

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2379

BY DELEGATE ESPINOSA AND HIGGINBOTHAM

[Introduced January 14, 2019; Referred
to the Committee on Industry and Labor then the
Judiciary.]

1 A BILL to amend and reenact §3-8-12 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §21-1A-4 of said code; and to amend and reenact §21-5-1 of said code, all
 3 relating to limitations on the use of wages and agency shop fees by employers and labor
 4 organization for political activities; prohibiting any person from coercing or intimidating any
 5 employee into making a political contribution or engaging in any form of political activity;
 6 prohibiting employers and any other persons responsible for the disbursement of wages
 7 and salaries from withholding or diverting any portion of an employee's wages or salary
 8 for political activities without express, written authorization; providing for criminal penalties;
 9 setting forth requirements for employees to provide written authorization for disbursement
 10 of wages and salaries by an employer or other person for political activities; requiring the
 11 Secretary of State to promulgate forms; defining terms "political activities" and "agency
 12 shop fees"; modifying definition of "deductions" to exclude amounts for union or club dues;
 13 and making it an unfair labor practice under the Labor-Management Relations Act for the
 14 Private Sector for a labor organization to use agency shop fees paid by nonmembers for
 15 political activities, unless expressly authorized by the individual.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; withholding of wages or salaries without express authorization; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) A person may not publish, issue or circulate, or cause to be published, issued or
 2 circulated, any anonymous letter, circular, placard, radio or television advertisement or other
 3 publication supporting or aiding the election or defeat of a clearly identified candidate.

4 (b) An owner, publisher, editor or employee of a newspaper or other periodical may not
5 insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which
6 tends to influence the voting at any election, unless directly designating it as a paid advertisement
7 and stating the name of the person authorizing its publication and the candidate in whose behalf
8 it is published.

9 (c) A person may not, in any room or building occupied for the discharge of official duties
10 by any officer or employee of the state or a political subdivision of the state, solicit orally or by
11 written communication delivered within the room or building, or in any other manner, any
12 contribution of money or other thing of value for any party or political purpose, from any
13 postmaster or any other officer or employee of the federal government, or officer or employee of
14 the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal
15 government, or of this state, or any political subdivision of the state, who may have charge or
16 control of any building, office or room, occupied for any official purpose, may not knowingly permit
17 any person to enter any building, office or room, occupied for any official purpose for the purpose
18 of soliciting or receiving any political assessments from, or delivering or giving written solicitations
19 for, or any notice of, any political assessments to, any officer or employee of the state, or a political
20 subdivision of the state.

21 (d) Except as provided in §3-8-8 of this ~~chapter~~ code, a person entering into any contract
22 with the state or its subdivisions, or any department or agency of the state, either for rendition of
23 personal services or furnishing any material, supplies or equipment or selling any land or building
24 to the state, or its subdivisions, or any department or agency of the state, if payment for the
25 performance of the contract or payment for the material, supplies, equipment, land or building is
26 to be made, in whole or in part, from public funds may not, during the period of negotiation for or
27 performance under the contract or furnishing of materials, supplies, equipment, land or buildings,
28 directly or indirectly, make any contribution to any political party, committee or candidate for public
29 office or to any person for political purposes or use; nor may any person or firm solicit any

30 contributions for any purpose during any period.

31 (e) A person may not, directly or indirectly, promise any employment, position, work,
32 compensation or other benefit provided for, or made possible, in whole or in part, by act of the
33 Legislature, to any person as consideration, favor or reward for any political activity for the support
34 of or opposition to any candidate, or any political party in any election.

35 (f) Except as provided in §3-8-8 of this ~~chapter~~ code, a person may not, directly or
36 indirectly, make any contribution in excess of the value of \$1,000 in connection with any campaign
37 for nomination or election to or on behalf of any statewide office, in connection with any other
38 campaign for nomination or election to or on behalf of any other elective office in the state or any
39 of its subdivisions, or in connection with or on behalf of any person engaged in furthering,
40 advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

41 (g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
42 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
43 existence and of the purposes for which it was formed. During the two-year election cycle, a
44 political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986)
45 may not accept contributions totaling more than \$1,000 from any one person prior to the primary
46 election and contributions totaling more than \$1,000 from any one person after the primary and
47 before the general election.

48 (h) It is unlawful for any person to create, establish or organize more than one political
49 organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent
50 to avoid or evade the contribution limitations contained in subsection (g) of this section.

51 (i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person
52 may not, directly or indirectly, make contributions to a state party executive committee or state
53 party legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in any
54 calendar year.

55 (j) The limitations on contributions contained in this section do not apply to transfers

56 between and among a state party executive committee or a state party's legislative caucus
57 political committee from national committees of the same political party: *Provided*, That transfers
58 permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to
59 any state party executive committee or state party legislative caucus political committee:
60 *Provided, however*, That the moneys transferred may only be used for voter registration and get-
61 out-the-vote activities of the state committees.

62 (k) A person may not solicit any contribution, other than contributions to a campaign for or
63 against a county or local government ballot issue, from any nonelective salaried employee of the
64 state government or of any of its subdivisions: *Provided*, That in no event may any person acting
65 in a supervisory role solicit a person who is a subordinate employee for any contribution.

66 ~~(l)~~ (l) A person may not coerce or intimidate any ~~nonelective-salaried~~ employee into making
67 a contribution. A person may not coerce or intimidate any ~~nonsalaried~~ employee of the state
68 government or any of its subdivisions into engaging in any form of political activity. The provisions
69 of this subsection may not be construed to prevent any employee from making a contribution or
70 from engaging in political activity voluntarily without coercion, intimidation or solicitation.

71 ~~(m)~~ (m) A person may not solicit a contribution from any other person without informing the
72 other person at the time of the solicitation of the amount of any commission, remuneration or other
73 compensation that the solicitor or any other person will receive or expect to receive as a direct
74 result of the contribution being successfully collected. Nothing in this subsection may be
75 construed to apply to solicitations of contributions made by any person serving as an unpaid
76 volunteer.

77 ~~(n)~~ (n) A person may not place any letter, circular, flyer, advertisement, election
78 paraphernalia, solicitation material or other printed or published item tending to influence voting
79 at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside
80 receptacle by the business or entity owning the receptacle; and (2) contains a written
81 acknowledgment of the approval. This subdivision does not apply to any printed material

82 contained in a newspaper or periodical published or distributed by the owner of the receptacle.
83 The term "roadside receptacle" means any container placed by a newspaper or periodical
84 business or entity to facilitate home or personal delivery of a designated newspaper or periodical
85 to its customers.

86 (o) An employer or any other person or entity responsible for the disbursement of funds in
87 payment of wages or salaries may not withhold or divert any portion of an employee's wages or
88 salaries for use as contributions to any candidate or political committee, or for any other political
89 activities which tend to influence the voting at any election except upon the express, written
90 request of the employee. The request must be made on a form prescribed by the Secretary of
91 State informing the employee of the prohibition against discrimination set forth in subsection (l) of
92 this section. The request is valid for no more than 12 months from the date it is made by the
93 employee. For purposes of this section, "political activities" mean any activity to urge any person
94 to vote for or against any candidate or ballot issue or to support or oppose a political committee,
95 political party or any other organization engaged in electioneering communications or
96 independent expenditures as defined in §3-8-1a of this code.

97 ~~(n)~~ (p) Any person violating any provision of this section is guilty of a misdemeanor and,
98 upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than
99 one year, or, both fined and confined.

100 ~~(e) The provisions of subsection (k) of this section, permitting contributions to a campaign~~
101 ~~for or against a county or local government ballot issue shall become operable on and after~~
102 ~~January 1, 2005~~

103 ~~(p)~~ (q) The limitations on contributions established by subsection (g) of this section do not
104 apply to contributions made for the purpose of supporting or opposing a ballot issue, including a
105 constitutional amendment.

CHAPTER 21. LABOR.

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

§21-1A-4. Unfair labor practices.

1 (a) It ~~shall be~~ is 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~~ may not be
6 prohibited from permitting employees to confer with him or her during working hours without loss
7 of time or 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;

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

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

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

15 (1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in §21-
16 1A-3 of this code: *Provided*, That this subdivision ~~shall~~ may not impair the right of a labor
17 organization to prescribe its own rules with respect to the acquisition or retention of membership
18 therein; or (B) an employer in the selection of his or her representatives for the purposes of
19 collective bargaining or the adjustment of grievances;

20 (2) To cause or attempt to cause an employer to discriminate against an employee in
21 violation of §21-1A-(3) (a) of this code or to discriminate against an employee with respect to
22 whom membership in such organization has been denied or terminated on some ground other

23 than his or her failure to tender the periodic dues and the initiation fees uniformly required as a
24 condition of acquiring or retaining membership;

25 (3) To refuse to bargain collectively with an employer, provided it is the representative of
26 his or her employees subject to ~~the provisions of~~ §21-1A-5 of this code;

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

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

35 (B) Forcing or requiring any person to cease using, selling, handling, transporting or
36 otherwise dealing in the products of any other producer, processor or manufacturer, or to cease
37 doing business with any other person, or forcing or requiring any other employer to recognize or
38 bargain with a labor organization as the representative of his or her employees unless such labor
39 organization has been certified as the representative of such employees under the provisions of
40 section five of this article: *Provided*, That nothing contained in this paragraph may be construed
41 to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

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

45 (D) Forcing or requiring any employer to assign particular work to employees in a particular
46 labor organization or in a particular trade, craft or class rather than to employees in another labor
47 organization or in another trade, craft or class, unless such employer is failing to conform to an
48 order of certification of the board determining the bargaining representative for employees

49 performing such work: *Provided*, That nothing contained in this subsection ~~shall~~ may be
50 construed to make unlawful a refusal by any person to enter upon the premises of any employer
51 (other than his or her own employer), if the employees of ~~such~~ that employer are engaged in a
52 strike ratified or approved by a representative of ~~such~~ the employees whom ~~such~~ the employer is
53 required by law to recognize;

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

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

63 (7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any
64 employer where an object thereof is forcing or requiring an employer to recognize or bargain with
65 a labor organization as the representative of his or her employees, or forcing or requiring the
66 employees of an employer to accept or select such labor organization as their collective
67 bargaining representative, unless ~~such~~ the labor organization is currently certified as the
68 representative of such employees:

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

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

74 (C) Where ~~such~~ picketing has been conducted without a petition under §21-1A-5(c) of this

75 code being filed within a reasonable period of time not to exceed 15 days from the commencement
76 of ~~such~~ the picketing: *Provided*, That when such a petition has been filed the board shall forthwith,
77 without regard to the provisions of ~~said subsection~~ §21-1A-5(c) of this code or the absence of a
78 showing of a substantial interest on the part of the labor organization, direct an election in such
79 unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this
80 subdivision ~~shall~~ may be construed to permit any act which would otherwise be an unfair labor
81 practice under this subsection.

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

86 (d) For the purposes of this section, to bargain collectively is the performance of the mutual
87 obligation of the employer and the representative of the employees to meet at reasonable times
88 and confer in good faith with respect to wages, hours and other terms and conditions of
89 employment, or the negotiation of an agreement, or any question arising thereunder, and the
90 execution of a written contract incorporating any agreement reached if requested by either party,
91 but ~~such~~ this obligation does not compel either party to agree to a proposal or require the making
92 a concession: *Provided*, That where there is in effect a collective bargaining contract covering
93 employees, the duty to bargain collectively ~~shall~~ also means that no party to ~~such~~ the contract
94 ~~shall~~ may terminate or modify ~~such~~ the contract, unless the party desiring such termination or
95 modification:

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

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

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

102 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms

103 and conditions of the existing contract for a period of 60 days after ~~such~~ notice is given or until

104 the expiration date of ~~such~~ the contract, whichever occurs later. The duties imposed upon

105 employers, employees and labor organizations by this subdivision and subdivisions (2) and (3) of

106 this subsection shall become inapplicable upon an intervening certification of the board, under

107 which the labor organization or individual, which is a party to the contract, has been superseded

108 as or ceased to be the representative of the employees subject to ~~the provisions of~~ §21-1A-5 (a)

109 of this code, and the duties so imposed ~~shall~~ may not be construed as requiring either party to

110 discuss or agree to any modification of the terms and conditions contained in a contract for a fixed

111 period, if ~~such~~ the modification is to become effective before ~~such~~ the terms and conditions can

112 be reopened under the provisions of the contract. Any employee who engages in a strike within

113 the 60-day period specified in this subsection shall lose his or her status as an employee of the

114 employer engaged in the particular labor dispute, for the purposes of this section and §21-1A-3

115 and §21-1A-5 of this code, but ~~such~~ loss of status for ~~such~~ the employee shall terminate if and

116 when he or she is reemployed by ~~such~~ the employer.

117 (e) It ~~shall be~~ is an unfair labor practice for any labor organization and any employer to

118 enter into any contract or agreement, express or implied, whereby ~~such~~ the employer ceases or

119 refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise

120 dealing in any of the products of any other employer, or to cease doing business with any other

121 person and any such contract or agreement entered into heretofore or hereafter shall be to ~~such~~

122 that extent unenforceable and void.

123 (f) It is an unfair labor practice for any labor organization to use agency shop fees paid by

124 an individual who is not a member of the organization to make any contributions or expenditures

125 to influence an election or to operate a political committee, unless affirmatively authorized by the

126 individual. Any such authorization is valid for no more than 12 months from the date it is made

127 by the individual. For purposes of this section, “agency shop fees” means any dues, fees,
 128 assessments or other similar charges, however denominated, of any kind or amount to the labor
 129 organization.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term “firm” includes any partnership, association, joint-stock company, trust,
 3 division of a corporation, the administrator or executor of the estate of a deceased individual, or
 4 the receiver, trustee or successor of any of the same, or officer thereof, employing any person.

5 (b) The term “employee” or “employees” includes any person suffered or permitted to work
 6 by a person, firm or corporation.

7 (c) The term “wages” means compensation for labor or services rendered by an employee,
 8 whether the amount is determined on a time, task, piece, commission or other basis of calculation.

9 As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10 and §21-5-12 of this code, the term “wages”
 10 shall also include then accrued fringe benefits capable of calculation and payable directly to an
 11 employee: *Provided*, That nothing herein contained shall may require fringe benefits to be
 12 calculated contrary to any agreement between an employer and his or her employees which does
 13 not contradict the provisions of this article.

14 (d) The term “commissioner” means Commissioner of Labor or his or her designated
 15 representative.

16 (e) The term “railroad company” includes any firm or corporation engaged primarily in the
 17 business of transportation by rail.

18 (f) The term “special agreement” means an arrangement filed with and approved by the
 19 commissioner whereby a person, firm or corporation is permitted upon a compelling showing of
 20 good cause to establish regular paydays less frequently than once in every two weeks: *Provided*,
 21 That in no event shall may the employee be paid in full less frequently than once each calendar

22 month on a regularly established schedule.

23 (g) The term “deductions” includes amounts required by law to be withheld, and amounts
24 authorized for ~~union or club dues~~ pension plans, payroll savings plans, credit unions, charities
25 and hospitalization and medical insurance.

26 (h) The term “officer” ~~shall~~ includes officers or agents in the management of a corporation
27 or firm who knowingly permit the corporation or firm to violate the provisions of this article.

28 (i) The term “wages due” ~~shall~~ includes at least all wages earned up to and including the
29 twelfth day immediately preceding the regular payday.

30 (j) The term “construction” means the furnishing of work in the fulfillment of a contract for
31 the construction, alteration, decoration, painting or improvement of a new or existing building,
32 structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or
33 development of real property: *Provided*, That construction performed for the owner or lessee of a
34 single family dwelling or a family farming enterprise is excluded.

35 (k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand,
36 sandstone, shale, iron ore and any other metallurgical ore.

37 (l) The term “fringe benefits” means any benefit provided an employee or group of
38 employees by an employer, or which is required by law, and includes regular vacation, graduated
39 vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses,
40 sickness and accident benefits and benefits relating to medical and pension coverage.

41 (m) The term “employer” means any person, firm or corporation employing any employee.

42 (n) The term “doing business in this state” means having employees actively engaged in
43 the intended principal activity of the person, firm or corporation in West Virginia.

NOTE: The purpose of this bill is to protect an employee’s wages or salaries from being withheld or diverted for political activities without the express, written authorization of the employee. The bill makes clear that it is unlawful for any person to coerce or intimidate any employee into making a political contribution or engaging in political activities. The bill also makes it an unfair labor practice for any labor organization to use agency shop fees

paid for by nonmembers for contributions or expenditures to influence an election without the authorization of the individual.

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