

Legislative Analysis



TEMPORARY LABORER RIGHTS ACT

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House Bill 4034 as introduced
Sponsor: Rep. Kara Hope
Committee: Labor
Revised 6-9-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4034 would create the Temporary Laborer Rights Act. The bill would, among other things, require a *temporary labor service agency* (TLSA) to register and maintain a good standing with the Department of Licensing and Regulatory Affairs (LARA), provide each *temporary laborer* with dispatch notices, and maintain records of each interaction with a *client*.

Temporary labor service agency would mean a person engaged in the business of employing temporary laborers to provide services for a fee to or for a client under a contract with the client.

Temporary laborer would mean an individual who contracts for employment with a temporary labor service agency.

Client would mean a person that contracts with a temporary labor service organization to obtain the services of temporary laborers.

Registration

All TLSAs would have to register with LARA and provide proof of an unemployment agency account number and insurance that complies with the Worker's Disability Compensation Act. TLSAs would be required to report any lapses in insurance coverage, and in such cases, LARA would have to suspend the TLSA's registration until the lapse ends. A TLSA would also have to provide each client with proof of valid registration when entering into a contract.

A person could not register a TLSA if that person or any of its officers, directors, partners, or managers or any owner of 25% or more of a beneficial interest has been an owner, officer, director, partner, or manager of a TLSA whose registration has been revoked or suspended within five years of filing the registration.

LARA could charge a registration fee of \$1,000 per year, in addition to \$250 per branch office where a TLSA regularly contracts with temporary laborers. The department could also charge an additional fee if a TLSA issues or delivers an invalid check.

LARA would have to post the following information on its website:

- A list of all registered TLSAs in good standing.
- A list of TLSAs with a suspended registration that provides the reason for the suspension, the suspension date, and when the suspension will be lifted.
- A list of TLSAs with a revoked registration that provides the reason for the revocation and the date of revocation.

If a TLSA fails to register with LARA, provide proof of an unemployment agency account number or insurance, or notify LARA of lapses in insurance coverage, it could be charged a civil fine of up to \$500. Each day the violation continues would be a separate violation.

If a TLSA has its registration denied, suspended, or revoked, it would have to notify each client and temporary laborer it employs in writing and by telephone within 24 hours. A contract with a client would be unenforceable until the TLSA becomes registered and in good standing with LARA.

Clients would be responsible for verifying a TLSA's registration and could not enter into a contract with an unregistered TLSA. If a client violates these provisions, it could be ordered to pay a civil fine of up to \$500; each day in which a client contracts with an unregistered TLSA would be a separate violation.

Recording requirements

TLSAs would have to maintain a record for each client transaction that includes the following, in addition to any other information required by LARA:

- The name, address, and telephone number of the client.
- The job sites to which temporary laborers were sent.
- The transaction date.
- Each temporary laborer's name, address, assigned job sites, hours worked, wage rate, name and nature of the work performed, and self-reported race and gender.
- The name and title of the employee responsible for the transaction.
- The hours billed to the client.
- Any specific qualifications or attributes of a temporary laborer that the client requested.
- A copy of each contract with the client, all invoices, and all notices provided to temporary laborers.
- All deductions made from each temporary laborer's compensation, including transportation, food, equipment, and withheld taxes.
- Verification of the cost of any equipment or meals charged to a temporary worker.

Each TLSA would have to submit this information, categorized by branch office, to LARA every year. LARA would have to aggregate the information submitted by all TLSAs in the state and, after removing all identifying data, make the information publicly available and grouped by municipality and county.¹ LARA would be responsible for creating the form through which this information is submitted. Information submitted to LARA would be exempt from FOIA disclosure.

A client would have to provide any of the above information in its possession to a TLSA within seven days of the last day of the work week in which the temporary laborer provided services. A failure to provide the information generally would not serve as a defense to any violation of the bill's recording requirements.

¹ Identifying data would mean any information regarding a TLSA or temporary laborer's identity, any information that identifies clients contracting with a TLSA, or any other information that can be traced to a specific TLSA or client.

Each TLSA would have to make these records available for LARA inspection during normal business hours and would have to maintain the records for seven years. TLSAs would also be required to make the following information available for review or copy by the applicable temporary laborer during normal business hours and within five days of the laborer's request:

- The name and contact information for the client.
- The job site or sites.
- The transaction date.
- The temporary laborer's name, address, site assignment, hours worked, wage rate, and work performed.
- The TLSA employee responsible for the transaction.
- Copies of all notices provided to the temporary laborer.
- All deductions made from the temporary laborer's compensation.
- Verification of the cost of any equipment or meals charged to the temporary laborer.

TLSAs would be responsible for creating forms to allow for such a request and for making the forms available at a dispatch office.

A false, inaccurate, incomplete, or deleted entry of these records would be a violation of the act.

Dispatch notices

When a temporary laborer is dispatched to a client, the TLSA would have to provide the laborer with a notice that includes the following information:

- The name of each temporary laborer dispatched to the site.
- The name and nature of the work to be performed.
- The equipment, protective clothing, and training required for the work.
- The wage rate for the work.
- The name and address of the client and job site.
- The terms of the transportation to the site.
- Whether the TLSA or the client will provide meals or equipment and, if applicable, the cost of the meal and equipment.

If the temporary laborer will have the assignment for multiple days, notice would only be required on the first day and on any day the terms of the notice are changed.

If a temporary laborer is not placed with a client or is not contracted to work for a day that the laborer reports to the TLSA, the TLSA would have to fulfill any requests made by the laborer to provide signed confirmation that the laborer sought work. The confirmation would have to include the name of the agency, the name and address of the temporary laborer, and the date and time that the laborer received the confirmation.

LARA would have to encourage a TLSA to hire employees who can communicate the notice and confirmation in the languages that are genuinely understood in the geographic area of the TLSA.

Transportation

TLSAs and clients could not charge fees for a temporary laborer's transportation to or from a job site. A TLSA that provides transportation *to* a job site would have to provide transportation

from the job site, unless the temporary laborer agrees to obtain an alternative means of transportation.

A TLSA could not require a temporary laborer to accept transportation from another temporary laborer as a condition of employment and could not refer a temporary laborer to another individual or entity for transportation, except to a public mass transit system or a service that would provide free transportation.

The TLSA would be responsible for the conduct and performance of anyone who transports a temporary laborer to or from the TLSA to the job site, unless the temporary laborer transports themselves, the transporter is a public mass transit system or common carrier, or the transporter is selected exclusively by the laborer in a vehicle not owned or operated by the TLSA.

A TLSA that provides or refers transportation to a temporary laborer could not allow a vehicle to be used if it knows or should know that the vehicle is unsafe or improperly equipped, unless the applicable vehicle is the temporary laborer's personal vehicle or is the property of a mass transit system or a common carrier.

Branch offices

TLAs would have to provide adequate seating and access to restrooms and water in their offices' public access areas. All required notices would have to be posted in this area, in addition to a copy or summary of this act and a LARA telephone number.

Payment

TLAs would be required to include the following information on each temporary laborer's paycheck stub or in an attached and LARA-approved form, in addition to any other information required by LARA:

- The name, address, and telephone number of each client for which the laborer worked. (A code for each client could be used if this contact information is made available to the laborer.)
- The hours worked at each client for each day of the pay period. (If the laborer is assigned to the same job site and client for multiple days in one work week, the TLSA could provide a summary of the hours worked at that site but would have to identify the first and last day of the work week.)
- The wage rate for each hour worked, including premium rates and bonuses.
- The total pay period earnings, all deductions made by the client or TLSA, and the purpose for which the deductions were made.

Deductions for meals or equipment could not cause a temporary laborer's hourly wage rate to fall below the state minimum wage. (The minimum wage for most Michigan employees is currently \$10.10 per hour.)

If a client directs a temporary laborer not to perform work, then the TLSA would have to pay the laborer an amount equivalent to at least four hours of pay. If the laborer instead works at another site during the same shift, then the TLSA would only have to pay the laborer an amount equivalent to two hours of pay.

At the end of a workday, clients would have to provide temporary laborers with a form verifying the date, laborer's name, site location, and hours worked for that day. LARA would be responsible for distributing the form. Violators could be ordered to pay a fine of up to \$500 for the first violation and \$2,500 for repeated violations.

By February 1 of each year, TLSAs would have to provide temporary laborers with earnings summaries for the immediately preceding year. At the time of each wage payment, a TLSA would have to either notify its temporary laborers of the summary or post a notice of its availability in a conspicuous place in its public access area.

Placement fee

If a client informs a TLSA of its plans to hire a permanent employee for a position similar to the positions for which the TLSA is providing temporary laborers, then the TLSA would be required to attempt to place a temporary laborer into that permanent position. If the temporary laborer is offered and accepts the position, then the TLSA could charge a placement fee. The fee could not exceed an amount equal to the difference between the total daily commission the TLSA would have received over a 60-day period and the daily commission rate the TLSA is entitled to receive for each day the temporary laborer worked for the TLSA in the immediately preceding twelve months.

TLSA restrictions

A TLSA could not do any of the following:

- Provide a temporary laborer to a site where a strike, lockout, or other labor dispute is occurring.
- Charge a temporary laborer the market value of any safety equipment, clothing, or other legally required item loaned to the laborer for work use, unless the laborer does not return the item. (If other items are made available for purchase, the TLSA could not charge the laborer more than the item's actual market value.)
- Charge a temporary laborer for conducting a consumer credit report, criminal background check, or drug test. (Clients would also be prohibited from charging laborers for this information.)
- Restrict the right of a temporary laborer to accept a permanent position with a client that the laborer has been referred to for work.
- Restrict the right of a client to offer permanent employment to a temporary laborer.

A TLSA also could not require a temporary laborer to purchase a meal as a condition of employment. TLSAs and clients could only charge the temporary laborer for the actual cost of a meal partially or wholly consumed and could not charge for meals that were not consumed by the laborer.

Investigations and enforcement

LARA investigators could inspect a location covered by the act or a contract for the employment of a temporary laborer at any reasonable time.

An individual who has been aggrieved by a violation of the act could file a complaint with LARA or bring a civil action for relief or damages in the appropriate county circuit court. Filing a complaint with LARA would not prevent an individual from bringing an action.

A person could not retaliate or discriminate against an individual because the individual does any of the following:

- Files a complaint.
- Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.
- Opposes a violation of the act.

All hearings conducted under the act would have to be conducted in accordance with the contested case procedures of the Administrative Procedures Act. If LARA determines that a violation occurred, then it could issue and cause to be served a cease-and-desist order; deny, suspend, or revoke a registration; or take other appropriate actions to eliminate the effect of the violation.

The appropriate county prosecutor or the attorney general could bring an action to collect any fines issued under the act.

FISCAL IMPACT:

House Bill 4034 would increase costs for the state by an indeterminate amount. The amount of any increased costs would depend on additional administrative costs and staff resources that may be required under the bill's requirements for activities such as creating forms, inspecting agency records, registering agencies, maintaining information on a state department website, conducting investigations, and enforcing the act. The bill allows the overseeing department to assess nonrefundable registration fees, but it is unclear whether these fees, if assessed, would create enough revenue to support the additional administrative costs.

In addition, the bill would have an indeterminate fiscal impact on the state and local units of government that would depend on the number of individuals ordered to pay civil fines and the amount of civil fine revenue collected. Under the bill, civil fines could be ordered for the following offenses:

- A client that does not provide a temporary laborer with a work verification form at the end of a workday: fine of up to \$500 for the first offense, and fine of up to \$2,500 for subsequent offenses; each violation for each temporary laborer and for each day the violation continues would be a separate and distinct violation.
- A temporary labor service agency that does not register with the department or provide proof of an unemployment agency account number or proof of insurance: fine of up to \$500; each day the violation continues would be a separate and distinct violation.
- A client that enters into a contract with a temporary labor service agency that is not registered: fine of up to \$500; each day during which a client contracts with a temporary labor service agency not registered would be a separate and distinct violation.

Revenue collected from the payment of civil fines is used to support public and county law libraries. Under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, so revenue to the state would also be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch; the Departments of State Police, Corrections, Health and Human Services, and Treasury; and the Legislative Retirement System.

The bill also would allow any individual aggrieved by a violation under the bill to bring a civil action of appropriate injunctive relief or damages, or both, in the circuit court for the county where the alleged violation occurred. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs.

Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

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