

1 HOUSE BILL NO. 168

2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC
5 EMPLOYEES AND LABOR ORGANIZATIONS; REQUIRING LABOR ORGANIZATIONS TO ALLOW PUBLIC
6 EMPLOYEES TO OPT OUT OF MEMBERSHIP; PROHIBITING LABOR ORGANIZATIONS FROM
7 REQUIRING PAYMENT OF DUES, FEES, ASSESSMENTS, OR OTHER CHARGES; REQUIRING FREE AND
8 AFFIRMATIVE CONSENT BY PUBLIC EMPLOYEES TO ASSOCIATE WITH A LABOR ORGANIZATION;
9 REQUIRING THE EMPLOYER PUBLIC ENTITY TO PROVIDE NOTICE AND RECEIVE THE PUBLIC
10 EMPLOYEE'S AFFIRMATIVE CONSENT; REVISING UNFAIR LABOR PRACTICES; AMENDING SECTIONS
11 39-31-101, 39-31-203, 39-31-401, AND 39-31-402, MCA; REPEALING SECTION 39-31-204, MCA; AND
12 PROVIDING AN EFFECTIVE DATE."

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

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16 **NEW SECTION. Section 1. Public employee choice -- labor organization fees.** (1) A labor
17 organization or an employer public entity on behalf of the labor organization:

18 (a) may not collect any dues, fees, assessments, or other charges from any public employee unless:

19 (i) the public employee has freely and affirmatively consented as provided in subsection (2); and

20 (ii) the employer public entity annually provides the public employee with notice of the public
21 employee's first amendment rights against compelled speech; and

22 (b) shall allow, at any time, a member public employee to disassociate with the labor organization and
23 shall provide annual notice that the public employee may disassociate with the labor organization.

24 (2) A public employee:

25 (a) may not be required to become or remain a member of a labor organization to obtain or retain
26 public employment; and

27 (b) must affirmatively consent to any collection of dues, fees, assessments, or other charges on
28 behalf of the labor organization and must consent to the waiver of the public employee's first amendment rights

1 in associating with the labor organization. The public employee's consent must be made in writing directly to the
 2 employer public entity on an annual basis. The public employee shall freely and affirmatively opt in to the
 3 collection of dues, fees, assessments, or other charges on an annual basis and failure to do so must be
 4 construed to mean that the public employee has chosen to disassociate with the labor organization. As used in
 5 this subsection, the consent given by the public employee must be physically signed annually by the public
 6 employee and must state:

7 "I recognize that I have a first amendment right to associate, including the right not to associate. My
 8 rights provide that I am not compelled to be a member of a labor organization. I am not compelled to pay a
 9 labor organization any money as a condition of employment. However, I am waiving this right and consent to
 10 labor organization membership. I also consent to having labor organization dues deducted from my paycheck.
 11 My consent may be revoked at any time, resulting in the immediate termination of any financial agreement to
 12 pay the labor organization dues, fees, or any other form of payment."
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14 **Section 2.** Section 39-31-101, MCA, is amended to read:

15 "**39-31-101. Policy.** ~~In order to promote public business by removing certain recognized sources of~~
 16 ~~strife and unrest, it~~ It is the policy of the state of Montana to encourage the practice and procedure of collective
 17 ~~bargaining to arrive at friendly adjustment of all disputes between public employers and their employees~~
 18 recognize that the relationship of a public collective bargaining unit and a public employee is a voluntary
 19 choice."

20
 21 **Section 3.** Section 39-31-203, MCA, is amended to read:

22 "**39-31-203. Deduction of dues from employee's pay.** ~~Upon~~ As provided in [section 1], on written
 23 authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of
 24 the public employee the monthly amount of dues as certified by the secretary of the exclusive representative
 25 and shall deliver the dues to the treasurer of the exclusive representative."
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27 **Section 4.** Section 39-31-401, MCA, is amended to read:

28 "**39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public

1 employer to:

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

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

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

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

15 (5) refuse to bargain collectively in good faith with an exclusive representative."
16

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

18 **"39-31-402. Unfair labor practices of labor organization.** It is an unfair labor practice for a labor
19 organization or its agents to:

20 (1) restrain or coerce:

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

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

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

26 (3) use agency shop fees for contributions to political candidates or parties at state or local levels."
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28 NEW SECTION. **Section 6. Repealer.** The following section of the Montana Code Annotated is

1 repealed:

2 39-31-204. Right of nonassociation with labor organization on religious grounds -- requirements and
3 procedure for assertion of right.

4
5 NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an
6 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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8 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2021.

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