

# HOUSE BILL No. 5252

January 27, 2016, Introduced by Rep. Kivela and referred to the Committee on Commerce and Trade.

A bill to amend 1939 PA 176, entitled

"An act to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; to make appropriations; and to prescribe means of enforcement and penalties for violations of this act,"

by amending sections 1, 2, 8, 14, 17, and 22 (MCL 423.1, 423.2, 423.8, 423.14, 423.17, and 423.22), as amended by 2012 PA 348.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. It is hereby declared as the public policy of this  
2 state that the best interests of the people of the state are served  
3 by ~~protecting their right to work in a manner consistent with~~  
4 ~~section 14(b) of the national labor relations act, 29 USC 164(b),~~

1 ~~and preventing or promptly settling~~ **THE PREVENTION OR PROMPT**  
2 **SETTLEMENT OF** labor disputes; that strikes and lockouts and other  
3 forms of industrial strife, regardless of where the merits of the  
4 controversy lie, are forces productive ultimately of economic  
5 waste; that the interests and rights of the consumers and the  
6 people of the state, while not direct parties thereto, should  
7 always be considered, respected and protected; and that the  
8 voluntary mediation of such disputes under the guidance and  
9 supervision of a governmental agency will tend to promote permanent  
10 industrial peace and the health, welfare, comfort and safety of the  
11 people of the state.

12 Sec. 2. As used in this act:

13 (a) "Company union" includes any employee association,  
14 committee, agency, or representation plan, formed or existing for  
15 the purpose, in whole or in part, of dealing with employers  
16 concerning grievances or terms and conditions of employment, which  
17 in any manner or to any extent, and by any form of participation,  
18 interference, or assistance, financial or otherwise, either in its  
19 organization, operation, or administration, is dominated or  
20 controlled, sponsored or supervised, maintained, directed, or  
21 financed by the employer.

22 (b) "Dispute" and "labor dispute" include, but are not  
23 restricted to, any controversy concerning terms, tenure, or  
24 conditions of employment, or concerning the association or  
25 representation of employees in negotiating, fixing, maintaining, or  
26 changing terms or conditions of employment, regardless of whether  
27 the disputants stand in the proximate relation of employer and

1 employee.

2 (c) "Commission" means the employment relations commission  
3 created by section 3.

4 (d) "Person" includes an individual, partnership, association,  
5 corporation, business trust, **OR** labor organization. ~~, or any other~~  
6 ~~private entity.~~

7 (e) "Employee" includes any employee, and is not limited to  
8 the employees of a particular employer, unless the act explicitly  
9 provides otherwise, and includes any individual whose work has  
10 ceased as a consequence of, or in connection with, any current  
11 labor dispute or because of any act that is illegal under this act,  
12 and who has not obtained any other regular and substantially  
13 equivalent employment, but does not include any individual employed  
14 as an agricultural laborer, or in the domestic service of any  
15 family or any person at his home, or any individual employed by his  
16 parent or spouse, or any individual employed as an executive or  
17 supervisor, or any individual employed by an employer subject to  
18 the railway labor act, 45 USC 151 to 188, or by any other person  
19 who is not an employer as defined in this act.

20 (f) "Employer" means a person and includes any person acting  
21 as an agent of an employer, but does not include the United States  
22 or any corporation wholly owned by the United States; any federal  
23 reserve bank; any employer subject to the railway labor act, 45 USC  
24 151 to 188; the state or any political subdivision thereof; **OR** any  
25 labor organization, or anyone acting in the capacity of officer or  
26 agent of such labor organization, other than when acting as an  
27 employer. ~~, or any entity subject to 1947 PA 336, MCL 423.201 to~~

1 423.217-

2 (g) "Labor organization" means any organization of any kind,  
3 or any agency or employee representation committee or plan, in  
4 which employees participate and that exists for the purpose, in  
5 whole or in part, of dealing with employers concerning grievances,  
6 labor disputes, wages, rates of pay, hours of employment, or  
7 conditions of work.

8 Sec. 8. Employees may ~~do any of the following:~~

9 ~~—— (a) Organize~~ **ORGANIZE** together or form, join, or assist in  
10 labor organization; engage in lawful concerted activities for the  
11 purpose of collective negotiation or bargaining or other mutual aid  
12 and protection; or negotiate or bargain collectively with their  
13 employers through representatives of their own free choice.

14 ~~—— (b) Refrain from any or all of the activities identified in~~  
15 ~~subdivision (a).~~

16 Sec. 14. ~~(1) An individual shall not be required as a~~  
17 ~~condition of obtaining or continuing employment to do any of the~~  
18 ~~following:~~

19 ~~—— (a) Refrain or resign from membership in, voluntary~~  
20 ~~affiliation with, or voluntary financial support of a labor~~  
21 ~~organization.~~

22 ~~—— (b) Become or remain a member of a labor organization.~~

23 ~~—— (c) Pay any dues, fees, assessments, or other charges or~~  
24 ~~expenses of any kind or amount or provide anything of value to a~~  
25 ~~labor organization.~~

26 ~~—— (d) Pay to any charitable organization or third party an~~  
27 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~

1 ~~fees, assessments, or other charges or expenses required of members~~  
2 ~~of or employees represented by a labor organization.~~

3 ~~—— (2) An agreement, contract, understanding, or practice between~~  
4 ~~or involving an employer and a labor organization that violates~~  
5 ~~subsection (1) is unlawful and unenforceable. This subsection~~  
6 ~~applies only to an agreement, contract, understanding, or practice~~  
7 ~~that takes effect or is extended or renewed after the effective~~  
8 ~~date of the 2012 amendatory act that amended this section.~~

9 ~~—— (3) Subsections (1) and (2) shall be implemented to the~~  
10 ~~maximum extent permitted by the United States constitution and~~  
11 ~~federal law.~~

12 ~~—— (4) The court of appeals has exclusive original jurisdiction~~  
13 ~~over any action challenging the validity of subsection (1), (2), or~~  
14 ~~(3). The court of appeals shall hear the action in an expedited~~  
15 ~~manner.~~

16 ~~—— (5) A person, employer, or labor organization that violates~~  
17 ~~subsection (1) is liable for a civil fine of not more than \$500.00.~~  
18 ~~A civil fine recovered under this section shall be submitted to the~~  
19 ~~state treasurer for deposit in the general fund of this state.~~

20 ~~—— (6) Except for actions required to be brought under subsection~~  
21 ~~(4), a person who suffers an injury as a result of a violation or~~  
22 ~~threatened violation of subsection (1) may bring a civil action for~~  
23 ~~damages, injunctive relief, or both. In addition, a court shall~~  
24 ~~award court costs and reasonable attorney fees to a plaintiff who~~  
25 ~~prevails in an action brought under this subsection. Remedies~~  
26 ~~provided for in this subsection are independent of and in addition~~  
27 ~~to other penalties and remedies prescribed by this act.~~

1 ~~—— (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated~~  
2 ~~to the department of licensing and regulatory affairs to be~~  
3 ~~expended to do all of the following regarding the amendatory act~~  
4 ~~that added this subsection:~~

5 ~~—— (a) Respond to public inquiries regarding the amendatory act.~~

6 ~~—— (b) Provide the commission with sufficient staff and other~~  
7 ~~resources to implement the amendatory act.~~

8 ~~—— (c) Inform employers, employees, and labor organizations~~  
9 ~~concerning their rights and responsibilities under the amendatory~~  
10 ~~act.~~

11 ~~—— (d) Any other purposes that the director of the department of~~  
12 ~~licensing and regulatory affairs determines in his or her~~  
13 ~~discretion are necessary to implement the amendatory act.~~ **NOTHING IN**

14 **THIS ACT SHALL BE CONSTRUED TO DO EITHER OF THE FOLLOWING:**

15 **(A) INTERFERE WITH THE RIGHT OF AN EMPLOYER TO ENTER INTO AN**  
16 **ALL-UNION AGREEMENT WITH 1 LABOR ORGANIZATION IF IT IS THE ONLY**  
17 **ORGANIZATION ESTABLISHED AMONG THE EMPLOYER'S EMPLOYEES AND**  
18 **RECOGNIZED BY THE EMPLOYER, BY CONSENT, AS THE REPRESENTATIVE OF A**  
19 **MAJORITY OF THE EMPLOYER'S EMPLOYEES.**

20 **(B) INTERFERE WITH THE RIGHT OF THE EMPLOYER TO MAKE AN ALL-**  
21 **UNION AGREEMENT WITH MORE THAN 1 LABOR ORGANIZATION ESTABLISHED**  
22 **AMONG THE EMPLOYER'S EMPLOYEES IF THE LABOR ORGANIZATIONS ARE**  
23 **RECOGNIZED BY THE EMPLOYER, BY CONSENT, AS THE REPRESENTATIVES OF A**  
24 **MAJORITY OF THE EMPLOYER'S EMPLOYEES.**

25 **Sec. 17. (1) An employee or other person shall not by force,**  
26 **intimidation, or unlawful threats compel or attempt to compel any**  
27 **person to do any of the following:**

1 ~~—— (a) Become or remain a member of a labor organization or~~  
 2 ~~otherwise affiliate with or financially support a labor~~  
 3 ~~organization.~~

4 ~~—— (b) Refrain from engaging in employment or refrain from~~  
 5 ~~joining a labor organization or otherwise affiliating with or~~  
 6 ~~financially supporting a labor organization.~~

7 ~~—— (c) Pay to any charitable organization or third party an~~  
 8 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~  
 9 ~~fees, assessments, or other charges or expenses required of members~~  
 10 ~~of or employees represented by a labor organization.~~

11 ~~—— (2) A person who violates this section is liable for a civil~~  
 12 ~~fine of not more than \$500.00. A civil fine recovered under this~~  
 13 ~~section shall be submitted to the state treasurer for deposit in~~  
 14 ~~the general fund of this state.~~

15 **(A) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION.**

16 **(B) REFRAIN FROM ENGAGING IN EMPLOYMENT.**

17 **(2) VIOLATION OF THIS SECTION IS A MISDEMEANOR.**

18 Sec. 22. (1) ~~It shall be unlawful for an~~ **AN** employer ~~to~~ **SHALL**  
 19 **NOT** engage in a lockout ~~or for~~ **AND** a labor organization ~~to~~ **SHALL**  
 20 **NOT** engage in or instigate a strike without first having served  
 21 notice as required in section 9.

22 ~~It shall be unlawful for any~~ **AN** individual ~~to~~ **SHALL NOT**  
 23 instigate a lockout or strike that is unlawful under this section.

24 (3) Any person may pursue any appropriate legal or equitable  
 25 remedy or other relief in any circuit court having jurisdiction  
 26 with respect to any act or conduct in violation of any of the  
 27 provisions of this act, except subsection (1) and sections ~~14(4),~~

1 16 ~~7~~ and 17a. The existence of a criminal penalty with respect to  
2 any such act or conduct does not preclude appropriate equitable  
3 relief.

4 Enacting section 1. This amendatory act takes effect 90 days  
5 after the date it is enacted into law.