

SENATE BILL NO. 339

INTRODUCED BY G. HINKLE

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WORKERS' FREEDOM ACT; PROVIDING AN  
5 EMPLOYEE WITH FREEDOM OF CHOICE ON WHETHER TO JOIN A LABOR ORGANIZATION; REQUIRING  
6 WRITTEN AUTHORIZATION OF PARTICIPATION; REQUIRING POSTED NOTICE; DESCRIBING  
7 VIOLATIONS; PROVIDING PENALTIES; REPEALING THE RIGHT OF NONASSOCIATION FOR PUBLIC  
8 EMPLOYEES FOR CERTAIN REASONS; REPEALING RIGHT-TO-WORK PROVISIONS; AMENDING  
9 SECTIONS 39-31-201, 39-31-205, 39-31-401, AND 50-78-102, MCA; REPEALING SECTIONS 39-31-204,  
10 39-33-101, 39-33-102, 39-33-103, 39-33-104, AND 39-33-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Workers' Freedom  
15 Act".

16  
17 NEW SECTION. Section 2. Policy. It is the public policy of the state of Montana, in order to maximize  
18 individual freedom of choice in the pursuit of employment and to encourage an employment climate conducive  
19 to economic growth, that the right to work not be subject to restraint or coercion. An individual's right to work may  
20 not be infringed or restricted based on membership in, affiliation with, or financial support of a labor organization  
21 or on refusal to join, affiliate with, or financially or otherwise support a labor organization.

22  
23 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 12], the following definitions  
24 apply:

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

29 (2) "Labor organization" has the meaning provided in 39-31-103.  
30

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

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

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

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

9            (4) be recommended, approved, referred, or cleared by or through a labor organization.

10

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

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

19

20           **NEW SECTION. Section 6. Agreements in violation and actions to induce agreements illegal.** (1)  
21 An agreement, understanding, or practice, written or oral, implied or expressed, between a labor organization and  
22 an employer that violates the rights of an employee guaranteed by [sections 1 through 12] is void.

23           (2) Any strike, picketing, boycott, or other action by a labor organization to induce or attempt to induce  
24 an employer to enter into an agreement prohibited by [sections 1 through 12] is illegal and constitutes a violation  
25 of [sections 1 through 12].

26

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

1 EMPLOYEE FREEDOM OF CHOICE

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

9  
 10 **NEW SECTION. Section 8. Coercion and intimidation prohibited.** It is unlawful for a person, an  
 11 employer, a labor organization, or an officer, agent, or member of a labor organization to:

12 (1) intimidate or threaten to intimidate an employee or prospective employee or any individual residing  
 13 in the employee's or prospective employee's home or to damage the employee's property;

14 (2) compel or attempt to compel an employee to:

15 (a) join, affiliate with, or financially or otherwise support a labor organization;

16 (b) refrain from joining a labor organization; or

17 (c) forfeit rights guaranteed by the provisions of [sections 1 through 12]; or

18 (3) cause or attempt to cause an individual to be denied employment or an employee to be discharged  
 19 from employment because of support or nonsupport of a labor organization by inducing or attempting to induce  
 20 another person to refuse to work with the employee.

21  
 22 **NEW SECTION. Section 9. Penalties.** A violation of the provisions of 39-31-201, 39-31-205, [section  
 23 15], 39-31-401, or [sections 1 through 12] is a misdemeanor, and upon conviction, an individual, employer, or  
 24 labor organization or an agent or representative of an employer or labor organization shall be fined an amount  
 25 up to \$1,000. A violation of [sections 1 through 12] is an absolute liability offense as provided in 45-2-104.

26  
 27 **NEW SECTION. Section 10. Civil penalties.** A person harmed as a result of a violation or threatened  
 28 violation of 39-31-201, 39-31-205, [section 15], 39-31-401, or [sections 1 through 12] may:

29 (1) file a complaint to enjoin the violator or person threatening violation; and

30 (2) recover damages, including costs and reasonable attorney fees, resulting from the violation or

1 threatened violation.

2

3 NEW SECTION. Section 11. Duty to investigate. Each county attorney and the attorney general shall  
4 investigate and prosecute any complaints of violations of 39-31-201, 39-31-205, [section 15], 39-31-401, or  
5 [sections 1 through 12].

6

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

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

12

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

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

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

22

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

24 "**39-31-205. Designated labor organizations to represent employees without discrimination.** Labor  
25 organizations designated in accordance with the provisions of this chapter are responsible for representing the  
26 interest of all employees ~~in~~ who choose, on an individual basis, to become members of the exclusive bargaining  
27 unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe  
28 benefits, and other conditions of employment."

29

30 NEW SECTION. Section 15. Agreement invalid as to employee who is not a voluntary member.

1 If an agreement exists between a labor organization and a public employer under which an employee is  
 2 represented who has not chosen to be a member of the labor organization on an individual basis, the agreement  
 3 is invalid as it pertains to that employee.

4

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

6 **"39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public  
 7 employer to:

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

9 (2) dominate, interfere, or assist in the formation or administration of any labor organization; ~~however~~

10 However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting  
 11 employees to confer with ~~him~~ the employer during working hours without loss of time or pay;

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

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

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

21

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

23 **"50-78-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

5 (5) "Designated representative" means:

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

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

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

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

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

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

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

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

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

24 (c) any emitter of ionizing radiation.

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

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

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

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

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

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

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

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

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

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

16  
17 **NEW SECTION. Section 18. Codification instruction.** (1) [Sections 1 through 12] are intended to be  
18 codified as an integral part of Title 39, chapter 33, and the provisions of Title 39, chapter 33, apply to [sections  
19 1 through 12].

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

22  
23 **NEW SECTION. Section 19. Repealer.** Sections 39-31-204, 39-33-101, 39-33-102, 39-33-103,  
24 39-33-104, and 39-33-105, MCA, are repealed.

25  
26 **NEW SECTION. Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are  
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
28 the part remains in effect in all valid applications that are severable from the invalid applications.

29  
30 **NEW SECTION. Section 21. Effective date.** [This act] is effective July 1, 2009.

31 - END -