

REPORTING DEATHS OR INJURIES ON A FAMILY FARM

Phone: (517) 373-8080
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House Bill 4031 (H-2) as reported from committee

Sponsor: Rep. Bronna Kahle

Committee: Agriculture

Complete to 5-5-21

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

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: A fiscal analysis is in progress.

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 that 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 share 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 then MIOSHA fines for failure to report and workplace hazards were the Eisenmann family, who operate Eisenmann's Golden Acres, Inc. According to Michigan Farm News, there are three employees at EGA, Inc.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

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

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

death or injury within the current required time periods, a civil penalty or fine assessed against the employer would have to be reduced by 95%.

Family farm would mean a farm where the majority of the business is owned by the operator or the operator's family members or a farm that is organized as a sole proprietorship, partnership, or family corporation. It would not include a farm that is organized as a nonfamily corporation or cooperation or a farm with a hired manager that is not a family member of the operator.

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

The bill also would update language to reflect departmental name changes for the Department of Labor and Economic Opportunity (formerly the Department of Labor) and the Department of Health and Human Services (formerly the Department of Public Health).

MCL 408.1035

ARGUMENTS:

For:

Supporters of the bill argue 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 argue that the MIOSHA time frames are important for MIOSHA to be able to properly investigate a work-related death. While eight hours may seem like a short time frame, it is imperative that MIOSHA be able to inspect the work site and interview others from the premises while the scene and information are minimally disturbed. Additionally, current MIOSHA penalties mirror federal Occupational Safety and Health Administration regulations, and all business operations, no matter their revenues, should adhere to safe workplace practices and environments for the benefit of their employees, both familial and nonfamilial.

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>.

POSITIONS:

The Michigan Farm Bureau indicated support for the concept of the bill. (4-28-21)

Representatives of the following entities testified in opposition to the bill (2-24-21):

- Michigan Occupational Safety and Health Administration
- Department of Labor and Economic Opportunity

The following entities indicated opposition to the bill (2-24-21):

- Michigan Immigrant Rights Center
- Michigan Association for Justice
- Michigan League for Public Policy

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ 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.