

SENATE BILL NO. 339
INTRODUCED BY G. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WORKERS' 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; REPEALING RIGHT-TO-WORK PROVISIONS; AMENDING SECTIONS 39-31-201, 39-31-205, 39-31-401, AND 50-78-102, 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 EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Workers' 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 12], 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" has the meaning provided in 39-31-103.

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) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization;
- (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; or
- (4) be recommended, approved, referred, or cleared by or through 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 12] 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 12] is illegal and constitutes a violation of [sections 1 through 12].

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 employee's 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 decision to join a labor organization or the employee's refusal to join or to pay dues, fees, assessments, or other charges to a labor organization.

NEW SECTION. Section 8. Coercion and intimidation prohibited. It is unlawful for a person, an employer, a labor organization, or an officer, agent, or member of a labor organization to:

- (1) intimidate or threaten to intimidate an employee or prospective employee or any individual residing in the employee's or prospective employee's home or to damage the employee's property;
- (2) compel or attempt to compel an employee to:
 - (a) join, affiliate with, or financially or otherwise support a labor organization;
 - (b) refrain from joining a labor organization; or
 - (c) forfeit rights guaranteed by the provisions of [sections 1 through 12]; or
- (3) cause or attempt to cause an individual to be denied employment or an employee to be discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce another person to refuse to work with the employee.

NEW SECTION. Section 9. Penalties. A violation of the provisions of 39-31-201, 39-31-205, [section 15], 39-31-401, or [sections 1 through 12] is a misdemeanor, and upon conviction, an individual, employer, or labor organization or an agent or representative of an employer or labor organization shall be fined an amount up to \$1,000. A violation of [sections 1 through 12] is an absolute liability offense as provided in 45-2-104.

NEW SECTION. Section 10. Civil penalties. A person harmed as a result of a violation or threatened violation of 39-31-201, 39-31-205, [section 15], 39-31-401, or [sections 1 through 12] 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 11. Duty to investigate. Each county attorney and the attorney general shall

investigate and prosecute any complaints of violations of 39-31-201, 39-31-205, [section 15], 39-31-401, or [sections 1 through 12].

NEW SECTION. Section 12. Validity of existing agreement. (1) Sections 39-31-201, 39-31-205, [section 15], 39-31-401, and [sections 1 through 12] do not affect the validity of any agreement between a labor organization and an employer entered into before July 1, 2009.

(2) Sections 39-31-201, 39-31-205, [section 15], 39-31-401, and [sections 1 through 12] apply to any new agreement or extension or renewal of an existing agreement on or after July 1, 2009.

Section 13. Section 39-31-201, MCA, is amended to read:

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

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

Section 14. Section 39-31-205, MCA, is amended to read:

"39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees ~~in~~ who choose, on an individual basis, to become members of the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment."

NEW SECTION. Section 15. Agreement invalid as to employee who is not a voluntary member. If an agreement exists between a labor organization and a public employer under which an employee is represented who has not chosen to be a member of the labor organization on an individual basis, the agreement is invalid as it pertains to that employee.

Section 16. Section 39-31-401, MCA, is amended to read:

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

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

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

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

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

~~—(5) refuse to bargain collectively in good faith with an exclusive representative."~~

Section 17. Section 50-78-102, MCA, is amended to read:

"50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

~~—(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or~~

~~—(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.~~

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under subsection (e)(1)(i) of the OSHA standard or under this chapter."

NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 39, chapter 33, and the provisions of Title 39, chapter 33, apply to [sections 1 through 12].

(2) [Section 15] is intended to be codified as an integral part of Title 39, chapter 31, part 2, and the provisions of Title 39, chapter 31, part 2, apply to [section 15].

NEW SECTION. Section 19. Repealer. Sections 39-31-204, 39-33-101, 39-33-102, 39-33-103, 39-33-104, and 39-33-105, MCA, are repealed.

NEW SECTION. Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2009.

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