

HOUSE BILL NO. 251

INTRODUCED BY C. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WORKER FREEDOM ACT; PROVIDING AN EMPLOYEE WITH FREEDOM OF CHOICE ON WHETHER TO JOIN A LABOR ORGANIZATION; REQUIRING WRITTEN AUTHORIZATION OF PARTICIPATION; REQUIRING POSTED NOTICE; DESCRIBING VIOLATIONS; PROVIDING PENALTIES; REPEALING THE RIGHT OF NONASSOCIATION FOR PUBLIC EMPLOYEES FOR CERTAIN REASONS; AMENDING SECTIONS 39-31-201, 39-31-203, AND 39-31-401, MCA; REPEALING SECTIONS 39-31-204, 39-33-101, 39-33-102, 39-33-103, 39-33-104, AND 39-33-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 11] may be cited as the "Worker Freedom Act".

NEW SECTION. **Section 2. Policy.** It is the public policy of the state of Montana, in order to maximize individual freedom of choice in the pursuit of employment and to encourage an employment climate conducive to economic growth, that the right to work not be subject to restraint or coercion. An individual's right to work may not be infringed or restricted based on membership in, affiliation with, or financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 11] the following definitions apply:

(1) "Employer" means an individual, corporation, association, organization, or entity that employs one or more individuals. The term includes the state and its political subdivisions and all districts, boards, commissions, or other units whose governing body exercises governmental powers. The term also includes an employer of agricultural labor.

(2) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

NEW SECTION. Section 4. Freedom of choice guaranteed. An individual may not be required as a condition of employment or continuation of employment to:

(1) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(2) become or remain a member of a labor organization or pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) pay a charity or other third party, in lieu of payment to a labor organization, an amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization.

NEW SECTION. Section 5. Voluntary deductions protected. (1) It is unlawful for an employer to deduct from the wages, earnings, or compensation of an employee any dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization unless the employee has first presented and the employer has received a signed written authorization for the deductions.

(2) The authorization given pursuant to subsection (1) may be revoked by the employee at any time by submitting written notice to the employer 30 days before the date of revocation. An employer receiving an authorization from an employee shall promptly notify the employee in writing of the employee's right to revoke the authorization by giving the employer 30 days' written notice.

NEW SECTION. Section 6. Agreements in violation and actions to induce agreements illegal.

(1) An agreement, understanding, or practice, written or oral, implied or expressed, between a labor organization and an employer that violates the rights of an employee guaranteed by [sections 1 through 11] is void.

(2) Any strike, picketing, boycott, or other action by a labor organization to induce or attempt to induce

an employer to enter into an agreement prohibited by [sections 1 through 11] is illegal and constitutes a violation of [sections 1 through 11].

NEW SECTION. Section 7. Posted notice required. An employer shall continuously display the following notice at a place or places where it may be readily seen by all employees in the employer's business establishment and shall furnish a copy of the notice to each employee when the employment begins and ends:

"EMPLOYEE FREEDOM OF CHOICE

Under the law of the state of Montana, an employee is protected in the exercise of the employee's freedom of choice to join or to refrain from joining a labor organization. It is unlawful for a labor organization and an employer to enter into a contract or agreement that requires the employee to pay dues, fees, assessments, or charges of any kind to a labor organization as a condition of obtaining or retaining a job. Under this law, an employer may not discharge or otherwise discriminate against an employee because of the employee's refusal to join or pay dues, fees assessments, or other charges to a labor organization."

NEW SECTION. Section 8. Criminal penalties. A violation of [sections 1 through 11] is a misdemeanor, and upon conviction an individual, employer, or labor organization or an agent or representative of an employer or labor organization must be fined an amount of up to \$1,000. A violation of [sections 1 through 11] is an absolute liability offense as provided in 45-2-104.

NEW SECTION. Section 9. Civil penalties. A person harmed as a result of a violation or threatened violation of [sections 1 through 11] may:

- (1) file a complaint to enjoin the violator or person threatening violation; and
- (2) recover damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation.

NEW SECTION. Section 10. Duty to investigate. The attorney general and county attorney of a relevant jurisdiction shall investigate and prosecute any complaints of violations of [sections 1 through 11].

1 **NEW SECTION. Section 11. Exceptions.** This act does not apply to:

- 2 (1) employers and employees to the extent that they are subject to the Railway Labor Act, 45 U.S.C.
3 151, et seq.;
- 4 (2) the United States or employees of the United States;
- 5 (3) employers and employees on exclusive federal enclaves; or
- 6 (4) the extent any of its provisions would otherwise conflict with, or be preempted by, federal law.

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8 **Section 12.** Section 39-31-201, MCA, is amended to read:

9 **"39-31-201. ~~Public employees protected in right~~ Right of self-organization -- choice as to**
10 **membership.** (1) Public employees ~~shall have and shall be~~ are protected in the exercise of the right of self-
11 organization, the right to form, join, or assist any labor organization, the right to bargain collectively through
12 representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of
13 employment, and the right to engage in other concerted activities for the purpose of collective bargaining or
14 other mutual aid or protection free from interference, restraint, or coercion.

15 (2) A public employee, on an individual basis, has the right to choose not to join or assist any labor
16 organization, free from interference, restraint, or coercion."

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18 **Section 13.** Section 39-31-203, MCA, is amended to read:

19 **"39-31-203. Deduction of dues from employee's pay.** (1) Upon written authorization of any public
20 employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the
21 monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues
22 to the treasurer of the exclusive representative.

23 (2) The authorization given pursuant to subsection (1) may be revoked by the public employee at any
24 time by submitting written notice to the public employer 30 days before the date of revocation. A public
25 employer receiving an authorization from a public employee shall promptly notify the employee in writing of the
26 employee's right to revoke the authorization by giving the employer 30 days' written notice."

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28 **Section 14.** Section 39-31-401, MCA, is amended to read:

1 **"39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public
2 employer to:

3 (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201
4 and 39-21-203(2);

5 (2) dominate, interfere, or assist in the formation or administration of any labor organization. However,
6 subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting
7 employees to confer with the employer during working hours without loss of time or pay.

8 (3) discriminate in regard to hire or tenure of employment or any term or condition of employment in
9 order to encourage or discourage membership in any labor organization. ~~However, nothing in this chapter or in~~
10 ~~any other statute of this state precludes a public employer from making an agreement with an exclusive~~
11 ~~representative to require, as a condition of employment, that an employee who is not or does not become a~~
12 ~~union member must have an amount equal to the union initiation fee and monthly dues deducted from the~~
13 ~~employee's wages in the same manner as checkoff of union dues.~~

14 (4) discharge or otherwise discriminate against an employee because the employee has signed or
15 filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

16 (5) refuse to bargain collectively in good faith with an exclusive representative."
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18 **NEW SECTION. Section 15. Repealer.** The following sections of the Montana Code Annotated are
19 repealed:

20 39-31-204. Right of nonassociation with labor organization on religious grounds -- requirements and
21 procedure for assertion of right.

22 39-33-101. Intent of part.

23 39-33-102. Immediate family defined.

24 39-33-103. Unfair labor practice.

25 39-33-104. Beer and liquor establishment excepted.

26 39-33-105. Violation.
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28 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 11] are intended to be

1 codified as an integral part of Title 39, chapter 33, and the provisions of Title 39, chapter 33, apply to [sections
2 1 through 11].

3
4 NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
6 the part remains in effect in all valid applications that are severable from the invalid applications.

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8 NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

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