

UPDATE MIOSHA ADMINISTRATION AND PENALTIES

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Senate Bills 829 and 830 as reported from House committee

Sponsor: Sen. John Cherry

House Committee: Labor

Senate Committee: Labor

Complete to 12-7-24

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

SUMMARY:

Senate Bill 830 would update Michigan's occupational health and safety standards to reflect the transfer of responsibility for administering and enforcing those standards to the Department of Labor and Economic Opportunity and to incorporate updated federal penalties. Senate Bill 829 is a companion bill that would make complementary updates to the Code of Criminal Procedure.

Senate Bill 830 would amend the Michigan Occupational Safety and Health Act (MIOSHA) to transfer administration and enforcement of the act to the Department of Labor and Economic Opportunity (LEO) in alignment with Executive Order 2019-13 (see **Background**, below) and to modify the act's prescribed maximum penalties to match federal standards.

Currently, MIOSHA provides that LEO is responsible for administering and enforcing the provisions of MIOSHA pertaining to occupational safety, and the Department of Health and Human Services (DHHS) is responsible for administering and enforcing provisions relating to occupational health. Both departments must annually report the provisions of MIOSHA where their authority overlaps, and all agreements and administrative procedures to coordinate joint enforcement,¹ to the appropriate House and Senate committees.

Senate Bill 830 would remove these provisions and instead provide that LEO administers and enforces the entirety of MIOSHA, in accordance with E.O. 2019-13.

LEO authorities and responsibilities

Under the bill, LEO would have the sole authority to do all of the following:²

- Conduct an occupational health education and training program.
- Administer and enforce the federal Field Sanitation Standard in a manner that is consistent with the federal Occupational Safety and Health Administration (OSHA) and distribute free copies of the Field Sanitation Standard and state-level agricultural sanitation standards to the public.
- Grant, modify, or revoke variances from an occupational health and safety standard:
 - Approve an employer's application for a temporary order to grant a variance from a MIOSHA standard or portion of a standard and issue an interim order to be effective until a decision on the temporary order is made.

¹ Any changes to those agreements or procedures must also be reported in writing within 15 days.

² Current law provides that either LEO or DHHS, as appropriate, has these responsibilities.

- Grant a variance from a standard or portion of a standard to allow an employer to participate in an approved experiment designed to demonstrate or validate new and improved techniques to safeguard worker safety.
- Grant an employer's application for a variance from a standard upon determining that the conditions, practices, means, methods, operations, or processes used or proposed will provide employment and places of employment that are as safe and healthful as those that would prevail if the employer complied with the standard.
- Modify or revoke a rule or order granting a variance.
- Investigate alleged MIOSHA violations:
 - Physically inspect or investigate conditions of employment, and all pertinent conditions, equipment, and materials in a place of employment, and privately question the employer, owner, agent, operator, or an employee with respect to safety or health.
 - Apply to the appropriate judicial officer for a warrant if permission to enter a place of employment is denied.
 - Require the attendance and testimony of witnesses and the production of evidence under oath when conducting inspections and investigations.
 - Apply for a court order requiring a person to appear and produce evidence or give testimony related to an investigation.
 - Conduct an inspection upon receiving a complaint about a violation of a standard that threatens physical harm to an employee and determining that there are reasonable grounds for the complaint.
 - When applicable, notify a complainant and employer of a determination that there are not reasonable grounds to believe an alleged violation exists.
 - Establish procedures for the informal review of any decision resulting from a request or notice to inspect an alleged violation.
 - If an employee or designated employee representative requests a review, provide a written statement of the final disposition of the notice or complaint and the reasons for the disposition.
- Address safety hazards:
 - If imminent danger exists in a place of employment, inform the employer and affected employees, immediately recommend an order to be issued that requires necessary action to avoid, correct, or remove the danger, and tag the equipment or process that is the source of the danger.
 - Conduct an immediate inspection or otherwise abate a danger after being notified that a condition exists that may present an immediate danger.
 - Issue a citation for a violation of MIOSHA or a related order, rule, or standard and notify employers that do not correct the violation within the permitted correction period.³
- Modify a schedule for compliance, modify or dismiss a citation, or modify or dismiss a proposed penalty after receiving a petition from an employer, employee, or employee bargaining representative.

³ Currently, citations must be issued within 90 days after the completion of an inspection or investigation, and citations and notices must be sent by registered mail to the employer. The bill would require LEO representatives to issue citations within 90 days after the completion of a conference with the employer or the employee or employee representative, as applicable, for the inspection or investigation, and citations and notices would have to be sent by registered mail. Copies of the citation and employer notices of compliance would have to be filed with LEO.

LEO, rather than the Department of Licensing and Regulatory Affairs (LARA), would also be responsible for the following:

- Making copies of federal occupational safety and health standards available to the public at no cost.
- Administering and enforcing the federal Hazard Communication Standard in a manner consistent with federal administration and enforcement.⁴
- Periodically distributing public service announcements to newspapers, television stations, and radio stations throughout Michigan to educate employers, employees, and the public about the requirements of the Hazard Communication Standard, certain state-level requirements, and the hazards of exposure to hazardous chemicals.
- Providing copies of safety data sheets for hazardous chemicals to employees.
- Ordering appropriate relief (such as rehire, reinstatement, or back pay) upon receiving a complaint filed by an employee who suffers a loss of wages or fringe benefits or who is in any manner discriminated against for refusing to operate equipment or engage in a process that has been tagged as a source of imminent danger.
- Responding within 24 hours after receiving an imminent danger complaint that concerns an unknown and unlabeled container of chemicals or concerns a container of hazardous chemicals that is not labeled or for which a safety data sheet is not available.

Penalties

MIOSHA allows the Board of Health and Safety Compliance and Appeals to assess civil penalties to employers, taking into consideration the size of the business, the seriousness of the violation, the good-faith efforts of the employer, and the history of previous citations. The board can issue a penalty of up to \$7,000 for each of the following:

- A citation for a serious violation of MIOSHA or rules, orders or standards promulgated under the act.
- Each day that a failure to correct a violation for which a citation was issued continues beyond the permitted correction period.
- A citation for a violation of MIOSHA or a rule, order, or standard promulgated under the act that is specifically determined not to be of a serious nature.
- A violation of a posting requirement under MIOSHA, up to \$7,000 for each violation.

For a willful or repeated violation of MIOSHA or a rule, order, or standard promulgated under the act, the board can currently issue a penalty of up to \$70,000 for each violation, but at least \$5,000 for each willful violation.

Under the bill, the board would instead assess a civil penalty for each violation described above of up to the *equivalent federal penalty*. If a federal penalty is changed, the LEO director would have to initiate the processing of an administrative rule to update the penalty within 10 working days.

Equivalent federal penalty would mean the penalty for a violation of the Occupational Safety and Health Act, or a standard adopted or promulgated under that act, that is equivalent or most equivalent to a violation of MIOSHA or a rule or standard promulgated under MIOSHA.⁵

⁴ See: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>.

⁵ The maximum penalties for 2024 can be found here: <https://www.osha.gov/penalties/>.

(Current penalties for a willful violation of MIOSHA or a related order, rule, or standard that causes the death of an employee, knowingly making a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to MIOSHA or fails to maintain or transmit required records or reports of work illnesses or injuries and chemical exposures, and giving unauthorized advance notice of an investigation or inspection would not be amended.⁶)

Confidentiality

Currently, information reported by or otherwise obtained from an employee in connection with an inspection, investigation, or proceeding under MIOSHA must be made publicly available pursuant to the Freedom of Information Act (FOIA), except for information that might reveal a trade secret or information that identifies (or may lead to the identification of) an employee who provides information related to a possible MIOSHA violation. Under the bill, reports that LEO creates and obtains regarding an employer's request for consultation on occupational safety and health issues would also be exempt from FOIA disclosure.

Additional provisions

The bill would amend other sections of MIOSHA to reflect LEO's sole administration and enforcement authority, remove references to DHHS, LARA, and related officers, and update references to the Consultation Education and Training (CET) Division and the CET Fund.

MIOSHA currently requires the Board of Health and Safety Compliance and Appeals to hold quarterly meetings in Lansing. Under the bill, the board's quarterly meetings would no longer be required to be held in Lansing.

Finally, the bill would repeal section 35a of the act, which prescribes penalties for MIOSHA violations that would apply if MIOSHA's incorporation of federal OSHA standards is ruled to be unconstitutional and current penalties are repealed.⁷

MCL 408.1004 et seq. (amended); MCL 408.1035a (repealed)

Senate Bill 829 would amend the sentencing guidelines chapter of the Code of Criminal Procedure to remove references to section 35a of MIOSHA, which would be repealed by Senate Bill 830.

The bill cannot take effect unless SB 830 is also enacted.

MCL 777.14b

⁶ A willful violation that causes the death of an employee is a felony punishable for a first violation by up to one year's imprisonment, a fine of up to \$10,000, or both, and punishable for a repeated violation by up to three years' imprisonment, a fine of \$20,000, or both. Knowingly making a false statement or failing to maintain or transmit required reports is a misdemeanor punishable by up to six month's imprisonment, a fine of up to \$10,000, or both. Giving unauthorized notice of an investigation or inspection is a misdemeanor punishable by up to six months' imprisonment, a fine of up to \$1,000, or both.

⁷ Senate Bill 830 refers to this section as 1035a, rather than 35a.

BACKGROUND:

Executive Order 2019-13 transferred the Michigan Occupational Safety and Health Administration and LARA's authorities, powers, duties, and functions under the Michigan Occupational Safety and Health Act from LARA to LEO.⁸

Michigan is one of 27 states authorized by the federal government to have their own occupational safety and health regulations and standards. (Puerto Rico and the U.S. Virgin Islands also have their own regulations.) OSHA requires those state plans, including MIOSHA, to adopt maximum penalty levels that are at least as effective as the federal OSHA penalties.

BRIEF DISCUSSION:

According to Senate and House committee testimony, Michigan is currently one of six states that have not adopted the most recent OSHA maximum penalties. If Michigan does not become compliant with the federal penalties, OSHA could take over occupational health and safety enforcement from the Michigan Occupational Health and Safety Administration. Supporters of Senate Bills 829 and 830 suggest that employers would prefer to keep the state-run program because of greater flexibility and accessibility and warn that, since OSHA only covers private-sector employees, the 500,000 public sector workers in Michigan would no longer be covered if OSHA takes over enforcement.

FISCAL IMPACT:

A fiscal analysis is in progress.

POSITIONS:

Representatives of the following entities testified in support of the bill (11-14-24):

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

The following entities indicated support for the bill (11-14-24):

- Michigan AFL-CIO
- Michigan Regional Council of Carpenters and Millwrights
- International Brotherhood of Electrical Workers Michigan State Conference
- United Food and Commercial Workers Local 876

The following entities indicated opposition to the bill (11-14-24):

- Home Builders Association of Michigan

Legislative Analyst: Holly Kuhn
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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.

⁸ <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2019-EO-13.pdf>.