

HOUSE BILL NO. 5022

September 25, 2019, Introduced by Reps. Hope, Hammoud, Pagan, Love, Cherry, Haadsma, Sabo, Wittenberg, Sowerby, Shannon, Kennedy, Byrd, Tate, Coleman, Elder, Guerra, Garza, Lasinski, Ellison, Tyrone Carter, Rabhi, Manoogian, Sneller, Warren, LaGrand, Hood and Jones and referred to the Committee on Commerce and Tourism.

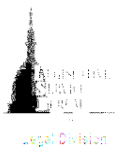
A bill to regulate temporary labor service agencies, their clients, and temporary laborers; to prohibit retaliation for exercising rights granted under this act; to provide for the powers and duties of certain state officers and entities; to provide for the promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "temporary laborer rights act".

3 Sec. 3. As used in this act:

4 (a) "Client" means a person that contracts with a temporary
5 labor service organization to obtain the services of temporary



1 laborers.

2 (b) "Department" means the department of licensing and
3 regulatory affairs.

4 (c) "Job site" means the physical location at which a
5 temporary laborer performs work for a client under a contract
6 between a temporary labor service agency and the client.

7 (d) "Temporary labor" means work performed by a temporary
8 laborer at a job site, the duration of which may be specific or
9 undefined, under a contract between a temporary labor service
10 agency and a client. Temporary labor does not include professional
11 work.

12 (e) "Temporary labor service agency" means a person engaged in
13 the business of employing temporary laborers to provide services,
14 for a fee, to or for a client under a contract with the client.

15 (f) "Temporary laborer" means an individual who contracts for
16 employment with a temporary labor service agency.

17 Sec. 5. (1) A temporary labor service agency shall provide a
18 temporary laborer, at the time of dispatch to a client, with a
19 notice containing all of the following on a form approved by the
20 department:

21 (a) The name of each temporary laborer dispatched to the same
22 job site.

23 (b) The name and nature of the work to be performed and the
24 types of equipment, protective clothing, and training that are
25 required for the work.

26 (c) The wage rate for the work.

27 (d) The name and address of the client and job site.

28 (e) The terms of the transportation to the job site.

29 (f) Whether a meal or equipment is provided by the temporary



1 labor service agency or the client and the cost of the meal and
2 equipment.

3 (2) If a temporary laborer is assigned to the same assignment
4 for more than 1 day, the temporary labor service agency is required
5 to provide the notice under subsection (1) only on the first day
6 and any day the terms of the notice change.

7 (3) If a temporary laborer is not placed with a client or
8 otherwise contracted to work for a day that the temporary laborer
9 reports to the temporary labor service agency, the temporary labor
10 service agency shall, upon the request of the temporary laborer,
11 provide the temporary laborer with confirmation that the temporary
12 laborer sought work. The confirmation must be signed by an employee
13 of the temporary labor service agency and include the name of the
14 agency, the name and address of the temporary laborer, and the date
15 and time that the temporary laborer received the confirmation.

16 (4) A temporary labor service agency shall not provide a
17 temporary laborer to a job site where a strike, lockout, or other
18 labor dispute exists.

19 (5) The department shall encourage a temporary labor service
20 agency to hire employees who can communicate the information
21 required under subsections (1) to (3) in the languages that are
22 generally understood in the geographic area of the temporary labor
23 service agency.

24 Sec. 7. (1) A temporary labor service agency shall maintain a
25 record of each transaction with a client that includes all of the
26 following information:

27 (a) The name, address, and telephone number of the client, the
28 job sites to which temporary laborers were sent by the temporary
29 labor service agency, and the date of the transaction.



1 (b) All of the following information for each temporary
2 laborer:

3 (i) The temporary laborer's name and address.

4 (ii) The job sites to which the temporary laborer was assigned.

5 (iii) The number of hours worked by the temporary laborer and
6 the temporary laborer's wage rate.

7 (iv) The name and nature of the work performed by the temporary
8 laborer.

9 (c) The name and title of the employee responsible for the
10 transaction.

11 (d) The number of hours billed to the client.

12 (e) The specific qualifications or attributes of a temporary
13 laborer requested by the client.

14 (f) Copies of all contracts with the client and copies of all
15 invoices for the client.

16 (g) Copies of all notices provided under section 5(1).

17 (h) All deductions from each temporary laborer's compensation
18 made by the client or temporary labor service agency including, but
19 not limited to, the temporary laborer's transportation, food,
20 equipment, withheld income tax, and withheld Social Security
21 payments.

22 (i) Verification of the actual cost of any equipment or meal
23 charged to a temporary laborer.

24 (j) The race and gender of each temporary laborer, as provided
25 by the temporary laborer.

26 (k) Any other information as required by the department.

27 (2) A client shall remit the information described in
28 subsection (1) in its possession to a temporary labor service
29 agency within 7 days after the last day of the work week worked by



1 a temporary laborer. The failure of a client to remit this
2 information to a temporary labor service agency is not a defense to
3 a violation of this section.

4 (3) A temporary labor service agency shall maintain records
5 under subsection (1) for 7 years after their creation. A temporary
6 labor service agency shall make the records available for
7 inspection by the department during normal business hours. A
8 temporary labor service agency shall make the records described in
9 subsection (1)(a), (b), (c), (g), (h), and (i) available for review
10 or copying by the respective temporary laborer during normal
11 business hours within 5 days after the temporary laborer requests
12 the records. A temporary labor service agency shall make forms, in
13 duplicate, for requests made under this subsection available to
14 temporary laborers at the dispatch office, and shall provide a copy
15 of the request form to the temporary laborer.

16 (4) A person shall not make a false, inaccurate, or incomplete
17 entry into a record required under this section or delete required
18 information from a record. Failure by a client to remit records to
19 the temporary labor service agency under subsection (2) is a
20 violation of this section, unless the client was precluded from
21 remitting the records for reasons beyond its control.

22 Sec. 9. A temporary labor service agency or client shall not
23 charge a temporary laborer for a meal that the temporary labor
24 service agency or client provides to the temporary laborer and that
25 the temporary laborer does not consume. If a temporary labor
26 service agency or client provides a meal to a temporary laborer and
27 the temporary laborer consumes, wholly or partially, the meal, the
28 temporary labor service agency or client may charge only the actual
29 cost of the meal. The purchase of a meal must not be a condition of



1 employment for a temporary laborer.

2 Sec. 11. (1) A temporary labor service agency or client shall
3 not charge a fee to transport a temporary laborer to or from a job
4 site. A temporary labor service agency is responsible for the
5 conduct and performance of a person who transports a temporary
6 laborer to or from the temporary labor service agency to a job
7 site, unless the transporter is any of the following:

8 (a) A public mass transportation system.

9 (b) A common carrier.

10 (c) The temporary laborer providing his or her own
11 transportation.

12 (d) Selected exclusively by and at the sole choice of the
13 temporary laborer for transportation in a vehicle not owned or
14 operated by the temporary labor service agency.

15 (2) If a temporary labor service agency provides
16 transportation to a temporary laborer or refers a temporary laborer
17 to a person for transportation under subsection (3), the temporary
18 labor service agency shall not allow a motor vehicle to be used for
19 the transportation if the temporary labor service agency knows or
20 should know that the motor vehicle is unsafe or not equipped as
21 required under this act. This subsection does not apply to a motor
22 vehicle that is any of the following:

23 (a) The property of a public mass transportation system.

24 (b) The property of a common carrier.

25 (c) The temporary laborer's personal vehicle.

26 (d) The vehicle of a temporary laborer used to transport other
27 temporary laborers and that is selected exclusively by and at the
28 sole choice of the temporary laborer for transportation.

29 (3) A temporary labor service agency shall not refer a



1 temporary laborer to a person for transportation to or from a job
2 site unless that person is a public mass transportation system or
3 will provide the transportation at no charge. Directing a temporary
4 laborer to accept transportation from a specific temporary laborer
5 as a condition of work is a referral by the temporary labor service
6 agency under this subsection. Any mention or discussion by a
7 temporary labor service agency of the cost of transportation
8 provided by another temporary laborer is a referral under this
9 subsection. Informing a temporary laborer of the availability of
10 transportation provided by another temporary laborer is not a
11 referral under this subsection.

12 (4) A temporary labor service agency that provides
13 transportation for a temporary laborer to a job site shall also
14 provide the temporary laborer transportation from the job site,
15 unless the temporary laborer agrees, before departure to the job
16 site, to obtain an alternative means of transportation from the job
17 site.

18 Sec. 13. (1) A temporary labor service agency or client shall
19 not charge a temporary laborer the market value of any safety
20 equipment, clothing, accessory, or other item temporarily provided
21 to a temporary laborer that is required by law, custom, or the
22 client to perform the work, unless the temporary laborer fails to
23 return the item.

24 (2) If a temporary labor service agency makes available to a
25 temporary laborer for purchase an item other than those described
26 in subsection (1), the temporary labor service agency shall not
27 charge more than the actual market value for the item.

28 Sec. 15. (1) A temporary labor service agency shall include on
29 a temporary laborer's paycheck stub, or with the temporary



1 laborer's paycheck stub on a form approved by the department, all
2 of the following information:

3 (a) The name, address, and telephone number of each client for
4 which the temporary laborer worked. If this information is provided
5 on the temporary laborer's paycheck stub, a code for each client
6 may be used if the required information for each coded client is
7 made available to the temporary laborer.

8 (b) The number of hours worked by the temporary laborer at
9 each client each day during the pay period. If the temporary
10 laborer is assigned to work at the same job site of the same client
11 for multiple days in the same work week, the temporary labor
12 service agency may record a summary of hours worked at that
13 client's job site if the first and last day of that work week are
14 also identified.

15 (c) The wage rate for each hour worked, including premium
16 rates and bonuses.

17 (d) The total pay period earnings.

18 (e) All deductions from the temporary laborer's compensation
19 made by the client or the temporary labor service agency, and the
20 purpose for which deductions were made, including, but not limited
21 to, transportation, food, equipment, withheld income tax, and
22 withheld Social Security payments.

23 (f) Any additional information as required by the department.

24 (2) A client shall provide a temporary laborer, at the end of
25 a work day, with a work verification form that includes the date,
26 the temporary laborer's name, the job site location, and the hours
27 worked on that day. The department shall prescribe a form for a
28 client to use under this subsection. A client that violates this
29 subsection may be ordered to pay a civil fine of not more than



1 \$500.00. For a second and any subsequent violation, a client may be
2 ordered to pay a civil fine of not more \$2,500.00. Each violation
3 of this subsection for each temporary laborer and for each day the
4 violation continues is a separate and distinct violation. A
5 violation of this subsection may be prosecuted by the prosecutor of
6 the county in which the violation occurred or by the attorney
7 general.

8 (3) Not later than February 1 of each year, a temporary labor
9 service agency shall provide a temporary laborer with an earnings
10 summary for the immediately preceding calendar year. A temporary
11 labor service agency shall, at the time of each wage payment, give
12 notice to a temporary laborer of the availability of the annual
13 earnings summary or, as an alternative, post a notice of the
14 availability of the annual earnings summary in a conspicuous place
15 in its public access area.

16 (4) A temporary labor service agency or client shall not
17 charge a temporary laborer for the expense of conducting a consumer
18 report, as that term is defined in 15 USC 1681a(d), a criminal
19 background check, or a drug test.

20 (5) The total amount deducted from a temporary laborer's
21 compensation by a temporary labor service agency or a client for
22 meals or equipment must not cause a temporary laborer's hourly wage
23 rate to fall below the minimum wage rate established under the
24 improved workforce opportunity wage act, 2018 PA 337, MCL 408.931
25 to 408.945.

26 (6) If a temporary laborer who is contracted by a temporary
27 labor service agency to work at a client's job site is not utilized
28 by the client, the temporary labor service agency shall pay the
29 temporary laborer an amount equal to at least 4 hours of pay at the



1 agreed upon wage rate. However, if the temporary labor service
2 agency contracts the temporary laborer to work at another job site
3 during the same shift, the temporary labor service agency shall pay
4 the temporary laborer an amount equal to at least 2 hours of pay at
5 the agreed upon wage rate.

6 Sec. 17. A temporary labor service agency shall attempt to
7 place a temporary laborer into a permanent position with a client
8 if the client informs the temporary labor service agency of its
9 plan to hire a permanent employee for a position similar to the
10 positions for which temporary laborers are being provided by the
11 agency at the same job site.

12 Sec. 19. A temporary labor service agency shall not restrict
13 the right of a temporary laborer to accept a permanent position
14 with a client to whom the temporary laborer has been referred for
15 work or restrict the right of the client to offer employment to the
16 temporary laborer. If the temporary laborer accepts a permanent
17 position with the client, the temporary labor service agency may
18 charge a placement fee to the client. The fee must not exceed an
19 amount equal to the total daily commission rate the temporary labor
20 service agency would have received over a 60-day period, reduced by
21 an amount equal to the daily commission rate the temporary labor
22 service agency is entitled to receive for each day the temporary
23 laborer performed work for the temporary labor service agency in
24 the immediately preceding 12 months.

25 Sec. 21. A temporary labor service agency shall provide
26 adequate seating in the public access area of the offices of the
27 temporary labor service agency. All notice posting required under
28 this act must be posted in the public access area. The public
29 access area must allow for access to restrooms and water.



1 Sec. 23. (1) A temporary labor service agency shall register
2 with the department pursuant to this section and procedures
3 established by the department. A temporary labor service agency
4 shall provide proof of an unemployment agency account number issued
5 under the Michigan employment security act, 1936 (Ex Sess) PA 1,
6 MCL 421.1 to 421.75, and proof of insurance that complies with
7 section 611 of the worker's disability compensation act of 1969,
8 1969 PA 317, MCL 418.611. If a temporary labor service agency's
9 insurance coverage lapses, the temporary labor service agency shall
10 report the lapse of coverage to the department, and the department
11 shall suspend the temporary labor service agency's registration
12 until the lapse ends.

13 (2) The department may assess a temporary labor service agency
14 a nonrefundable registration fee of not more than \$1,000.00 per
15 year and a nonrefundable fee of not more than \$250.00 for each
16 branch office or location where the temporary labor service agency
17 regularly contracts with temporary laborers for services. The
18 department may charge an additional fee if the temporary labor
19 service agency issues or delivers a check to the department that is
20 not honored by the financial institution upon which it is drawn.

21 (3) At the time of registration and every year after that, a
22 temporary labor service agency shall submit to the department a
23 report that includes the information listed in section 7(1),
24 categorized by branch office, in the aggregate for all temporary
25 laborers, on a form as prescribed by the department. The department
26 shall aggregate the information submitted by all temporary labor
27 service agencies and make the information available to the public
28 only on a municipal and county basis. The department shall remove
29 all identifying data before making the information available. The



1 information and reports submitted to the department under this
2 subsection are exempt from disclosure under the freedom of
3 information act, 1976 PA 442, MCL 15.231 to 15.246. As used in this
4 subsection, "identifying data" means information that does any of
5 the following:

6 (a) Provides information regarding a temporary laborer or
7 temporary laborer's service agency's identity.

8 (b) Identifies clients utilizing a temporary labor service
9 agency or other information that can be traced to a specific
10 temporary labor service agency or its client.

11 (4) The department shall create and maintain all of the
12 following at regular intervals on its public website:

13 (a) A list of all registered temporary labor service agencies
14 whose registration is in good standing.

15 (b) A list of temporary labor service agencies whose
16 registration has been suspended, including the reason for the
17 suspension, the date the suspension was initiated, and the date, if
18 known, the suspension will be lifted.

19 (c) A list of temporary labor service agencies whose
20 registration has been revoked, including the reason for the
21 revocation and the date the registration was revoked.

22 (5) A temporary labor service agency shall post at each of its
23 branch offices, in a position easily accessible to all temporary
24 laborers, notices as supplied and required by the department that
25 include a copy or summary of the provisions of this act and a toll-
26 free telephone number for persons to contact the department
27 regarding this act.

28 (6) A temporary labor service agency that violates subsection
29 (1) may be ordered to pay a civil fine of not more than \$500.00.



1 For a continuing violation, each day the violation continues is a
2 separate and distinct violation. A violation of this subsection may
3 be prosecuted by the prosecutor of the county in which the
4 violation occurred or by the attorney general.

5 Sec. 25. A person is not eligible to register a temporary
6 labor service agency under this act if the person or any of its
7 officers, directors, partners, or managers or any owner of 25% or
8 more of a beneficial interest has been involved, as an owner,
9 officer, director, partner, or manager of a temporary labor service
10 agency whose registration has been revoked or suspended, without
11 being reinstated, within the 5 years immediately preceding the
12 filing of the registration.

13 Sec. 27. (1) The department shall enforce this act. The
14 department shall conduct investigations in connection with the
15 administration and enforcement of this act. To ensure compliance
16 with this act, an investigator of the department may inspect, at
17 any reasonable time, a location covered by this act or a contract
18 for the employment of a temporary laborer entered into by a client.

19 (2) The department shall conduct all hearings under this act
20 pursuant to the contested case procedures of the administrative
21 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
22 determine whether a person violated this act. If the department
23 determines that a person violated this act, the department may do
24 any of the following:

25 (a) Issue and cause to be served on a person an order to cease
26 and desist from further violating this act.

27 (b) Take appropriate action to eliminate the effect of the
28 violation.

29 (c) Deny, suspend, or revoke a registration under this act.



1 Sec. 28. An individual aggrieved by a violation of this act
2 may do either of the following:

3 (a) File a complaint with the department.

4 (b) Bring a civil action for appropriate injunctive relief or
5 damages, or both, in the circuit court for the county where the
6 alleged violation occurred or where the person against whom the
7 civil complaint is filed resides or has his or her principal place
8 of business. Filing a complaint with the department under
9 subdivision (a) is not a prerequisite or a bar to bringing an
10 action under this subdivision.

11 Sec. 29. (1) A client shall not enter into a contract with a
12 temporary labor service agency unless the temporary labor service
13 agency is registered under this act. A client shall verify a
14 temporary labor service agency's registration with the department
15 before entering into a contract with the temporary labor service
16 agency, and on March 1 and September 1 of each year. A temporary
17 labor service agency shall provide each of its clients with proof
18 of valid registration at the time of entering into a contract. A
19 temporary labor service agency shall notify, by telephone and in
20 writing, each temporary laborer it employs and each client with
21 whom it has a contract within 24 hours after a denial, suspension,
22 or revocation of its registration. If a temporary labor service
23 agency's registration is denied, suspended, or revoked, the
24 temporary labor service agency may no longer enforce a contract
25 with a client beginning the date a denial, suspension, or
26 revocation of registration becomes effective and until the
27 temporary labor service agency becomes registered and considered in
28 good standing by the department.

29 (2) Upon the request of a client, the department shall provide



1 to the client a list of registered temporary labor service
2 agencies. The department shall provide on its public website a list
3 of registered temporary labor service agencies. A client may rely
4 on information provided by the department or maintained on the
5 department's public website and must be held harmless if the
6 information maintained or provided by the department was
7 inaccurate.

8 (3) A client that violates this section may be ordered to pay
9 a civil fine of not more than \$500.00. Each day during which a
10 client contracts with a temporary labor service agency not
11 registered under this act is a separate and distinct violation. A
12 violation of this section may be prosecuted by the prosecutor of
13 the county in which the violation occurred or by the attorney
14 general.

15 Sec. 31. A person shall not retaliate or discriminate against
16 an individual because the individual does or is about to do any of
17 the following:

18 (a) File a complaint under this act.

19 (b) Testify, assist, or participate in an investigation,
20 proceeding, or action concerning a violation of this act.

21 (c) Oppose a violation of this act.

22 Sec. 33. The department may promulgate rules to implement this
23 act pursuant to the administrative procedures act of 1969, 1969 PA
24 306, MCL 24.201 to 24.328.

