

EMPLOYMENT RELATIONS COMMISSION Act 176 of 1939

AN ACT to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; to make appropriations; and to prescribe means of enforcement and penalties for violations of this act.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—Am. 1947, Act 318, Eff. Oct. 11, 1947;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1978, Act 250, Imd. Eff. June 20, 1978;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

The People of the State of Michigan enact:

423.1 Declaration of public policy.

Sec. 1. It is hereby declared as the public policy of this state that the best interests of the people of the state are served by protecting their right to work in a manner consistent with section 14(b) of the national labor relations act, 29 USC 164(b), and preventing or promptly settling labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.1;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Constitutionality: Michigan's labor mediation law was held invalid where it conflicted with provisions of the national labor relations act. International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, CIO v O'Brien, Prosecuting Attorney, 339 US 454; 70 S Ct 781; 94 L Ed 978 (1949).

Compiler's note: For transfer of powers and duties relating to promulgation of rules by the employment relations commission from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.2 Definitions.

Sec. 2. As used in this act:

(a) "Company union" includes any employee association, committee, agency, or representation plan, formed or existing for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which in any manner or to any extent, and by any form of participation, interference, or assistance, financial or otherwise, either in its organization, operation, or administration, is dominated or controlled, sponsored or supervised, maintained, directed, or financed by the employer.

(b) "Dispute" and "labor dispute" include but are not restricted to any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of employees in negotiating, fixing, maintaining, or changing terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "Commission" means the employment relations commission created by section 3.

(d) "Person" includes an individual, partnership, association, corporation, business trust, labor organization, or any other private entity.

(e) "Employee" includes any employee, and is not limited to the employees of a particular employer, unless the act explicitly provides otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any act that is illegal under this act, and who has not obtained any other regular and substantially equivalent employment, but does not include any individual employed as an agricultural laborer, or in the domestic service of any family or any person at his home, or any individual employed by his parent or spouse, or any individual employed as an executive or supervisor, or any individual employed by an employer subject to the railway labor act, 45 USC 151 to 188, or by any other person who is not an employer as defined in this act.

(f) "Employer" means a person and includes any person acting as an agent of an employer, but does not include the United States or any corporation wholly owned by the United States; any federal reserve bank; any employer subject to the railway labor act, 45 USC 151 to 188; the state or any political subdivision thereof; any labor organization, or anyone acting in the capacity of officer or agent of such labor organization, other than when acting as an employer; or any entity subject to 1947 PA 336, MCL 423.201 to 423.217.

(g) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.2;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1969, Act 181, Imd. Eff. Aug. 5, 1969;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1978, Act 250, Imd. Eff. June 20, 1978;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Compiler's note: Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.3 Employment relations commission; creation; appointment, qualifications, and terms of commissioners.

Sec. 3. The employment relations commission is created within the department of labor. The commission consists of 3 commissioners appointed by the governor, with the advice and consent of the senate. A commissioner shall be a citizen of the United States and a resident of the state, and shall have been a qualified elector in the state for a period of at least 5 years next preceding appointment. Members of the commission shall be selected so as to insure that not more than 2 members represent any one political party. Each commissioner shall be appointed for a term of 3 years.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.3;—Am. 1969, Act 202, Eff. Mar. 20, 1970;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

Transfer of powers: See MCL 16.481.

423.4 Employment relations commission; oath of commissioners; vacancies; chairman; removal; quorum; seal.

Sec. 4. Commissioners shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successors. Vacancies shall be filled in the same manner as is provided for appointment in the first instance for the remainder of the unexpired term. The governor shall designate 1 commissioner to serve as chairman of the commission. A commissioner may be removed by the governor for misfeasance, malfeasance, or nonfeasance in office, after hearing. A vacancy in the board shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Two commissioners shall at all times constitute a quorum; but official orders shall require concurrence of a majority of the commission. The commission shall have an official seal of which courts shall take judicial notice.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.4;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.5 Employment relations commission; compensation and expenses of commissioners and employees.

Sec. 5. A commissioner shall receive such compensation as is appropriated by the legislature. Commissioners and employees of the commission shall be entitled to actual and necessary traveling and other expenses incurred in the performance of duties under this act. The compensation and expenses of commissioners and employees of the commission shall be paid in accordance with the accounting laws of the state.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.5;—Am. 1957, Act 253, Imd. Eff. June 6, 1957;—Am. 1969, Act 174, Imd. Eff. Aug. 5, 1969;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.6 Repealed. 1978, Act 250, Imd. Eff. June 20, 1978.

Compiler's note: The repealed section pertained to compensation of secretary, assistants, and employees of employment relations commission, and to powers and duties of secretary.

423.7 Employment relations commission; principal office; office space; rules.

Sec. 7. The principal office of the commission shall be in the city of Lansing. The department of management and budget shall provide suitable office space for the use of the commission. The commission

shall promulgate rules as may be necessary to carry out this act. The rules shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.7;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

Administrative rules: R 423.101 et seq. of the Michigan Administrative Code.

423.7a Employment relations commission; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 7a. (1) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1977, Act 203, Imd. Eff. Nov. 17, 1977.

423.8 Employees; rights.

Sec. 8. Employees may do any of the following:

(a) Organize together or form, join, or assist in labor organization; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their employers through representatives of their own free choice.

(b) Refrain from any or all of the activities identified in subdivision (a).

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.8;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Compiler's note: Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.9 Prerequisites for strike or lockout; notice of dispute and statement of issues; mediation.

Sec. 9. A strike or lockout shall not take place or be put into effect until and unless each of the steps are taken and the requirements complied with as follows:

(a) If the parties thereto are unable to settle any labor dispute, the employees or their representatives, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice of the dispute together with a statement of the issues involved upon the commission and the other party to the dispute. The notice may be served personally on any member of the commission and a copy thereof personally served upon the other party, or sent by registered mail to the commission at a regularly established office thereof and to the employer or the representative of his employees at his regular address not less than 10 days before the strike or lockout is to become effective.

(b) Upon receipt of the notice the commission shall exercise the powers granted in this act to effect a settlement of the dispute by mediation between the parties. Each of the parties to the dispute shall actively and in good faith participate in the mediation thereof.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—Am. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1978, Act 250, Imd. Eff. June 20, 1978.

423.9a Election in case of impending strike; conduct and supervision; time; persons entitled to vote; secret ballot; place; rules; absentee voting; hearing on eligibility to vote; determination.

Sec. 9a. If it becomes apparent to the commission that there is no reasonable probability of settlement of a labor dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of an impending strike, an election upon such issue which election shall be conducted and supervised by the commission, or by its duly authorized representative. If either party to the dispute notifies the commission in writing, a copy of which shall at the same time be served on the other party, that, in the opinion of such party, further efforts to settle the dispute by mediation would be without avail, the commission may cause an election to be held within 10 days after the receipt of the notice unless it is not practicable to hold the election within that period, in which event the election shall be held within 20 days after receipt of the notice. Every employee in the bargaining unit, which is involved in the dispute, as that bargaining unit is determined under

section 9e or as recognized by the employer or as identified by contract or past practice, shall be entitled to vote in the election. The election shall be by secret ballot, and shall be held on the premises where those voting are employed unless the commission shall determine that the election cannot be fairly held there, in which case it shall be held at such place as the commission shall determine. The commission may promulgate rules as necessary to effectively conduct any election, including provisions for absentee voting. The provisions shall facilitate voting by all employees, and shall insure secrecy of the ballot. The commission may determine after proper hearing any disputed issue concerning the eligibility of a person or persons to vote in the election. The hearing may be held either before or after an election and may be conducted by an authorized representative of the commission. A determination with respect to eligibility shall be applicable in the administration of this section, but shall not have force and effect for any other purpose under this act.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—Am. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9a;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1978, Act 250, Imd. Eff. June 20, 1978.

Administrative rules: R 423.101 et seq. of the Michigan Administrative Code.

423.9b, 423.9c Repealed. 1978, Act 250, Imd. Eff. June 20, 1978.

Compiler's note: The repealed sections prohibited cessation of employment or operation of business during mediation or until strike authorized, and contained provisions regarding jurisdictional disputes.

423.9d Voluntary arbitration; existing collective agreement as binding on parties; agreement to arbitrate; designation of arbitrator; expense of arbitration; enforcement of agreement; hearings; notice; procedure; transcript; findings; opinion and award; enforcement of award.

Sec. 9d. (1) Any labor dispute, other than a representation question, may lawfully be submitted to voluntary arbitration in the manner provided in this section. However, arbitration of labor disputes without complying with this section shall be valid as it has heretofore been under the common law.

(2) (a) When a labor dispute involves the meaning or interpretation of an existing collective agreement between an employer and a labor organization and the collective agreement provides for the use of a designated arbitrator to decide disputes thereunder, or provides the method for selection of arbitrator or arbitrators, the provisions of that agreement shall be binding upon the parties, and shall be complied with unless the parties agree to submit the dispute to some other arbitration procedure.

(b) Disputes, other than representation questions, for which a settlement procedure by arbitration is not provided under any collective agreement between the employer and the labor organization involved, may be submitted to arbitration by agreement of the parties. The agreement to arbitrate shall be in writing, shall provide that the arbitration shall be conducted pursuant to this section, and shall include an undertaking by each of the parties that he will faithfully abide by and perform the arbitration award. The agreement, or a supplemental agreement, shall also specify the issue or issues to be decided, shall make provision for the payment by the parties, or either of them, of the costs and expenses of the arbitration, and may include such other provisions, not inconsistent herewith, as shall be agreeable to the parties. However, the commission may, upon the request of the parties, and upon finding that the parties, or either of them, are unable to bear the expense of the arbitration, designate an arbitrator for a dispute, in which event the expense of the arbitration, including a per diem fee of \$50.00 and necessary expenses of the arbitrator, shall be paid out of the general fund. An agreement to arbitrate an existing or future dispute shall be enforceable in equity by any circuit court having jurisdiction.

(3) The arbitrator or arbitrators designated in a proceeding shall within 20 days after his or their appointment, proceed to conduct hearings in the dispute. Reasonable notice of the hearings shall be given to the parties, who may appear and be heard both in person and by counsel or other representative. Hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Oral or documentary evidence and other data deemed relevant by the arbitrator or arbitrators may be received in evidence. A transcript of the proceedings shall be taken if the arbitrator or arbitrators so desire, or at the request and at the expense of any party. Within 30 days after the conclusion of the hearing, or within such additional period as the parties shall stipulate, the arbitrator or arbitrators shall make written findings and promulgate a written opinion and award upon the issue or issues presented and shall mail or otherwise deliver a true copy thereof to each of the parties. A majority vote of the arbitrators, if there be more than 1, shall constitute a decision on any matter. This section shall not supersede or invalidate the provisions of any collective agreement under which the parties are required to arbitrate disputes under subsection (2)(a).

(4) An award rendered in a proceeding hereunder shall be enforceable at law or in equity as the agreement of the parties.

History: Add. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9d;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1976, Act 17, Imd. Eff. April 27, 2016

423.9e Bargaining unit.

Sec. 9e. The commission, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units. If the group of employees involved in the dispute was recognized by the employer or identified by certification, contract, or past practice, as a unit for collective bargaining, the commission may adopt that unit.

History: Add. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9e;—Am. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.9f Mass picketing; threats or force, picketing private residence, misdemeanor.

Sec. 9f. It shall be unlawful (1) for any person or persons to hinder or prevent by masspicketing, unlawful threats or force the pursuit of any lawful work or employment, (2) to obstruct or interfere with entrance to or egress from any place of employment, (3) to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance, or (4) to engage in picketing a private residence by any means or methods whatever: Provided, That picketing, to the extent that the same is authorized under constitutional provisions, shall in no manner be prohibited. Violation of this section shall be a misdemeanor and punishable as such.

History: Add. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9f;—Am. 1949, Act 230, Imd. Eff. May 31, 1949.

423.9g Copy or statement of most recent offer submitted by employer to bargaining unit.

Sec. 9g. When a vote is held pursuant to this act on the question of calling a strike, the commission, if so requested by the employer or by the collective bargaining unit to be affected by the strike, shall cause to be either printed on the ballot or affixed thereto a copy or statement of the most recent offer submitted by the employer to the bargaining unit representing the employees in the course of collective bargaining negotiations between the employer and the unit.

History: Add. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.9g;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.10 Steps by commission to effect settlement.

Sec. 10. (1) After the commission receives the above notice, or upon its own motion, in an existing, imminent or threatened labor dispute, the commission may end, upon the direction of the governor, the commission shall take such steps as it may deem expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threatened to precipitate or culminate in the labor dispute. To this end, the commission shall:

(a) Arrange for, hold, adjourn, or reconvene a conference or conferences between the disputants, any of their representatives, or both.

(b) Invite the disputants, their representatives, or both, to attend the conference and submit, either orally or in writing, the grievances of, and differences between, the disputants.

(c) Discuss the grievances and differences with the disputants or their representatives.

(d) Assist in negotiating and drafting agreements for the adjustment or settlement of the grievances and differences and for the termination or avoidance of the existing or threatened labor dispute.

(2) In carrying out any of its work under this act, the commission may designate a commissioner to act in its behalf and may delegate to a designee any of its duties under this act including, by way of illustration and not limitation, the mediation of specialized categories of disputes or grievances and, for such purpose, the designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duties so delegated.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.10;—Am. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.11 Hearings; witnesses; oaths; evidence; subpoena; order requiring appearance; contempt; service of process or papers; proof of service.

Sec. 11. (1) Subject to Act No. 267 of the Public Acts of 1976, the commission and each commissioner and each person designated by the commission may hold public or private hearings within the state, subpoena witnesses and compel their attendance, administer oaths, take testimony, and receive evidence. A subpoena may be issued only after the mediation of a dispute shall have been actually undertaken.

(2) If a person is contumacious or refuses to obey a subpoena issued to the person, the circuit court of a

county within the jurisdiction of which the inquiry is carried on, upon application by the commission, may issue to the person an order requiring the person to appear before the commission, to produce evidence or to give testimony touching the matter in question. Failure to obey an order may be punished by the court as contempt.

(3) Process and papers of the commission may be served either personally or by registered mail or by telegraph or by leaving a copy at the principal office or place of business of the person to be served. Return by the individual serving the same setting forth the manner of the service, return post office receipt or telegraph receipt for the service, shall be proof of service of the same.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.11;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1977, Act 203, Imd. Eff. Nov. 17, 1977.

423.12 Disqualification of commissioner.

Sec. 12. A commissioner having any financial interest in or having membership in or affiliation with any labor organization in a trade, business, or occupation in which a labor dispute exists or is threatened and of which the commission has taken cognizance, shall not be qualified to participate in any way in the acts or efforts of the commission in connection with the settlement or avoidance thereof.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.12;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.13-423.13g Repealed. 1978, Act 250, Imd. Eff. June 20, 1978.

Compiler's note: The repealed sections pertained to labor disputes involving hospital or public utility employees.

423.14 Agreements between employer and union; prohibitions; court jurisdiction; violation; penalty; civil action; appropriation.

Sec. 14. (1) An individual shall not be required as a condition of obtaining or continuing employment to do any of the following:

(a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.

(b) Become or remain a member of a labor organization.

(c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization.

(d) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.

(2) An agreement, contract, understanding, or practice between or involving an employer and a labor organization that violates subsection (1) is unlawful and unenforceable. This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the 2012 amendatory act that amended this section.

(3) Subsections (1) and (2) shall be implemented to the maximum extent permitted by the United States constitution and federal law.

(4) The court of appeals has exclusive original jurisdiction over any action challenging the validity of subsection (1), (2), or (3). The court of appeals shall hear the action in an expedited manner.

(5) A person, employer, or labor organization that violates subsection (1) is liable for a civil fine of not more than \$500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

(6) Except for actions required to be brought under subsection (4), a person who suffers an injury as a result of a violation or threatened violation of subsection (1) may bring a civil action for damages, injunctive relief, or both. In addition, a court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection. Remedies provided for in this subsection are independent of and in addition to other penalties and remedies prescribed by this act.

(7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated to the department of licensing and regulatory affairs to be expended to do all of the following regarding the amendatory act that added this subsection:

(a) Respond to public inquiries regarding the amendatory act.

(b) Provide the commission with sufficient staff and other resources to implement the amendatory act.

(c) Inform employers, employees, and labor organizations concerning their rights and responsibilities under the amendatory act.

(d) Any other purposes that the director of the department of licensing and regulatory affairs determines in his or her discretion are necessary to implement the amendatory act.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.14;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Compiler's note: Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.15 Unlawful possession of property; penalty.

Sec. 15. It shall be unlawful for any person to enter or take part in entering upon, or take possession or control of, any property, or to withhold possession of property, against the will of the owner thereof, or other person in the rightful possession or use thereof, or to interfere with the free use thereof, whether the same be accomplished by force or unlawful threats. Violation of this provision shall be a misdemeanor and punishable as such.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.15;—Am. 1949, Act 230, Imd. Eff. May 31, 1949.

423.16 Company unions; interference with unions and discrimination prohibited.

Sec. 16. It shall be unlawful for an employer or any officer or agent of an employer (1) to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section 8; (2) to initiate, create, dominate, contribute to, or interfere with the formation or administration of, any labor organization: Provided, That an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay; (3) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in any labor organization; (4) to encourage membership in, or initiate, create, dominate, or contribute to a company union; (5) to discriminate against any employee because he has given testimony or instituted a proceeding under this act; or (6) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 26.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.16;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1965, Act 282, Imd. Eff. July 22, 1965.

423.17 Prohibited conduct; violation; civil fine.

Sec. 17. (1) An employee or other person shall not by force, intimidation, or unlawful threats compel or attempt to compel any person to do any of the following:

(a) Become or remain a member of a labor organization or otherwise affiliate with or financially support a labor organization.

(b) Refrain from engaging in employment or refrain from joining a labor organization or otherwise affiliating with or financially supporting a labor organization.

(c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.

(2) A person who violates this section is liable for a civil fine of not more than \$500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.17;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Compiler's note: Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.17a Unlawful picketing to force recognition or bargain with labor organization.

Sec. 17a. It shall be unlawful for a labor organization or its agents to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where the primary object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative

(1) Where another labor organization has been certified or has been lawfully recognized in accordance with this act and a question concerning representation may not appropriately be raised under section 27, or

(2) Where, within the preceding twelve months a valid election under section 27 has been conducted, unless the picketing labor organization is currently certified or lawfully recognized as the representative of such employees.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965.

423.19 Liberal construction of act; police powers.

Sec. 19. This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all the provisions of this act shall be liberally construed for the accomplishment of said purposes.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.19.

423.20 Expenses paid from legislated appropriations.

Sec. 20. The expense of carrying out the provisions of this act shall be paid from appropriations made therefor by the legislature.

History: 1939, Act 176, Imd. Eff. June 8, 1939;—CL 1948, 423.20;—Am. 1949, Act 230, Imd. Eff. May 31, 1949.

423.22 Unlawful acts; legal or equitable remedy.

Sec. 22. (1) It shall be unlawful for an employer to engage in a lockout or for a labor organization to engage in or instigate a strike without first having served notice as required in section 9.

(2) It shall be unlawful for any individual to instigate a lockout or strike that is unlawful under this section.

(3) Any person may pursue any appropriate legal or equitable remedy or other relief in any circuit court having jurisdiction with respect to any act or conduct in violation of any of the provisions of this act, except subsection (1) and sections 14(4), 16, and 17a. The existence of a criminal penalty with respect to any such act or conduct does not preclude appropriate equitable relief.

History: Add. 1947, Act 318, Eff. Oct. 11, 1947;—CL 1948, 423.22;—Am. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1978, Act 250, Imd. Eff. June 20, 1978;—Am. 2012, Act 348, Eff. Mar. 28, 2013.

Compiler's note: Enacting section 1 of Act 348 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

423.22a Repealed. 1949, Act 230, Imd. Eff. May 31, 1949.

Compiler's note: The repealed section provided for use of other legal or equitable remedy.

423.23 Review of rulings or orders by supreme court; exceptions; violations of certain provisions as unfair labor practices; remedies; procedures.

Sec. 23. (1) Rulings or orders promulgated by the commission shall be reviewable only by the supreme court and on petition for writ of certiorari or such other process as may be appropriate, except as provided in this section.

(2) Violations of the provisions of sections 16, 17a, and 22(a) of this act only, shall be deemed to be unfair labor practices remediable by the commission in the following manner:

(a) When it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent designated by the commission for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a commissioner, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the commissioner or agent conducting the hearing or the commission, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the commissioner or agent conducting the hearing or the commission, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(b) The testimony taken by the commissioner, agent or the commission shall be reduced to writing and filed with the commission. Thereafter the commission upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on such person an order requiring that person to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which that person has complied with the

order. If, upon the preponderance of the testimony taken the commission is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the commission shall state its findings of fact and shall issue an order dismissing the complaint. No order of the commission shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a commissioner, or before examiners thereof, the commissioner, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the commission, and if exceptions are not filed within 20 days after service thereof upon the parties, or within such further period as the commission may authorize, the recommended order shall become the order of the commission and become effective as prescribed in the order.

(c) Until the record in a case has been filed in a court, the commission at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) The commission or any prevailing party may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall summarily grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the commission, its commissioner or agent, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the commission with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the commission, its commissioner or agent, the court may order the additional evidence to be taken before the commission, its commissioner or agent, and to be made a part of the record. The commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

(e) Any party aggrieved by a final order of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside, with copy of the petition filed on the commission, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the commission. Upon the timely filing of the petition, the court shall proceed in the same manner as in the case of an application by the commission under subsection (d), and shall summarily grant to the commission or to any prevailing party such temporary relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. The findings of the commission with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive. If a timely petition for review is not filed under this subdivision by an aggrieved party, it shall be conclusively presumed that the commission's order is supported by competent, material and substantial evidence on the record considered as a whole, and the commission or any prevailing party shall be entitled, upon application therefor, to a summary order enforcing the commission's order.

(f) The commencement of proceedings under subdivision (d) or (e), shall not, unless specifically ordered by the court, operate as a stay of the commission's order.

(g) Petitions filed under subdivisions (d) and (e) shall be heard expeditiously by the courts to which presented, and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character.

(h) The commission and/or any charging party shall have power, upon issuance of complaint as provided in subdivision (a) charging that any person has engaged in or is engaging in an unfair labor practice, shall have power to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where the person resides or transacts business, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the commission and/or any charging party such temporary relief or restraining order as it deems just and

proper.

(i) For the purpose of all hearings and investigations, which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

(j) The labor relations and mediation functions of this act shall be separately administered by the commission.

History: Add. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1976, Act 98, Imd. Eff. Apr. 27, 1976;—Am. 1977, Act 265, Imd. Eff. Dec. 8, 1977;—Am. 1978, Act 250, Imd. Eff. June 20, 1978.

423.24 Conspiracy; penalty.

Sec. 24. Any person who shall conspire with 1 or more other persons to violate any of the provisions of this act, violation of which is made a penal offense hereunder, shall upon conviction thereof, be deemed guilty of a misdemeanor, and punished by a fine of not to exceed \$1,000.00, or by imprisonment of not to exceed 6 months, or both.

History: Add. 1949, Act 230, Imd. Eff. May 31, 1949.

423.25 Written findings as to matters in disagreement; availability of writings to public.

Sec. 25. (1) When in the course of mediation under section 7 of Act No. 336 of the Public Acts of 1947, as amended, being section 423.207 of the Michigan Compiled Laws, it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

(2) A writing prepared, owned, used, in the possession of, or retained by the mediation panel in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976.

History: Add. 1949, Act 230, Imd. Eff. May 31, 1949;—Am. 1954, Act 86, Eff. Aug. 13, 1954;—Am. 1956, Act 140, Eff. Aug. 11, 1956;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976;—Am. 1977, Act 203, Imd. Eff. Nov. 17, 1977;—Am. 1978, Act 250, Imd. Eff. June 20, 1978.

423.25a Confidential information.

Sec. 25a. (1) Except as provided in subsection (2), a member of the commission or a labor mediator, or other agent of the commission dealing with the mediation process shall not disclose confidential information received by him for the purpose of resolving a dispute in the course of his official duties under this act.

(2) Subsection (1) shall not apply to confidential information received by a member of the commission or a labor mediator, or other agent of the commission dealing with the mediation process from an informant who is a victim of or involved in a crime, other than criminal contempt in a proceeding arising out of a violation of this act, at a legislative, administrative, or judicial proceeding in which the commission of that crime is the subject of inquiry.

(3) As used in this section, "confidential information" means a statement, report, memorandum, document, or other communication or instrument which is not intended to be disclosed to third persons other than those to whom disclosure is necessary to enable the member of the commission or the labor mediator, or other agent of the commission dealing with the mediation process to perform his duties in resolving the dispute.

History: Add. 1976, Act 268, Eff. Mar. 31, 1977.

423.26 Collective bargaining representatives; duties; grievances by individual employee; adjustment.

Sec. 26. Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965.

423.27 Petition as to representation; investigation; hearing; election.

Sec. 27. When a petition is filed, in accordance with rules prescribed by the commission:

(a) By an employee or group of employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 26, or assert that the individual or labor organization, which was certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 26; or

(b) By an employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 26; the commission shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the commission finds upon the record of the hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the commission.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

Administrative rules: R 423.101 et seq. of the Michigan Administrative Code.

423.28 Determination of appropriate unit for collective bargaining.

Sec. 28. The commission shall decide in each case, in order to insure employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.29 Directing election in bargaining unit; eligibility to vote; rules; rerun and runoff elections; election on petition of persons not parties to collective bargaining agreement.

Sec. 29. An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election was held. The commission shall determine who is eligible to vote in the election and shall promulgate rules governing the election. A rerun election may be conducted in the event of conduct improperly affecting a prior election. In an election involving more than 2 choices, where none of the choices on the ballot receives a majority vote, a runoff election shall be conducted between the 2 choices receiving the 2 largest numbers of valid votes cast in the election. An election shall not be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration. A collective bargaining agreement shall not bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965;—Am. 1976, Act 17, Imd. Eff. Feb. 20, 1976.

423.30 Duty to bargain; collective bargaining, definition.

Sec. 30. An employer shall bargain collectively with the representatives of its employees as defined in section 26 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising under an agreement, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

History: Add. 1965, Act 282, Imd. Eff. July 22, 1965.