

SENATE BILL 212

Introduced by Keating, et al.

1/20	Introduced
1/20	Referred to Labor & Employment Relations
1/20	First Reading
2/13	Hearing
2/16	Committee Report--Bill Not Passed
2/16	Motion Failed to Adopt Minority Committee Report--Do Pass
2/16	Adverse Committee Report Adopted

1 *Soroka* BILL NO. *212*
 2 INTRODUCED BY *Heating Burnett Swift Spring*
 3 *AKLESTAD Huter*
 4 *Devin*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
 6 WORKERS' FREEDOM ACT; PROVIDING AN EMPLOYEE FREEDOM OF
 7 CHOICE ON WHETHER TO JOIN A LABOR ORGANIZATION; AMENDING
 8 SECTIONS 39-31-201, 39-31-205, AND 39-31-401, MCA; REPEALING
 9 SECTIONS 39-31-204, 39-33-101, 39-33-102, 39-33-103,
 10 39-33-104, AND 39-33-105, MCA; AND PROVIDING AN EFFECTIVE
 11 DATE."

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

13 NEW SECTION. Section 1. Short title. [Sections 1
 14 through 12], 39-31-201, 39-31-205, [section 15], and
 15 39-31-401 may be cited as the "Workers' Freedom Act".

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

1 NEW SECTION. Section 3. Definitions. As used in
 2 [sections 1 through 12], 39-31-201, 39-31-205, [section 15],
 3 and 39-31-401, the following definitions apply:

4 (1) "Employer" means an individual, corporation,
 5 association, organization, or entity that employs one or
 6 more persons. The term includes the state of Montana and its
 7 political subdivisions and all districts, boards,
 8 commissions, or other units whose governing body exercises
 9 governmental powers. The term also includes an employer of
 10 agricultural labor.

11 (2) "Labor organization" has the meaning as defined in
 12 39-31-103.

13 NEW SECTION. Section 4. Freedom of choice guaranteed.
 14 A person may not be required as a condition of employment or
 15 continuation of employment to:

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

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

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

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

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

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

NEW SECTION. Section 6. Agreements in violation and actions to induce agreements illegal. (1) An agreement, understanding, or practice, written or oral, implied or expressed, between a labor organization and an employer that violates the rights of an employee guaranteed by [sections 1 through 8] is void.

(2) Any strike, picketing, boycott, or other action by a labor organization to induce or attempt to induce an employer to enter into an agreement prohibited by [sections

1 through 12] is illegal and constitutes a violation of [sections 1 through 12].

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

EMPLOYEE FREEDOM OF CHOICE

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

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

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

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

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

(b) refrain from joining a labor organization; or

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

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

NEW SECTION. Section 9. Penalties. A person, employer, or labor organization or an agent or representative of an employer or labor organization who violates the provisions of [sections 1 through 12], 39-31-201, 39-31-205, [section 15], or 39-31-401 is guilty of a misdemeanor and upon conviction shall be fined up to \$1,000, imprisoned up to 90 days, or both.

NEW SECTION. Section 10. Civil remedies. A person harmed as a result of a violation or threatened violation of [sections 1 through 12], 39-31-201, 39-31-205, [section 15],

or 39-31-401 may:

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

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

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

NEW SECTION. Section 12. Validity of existing agreement. (1) [Sections 1 through 12], 39-31-201, 39-31-205, [section 15], and 39-31-401 do not affect the validity of any agreement between a labor organization and an employer entered into before July 1, 1993.

(2) However, [sections 1 through 12], 39-31-201, 39-31-205, [section 15], and 39-31-401 apply to any extension or renewal of an agreement on or after July 1, 1993.

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

"39-31-201. ~~Public-employees-protected-in--right~~ Right of self-organization -- choice as to membership. (1) Public employees ~~shall have and shall--be~~ are protected in the exercise of the right of self-organization, to form, join,

1 or assist any labor organization, to bargain collectively
 2 through representatives of their own choosing on questions
 3 of wages, hours, fringe benefits, and other conditions of
 4 employment, and to engage in other concerted activities for
 5 the purpose of collective bargaining or other mutual aid or
 6 protection, free from interference, restraint, or coercion.

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

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

12 "39-31-205. Designated labor organizations to represent
 13 employees without discrimination. Labor organizations
 14 designated in accordance with the provisions of this chapter
 15 are responsible for representing the interest of all
 16 employees in who choose on an individual basis to become
 17 members of the exclusive bargaining unit without
 18 discrimination for the purposes of collective bargaining
 19 with respect to rates of pay, hours, fringe benefits, and
 20 other conditions of employment."

21 **NEW SECTION. Section 15.** Agreement invalid as to
 22 employee who is not voluntary member. If an agreement exists
 23 between a labor organization and a public employer under
 24 which an employee is represented who has not chosen to be a
 25 member of the labor organization on an individual basis, the

1 agreement is invalid as it pertains to that employee.

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

3 "39-31-401. Unfair labor practices of public employer.

4 It is an unfair labor practice for a public employer to:

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

7 (2) dominate, interfere, or assist in the formation or
 8 administration of any labor organization; however, subject
 9 to rules adopted by the board under 39-31-104, an employer
 10 is not prohibited from permitting employees to confer with
 11 him the employer during working hours without loss of time
 12 or pay;

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

24 (4) discharge or otherwise discriminate against an
 25 employee because he the employee has signed or filed an

1 affidavit, petition, or complaint or given any information
2 or testimony under this chapter;--or

3 ~~{5}--refuse--to--bargain--collectively--in--good--faith--with~~
4 ~~an--exclusive--representative."~~

5 NEW SECTION. Section 17. Repealer. Sections 39-31-204,
6 39-33-101, 39-33-102, 39-33-103, 39-33-104, and 39-33-105,
7 MCA, are repealed.

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

12 (2) [Sections 12 and 15] are intended to be codified as
13 an integral part of Title 39, chapter 31, part 2, and the
14 provisions of Title 39, chapter 31, part 2, apply to
15 [sections 12 and 15].

16 NEW SECTION. Section 19. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 20. Effective date. [This act] is
23 effective July 1, 1993.

-End-