

Senate Bill No. 337

(By Senators Carmichael, Blair, Boso, Sypolt and Trump)

[Introduced January 27, 2015; referred to the Committee on the Judiciary.]

9 A BILL to amend and reenact §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as
10 amended; and to amend said code by adding thereto a new article, designated §21-5G-1,
11 §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, §21-5G-7, §21-5G-8 and §21-5G-9,
12 all relating to establishing the West Virginia Right to Work Law; prohibiting any
13 requirement that a person become or remain a member of a labor organization as condition
14 of employment; prohibiting any requirement that a person must pay dues or other fees to a
15 labor organization; prohibiting any requirement that a person contribute to a charity in lieu
16 of paying dues or other fees to a labor organization; providing that certain agreements or
17 practices between labor organizations and employers are null and void; providing for
18 monetary penalties; providing for injunctive relief; providing for private cause of action for
19 damages and attorney's fees; providing exceptions; requiring prosecuting attorneys and the
20 Attorney General to investigate complaints; and defining terms.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended, be amended

1 and reenacted; and that said code be amended by adding thereto a new article, designated §21-5G-1,
2 §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, §21-5G-7, §21-5G-8 and §21-5G-9, all to read
3 as follows:

4 **ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE**
5 **SECTOR.**

6 **§21-1A-3. Rights of employees.**

7 Employees shall have the right to self-organization, to form, join or assist labor
8 organizations, to bargain collectively through representatives of their own choosing, and to engage
9 in other concerted activities for the purpose of collective bargaining or other mutual aid or
10 protection, and shall also have the right to refrain from any or all of such activities ~~except to the~~
11 ~~extent that such right may be affected by an agreement requiring membership in a labor organization~~
12 ~~as a condition of employment as authorized in subdivision (3), subsection (a), section four of this~~
13 ~~article~~ including the right to refrain from paying any dues, fees, assessments or other similar charges
14 however denominated of any kind or amount to a labor organization or to a charity in lieu of a
15 payment to a labor organization.

16 **§21-1A-4. Unfair labor practices.**

17 (a) It shall be an unfair labor practice for an employer:

18 (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed
19 in section three of this article;

20 (2) To dominate or interfere with the formation or administration of any labor organization
21 or contribute financial or other support to it: *Provided*, That an employer shall not be prohibited
22 from permitting employees to confer with him or her during working hours without loss of time or

1 pay;

2 (3) By discrimination in regard to hire or tenure of employment or any term or condition of
3 employment, to encourage or discourage membership in any labor organization. *Provided, however,*
4 ~~That nothing contained in this article, or in any other statute of this state, shall preclude an employer~~
5 ~~from making an agreement with a labor organization (not established, maintained or assisted by any~~
6 ~~action defined in this section as an unfair labor practice) to require as a condition of employment~~
7 ~~membership therein on or after the thirtieth day following the beginning of such employment or the~~
8 ~~effective date of such agreement, whichever is the later, (i) if such labor organization is the~~
9 ~~representative of the employees as provided in section five of this article, in the appropriate~~
10 ~~collective-bargaining unit covered by such agreement when made, and (ii) unless following an~~
11 ~~election held as provided in subsection (d), section five of this article, within one year preceding the~~
12 ~~effective date of such agreement, the board shall have certified that at least a majority of the~~
13 ~~employees eligible to vote in such election have voted to rescind the authority of such labor~~
14 ~~organization to make such an agreement: *Provided further,* That no employer shall justify any~~
15 ~~discrimination against an employee for nonmembership in a labor organization (A) if he or she has~~
16 ~~reasonable grounds for believing that such membership was not available to the employee on the~~
17 ~~same terms and conditions generally applicable to other members, or (B) if he or she has reasonable~~
18 ~~grounds for believing that membership was denied or terminated for reasons other than the failure~~
19 ~~of the employee to tender the periodic dues and the initiation fees uniformly required as a condition~~
20 ~~of acquiring or retaining membership;~~

21 (4) To discharge or otherwise discriminate against an employee because he or she has filed
22 charges or given testimony under this article; and

1 (5) To refuse to bargain collectively with the representatives of his or her employees, subject
2 to the provisions of subsection (a), section five of this article.

3 (b) It shall be an unfair labor practice for a labor organization or its agents:

4 (1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section
5 three of this article: *Provided*, That this subdivision shall not impair the right of a labor organization
6 to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B)
7 an employer in the selection of his or her representatives for the purposes of collective bargaining
8 or the adjustment of grievances;

9 (2) To cause or attempt to cause an employer to discriminate against an employee in violation
10 of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect
11 to whom membership in such organization has been denied or terminated on some ground other than
12 his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition
13 of acquiring or retaining membership;

14 (3) To refuse to bargain collectively with an employer, provided it is the representative of his
15 or her employees subject to the provisions of subsection (a), section five of this article;

16 (4) (I) To engage in or induce or encourage any individual employed by any person to engage
17 in, a strike or a refusal in the course of employment to use, manufacture, process, transport, or
18 otherwise handle or work on any goods, articles, materials or commodities or to perform any
19 services; or (ii) to threaten, coerce, or restrain any person, where in either case an object thereof is:

20 (A) Forcing or requiring any employer or self-employed person to join any labor or employer
21 organization or to enter into any agreement which is prohibited by subsection (e) of this section;

22 (B) Forcing or requiring any person to cease using, selling, handling, transporting or

1 otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing
2 business with any other person, or forcing or requiring any other employer to recognize or bargain
3 with a labor organization as the representative of his or her employees unless such labor organization
4 has been certified as the representative of such employees under the provisions of section five of this
5 article: *Provided*, That nothing contained in this ~~clause (B) shall~~ paragraph may be construed to
6 make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

7 (C) Forcing or requiring any employer to recognize or bargain with a particular labor
8 organization as the representative of his or her employees if another labor organization has been
9 certified as the representative of such employees under the provisions of section five of this article;

10 (D) Forcing or requiring any employer to assign particular work to employees in a particular
11 labor organization or in a particular trade, craft or class rather than to employees in another labor
12 organization or in another trade, craft or class, unless such employer is failing to conform to an order
13 of certification of the board determining the bargaining representative for employees performing
14 such work: *Provided*, That nothing contained in this subsection ~~(b)~~ shall be construed to make
15 unlawful a refusal by any person to enter upon the premises of any employer (other than his or her
16 own employer), if the employees of such employer are engaged in a strike ratified or approved by
17 a representative of such employees whom such employer is required by law to recognize;

18 (5) To require of employees covered by an agreement authorized under subdivision (3),
19 subsection (a) of this section, the payment, as a condition precedent to becoming a member of such
20 organization, of a fee in an amount which the board finds excessive or discriminatory under all the
21 circumstances. In making such a finding, the board shall consider, among other relevant factors, the
22 practices and customs of labor organizations in the particular industry, and the wages currently paid

1 to the employees affected;

2 (6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any
3 money or other thing of value, in the nature of an exaction, for services which are not performed or
4 not to be performed; and

5 (7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any
6 employer where an object thereof is forcing or requiring an employer to recognize or bargain with
7 a labor organization as the representative of his or her employees, or forcing or requiring the
8 employees of an employer to accept or select such labor organization as their collective bargaining
9 representative, unless such labor organization is currently certified as the representative of such
10 employees:

11 (A) Where the employer has lawfully recognized in accordance with this article any other
12 labor organization and a question concerning representation may not appropriately be raised under
13 subsection (c), section five of this article;

14 (B) Where within the preceding twelve months a valid election under subsection (c), section
15 five of this article has been conducted; or

16 (C) Where such picketing has been conducted without a petition under subsection (c), section
17 five of this article being filed within a reasonable period of time not to exceed fifteen days from the
18 commencement of such picketing: *Provided*, That when such a petition has been filed the board
19 shall forthwith, without regard to the provisions of said subsection (c), section five or the absence
20 of a showing of a substantial interest on the part of the labor organization, direct an election in such
21 unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this
22 subdivision (7) of this subsection shall be construed to permit any act which would otherwise be an

1 unfair labor practice under this subsection. ~~(b)~~

2 (c) The expressing of any views, argument or opinion, or the dissemination thereof, whether
3 in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor
4 practice, or be prohibited under this article, if such expression contains no threat of reprisal or force
5 or promise of benefit.

6 (d) For the purposes of this section, to bargain collectively is the performance of the mutual
7 obligation of the employer and the representative of the employees to meet at reasonable times and
8 confer in good faith with respect to wages, hours and other terms and conditions of employment, or
9 the negotiation of an agreement, or any question arising thereunder, and the execution of a written
10 contract incorporating any agreement reached if requested by either party, but such obligation does
11 not compel either party to agree to a proposal or require the making a concession: *Provided*, That
12 where there is in effect a collective-bargaining contract covering employees, the duty to bargain
13 collectively shall also mean that no party to such contract shall terminate or modify such contract,
14 unless the party desiring such termination or modification:

15 (1) Gives a written notice to the other party of the proposed termination or modification sixty
16 days prior to the expiration date thereof, or in the event such contract contains no expiration date,
17 sixty days prior to the time it is proposed to make such termination or modification;

18 (2) Offers to meet and confer with the other party for the purpose of negotiating a new
19 contract or a contract containing the proposed modifications;

20 (3) Notifies the commissioner of labor of the existence of a dispute;

21 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms and
22 conditions of the existing contract for a period of sixty days after such notice is given or until the

1 expiration date of such contract, whichever occurs later. The duties imposed upon employers,
2 employees, and labor organizations by subdivisions (2), (3) and (4) of this subsection ~~(d)~~ shall
3 become inapplicable upon an intervening certification of the board, under which the labor
4 organization or individual, which is a party to the contract, has been superseded as or ceased to be
5 the representative of the employees subject to the provisions of subsection (a), section five of this
6 article, and the duties so imposed shall not be construed as requiring either party to discuss or agree
7 to any modification of the terms and conditions contained in a contract for a fixed period, if such
8 modification is to become effective before such terms and conditions can be reopened under the
9 provisions of the contract. Any employee who engages in a strike within the sixty- day period
10 specified in this subsection shall lose his or her status as an employee of the employer engaged in
11 the particular labor dispute, for the purposes of sections three, four and five of this article, but such
12 loss of status for such employee shall terminate if and when he or she is redeployed by such
13 employer.

14 (e) It shall be an unfair labor practice for any labor organization and any employer to enter
15 into any contract or agreement, express or implied, whereby such employer ceases or refrains or
16 agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of
17 the products of any other employer, or to cease doing business with any other person and any such
18 contract or agreement entered into heretofore or hereafter shall be to such extent unenforceable and
19 void.

20 **ARTICLE 5G. WEST VIRGINIA RIGHT TO WORK LAW.**

21 **§21-5G-1. Definitions.**

22 (a) The term "labor organization" means any organization of any kind, or agency or employee

1 representation committee or union, which exists for the purpose, in whole or in part, of collective
2 bargaining or of dealing with any employer, or with any public body, concerning wages, rates of pay,
3 salaries, hours of work, other forms of compensation, or other terms or conditions of employment
4 or grievances, or for any other mutual aid or protection in relation to employment.

5 (b) The term "Employer" means all persons, firms, associations, corporations, public
6 employers, public school employers and public colleges, universities, institution, and education
7 agencies.

8 **§21-5G-2. Right to refrain.**

9 A person may not be required, as a condition or continuation of employment, to:

10 (1) Become or remain a member of a labor organization;

11 (2) Pay any dues, fees, assessments or other similar charges however denominated, of any
12 kind or amount to a labor organization; or

13 (3) Pay any charity or third party in lieu of those payments, any amount or pro rata portion
14 of dues, fees, assessments or other charges required of members of a labor organization.

15 **§21-5G-3. Agreements in violation.**

16 Any agreement, understanding or practice, written or oral, implied or expressed, between any
17 labor organization and employer or public body which violates the rights of employees as set out in
18 this article is hereby declared to be unlawful, null and void, and of no legal effect.

19 **§21-5G-4. Penalty.**

20 A labor organization, employer, public body or other person directly or indirectly violating
21 this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500
22 nor more than \$5,000.

1 **§21-5G-5. Injunctive relief.**

2 Any person injured as a result of any violation or threatened in violation of this article is
3 entitled to injunctive relief against any and all violators or persons threatening violations.

4 **§21-5G-6. Damages.**

5 Any person injured as a result of any violation or threatened violation of this article may
6 recover damages, including costs and reasonable attorney fees, resulting from the violation or
7 threatened violation. These remedies are independent of and in addition to the penalties and
8 remedies set out in other provisions of this article.

9 **§21-5G-7. Duty to investigate.**

10 It is the duty of the prosecuting attorney of each county, and of the Attorney General of this
11 state, to investigate complaints of violations or threatened violations of this article, to prosecute all
12 persons violating any of its provisions, and to take all means necessary to ensure its enforcement.

13 **§21-5G-8. Exceptions.**

14 This article does not apply:

15 (1) To employers and employees covered by the federal Railway Labor Act;

16 (2) To federal employers and employees;

17 (3) To employers and employees on exclusive federal enclaves; or

18 (4) Where they would otherwise conflict with, or be preempted by, federal law.

19 **§21-5G-9. Severability.**

20 If any provision of this act or the application of any such provision to any person or
21 circumstance should be held invalid by a court of competent jurisdiction, the remainder of this act
22 or the application of its provisions to persons or circumstances other than those to which it is held

1 invalid shall not be affected thereby.

NOTE: The purpose of this bill is to establish the West Virginia Right to Work Law. The bill prohibits any requirement that a person become or remain a member of a labor organization as a condition of employment. The bill prohibits any requirement that a person must pay dues or other fees to a labor organization. The bill prohibits any requirement that a person contribute to a charity in lieu of paying dues or other fees to a labor organization. The bill provides that certain agreements or practices between labor organizations and employers are null and void. The bill provides for monetary penalties. The bill provides for injunctive relief. The bill provides for a private cause of action for damages and attorney's fees. The bill provides exceptions. The bill requires prosecuting attorneys and the Attorney General to investigate complaints. The bill defines terms.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 5G is new; therefore, strike-throughs and underscoring have been omitted.