

HOUSE BILL NO. 5135

June 24, 2021, Introduced by Reps. Hope, Clemente, Breen, Aiyash, Stone, Sabo, Young, Hood, Steckloff, Haadsma, Morse, Tyrone Carter, Rogers, Sowerby, Pohutsky, Brenda Carter, Cherry, Ellison, Cavanagh, Kuppa, Cynthia Johnson, Brixie, Coleman and Yancey and referred to the Committee on Workforce, Trades, and Talent.

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:

1 (a) "Client" means a person that contracts with a temporary
2 labor service organization to obtain the services of temporary
3 laborers.

4 (b) "Department" means the department of licensing and
5 regulatory affairs.

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

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

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

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

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

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

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

28 (c) The wage rate for the work.

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

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

2 (f) Whether a meal or equipment is provided by the temporary
3 labor service agency or the client and the cost of the meal and
4 equipment.

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

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

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

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

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

29 (a) The name, address, and telephone number of the client, the

1 job sites to which temporary laborers were sent by the temporary
2 labor service agency, and the date of the transaction.

3 (b) All of the following information for each temporary
4 laborer:

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

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

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

9 (iv) The name and nature of the work performed by the temporary
10 laborer.

11 (c) The name and title of the employee responsible for the
12 transaction.

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

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

16 (f) Copies of all contracts with the client and copies of all
17 invoices for the client.

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

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

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

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

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

29 (2) A client shall remit the information described in

1 subsection (1) in its possession to a temporary labor service
2 agency within 7 days after the last day of the work week worked by
3 a temporary laborer. The failure of a client to remit this
4 information to a temporary labor service agency is not a defense to
5 a violation of this section.

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

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

24 Sec. 9. A temporary labor service agency or client shall not
25 charge a temporary laborer for a meal that the temporary labor
26 service agency or client provides to the temporary laborer and that
27 the temporary laborer does not consume. If a temporary labor
28 service agency or client provides a meal to a temporary laborer and
29 the temporary laborer consumes, wholly or partially, the meal, the

1 temporary labor service agency or client may charge only the actual
2 cost of the meal. The purchase of a meal must not be a condition of
3 employment for a temporary laborer.

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

10 (a) A public mass transportation system.

11 (b) A common carrier.

12 (c) The temporary laborer providing his or her own
13 transportation.

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

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

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

26 (b) The property of a common carrier.

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

28 (d) The vehicle of a temporary laborer used to transport other
29 temporary laborers and that is selected exclusively by and at the

1 sole choice of the temporary laborer for transportation.

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

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

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

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

1 Sec. 15. (1) A temporary labor service agency shall include on
2 a temporary laborer's paycheck stub, or with the temporary
3 laborer's paycheck stub on a form approved by the department, all
4 of the following information:

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

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

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

19 (d) The total pay period earnings.

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

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

26 (2) A client shall provide a temporary laborer, at the end of
27 a work day, with a work verification form that includes the date,
28 the temporary laborer's name, the job site location, and the hours
29 worked on that day. The department shall prescribe a form for a

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

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

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

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

28 (6) If a temporary laborer who is contracted by a temporary
29 labor service agency to work at a client's job site is not utilized

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

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

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

27 Sec. 21. A temporary labor service agency shall provide
28 adequate seating in the public access area of the offices of the
29 temporary labor service agency. All notice posting required under

1 this act must be posted in the public access area. The public
2 access area must allow for access to restrooms and water.

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

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

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

1 only on a municipal and county basis. The department shall remove
2 all identifying data before making the information available. The
3 information and reports submitted to the department under this
4 subsection are exempt from disclosure under the freedom of
5 information act, 1976 PA 442, MCL 15.231 to 15.246. As used in this
6 subsection, "identifying data" means information that does any of
7 the following:

8 (a) Provides information regarding a temporary laborer or
9 temporary laborer's service agency's identity.

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

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

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

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

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

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

1 (6) A temporary labor service agency that violates subsection
2 (1) may be ordered to pay a civil fine of not more than \$500.00.
3 For a continuing violation, each day the violation continues is a
4 separate and distinct violation. A violation of this subsection may
5 be prosecuted by the prosecutor of the county in which the
6 violation occurred or by the attorney general.

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

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

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

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

29 (b) Take appropriate action to eliminate the effect of the

1 violation.

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

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

5 (a) File a complaint with the department.

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

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

1 good standing by the department.

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

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

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

20 (a) File a complaint under this act.

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

23 (c) Oppose a violation of this act.

24 Sec. 33. The department may promulgate rules to implement this
25 act pursuant to the administrative procedures act of 1969, 1969 PA
26 306, MCL 24.201 to 24.328.