

# Legislative Analysis



## MASS PICKETING PENALTIES

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**House Bill 5024 (Reported without amendment)**

**Sponsor: Rep. Tom McMillin**

**Committee: Oversight, Reform, and Ethics**

### First Analysis (2-21-12)

**BRIEF SUMMARY:** The bill would set penalties for mass picketing and related actions, fining individual violators \$1,000 for each day of the violation, and fining a union that continued to sponsor or assist in the prohibited activity in violation of an injunction, a civil fine of \$10,000 for each day of the violation. The bill would amend the act creating the Michigan Employment Relations Commission, and applies to private sector and public sector labor disputes.

**FISCAL IMPACT:** This bill would have an indeterminate fiscal impact on local courts. Courts may face costs due to an increased caseload from new actions created by this bill. The exact cost to local courts would depend on the number of new filings that would occur under this proposal.

For those who have previously violated these prohibitions, an additional fine is assessed. A fine of \$1,000 per day for an individual or \$10,000 per day for a union or organization is paid to local courts, which could partially or fully offset the costs related to the court's increased caseload. As employers that are subjected to picketing will receive compensation out of this fine, the exact amount a court will receive per violation is indeterminate.

### THE APPARENT PROBLEM:

Picketing is a form of protest, generally nonviolent, in which people (called picketers) gather outside a place of work or other location, in an attempt to dissuade others from going inside (called crossing the picket line). This form of protest is used by organized groups who are, or feel themselves to be, marginalized in decision-making that directly affects them, including but not limited to members of labor organizations. For example, people in U. S. civil rights movements, including African Americans, Hispanics, and women used picketing, in an attempt to change the behavior of groups that denied their membership or participation. Generally, however, picketing is associated with workers in trades and professions who wish to call the public's attention to their economic grievances against their employers.

There are several types of picketing: informational picketing, to inform the public about a matter of concern to the picketers; mass pickets, which aim to bring as many people as possible to a particular location in order to demonstrate support for a cause, sometimes resulting in a blockade; secondary picketing, when people not directly connected to the issue but supportive join the protest; and more recently in the socially connected

electronic age of business conglomerates, flying pickets, which mobilize groups at different locations; for example, at serial or simultaneous sites when a business has many locations---say, a headquarters in a distant city, but manufacturing plants scattered across different regions of the county. And finally, historically there has been disruptive picketing, where pickets use force, or the threat of force or physical obstruction to injure or intimidate or otherwise interfere with staff, service users, or customers.

Since 1939, mass picketing has been illegal in Michigan when it does any of the following: hinders or prevents, by unlawful threats or force, the pursuit of any lawful work or employment; obstructs or interferes with entrance to or egress from any place of employment; obstructs or interferes with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance; or engages in picketing a private residence by any means or methods whatever. The prohibition applies provided that the assembly is not protected by constitutional provisions. The violation of this law is punished as a misdemeanor.

Despite the fact that mass picketing is illegal, the Central Michigan University Board of Trustees, as recently as August 22, 2011, sought and won an *ex parte* temporary restraining order from an Isabella County Circuit Court judge to enjoin the Central Michigan University Faculty Association MEA/NEA bargaining unit employees from, among other things, engaging in a strike and preventing individuals from engaging in lawful work by mass picketing or threats.

Legislation has been introduced to provide an employer with the right to seek injunctive relief in circuit court and to receive an injunction without demonstrating irreparable harm or other factors; to award court costs to prevailing plaintiffs; and to punish non-compliance with contempt. The legislation also increases the penalty for violating the law from a misdemeanor to a daily civil fine of \$1,000 for each individual, and a daily fine of \$10,000 for the union or organization that sponsors or assists in the prohibited activity.

### ***THE CONTENT OF THE BILL:***

House Bill 5024 would amend Public Act 176 of 1939, which created the Michigan Employment Relations Commission, to modify the penalties for activities related to mass picketing.

Currently under Section 9f of the law, a person cannot hinder or prevent the pursuit of any lawful work or employment by mass picketing, unlawful threats, or force; obstruct or interfere with entrance to or egress from any place of employment; obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways airports, or other ways of travel or conveyance; or engage in picketing a private residence by any means or methods whatever. (However, these prohibitions do not apply where picketing is authorized under constitutional provisions). A violation of the law is punished as a misdemeanor. The bill would rewrite the section. It eliminates the reference to a

misdeemeanor and clarifies that, the prohibition "does not extend to picketing that is authorized under the federal constitution or the state constitution . . ."

The bill also contains the following new provisions.

#### Injunctive Relief

The bill specifies that an employer or other person or entity that was subject to any of the activities noted above could bring an action to enjoin the prohibited activity in the circuit court where they are located. Under the bill, the court having jurisdiction would be required to grant injunctive relief if it found that any person, union, or organization had engaged in (or was engaging in) any of the prohibited conduct, without regard to other remedies, demonstration of irreparable harm, or other factors.

The bill would require the court to award court costs and reasonable attorney fees to a plaintiff who prevailed in an action.

The bill specifies that an employer that was the subject of picketing could obtain injunctive relief against picketers without a showing of irreparable harm, if the court found the picketing to be in violation of the prohibitions noted above.

#### Contempt

Under the bill, failure to comply with an order of the court could be punished as contempt.

#### Penalties

Any person who violated the prohibitions, and who had previously been enjoined for a violation, would be subject to a civil fine of \$1,000 for each day of the violation. If a union or organization continued to sponsor or assist in the prohibited activity in violation of an injunction, then the union or organization would be subject to a civil fine of \$10,000 for each day of the violation. The bill specifies that the civil fine assessed would be paid to the court, and upon a showing of damages to business sales, business opportunities, or property, the employer, union, organization, or other entity that was the subject of the prohibited activity would be compensated from the payment made to the court.

MCL 423.9f

### ***ARGUMENTS:***

#### ***For:***

Proponents of the bill say the bill is needed to protect Michigan's still-struggling economy by better protecting job providers from illegal mass picketing. As one proponent notes: "With our economy just beginning to rebound, we must ensure the Michigan job providers are able to deliver their goods and services and keep our economy moving forward. The legislation will help provide a stable economy, while giving job providers some recourse to stop this type of disruptive act."

Proponents of the legislation say that this bill is one of four that constitute a "labor reform" package. They note that the four bills in the package, which increase penalties for participating in illegal public worker strikes, make it easier for employers to find replacements for striking workers, and to get court orders against mass picketing, when taken together, represent a proactive effort. The aim is to head off potential labor problems.

One proponent, referring to the four-bill package of legislation, has said: "These bills are necessary...because it is difficult, expensive, and time-consuming to penalize illegally striking employees as the current law is now constructed. Government employee unions have made it clear that they are not afraid to break the law and strike to oppose efforts by the legislature and governor to enact reforms and trim budgets. Last year, for example, the Michigan Education Association threatened a statewide strike in reaction to budget cuts and emergency financial manager legislation signed into state law. Some school districts have also had brief strikes." He continued: "Why does organized labor feel they should not be subject to penalties when they break the law by supporting and encouraging an illegal strike activity?" He noted that small businesses suffer penalties when they break the law, and workers should too.

***Against:***

Opponents of the bill say they are not aware of any problems with mass picketing that have not been adequately addressed under current law. The penalties in the bill are excessive and appear intended to intimidate workers in order to prevent them from giving voice to their grievances. One union spokesperson has said the effect would be to make strikes impossible and to reduce "unions to fraternal organizations or advisory clubs whose suggestions will be ignored at will by employers." The fines, he said, "will destroy any union's ability to exist within a month."

The introduction and passage of this kind of legislation creates, if anything, a more divisive and hostile relationship between employees and employers, and so rather than contribute to labor peace, they risk producing an increase in labor-management strife. Combined with other anti-worker and anti-union legislation during the current legislative session, this bill will work against the kind of cooperative action that Michigan needs as its economy recovers; it also impedes efforts in the public sector to find ways to address government problems within tight budgets.

Opponents of the bill, and other related legislation, find it bewildering. They see this bill, combined with similar legislation, as an unnecessary attack on the collective bargaining power of unions and on the political power of union workers. They see it as part of a regional strategy not to solve demonstrated problems but to weaken unions and stifle the voices of workers. Critics argue that unions are not the problem; they are often the beginning of the solution. They note that Michigan public sector employees, for example, have demonstrated during Michigan's decade-long economic downturn that they can partner with public sector managers to solve budget problems. They note that throughout the state, unionized public sector employees, including teachers, have made wage and benefit concessions, and helped local officials to downsize their organizations,

privatize services, and to consolidate operations. Unions in the private and public sector have cooperated to help companies and businesses adjust to new economic realities.

***POSITIONS:***

The Michigan Chamber of Commerce supports the bill. (1-17-12)

The Associated Builders and Contractors support the bill. (1-17-12)

The Michigan Retailers Association supports the bill. (1-17-12)

The National Federation of Independent Business supports the bill. (1-17-12)

The International Union, UAW opposes the bill. (1-17-12)

The Michigan Professional Fire Fighters oppose the bill. (1-17-12)

The Michigan AFL-CIO opposes the bill. (1-17-12)

The Michigan Education Association opposes the bill. (1-24-12)

The MEA/NEA Local 1 and the 6-E Coordinating Council oppose the bill. (1-17-12)

The Michigan Laborers District Council opposes the bill. (1-17-12)

The Association of Federal, State, County, and Municipal Employees (AFSCME) Council 25 opposes the bill. (1-17-12)

The Macomb Intermediate School District opposes the bill. (1-17-12)

The Teamsters oppose the bill. (1-17-12)

Teamsters Local 406 opposes the bill. (1-17-12)

The Michigan State Employees Association opposes the bill. (1-17-12)

The Michigan AAUP opposes the bill. (1-24-12)

The Michigan Municipal League opposes the bill. (1-24-12)

IW Local 25 opposes the bill. (1-24-12)

UAW Retirees, Fight for Your Rights oppose the bill. (1-31-12)

The IBEW Local 58 opposes the bill. (1-31-12)

UAW Local 6000 opposes the bill. (1-31-12)

The IUOE Local 324 opposes the bill. (1-31-12)

Progressive Democrats of Monroe oppose the bill. (1-31-12)

SEIU Local 517M opposes the bill. (1-31-12)

The Michigan Building and Construction Trades oppose the bill. (1-31-12)

Citizens of Michigan opposes the bill. (1-31-12)

The Michigan Nurses Association opposes the bill. (1-31-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.