

HOUSE BILL NO. 4915

July 18, 2023, Introduced by Reps. Martus, Fitzgerald, Weiss, Glanville, Hood, Farhat, Hoskins, Morgan, Steckloff and Snyder and referred to the Committee on Transportation, Mobility and Infrastructure.

A bill to amend 1993 PA 354, entitled
"Railroad code of 1993,"
by amending section 402 (MCL 462.402).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 402. ~~(1) As used in this section:~~
2 ~~(a) "Legal control" means legal control in whole or in part of~~
3 ~~any safe space.~~
4 ~~(b) "Person" means, in addition to a railroad, an individual,~~
5 ~~partnership, association, or corporation, and their respective~~
6 ~~trustees or receivers appointed by a court, that owns, leases, or~~

1 ~~otherwise has under his or their control land on which, or adjacent~~
2 ~~to which, is located and operated a railroad track or sidetrack~~
3 ~~that is part of or in any way connected with a railroad.~~

4 ~~(c) "Safe space" means that space whose height extends from~~
5 ~~the actual grade level to a distance 22 feet 6 inches above the top~~
6 ~~of the rails and whose width, along any railroad track or sidetrack~~
7 ~~with a radius of not less than 400 feet lateral curvature, extends~~
8 ~~8 feet 6 inches on both sides of a perpendicular from the center~~
9 ~~line of the track, or, along any railroad track or sidetrack with a~~
10 ~~radius of less than 400 feet lateral curvature, extends 9 feet on~~
11 ~~both sides of a perpendicular from the center line of the track.~~

12 ~~(d) "Union" means any labor organization that has a contract~~
13 ~~with an employer who is a common carrier.~~

14 ~~(1) (2)~~ A person shall not knowingly permit scrap iron,
15 lumber, debris, vegetation exceeding a height of 4 inches, marked
16 unevenness of terrain, or any material or condition whatsoever,
17 which unreasonably endangers an employee, to remain or continue in
18 the safe space over which the person has legal control.

19 ~~(2) (3)~~ **The Subject to subsection (3), the** department shall
20 make an inspection within 30 days upon written complaint by an
21 employee or union whose members are affected by a violation of this
22 section, or upon written complaint by any person, including a
23 common carrier, affected by the violation. Each party of interest
24 ~~shall~~ **must** be given a 15-day notice of the date of the inspection.
25 The department may dispose of a complaint by denial for lack of
26 merit in fact or in law. The department shall issue a proposed
27 order to all parties of interest after the complaint is inspected.

28 **(3) If a written complaint described in subsection (2) is**
29 **filed by an employee, that employee or a representative of the**

1 employee must be allowed to be present during the inspection by the
2 department. If the inspection results in the department issuing an
3 order under subsection (4) or (5), that employee or a
4 representative of the employee must be allowed to be present during
5 any subsequent inspections for compliance with the order.

6 (4) If no written objection to the proposed order is filed
7 with the department within 30 days after the date the proposed
8 order is transmitted, ~~it shall become~~ **the proposed order becomes**
9 the order of the department.

10 (5) If, after receipt of the proposed order of the inspection,
11 a party ~~who~~ **that** is opposed to the proposed order ~~may file~~ **files** a
12 written request for a hearing, ~~and~~ the department, after notice,
13 shall hold a hearing and shall issue its order.

14 (6) If an order issued pursuant to subsection (4) or (5) is
15 not complied with, ~~the~~ **both of the following apply:**

16 (a) **The** department or any person feeling aggrieved by the
17 violation of the order, including a common carrier or union any of
18 whose members feel aggrieved by the violation of the order, may
19 apply to the circuit court for the county of Ingham or to the
20 circuit court of any county in which the department has found there
21 is a violation of this section, for a court order to enforce the
22 department's order. A copy of the application for the court order
23 ~~shall~~ **must** be sent by registered or certified mail to the
24 department and to any party to whom the department order applies.
25 The circuit court, on its own motion, may join the department as a
26 party to an application made to the court for enforcement of the
27 order.

28 (b) **Unless otherwise agreed to by the department, the person**
29 **against whom the order is issued, and the complainant, a person**

1 that fails to comply with an order within 30 days after the
2 compliance deadline set in the order is subject to an
3 administrative fine of not less than \$1,000.00 and not more than
4 \$10,000.00 for each day of noncompliance after the compliance
5 deadline. On the request of the person against whom the
6 administrative fine is issued, the department shall hold a hearing
7 conducted pursuant to the administrative procedures act of 1969,
8 1969 PA 306, MCL 24.201 to 24.328. If an administrative fine issued
9 under this subdivision is not paid, the department shall notify the
10 attorney general, and the attorney general shall bring an action in
11 a court of competent jurisdiction to recover the fine.

12 (7) ~~The~~ Except as otherwise provided in subsection (6) (b), the
13 prosecuting attorney of the county in which the violation occurs
14 shall enforce this section.

15 (8) As used in this section:

16 (a) "Legal control" means legal control in whole or in part of
17 any safe space.

18 (b) "Person" means, in addition to a railroad, an individual,
19 partnership, association, or corporation, and their respective
20 trustees or receivers appointed by a court, that owns, leases, or
21 otherwise controls land on which, or adjacent to which, is located
22 and operated a railroad track or sidetrack that is part of or in
23 any way connected with a railroad.

24 (c) "Safe space" means that space with a height extending from
25 the actual grade level to a distance 22 feet 6 inches above the top
26 of the rails and a width, along any railroad track or sidetrack
27 with a radius of not less than 400 feet lateral curvature,
28 extending 8 feet 6 inches on both sides of a perpendicular from the
29 center line of the track, or, along any railroad track or sidetrack

1 with a radius of less than 400 feet lateral curvature, extending 9
2 feet on both sides of a perpendicular from the center line of the
3 track.

4 (d) "Union" means any labor organization that has a contract
5 with an employer that is a common carrier.