

HOUSE BILL No. 5025

September 28, 2011, Introduced by Reps. Poleski, Shaughnessy, Shirkey, McMillin, Agema, Lyons, Kowall, Price and Haines and referred to the Committee on Oversight, Reform, and Ethics.

A bill to amend 1978 PA 390, entitled

"An act to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts,"

by amending section 7 (MCL 408.477), as amended by 1995 PA 278.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Except for those deductions required or expressly
2 permitted by law or by a collective bargaining agreement, an
3 employer shall not deduct from the wages of an employee, directly
4 or indirectly, any amount including an employee contribution to a
5 separate segregated fund established by a corporation or labor
6 organization under section 55 of the Michigan campaign finance act,

1 ~~Act No. 388 of the Public Acts of 1976, being section 169.255 of~~
2 ~~the Michigan Compiled Laws 1976 PA 388, MCL 169.255,~~ without the
3 full, free, and written consent of the employee, obtained without
4 intimidation or fear of discharge for refusal to permit the
5 deduction.

6 (2) A DEDUCTION PERMITTED BY A COLLECTIVE BARGAINING AGREEMENT
7 FOR LABOR ORGANIZATION MEMBERSHIP REQUIRES ANNUAL WRITTEN CONSENT
8 BY THE EMPLOYEE, WHICH CONSENT MAY BE REVOKED BY THE EMPLOYEE AT
9 ANY TIME. THIS SUBSECTION SHALL NOT BE CONSTRUED TO IMPAIR THE
10 LABOR ORGANIZATION'S ABILITY TO BARGAIN FOR THE RIGHT TO COLLECT AN
11 AGENCY FEE OR FAIR SHARE CONTRIBUTION FROM A NONMEMBER, AS
12 PERMITTED BY LAW.

13 (3) ~~(2)~~ Except as OTHERWISE provided in this subsection and
14 ~~subsection (4)~~ SECTION, a deduction for the benefit of the employer
15 requires written consent from the employee for each wage payment
16 subject to the deduction. ~~, and the~~ THE cumulative amount of the
17 deductions shall not reduce the gross wages paid to a rate less
18 than minimum rate as defined in the minimum wage law of 1964, ~~Act~~
19 ~~No. 154 of the Public Acts of 1964, being sections 408.381 to~~
20 ~~408.398 of the Michigan Compiled Laws 1964 PA 154, MCL 408.381 TO~~
21 408.398. A nonprofit organization shall obtain a written consent
22 from an employee for deductions to that nonprofit organization that
23 qualify as charitable contributions under federal law. However,
24 this subsection does not require the nonprofit organization to
25 obtain from an employee a separate written consent for each
26 subsequent paycheck from which deductions that qualify as
27 charitable contributions that benefit the employer are made. An

1 employee at any time may rescind in writing his or her
2 authorization to have charitable contributions deducted from his or
3 her paycheck. As used in this subsection, "nonprofit organization"
4 means an organization that is exempt from taxation under section
5 501(c)(3) of the internal revenue code, **26 USC 501**.

6 (4) ~~(3)~~—Each deduction from the wages of an employee shall be
7 substantiated in the records of the employer and shall be
8 identified as pertaining to an individual employee. Prorating of
9 deductions between 2 or more employees is not permitted.

10 (5) ~~(4)~~—Within 6 months after making an overpayment of wages
11 or fringe benefits that are paid directly to an employee, an
12 employer may deduct the overpayment from the employee's regularly
13 scheduled wage payment without the written consent of the employee
14 if all of the following conditions are met:

15 (a) The overpayment resulted from a mathematical
16 miscalculation, typographical error, clerical error, or misprint in
17 the processing of the employee's regularly scheduled wages or
18 fringe benefits.

19 (b) The miscalculation, error, or misprint described in
20 subdivision (a) was made by the employer, the employee, or a
21 representative of the employer or employee.

22 (c) The employer provides the employee with a written
23 explanation of the deduction at least 1 pay period before the wage
24 payment affected by the deduction is made.

25 (d) The deduction is not greater than 15% of the gross wages
26 earned in the pay period in which the deduction is made.

27 (e) The deduction is made after the employer has made all

1 deductions expressly permitted or required by law or a collective
2 bargaining agreement, and after any employee-authorized deduction.

3 (f) The deduction does not reduce the regularly scheduled
4 gross wages otherwise due the employee to a rate that is less than
5 the greater of either of the following:

6 (i) The minimum rate as prescribed by subsection ~~(2)~~-(3).

7 (ii) The minimum rate as prescribed by the fair labor standards
8 act of 1938, chapter 676, 52 Stat. 1060, 29 ~~U.S.C.~~ **USC** 201 to 216
9 and 217 to 219.

10 (6) ~~(5)~~—An employee who believes his or her employer has
11 violated subsection ~~(4)~~-(5) may file a complaint with the
12 department within 12 months after the date of the alleged
13 violation.

14 (7) ~~(6)~~—As used in this section, "employer" means an
15 individual, sole proprietorship, partnership, association, or
16 corporation, public or private, this state or an agency of this
17 state, a city, county, village, township, school district, or
18 intermediate school district, an institution of higher education,
19 or an individual acting directly or indirectly in the interest of
20 an employer who employs 1 or more individuals.