

**SUBSTITUTE FOR
SENATE BILL NO. 713**

A bill to amend 1947 PA 336, entitled

"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"

by amending sections 2a, 6, and 10 (MCL 423.202a, 423.206, and 423.210), section 2a as added and section 6 as amended by 1994 PA 112 and section 10 as amended by 2014 PA 414, and by adding section 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) IF CONDITIONS CONSTITUTING A STRIKE IN VIOLATION
2 OF SECTION 2 BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES EXIST, THE
3 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL NOTIFY, AND A PARENT OF
4 A STUDENT IN THE SCHOOL DISTRICT MAY NOTIFY, THE COMMISSION OF THE

1 FULL OR PARTIAL DAYS A PUBLIC SCHOOL EMPLOYEE WAS ENGAGED IN THE
2 STRIKE.

3 (2) ~~(1) If a public school employer alleges that there is a~~
4 ~~strike by 1 or more public school employees in violation of section~~
5 ~~2, the~~ IF CONDITIONS CONSTITUTING A STRIKE IN VIOLATION OF SECTION
6 2 BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES EXIST, A public school
7 employer shall notify the commission AND THE SUPERINTENDENT OF
8 PUBLIC INSTRUCTION of the full or partial days a public school
9 employee was engaged in the alleged strike.

10 (3) ~~(2)~~ If a bargaining representative alleges that there is a
11 lockout by a public school employer in violation of section 2, the
12 bargaining representative shall notify the commission of the full
13 or partial days of the alleged lockout.

14 (4) ~~(3) Within 60~~ NOT MORE THAN 2 days after receipt of a
15 notice made pursuant to subsection (1), ~~or~~ (2), OR (3), the
16 commission shall conduct a hearing to determine if there has been a
17 violation and shall issue its decision and order. THE HEARING SHALL
18 OFFER AN OPPORTUNITY FOR THE BARGAINING REPRESENTATIVE, PUBLIC
19 SCHOOL EMPLOYER, OR PUBLIC SCHOOL EMPLOYEE TO OFFER TESTIMONY OR
20 OTHER EVIDENCE TO SUPPORT OR CONTEST THE ALLEGATION OF A STRIKE OR
21 LOCKOUT. A hearing conducted under this subsection is separate and
22 distinct from, and is not subject to the procedures and timelines
23 of, a proceeding conducted under section 6.

24 (5) ~~(4)~~ If, after a hearing under subsection ~~(3)~~ (4), a
25 majority of the commission finds that 1 or more public school
26 employees engaged in a strike in violation of section 2, the
27 commission shall ~~fine~~ DO ALL OF THE FOLLOWING:

1 (A) FINE each public school employee an amount equal to 1 day
2 of pay for that public school employee for each full or partial day
3 that he or she engaged in the strike. ~~and shall fine the bargaining~~
4 ~~representative of the public school employee or employees \$5,000.00~~
5 ~~for each full or partial day the public school employee or~~
6 ~~employees engaged in the strike.~~

7 (B) IF THE PUBLIC SCHOOL EMPLOYER COLLECTS MEMBERSHIP DUES OR
8 SERVICE FEES FOR PAYMENT TO THE BARGAINING REPRESENTATIVE, ORDER
9 THE PUBLIC SCHOOL EMPLOYER TO IMMEDIATELY STOP COLLECTING THOSE
10 DUES OR SERVICE FEES AFTER A DETERMINATION THAT A STRIKE IN
11 VIOLATION OF SECTION 2 OCCURRED.

12 (C) ORDER THAT THE INCUMBENT BARGAINING REPRESENTATIVE, ITS
13 PARENT ORGANIZATION, AND ANY AFFILIATES ARE NOT ELIGIBLE TO
14 REPRESENT THE BARGAINING UNIT FOR 5 YEARS AFTER A DETERMINATION
15 THAT PROHIBITED CONDUCT OCCURRED.

16 (D) CONDUCT AN ELECTION ON THE QUESTION OF CERTIFYING A
17 DIFFERENT BARGAINING REPRESENTATIVE TO REPRESENT THE BARGAINING
18 UNIT. THE ELECTION SHALL BE CONDUCTED WITHIN 90 DAYS AFTER THE
19 BARGAINING REPRESENTATIVE IS DECERTIFIED UNDER SUBDIVISION (C).

20 (6) ~~(5)~~—If, after a hearing under subsection ~~(3)~~ (4), a
21 majority of the commission finds that a public school employer
22 instituted a lockout in violation of section 2, the commission
23 shall fine the public school employer \$5,000.00 for each full or
24 partial day of the lockout and shall fine each member of the public
25 school employer's governing board \$250.00 for each full or partial
26 day of the lockout.

27 (7) ~~(6)~~—If the commission imposes a fine against a public

1 school employee under subsection ~~(4)~~ (5) and the public school
2 employee continues to be employed by a public school employer, the
3 commission shall order the public school employer to deduct the
4 fine from the public school employee's annual salary. The public
5 school employee's annual salary is the annual salary that is
6 established in the applicable contract in effect at the time of the
7 strike or, if no applicable contract is in effect at the time of
8 the strike, in the applicable contract in effect at the time of the
9 decision and order. However, if no applicable contract is in effect
10 at either of those times, the public school employee's annual
11 salary shall be considered to be the annual salary that applied or
12 would have applied to the public school employee in the most recent
13 applicable contract in effect before the strike. A public school
14 employer shall comply promptly with an order under this subsection.
15 A deduction under this subsection is not a demotion for the
16 purposes of ~~Act No. 4 of the Extra Session of 1937, being sections~~
17 ~~38.71 to 38.191 of the Michigan Compiled Laws 1937 (EX SESS) PA 4,~~
18 **MCL 38.71 TO 38.191.**

19 (8) ~~(7)~~ The commission shall transmit money received from
20 fines imposed under this section, and a public school employer
21 shall transmit money deducted pursuant to an order under subsection
22 ~~(6)~~ (7), to the state treasurer for deposit in the state school aid
23 fund established under section 11 of article IX of the state
24 constitution of 1963.

25 (9) ~~(8)~~ If the commission does not receive payment of a fine
26 imposed under this section within 30 days after the imposition of
27 the fine, or if a public school employer does not deduct a fine

1 from a public school employee's pay pursuant to an order under
2 subsection ~~(6)~~ **(7)**, the commission shall institute collection
3 proceedings.

4 **(10)** ~~(9)~~ Fines imposed under this section are in addition to
5 all other penalties prescribed by this act and by law.

6 **(11)** ~~(10)~~ A public school employer **OR THE SUPERINTENDENT OF**
7 **PUBLIC INSTRUCTION** may bring an action to enjoin a strike by public
8 school employees in violation of section 2, and a bargaining
9 representative may bring an action to enjoin a lockout by a public
10 school employer in violation of section 2, in the circuit court for
11 the county in which the affected public school is located. ~~A-IF THE~~
12 **COMMISSION HAS DETERMINED THAT A STRIKE OR LOCKOUT EXISTS AFTER A**
13 **HEARING UNDER SUBSECTION (4), THAT FINDING SHALL NOT BE OVERTURNED**
14 **EXCEPT BY CLEAR AND CONVINCING EVIDENCE. IF THE** court having
15 jurisdiction of an action brought under this subsection ~~shall grant~~
16 ~~injunctive relief if the court finds that a strike or lockout has~~
17 ~~occurred, without regard to the existence of other remedies,~~
18 ~~demonstration of irreparable harm, or other factors. Failure to~~
19 ~~comply with an order of the court may be punished as contempt. In~~
20 ~~addition, the court shall award court costs and reasonable attorney~~
21 ~~fees to a plaintiff who prevails in an action brought under this~~
22 ~~subsection.~~ **FINDS THAT CONDITIONS CONSTITUTING A STRIKE OR LOCKOUT**
23 **IN VIOLATION OF SECTION 2 EXIST AND UNLESS CLEAR AND CONVINCING**
24 **EVIDENCE HAS SHOWN THAT THE SANCTION WOULD NOT BE EQUITABLE OR THE**
25 **SANCTION WOULD DUPLICATE A SANCTION IMPOSED BY THE COMMISSION FOR**
26 **THE SAME ACTIVITY UNDER SUBSECTION (5) OR (6), THE COURT SHALL DO**
27 **ALL OF THE FOLLOWING:**

1 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ALL OF THE
2 FOLLOWING:

3 (i) IF THE PUBLIC SCHOOL EMPLOYER COLLECTS MEMBERSHIP DUES OR
4 SERVICE FEES FOR PAYMENT TO THE BARGAINING REPRESENTATIVE, ORDER
5 THE PUBLIC SCHOOL EMPLOYER TO IMMEDIATELY STOP COLLECTING THOSE
6 DUES OR SERVICE FEES AFTER A DETERMINATION THAT A STRIKE IN
7 VIOLATION OF SECTION 2 OCCURRED.

8 (ii) ORDER THAT THE INCUMBENT LABOR REPRESENTATIVE, ITS PARENT
9 ORGANIZATION, AND ANY AFFILIATES ARE NOT ELIGIBLE TO REPRESENT THE
10 BARGAINING UNIT FOR 5 YEARS AFTER A DETERMINATION THAT THE
11 PROHIBITED CONDUCT OCCURRED.

12 (iii) ORDER THE COMMISSION TO CONDUCT AN ELECTION ON THE
13 QUESTION OF CERTIFYING A DIFFERENT BARGAINING REPRESENTATIVE TO
14 REPRESENT THE BARGAINING UNIT. THE ELECTION SHALL BE CONDUCTED
15 WITHIN 90 DAYS AFTER THE BARGAINING REPRESENTATIVE IS DECERTIFIED
16 UNDER SUBPARAGRAPH (ii).

17 (iv) ORDER THE COMMISSION TO IMPOSE THE FINE UNDER SUBSECTION
18 (5) (A).

19 (B) FOR A LOCKOUT IN VIOLATION OF SECTION 2, ORDER THE PUBLIC
20 SCHOOL EMPLOYER TO PAY A FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL
21 DAY OF THE LOCKOUT AND ORDER EACH MEMBER OF THE PUBLIC SCHOOL
22 EMPLOYER'S GOVERNING BOARD TO PAY A FINE OF \$250.00 FOR EACH FULL
23 OR PARTIAL DAY OF THE LOCKOUT. THE FINE PROCEEDS SHALL BE
24 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE SCHOOL
25 AID FUND ESTABLISHED UNDER SECTION 11 OF ARTICLE IX OF THE STATE
26 CONSTITUTION OF 1963.

27 (C) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL

1 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR
2 LOCKOUT.

3 (D) AWARD COSTS AND ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS
4 IN AN ACTION UNDER THIS SUBSECTION.

5 (E) GRANT ADDITIONAL EQUITABLE RELIEF AS THE COURT FINDS
6 APPROPRIATE.

7 (12) AN ORDER ISSUED UNDER SUBSECTION (11) IS ENFORCEABLE
8 THROUGH THE COURT'S CONTEMPT POWER.

9 (13) ~~(11)~~—A public school employer shall not provide to a
10 public school employee or to a board member any compensation or
11 additional work assignment that is intended to reimburse the public
12 school employee or board member for a monetary penalty imposed
13 under this section or that is intended to allow the public school
14 employee or board member to recover a monetary penalty imposed
15 under this section.

16 (14) ~~(12)~~—As used in this section, "public school employee"
17 means a person employed by a public school employer.

18 Sec. 6. (1) Notwithstanding the provisions of any other law, a
19 public employee who, by concerted action with others and without
20 the lawful approval of his or her superior, willfully absents
21 himself or herself from his or her position, or abstains in whole
22 or in part from the full, faithful, and proper performance of his
23 or her duties for the purpose of inducing, influencing, or coercing
24 a change in employment conditions, compensation, or the rights,
25 privileges, or obligations of employment, or a public employee
26 employed by a public school employer who engages in an action
27 described in this subsection for the purpose of protesting or

1 responding to an act alleged or determined to be an unfair labor
2 practice committed by the public school employer, ~~shall be~~ **IS**
3 considered to be on strike.

4 (2) Before a public employer may discipline or discharge a
5 public employee for engaging in a strike, the public employee, upon
6 request, is entitled to a determination under this section as to
7 whether he or she violated this act. The request shall be filed in
8 writing, with the officer or body having power to remove or
9 discipline the employee, within 10 days after regular compensation
10 of the employee has ceased or other discipline has been imposed. If
11 a request is filed, the officer or body, within ~~10~~ **5** days after
12 receipt of the request, shall commence a proceeding for the
13 determination of whether the public employee has violated this act.
14 The proceedings shall be held in accordance with the law and
15 regulations appropriate to a proceeding to remove the public
16 employee and shall be held without unnecessary delay. The decision
17 of the officer or body shall be made within ~~10~~ **2** days after the
18 conclusion of the proceeding. If the **PUBLIC** employee involved is
19 found to have violated this act and his or her employment is
20 terminated or other discipline is imposed, the **PUBLIC** employee has
21 the right of review to the circuit court having jurisdiction of the
22 parties, within 30 days from the date of the decision, for a
23 determination as to whether the decision is supported by competent,
24 material, and substantial evidence on the whole record. **A PUBLIC**
25 **EMPLOYER MAY CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION**
26 **UNLESS THE PUBLIC EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE**
27 **CONSOLIDATION.** This subsection does not apply to a penalty imposed

1 under section 2a.

2 SEC. 8. (1) A LABOR ORGANIZATION AND ANY AGENT OF A LABOR
3 ORGANIZATION SHALL NOT DO EITHER OF THE FOLLOWING:

4 (A) SOLICIT OR ENCOURAGE ANY PUBLIC EMPLOYEE TO STRIKE IN
5 VIOLATION OF SECTION 2.

6 (B) CONSPIRE WITH ANY OTHER PERSON TO CAUSE A STRIKE IN
7 VIOLATION OF SECTION 2.

8 (2) IF A LABOR ORGANIZATION OR AGENT OF A LABOR ORGANIZATION
9 VIOLATES THIS SECTION, THE COMMISSION OR THE COURT SHALL SANCTION
10 THE LABOR ORGANIZATION AS PROVIDED FOR IN SECTION 2A(5) OR (11)(A).

11 Sec. 10. (1) A public employer or an officer or agent of a
12 public employer shall not do any of the following:

13 (a) Interfere with, restrain, or coerce public employees in
14 the exercise of their rights guaranteed in section 9.

15 (b) Initiate, create, dominate, contribute to, or interfere
16 with the formation or administration of any labor organization. A
17 public school employer's use of public school resources to assist a
18 labor organization in collecting dues or service fees from wages of
19 public school employees is a prohibited contribution to the
20 administration of a labor organization. ~~However, a~~ A public school
21 employer's collection of dues or service fees pursuant to a
22 collective bargaining agreement that is in effect on March 16, 2012
23 is not prohibited until the agreement expires or is terminated,
24 extended, or renewed. **HOWEVER, A PUBLIC EMPLOYER SHALL STOP ANY**
25 **COLLECTION OF MEMBERSHIP DUES OR SERVICE FEES OTHERWISE PERMITTED**
26 **UNDER THIS SUBDIVISION UPON A DETERMINATION AT A HEARING UNDER**
27 **SECTION 2A THAT ITS PUBLIC EMPLOYEES ENGAGED IN A STRIKE, OR**

1 **ACTIONS CONSIDERED UNDER SECTION 6(1) TO BE A STRIKE, IN VIOLATION**
2 **OF SECTION 2.** A public employer may permit employees to confer with
3 a labor organization during working hours without loss of time or
4 pay.

5 (c) Discriminate in regard to hire, terms, or other conditions
6 of employment to encourage or discourage membership in a labor
7 organization.

8 (d) Discriminate against a public employee because he or she
9 has given testimony or instituted proceedings under this act.

10 (e) Refuse to bargain collectively with the representatives of
11 its public employees, subject to section 11.

12 (2) A labor organization or its agents shall not do any of the
13 following:

14 (a) Restrain or coerce public employees in the exercise of the
15 rights guaranteed in section 9. This subdivision does not impair
16 the right of a labor organization to prescribe its own rules with
17 respect to the acquisition or retention of membership.

18 (b) Restrain or coerce a public employer in the selection of
19 its representatives for the purposes of collective bargaining or
20 the adjustment of grievances.

21 (c) Cause or attempt to cause a public employer to
22 discriminate against a public employee in violation of subsection
23 (1) (c).

24 (d) Refuse to bargain collectively with a public employer,
25 provided it is the representative of the public employer's
26 employees, subject to section 11.

27 (3) Except as provided in subsection (4), an individual shall

1 not be required as a condition of obtaining or continuing public
2 employment to do any of the following:

3 (a) Refrain or resign from membership in, voluntary
4 affiliation with, or voluntary financial support of a labor
5 organization or bargaining representative.

6 (b) Become or remain a member of a labor organization or
7 bargaining representative.

8 (c) Pay any dues, fees, assessments, or other charges or
9 expenses of any kind or amount, or provide anything of value to a
10 labor organization or bargaining representative.

11 (d) Pay to any charitable organization or third party any
12 amount that is in lieu of, equivalent to, or any portion of dues,
13 fees, assessments, or other charges or expenses required of members
14 of or public employees represented by a labor organization or
15 bargaining representative.

16 (4) The application of subsection (3) is subject to the
17 following:

18 (a) Subsection (3) does not apply to any of the following:

19 (i) A public police or fire department employee or any person
20 who seeks to become employed as a public police or fire department
21 employee as that term is defined under section 2 of 1969 PA 312,
22 MCL 423.232.

23 (ii) A state police trooper or sergeant who is granted rights
24 under section 5 of article XI of the state constitution of 1963 or
25 any individual who seeks to become employed as a state police
26 trooper or sergeant.

27 (b) Any person described in subdivision (a), or a labor

1 organization or bargaining representative representing persons
2 described in subdivision (a) and a public employer or this state
3 may agree that all employees in the bargaining unit shall share
4 fairly in the financial support of the labor organization or their
5 exclusive bargaining representative by paying a fee to the labor
6 organization or exclusive bargaining representative that may be
7 equivalent to the amount of dues uniformly required of members of
8 the labor organization or exclusive bargaining representative.
9 Section 9(2) shall not be construed to interfere with the right of
10 a public employer or this state and a labor organization or
11 bargaining representative to enter into or lawfully administer such
12 an agreement as it relates to the employees or persons described in
13 subdivision (a).

14 (c) If any of the exclusions in subdivision (a) (i) or (ii) are
15 found to be invalid by a court, the following apply:

16 (i) The individuals described in the exclusion found to be
17 invalid shall no longer be excepted from the application of
18 subsection (3).

19 (ii) Subdivision (b) does not apply to individuals described
20 in the invalid exclusion.

21 (5) An agreement, contract, understanding, or practice between
22 or involving a public employer, labor organization, or bargaining
23 representative that violates subsection (3) is unlawful and
24 unenforceable. This subsection applies only to an agreement,
25 contract, understanding, or practice that takes effect or is
26 extended or renewed after March 28, 2013.

27 (6) The court of appeals has exclusive original jurisdiction

1 over any action challenging the validity of subsection (3), (4), or
2 (5). The court of appeals shall hear the action in an expedited
3 manner.

4 (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated
5 to the department of licensing and regulatory affairs to be
6 expended to do all of the following regarding 2012 PA 349:

7 (a) Respond to public inquiries regarding 2012 PA 349.

8 (b) Provide the commission with sufficient staff and other
9 resources to implement 2012 PA 349.

10 (c) Inform public employers, public employees, and labor
11 organizations concerning their rights and responsibilities under
12 2012 PA 349.

13 (d) Any other purposes that the director of the department of
14 licensing and regulatory affairs determines in his or her
15 discretion are necessary to implement 2012 PA 349.

16 (8) A person, public employer, or labor organization that
17 violates subsection (3) is liable for a civil fine of not more than
18 \$500.00. A civil fine recovered under this section shall be
19 submitted to the state treasurer for deposit in the general fund of
20 this state.

21 (9) By July 1 of each year, each exclusive bargaining
22 representative that represents public employees in this state shall
23 have an independent examiner verify the exclusive bargaining
24 representative's calculation of all expenditures attributed to the
25 costs of collective bargaining, contract administration, and
26 grievance adjustment during the prior calendar year and shall file
27 that verification with the commission. The commission shall make

1 the exclusive bargaining representative's calculations available to
2 the public on the commission's website. The exclusive bargaining
3 representative shall also file a declaration identifying the local
4 bargaining units that are represented. Local bargaining units
5 identified in the declaration filed by the exclusive bargaining
6 representative are not required to file a separate calculation of
7 all expenditures attributed to the costs of collective bargaining,
8 contract administration, and grievance adjustment. For fiscal year
9 2011-2012, \$100,000.00 is appropriated to the commission for the
10 costs of implementing this subsection. For fiscal year 2014-2015,
11 \$100,000.00 is appropriated to the commission for the costs of
12 implementing this subsection.

13 (10) Except for actions required to be brought under
14 subsection (6), a person who suffers an injury as a result of a
15 violation or threatened violation of subsection (3) may bring a
16 civil action for damages, injunctive relief, or both. In addition,
17 a court shall award court costs and reasonable attorney fees to a
18 plaintiff who prevails in an action brought under this subsection.
19 Remedies provided in this subsection are independent of and in
20 addition to other penalties and remedies prescribed by this act.

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