

Legislative Analysis



REPORTING DEATHS OR INJURIES ON A FAMILY FARM

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<http://www.house.mi.gov/hfa>

House Bill 4031 as enrolled

Sponsor: Rep. Bronna Kahle

House Committee: Agriculture

Senate Committee: Economic and Small Business Development

Complete to 2-6-23

Analysis available at
<http://www.legislature.mi.gov>

(Vetoed by the Governor 2-4-22)

BRIEF SUMMARY: House Bill 4031 would amend the Michigan Occupational Safety and Health Act to change requirements and penalties for an employer report of a death or injury on a family farm.

FISCAL IMPACT: House Bill 4031 would have an indeterminate fiscal impact on the state and no fiscal impact on local units of government. It is not possible to determine the number of deaths or injuries that would occur on a family farm to the owner or a family member or to know the number of civil penalties or fines that would subsequently be reduced under the bill. Any decrease in the amount of civil fine revenue collected would impact the state general fund. Under section 36 of the Michigan Occupational Safety and Health Act, civil penalty revenue that is collected is required to be credited to the state general fund.

THE APPARENT PROBLEM:

The Michigan Occupational Safety and Health Administration (MIOSHA) currently requires an employer to report the death of an employee from a work-related incident within eight hours after the incident, no matter the relationship the employer and employee share. Failure to do so results in fines. For some farm operations in Michigan, this requirement could prove difficult, especially when the employer and employee have a familial relationship. Families endure immense grief when losing a loved one, especially due to a sudden work-related incident, and requiring the reporting of the incident within eight hours can be unrealistic. Additionally, because family-run farms are often small operations, the fines associated with the failure to report can have crippling ramifications. One family to endure the tragic loss of a family member and subsequent MIOSHA fines were the Eisenmann family, who operate Eisenmann's Golden Acres (EGA), Inc. According to news reports, there are three employees at EGA.¹ Legislation was proposed to ensure that family farming operations that experience tragic loss due to work-related incidents do not face large fines if they fail to report the incident to MIOSHA within the eight-hour time frame.

THE CONTENT OF THE BILL:

Under MIOSHA Safety and Health Standard Part 11, R 408.221201 et seq., an employer must report to MIOSHA any in-patient hospitalization, amputation, or loss of an eye within 24 hours of a work-related incident. R 408.22139(1) requires an employer, within eight hours after the death of any employee from a work-related incident, to report the fatality to MIOSHA by telephone.²

¹ <https://www.michiganfarmnews.com/family-grieves-a-farm-fatality-while-facing-a-12-000-fine>

² https://www.michigan.gov/documents/CIS_WSH_part11ad_37844_7.pdf

The bill would provide that, if a death or injury occurs on a ***family farm*** to the owner of the family farm or a ***family member*** of the owner, and if the employer fails to report the death or injury within the current required time periods, a civil penalty or fine assessed against the employer would have to be reduced by the maximum amount allowed under either the act or a rule issued under the act.

Family farm would mean a farming operation (including a sole proprietorship, partnership, or corporation) that meets all of the following conditions:

- It is wholly owned by the operator or by the operator's family members.
- During the immediately preceding 12-month period, all of the following conditions were met:
 - More than 50% of the employees of the farming operation were family members of its owner or operator.
 - The farming operation did not employ at any one time more than nine employees who were not family members of its owner or operator.
 - The farming operation did not operate a temporary labor camp.

The term ***family farm*** would *not* include either of the following:

- A farming operation that is organized as a nonfamily corporation or cooperation.
- A farming operation with a hired manager who is not a family member of the owner or operator of the farming operation.

Family member would mean a member of the family as defined by section 4946(d) of the Internal Revenue Code.³

MCL 408.1035

ARGUMENTS:

For:

Supporters of the bill argued that requiring a family member to report the death of a loved one to MIOSHA within eight hours of the incident is unreasonable and cruel. A grieving family member cannot be expected to remember to call MIOSHA while also experiencing shock and grief. Small family farms are often operated by a few close family members, and remembering to report their loss to MIOSHA is often the last thing on their minds during a tragedy. Additionally, the fines levied against these small operations can be crippling to a small family-run farm that often sees small profits. The fines levied can often equal a year's worth of profits for these family farms.

Against:

Critics of the bill argued that the MIOSHA time frames are important for MIOSHA to properly investigate a work-related death. While eight hours may seem like a short time, it is imperative

See also <https://adms.apps.lara.state.mi.us/File/ViewDmsDocument/12956>

³ 26 USC 4946: "the family of any individual shall include only his [or her] spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren."

<https://www.govinfo.gov/content/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleD-chap42-subchapA-sec4946.pdf>.

that MIOSHA be able to inspect the work site and interview others from the premises while the scene and information are minimally disturbed. Moreover, current MIOSHA time frames mirror federal standards under the Occupational Safety and Health Act (OSHA) and related regulations, which provide the minimum that state policies must adhere to.

Vetoed 2-4-22:

Governor Whitmer noted in her veto message that current MIOSHA policies allow the agency to reduce fines on family farms by up to 90% when employers cooperate with MIOSHA investigations, while the bill would require a reduction for certain family farms in all cases, “even when the employer makes no effort to timely cooperate with an investigation.” The governor vetoed the bill based in part on her belief that the law “should not require the agency to waive fines for employers that do not cooperate in good faith.” In addition, the governor argued that the bill’s definition of the term “family farm” was inconsistent with federal OSHA policies in a way that could lead to confusion and possible state noncompliance with federal requirements.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.