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 2 INTRODUCED BY Jon Wells <sup>House</sup> BILL NO. 123 <sup>Erin Hargrove</sup>  
 3 Leonard Donna Wendy Keating

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WORKERS' FREEDOM ACT; PROVIDING AN  
 5 EMPLOYEE FREEDOM OF CHOICE ON WHETHER TO JOIN A LABOR ORGANIZATION; AMENDING  
 6 SECTIONS 39-31-201, 39-31-205, AND 39-31-401, MCA; REPEALING SECTIONS 39-31-204, 39-33-101,  
 7 39-33-102, 39-33-103, 39-33-104, AND 39-33-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

13  
 14 NEW SECTION. Section 2. Public policy. It is the public policy of the state of Montana, in order  
 15 to maximize individual freedom of choice in the pursuit of employment and to encourage an employment  
 16 climate conducive to economic growth, that the right to work not be subject to restraint or coercion. A  
 17 person's right to work may not be infringed or restricted based on membership in, affiliation with, or  
 18 financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise  
 19 support a labor organization.

20  
 21 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 12], the following  
 22 definitions apply:

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

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

28  
 29 NEW SECTION. Section 4. Freedom of choice guaranteed. A person may not be required as a  
 30 condition of employment or continuation of employment to:

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

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

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

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

8  
9 **NEW SECTION. Section 5. Voluntary deductions protected.** (1) It is unlawful for an employer to  
10 deduct from the wages, earnings, or compensation of an employee any dues, fees, assessments, or other  
11 charges to be held for, transferred to, or paid over to a labor organization unless the employee has first  
12 presented and the employer has received a signed written authorization for the deductions.

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

17  
18 **NEW SECTION. Section 6. Agreements in violation and actions to induce agreements illegal.** (1)  
19 An agreement, understanding, or practice, written or oral, implied or expressed, between a labor  
20 organization and an employer that violates the rights of an employee guaranteed by [sections 1 through 12]  
21 is void.

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

25  
26 **NEW SECTION. Section 7. Posted notice required.** An employer shall continuously display the  
27 following notice at a place or places where it may be readily seen by all employees in the employer's  
28 business establishment and shall furnish a copy of the notice to each employee when the employee's  
29 employment begins and ends:

30 EMPLOYEE FREEDOM OF CHOICE

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

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

11 (1) (a) intimidate or threaten to intimidate an employee or prospective employee or any person  
12 residing in the employee's or prospective employee's home; or

13 (b) damage or threaten 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 a person 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  
20 induce another person to refuse to work with the employee.

21  
22 **NEW SECTION. Section 9. Penalties.** A person, employer, or labor organization or an agent or  
23 representative of an employer or labor organization who violates the provisions of [sections 1 through 12],  
24 39-31-201, 39-31-205, [section 15], or 39-31-401 is guilty of a misdemeanor and upon conviction shall  
25 be fined up to \$1,000 or be imprisoned up to 90 days, or both.

26  
27 **NEW SECTION. Section 10. Civil remedies.** A person harmed as a result of a violation or  
28 threatened violation of [sections 1 through 12], 39-31-201, 39-31-205, [section 15], or 39-31-401 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  
4 shall investigate and prosecute any complaints of violations of [sections 1 through 12], 39-31-201,  
5 39-31-205, [section 15], or 39-31-401.

6

7 **NEW SECTION. Section 12. Validity of existing agreement.** (1) [Sections 1 through 12],  
8 39-31-201, 39-31-205, [section 15], and 39-31-401 do not affect the validity of any agreement between  
9 a labor organization and an employer entered into before July 1, 1995.

10 (2) However, [sections 1 through 12], 39-31-201, 39-31-205, [section 15], and 39-31-401 apply  
11 to any extension or renewal of an agreement on or after July 1, 1995.

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  
17 through representatives of their own choosing on questions of wages, hours, fringe benefits, and other  
18 conditions of employment, and the right to engage in other concerted activities for the purpose of collective  
19 bargaining or other 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**  
21 **any labor 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  
26 the interest of all employees ~~in~~ who choose on an individual basis to become members of the exclusive  
27 bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay,  
28 hours, fringe benefits, and other conditions of employment."

29

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

1 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  
 3 agreement 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  
 9 39-31-201;

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

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

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

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

23

24 **NEW SECTION. Section 17. Repealer.** Sections 39-31-204, 39-33-101, 39-33-102, 39-33-103,  
 25 39-33-104, and 39-33-105, MCA, are repealed.

26

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

30 (2) [Section 15] is intended to be codified as an integral part of Title 39, chapter 31, part 2, and

1 the provisions of Title 39, chapter 31, part 2, apply to [section 15].

2

3 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

8 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 1995.

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0123, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

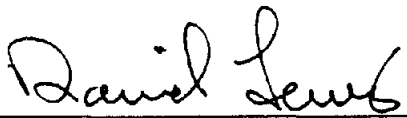
An act creating the workers' freedom act; providing an employee freedom of choice on whether to join a labor organization.

ASSUMPTIONS:

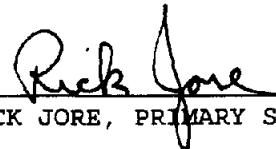
1. Neither the Department of labor and Industry nor the Department of Commerce are aware of state fiscal impact.

FISCAL IMPACT:

None

 1-16-95

DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning



RICK JORE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0123, as introduced

**HB 123**