

HOUSE BILL NO. 323

INTRODUCED BY B. TSCHIDA

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FREE ASSOCIATION BY PUBLIC EMPLOYEES WITH A PUBLIC LABOR ORGANIZATION AND PROHIBITING UNION DUES AND OTHER ASSESSMENTS TO BE CHARGED TO NONMEMBER EMPLOYEES; PROVIDING FOR UNFAIR LABOR PRACTICES; AMENDING SECTIONS 39-31-101, 39-31-203, 39-31-401, AND 39-31-402, MCA; REPEALING SECTION 39-31-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the U.S. Supreme Court in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), found that forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns; and

WHEREAS, the Supreme Court found that forcing nonunion employees to pay agency fees violated the First Amendment's protection on freedom of association and freedom of speech; and

WHEREAS, the Supreme Court ultimately held that neither an agency fee nor any other form of payment to a public sector union may be deducted from an employee, and no other attempt may be made to collect such a payment unless the employee affirmatively consents to pay.

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

**NEW SECTION. Section 1. Public employee choice -- labor organization fee or charge to nonmember prohibited.** (1) A public employee may not be required to become or remain a member of a labor organization to obtain or retain public employment.

(2) A labor organization:

(a) may not collect any dues, fees, assessments, or other charges from a nonmember public employee;

and

(b) must allow, at any time, a member public employee to disassociate with the labor organization.

(3) A public employer may not collect any dues, fees, assessments, or other charges from a nonmember employee on behalf of a labor organization unless the nonmember employee affirmatively consents to have the dues, fees, assessments, or other charges assessed.



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2 **Section 2.** Section 39-31-101, MCA, is amended to read:

3 **"39-31-101. Policy.** ~~In order to promote public business by removing certain recognized sources of strife~~  
 4 ~~and unrest, it~~ It is the policy of the state of Montana to encourage the practice and procedure of collective  
 5 bargaining to arrive at friendly adjustment of all disputes between public employers and their employees. to  
 6 recognize that the relationship of a public collective bargaining unit and a public employee is a voluntary choice."

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8 **Section 3.** Section 39-31-203, MCA, is amended to read:

9 **"39-31-203. Deduction of dues from employee's pay -- exception for nonmember employees. (1)**

10 Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from  
 11 the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive  
 12 representative and shall deliver the dues to the treasurer of the exclusive representative.

13 (2) This section may not be applied to a nonmember public employee as provided in [section 1]."

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15 **Section 4.** Section 39-31-401, MCA, is amended to read:

16 **"39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public  
 17 employer to:

18 (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [section 1]  
 19 and 39-31-201;

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

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

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

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

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3 **Section 5.** Section 39-31-402, MCA, is amended to read:

4 **"39-31-402. Unfair labor practices of labor organization.** It is an unfair labor practice for a labor  
5 organization or its agents to:

6 (1) restrain or coerce:

7 (a) employees in the exercise of the right guaranteed in [section 1] or 39-31-201; or

8 (b) a public employer in the selection of a representative for the purpose of collective bargaining or the  
9 adjustment of grievances;

10 (2) refuse to bargain collectively in good faith with a public employer if ~~it~~ the labor organization has been  
11 designated as the exclusive representative of its member employees;

12 (3) charge agency shop fees to public employees who elect to not be a member of a labor organization  
13 or use agency shop fees for contributions to political candidates or parties at state or local levels."

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15 NEW SECTION. **Section 6. Repealer.** The following section of the Montana Code Annotated is  
16 repealed:

17 39-31-204. Right of nonassociation with labor organization on religious grounds -- requirements and  
18 procedure for assertion of right.

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20 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an  
21 integral part of Title 39, chapter 31, part 1, and the provisions of Title 39, chapter 31, part 1, apply to [section 1].

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

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