

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Senate Bill 1

BY SENATORS COLE (MR. PRESIDENT), BLAIR, BOSO,
FERNs, GAUNCH, TRUMP, CARMICHAEL, SYPOLT AND
TAKUBO

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new article, designated §21-5G-1,
3 §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, §21-5G-7 and §21-5G-8, all relating
4 to establishing the West Virginia Workplace Freedom Act; eliminating language allowing
5 employment agreements require membership in a labor organization as a condition of
6 employment; prohibiting any requirement that a person become or remain a member of a
7 labor organization as condition of employment; prohibiting any requirement that a person
8 must pay dues or other fees to a labor organization as a condition of employment;
9 prohibiting any requirement that a person contribute to a charity in lieu of paying dues or
10 other fees to a labor organization; providing that certain agreements or practices between
11 labor organizations and employers are unlawful; providing for criminal penalties; providing
12 for administrative remedies; providing for civil relief, including damages, attorney's fees
13 and injunctive relief; providing for exceptions; requiring prosecuting attorneys and the
14 Attorney General to investigate complaints; defining terms; construction; applicability; and
15 severability.

Be it enacted by the Legislature of West Virginia:

1 That §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted; and that said code be amended by adding thereto a new article,
3 designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, §21-5G-7 and §21-
4 5G-8, all to read as follows:

**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, ~~except to~~
5 ~~the extent that such right may be affected by an agreement requiring membership in a labor~~
6 ~~organization as a condition of employment as authorized in subdivision (3), subsection (a), section~~
7 ~~four of this article~~ including the right to refrain from paying any dues, fees, assessments or other
8 similar charges however denominated of any kind or amount to a labor organization or to any third
9 party including, but not limited to, a charity in lieu of a payment to a labor organization.

§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 section three of this article;

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*,
10 ~~however~~, That nothing contained in this article, or in any other statute of this state, shall preclude
11 an employer from making an agreement with a labor organization (not established, maintained or
12 assisted by any action defined in this section as an unfair labor practice) to require as a condition
13 of employment membership therein on or after the thirtieth day following the beginning of such
14 employment or the effective date of such agreement, whichever is the later, (i) if such labor
15 organization is the representative of the employees as provided in section five of this article, in
16 the appropriate collective bargaining unit covered by such agreement when made, and (ii) unless
17 following an election held as provided in subsection (d), section five of this article, within one year
18 preceding the effective date of such agreement, the board shall have certified that at least a

19 ~~majority of the employees eligible to vote in such election have voted to rescind the authority of~~
20 ~~such labor organization to make such an agreement: *Provided further*, That no employer shall~~
21 ~~justify any discrimination against an employee for nonmembership in a labor organization (A) if~~
22 ~~he 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 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 subsection (a), section five of this article.

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 section
33 three of this article: *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 subdivision (3), subsection (a) of this section or to discriminate against an employee
39 with respect to whom membership in such organization has been denied or terminated on some
40 ground other than his or her failure to tender the periodic dues and the initiation fees uniformly
41 required as a 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 subsection (a), section five of this article;

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 subsection (e) of this
51 section;

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 section five of this article: *Provided*, That nothing contained in this ~~clause (B)~~ shall paragraph
58 may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary
59 picketing;

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

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

71 recognize;

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

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

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

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

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

92 (C) Where such picketing has been conducted without a petition under subsection (c),
93 section five of this article being filed within a reasonable period of time not to exceed fifteen days
94 from the commencement of such picketing: *Provided*, That when such a petition has been filed
95 the board shall forthwith, without regard to the provisions of said subsection (c), section five or
96 the absence of a showing of a substantial interest on the part of the labor organization, direct an

97 election in such unit as the board finds to be appropriate and shall certify the results thereof.
98 Nothing in this subdivision (7) of this subsection shall be construed to permit any act which would
99 otherwise be an unfair labor practice under this subsection. ~~(b)~~

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

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

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

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

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

119 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms
120 and conditions of the existing contract for a period of sixty days after such notice is given or until
121 the expiration date of such contract, whichever occurs later. The duties imposed upon employers,
122 employees, and labor organizations by subdivisions (2), (3) and (4) of this subsection ~~(d)~~ shall

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

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

ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM ACT.

§21-5G-1. Definitions.

1 As used in this article, the following terms have the following definitions:

2 (a) The term "person" means any individual, proprietorship, partnership, firm, association,
3 corporation, labor organization or any other legal entity.

4 (b) The term "labor organization" means any organization, agency, union or employee
5 representation committee of any kind, that exists, in whole or in part, to assist employees in
6 negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other
7 terms or conditions of employment.

8 (c) The term "employer" means any person employing at least one individual in the state,
9 or any agent of an employer employing at least one individual in the state.

10 (d) The term "state" means any officer, board, branch, commission, department, division,
11 bureau, committee, agency, authority or other instrumentality of the State of West Virginia.

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

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

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

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

5 (3) Pay any charity or third party, in lieu of those payments, any amount that is equivalent
6 to or a pro rata portion of dues, fees, assessments or other charges required of members of a
7 labor organization.

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

1 Any agreement, contract, understanding or practice, either written or oral, implied or
2 expressed, between any labor organization and an employer or public body which provides for
3 the exclusion from employment of any person because of membership in, affiliation with,
4 resignation from, or refusal to join or affiliate with any labor organization or employee organization
5 of any kind is hereby declared to be unlawful, null and void, and of no legal effect.

§21-5G-4. Criminal penalty.

1 A labor organization, employer, public body or other person directly or indirectly violating
2 this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than
3 \$500 nor more than \$5,000. Each day that any labor organization, employer, public body or other
4 person is in violation of the provisions of this article is considered a separate and distinct offense
5 for purposes of this section.

§21-5G-5. Administrative remedies.

1 Any individual who is employed by an employer may file a complaint alleging a violation
2 or threatened violation of this article with either the Attorney General, the West Virginia Division
3 of Labor or the prosecuting attorney of the county in which the individual is employed. Upon
4 receiving a complaint pursuant to this section, the Attorney General, Division of Labor or
5 prosecuting attorney shall investigate the complaint and enforce compliance if a violation of the
6 provisions of this article is found.

7 If the Division of Labor determines that a violation or threatened violation of this article has
8 occurred, the division shall issue an administrative order providing for any of the civil remedies
9 provided in section six of this article.

§21-5G-6. Civil relief; damages.

1 In addition to the criminal penalties and administrative remedies set forth in this article,
2 any person injured as a result of any violation or threatened violation of this article shall be entitled
3 to recover:

4 (a) Compensatory damages, including costs and reasonable attorney fees, resulting from
5 any violation or threatened violation of this article;

6 (b) Punitive damages;

7 (c) Injunctive relief against any and all persons violating or threatening violation of this
8 article;

9 (d) A writ of mandamus against the Attorney General, the Division of Labor or the
10 prosecuting attorney to compel them to fulfill their statutory obligations pursuant to section five of
11 this article.

12 The remedies and penalties set forth in this section shall be deemed concurrent or
13 contemporaneous with any other remedy prescribed herein and the existence or exercise of any
14 one such remedy shall not prevent the exercise of any other such remedy.

§21-5G-7. Exceptions.

1 This article does not apply:

2 (1) To any employee or employer covered by the federal Railway Labor Act, 45 U.S.C.
3 151, et. seq.;

4 (2) To any employee of the United States or a wholly owned corporation of the United
5 States;

6 (3) To any employee who is employed on property over which the United States
7 government has exclusive jurisdiction for purposes of labor relations; or

8 (4) Where the provisions of this article would otherwise conflict with, or be preempted by,
9 federal law.

§21-5G-8. Construction; applicability; severability.

1 (a) Construction. — Except to the extent expressly prohibited by the provisions of this
2 article, nothing in this article is intended, or should be construed, to change or affect any law
3 concerning collective bargaining or collective bargaining agreements in the building and
4 construction industry.

5 (b) Applicability. — This article applies to any written or oral contract or agreement entered
6 into, modified, renewed or extended after July 1, 2016: *Provided*, That the provisions of this article
7 shall not otherwise apply to or abrogate a written or oral contract or agreement in effect on or
8 before June 30, 2016.

9 (c) Severability. — If any provision of this act or the application of any such provision to
10 any person or circumstance should be held invalid by a court of competent jurisdiction, the
11 remainder of this act or the application of its provisions to persons or circumstances other than
12 those to which it is held invalid shall not be affected thereby.