent accidents in places of employment and to protect the life and safety of employees. If another state agency has rules promulgated before the effective date of this act that regulate a place of employment relative to the safety of the public, the rules of the other

state agency apply only to the safety of the public. If practicable, the standards promulgated shall be expressed in terms of objective criteria and of the performance desired.

Sec. 21. (1) Standards promulgated by the former general industry safety standards commission and standards promulgated by the former construction safety standards commission under this act that are in effect on the effective date of the amendatory act that repealed section 15 of this act are continued under section 31 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.231.

(2) The director shall promulgate an emergency safety standard in compliance with section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248, if the emergency safety standard is necessary to protect employees. If the director promulgates an emergency standard on a matter addressed by a federal standard, the director shall promulgate a standard that is substantially similar to the federal standard unless he or she determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in section 9, 16, or 19, or a combination thereof.

(3) Except for a standard adopted by reference pursuant to section 14, a standard approved by the director pursuant to section 16 or 19 shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 69. (1) The director may promulgate, amend, and rescind rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, with respect to matters necessary for the administration of this act.

(2) Declaratory rulings that concern the application of occupational safety and health standards promulgated pursuant to this act to specific facts shall be made solely by the director or his or her authorized representative with respect to occupational safety standards or occupational health standards, pursuant to section 63 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.263.

(3) Any occupational safety or health standard adopted by reference pursuant to section 14, promulgated pursuant to this act, or continued in effect pursuant to sections 21(1) and 24(1) is considered to supersede any occupational safety or health standard or rule promulgated pursuant to any other law of this state. However, if another state agency has authority to promulgate standards or rules applicable to the public safety or health, the rules and standards promulgated pursuant to this act do not supersede those other agency rules or standards but have concurrent applicability with those rules and standards.

Enacting section 1. Section 15 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1015, is repealed.

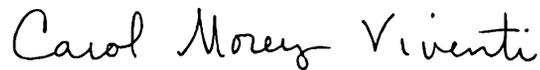
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

- (a) Senate Bill No. 1335.
- (b) Senate Bill No. 1336.
- (c) House Bill No. 5917.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor