

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2056**

BY DELEGATES FLEISCHAUER, PYLES AND CANESTRARO

[ Introduced January 9, 2019; Referred  
to the Committee on Industry and Labor then the  
Judiciary then Finance.]

1 A BILL to repeal §21-5G-1, 3 §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, and §21-5G-  
 2 7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21-1A-3  
 3 and §21-1A-4 of said code, all relating to repealing the West Virginia Workplace Freedom  
 4 Act and restoring prior law; and authorizing employers, through agreement with a labor  
 5 organization, to require membership in the organization as a condition of employment.

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

**ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM ACT.**

**§21-5G-1. Definitions.**

1 [Repealed]

**§21-5G-2. Individual’s right to refrain from affiliating with a labor organization.**

1 [Repealed]

**§21-5G-3. Contracting for exclusion from employment because of affiliation or nonaffiliation with a labor organization.**

1 [Repealed]

**§21-5G-4. Criminal penalty.**

1 [Repealed]

**§21-5G-5. Civil relief; damages.**

1 [Repealed]

**§21-5G-6. Exceptions.**

1 [Repealed]

**§21-5G-7. Applicability; severability.**

1 [Repealed]

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

**§21-1A-3. Rights of employees.**

1 Employees shall have the right to self-organization, to form, join or assist labor  
2 organizations, to bargain collectively through representatives of their own choosing, and to  
3 engage in other concerted activities for the purpose of collective bargaining or other mutual aid  
4 or protection, and shall also have the right to refrain from any or all of such activities, ~~including~~  
5 ~~the right to refrain from paying any dues, fees, assessments or other similar charges however~~  
6 ~~denominated of any kind or amount to a labor organization or to any third party including, but not~~  
7 ~~limited to, a charity in lieu of a payment to a labor organization~~ except to the extent that such right  
8 may be affected by an agreement requiring membership in a labor organization as a condition of  
9 employment as authorized in §21-1A-4(a)(3) of this code.

**§21-1A-4. Unfair labor practices.**

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

2 (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed  
3 in §21-1A-3 of this code;

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

8 (3) By discrimination in regard to hire or tenure of employment or any term or condition of  
9 employment, to encourage or discourage membership in any labor organization: *Provided, That*  
10 nothing contained in this article, or in any other statute of this state, shall preclude an employer  
11 from making an agreement with a labor organization (not established, maintained or assisted by  
12 any action defined in this section as an unfair labor practice) to require as a condition of  
13 employment membership therein on or after the 30th day following the beginning of such  
14 employment or the effective date of such agreement, whichever is the later: (A) If such labor  
15 organization is the representative of the employees as provided in §21-1A-5 of this code, in the  
16 appropriate collective-bargaining unit covered by such agreement when made; and (B) unless

17 following an election held as provided in §21-1A-5(d) of this code, within one year preceding the  
18 effective date of such agreement, the board shall have certified that at least a majority of the  
19 employees eligible to vote in such election have voted to rescind the authority of such labor  
20 organization to make such an agreement: *Provided, however,* That no employer shall justify any  
21 discrimination against an employee for nonmembership in a labor organization: (A) If he or she  
22 has reasonable grounds for believing that such membership was not available to the employee  
23 on the same terms and conditions generally applicable to other members; or (B) if he or she has  
24 reasonable grounds for believing that membership was denied or terminated for reasons other  
25 than the failure of the employee to tender the periodic dues and the initiation fees uniformly  
26 required as a condition of acquiring or retaining membership;

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

29 (5) To refuse to bargain collectively with the representatives of his or her employees,  
30 subject to the provisions of §21-1A-5(a) of this code.

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

32 (1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in §21-  
33 1A-3 of this code: *Provided,* That this subdivision shall not impair the right of a labor organization  
34 to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B)  
35 an employer in the selection of his or her representatives for the purposes of collective bargaining  
36 or the adjustment of grievances;

37 (2) To cause or attempt to cause an employer to discriminate against an employee in  
38 violation of §21-1A-4(a)(3) of this code or to discriminate against an employee with respect to  
39 whom membership in such organization has been denied or terminated on some ground other  
40 than his or her failure to tender the periodic dues and the initiation fees uniformly required as a  
41 condition of acquiring or retaining membership;

42 (3) To refuse to bargain collectively with an employer, provided it is the representative of

43 his or her employees subject to the provisions of §21-1A-5(a) of this code;

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

49 (A) Forcing or requiring any employer or self-employed person to join any labor or  
50 employer organization or to enter into any agreement which is prohibited by §21-1A-4(e) of this  
51 code;

52 (B) Forcing or requiring any person to cease using, selling, handling, transporting or  
53 otherwise dealing in the products of any other producer, processor or manufacturer, or to cease  
54 doing business with any other person, or forcing or requiring any other employer to recognize or  
55 bargain with a labor organization as the representative of his or her employees unless such labor  
56 organization has been certified as the representative of such employees under the provisions of  
57 §21-1A-5 of this code: *Provided*, That nothing contained in this paragraph may be construed to  
58 make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

59 (C) Forcing or requiring any employer to recognize or bargain with a particular labor  
60 organization as the representative of his or her employees if another labor organization has been  
61 certified as the representative of such employees under the provisions of §21-1A-5 of this code;

62 (D) Forcing or requiring any employer to assign particular work to employees in a particular  
63 labor organization or in a particular trade, craft or class rather than to employees in another labor  
64 organization or in another trade, craft or class, unless such employer is failing to conform to an  
65 order of certification of the board determining the bargaining representative for employees  
66 performing such work: *Provided*, That nothing contained in this subsection shall be construed to  
67 make unlawful a refusal by any person to enter upon the premises of any employer (other than  
68 his or her own employer), if the employees of such employer are engaged in a strike ratified or

69 approved by a representative of such employees whom such employer is required by law to  
70 recognize;

71 (5) To require of employees covered by an agreement authorized under §21-1A-4(a)(3) of  
72 this code, the payment, as a condition precedent to becoming a member of such organization, of  
73 a fee in an amount which the board finds excessive or discriminatory under all the circumstances.  
74 In making such a finding, the board shall consider, among other relevant factors, the practices  
75 and customs of labor organizations in the particular industry, and the wages currently paid to the  
76 employees affected;

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

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

86 (A) Where the employer has lawfully recognized in accordance with this article any other  
87 labor organization and a question concerning representation may not appropriately be raised  
88 under §21-1A-5(c) of this code;

89 (B) Where within the preceding twelve months a valid election under §21-1A-5(c) of this  
90 code has been conducted; or

91 (C) Where such picketing has been conducted without a petition under §21-1A-5(c) of this  
92 code being filed within a reasonable period of time not to exceed 15 days from the commencement  
93 of such picketing: *Provided*, That when such a petition has been filed the board shall forthwith,  
94 without regard to the provisions of ~~said~~ that subsection or the absence of a showing of a

95 substantial interest on the part of the labor organization, direct an election in such unit as the  
96 board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision shall  
97 be construed to permit any act which would otherwise be an unfair labor practice under this  
98 subsection.

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

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

112 (1) Gives a written notice to the other party of the proposed termination or modification 60  
113 days prior to the expiration date thereof, or in the event such contract contains no expiration date,  
114 60 days prior to the time it is proposed to make such termination or modification;

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

117 (3) Notifies the Commissioner of Labor of the existence of a dispute;

118 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms  
119 and conditions of the existing contract for a period of 60 days after such notice is given or until  
120 the expiration date of such contract, whichever occurs later. The duties imposed upon employers,

121 employees and labor organizations by this subdivision and §21-1A-4(d)(2), and §21-1A-4(d)(3) of  
122 this code shall become inapplicable upon an intervening certification of the board, under which  
123 the labor organization or individual, which is a party to the contract, has been superseded as or  
124 ceased to be the representative of the employees subject to the provisions of §21-1A-5(a) of this  
125 code, and the duties so imposed shall not be construed as requiring either party to discuss or  
126 agree to any modification of the terms and conditions contained in a contract for a fixed period, if  
127 such modification is to become effective before such terms and conditions can be reopened under  
128 the provisions of the contract. Any employee who engages in a strike within the 60-day period  
129 specified in this subsection shall lose his or her status as an employee of the employer engaged  
130 in the particular labor dispute, for the purposes of this section, and §21-1A-3 and §21-1A-5 of this  
131 code, but such loss of status for such employee shall terminate if and when he or she is  
132 reemployed by such employer.

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

NOTE: The purpose of this bill is to repeal the Workplace Freedom Act of 2016 and restore the prior provisions of the Labor-Management Relations Act.

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