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H.772

Introduced by Representatives Strong of Albany and Gage of Rutland City
Referred to Committee on
Date:
Subject: Labor; employment practices; Right to Work Act
Statement of purpose of bill as introduced: This bill proposes to secure the
right of employees to decide for themselves whether or not to join or
financially support a union.

An act relating to the right to work

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Right To Work Act

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Employer” means all persons, firms, associations, corporations, public employers, public school employers, and public colleges, universities, institutions, and education agencies, including employers as defined in sections 1502 and 1722 of this title, 3 V.S.A. § 902, and 16 V.S.A. § 1981.

(2) “Labor organization” means any organization of any kind, or agency or employee representation committee or union, which exists for the purpose,

1 in whole or in part, of dealing with employers concerning wages, rates of pay,
2 hours of work, other conditions of employment, or other forms of
3 compensation, including labor organizations as defined in sections 1502
4 and 1722 of this title, 3 V.S.A. § 902, and 16 V.S.A. § 1981.

5 § 572. RIGHT TO REFRAIN

6 No person shall be required, as a condition or continuation of
7 employment, to:

8 (1) become or remain a member of a labor organization;

9 (2) pay any dues, fees, assessments, or other similar charges, however
10 denominated, of any kind or amount to a labor organization; or

11 (3) pay to any charity or other third party, in lieu of such payments, any
12 amount equivalent to or pro rata portion of dues, fees, assessments, or other
13 charges required of members of a labor organization.

14 § 573. AGREEMENTS IN VIOLATION

15 Any agreement, understanding or practice, written or oral, implied or
16 expressed, between any labor organization and employer which violates the
17 rights of employees as guaranteed by provisions of this subchapter is hereby
18 declared to be unlawful, null and void, and of no legal effect.

19 § 574. PENALTY; JURISDICTION

20 Any person who directly or indirectly violates any provision of this
21 subchapter shall be guilty of a misdemeanor. The Civil Division of the

1 Superior Court shall have jurisdiction to hear and determine any violation of
2 this subchapter.

3 § 575. INJUNCTIVE RELIEF

4 Any person injured as a result of any violation or threatened violation of the
5 provisions of this subchapter shall be entitled to injunctive relief against any
6 and all violators or persons threatening violations.

7 § 576. DAMAGES

8 Any person injured as a result of any violation or threatened violation of the
9 provisions of this subchapter shall recover any and all damages, including
10 costs and reasonable attorney's fees, of any character resulting from such
11 violation or threatened violation. Such remedies shall be independent of and in
12 addition to the penalties and remedies proscribed in other provisions of this
13 section.

14 § 577. DUTY TO INVESTIGATE AND ENFORCE

15 It shall be the duty of the Attorney General of this State to investigate
16 complaints of violation or threatened violations of this subchapter and to
17 prosecute all persons violating any of its provisions, and to take all means at
18 his or her command to ensure effective enforcement.

19 § 578. EXCEPTIONS

20 The provisions of this subchapter shall not apply:

1 ~~the exclusive bargaining agent for the bargaining unit of the employee. The~~
2 ~~collective bargaining service fee shall not exceed 85 percent of the amount~~
3 ~~payable as dues by members of the employee organization, and shall be~~
4 ~~deducted in the same manner as dues are deducted from the salary or wages of~~
5 ~~members of the employee organization, and shall be used to defray the costs of~~
6 ~~chargeable activities. [Repealed.]~~

7 § 903. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

8 (a) Employees shall have the right to self-organization; to form, join, or
9 assist employee organizations; to bargain collectively through representatives
10 of their own choice, and to engage in concerted activities for the purpose of
11 collective bargaining or other mutual aid or protection, and shall also have the
12 right to refrain from any or all such activities, ~~except as provided in~~
13 ~~subsections (b) and (c) of this section, and to appeal grievances as provided in~~
14 ~~this chapter.~~

15 * * *

16 (c) ~~An employee who exercises the right not to join the employee~~
17 ~~organization representing the employee's collective bargaining unit shall pay~~
18 ~~the collective bargaining service fee to the representative of the bargaining unit~~
19 ~~in the same manner as employees who pay membership fees to the~~
20 ~~representative. The employee organization shall indemnify and hold the~~
21 ~~employer harmless from any and all claims stemming from the implementation~~

1 ~~or administration of the collective bargaining service fee. Nothing in this~~
2 ~~section shall require an employer to discharge an employee who does not pay~~
3 ~~the collective bargaining service fee. [Repealed.]~~

4 * * *

5 § 962. EMPLOYEES

6 It shall be an unfair labor practice for an employee organization or its
7 agents:

8 * * *

9 (3) To cause or attempt to cause an employer to discriminate against an
10 employee in violation of section 961 of this title ~~or to discriminate against an~~
11 ~~employee with respect to whom membership in such organization has been~~
12 ~~denied or terminated on some ground other than his or her failure to tender the~~
13 ~~periodic dues and the initiation fees uniformly required as a condition for~~
14 ~~acquiring or retaining membership.~~

15 * * *

16 (10) ~~To charge a collective bargaining fee unless such employee~~
17 ~~organization has established and maintained a procedure to provide~~
18 ~~nonmembers with:~~

19 ~~(A) an audited financial statement that identifies the major categories~~
20 ~~of expenses, and divides them into chargeable and nonchargeable expenses;~~

1 § 1982. RIGHTS

2 (a) Teachers shall have the right to or not to join, assist, or participate in
3 any teachers' organization of their choosing. ~~However, teachers who choose~~
4 ~~not to join the teachers' organization, recognized as the exclusive~~
5 ~~representative pursuant to section 1992 of this chapter, shall pay the agency fee~~
6 ~~in the same manner as teachers who choose to join the teachers' organization~~
7 ~~pay membership fees. The teachers' organization shall indemnify and hold the~~
8 ~~school board harmless from any and all claims stemming from the~~
9 ~~implementation or administration of the agency fee.~~

10 (b) Principals, assistant principals, and administrators other than
11 superintendent and assistant superintendent shall have the right to or not to
12 join, assist, or participate in any administrators' organization or as a separate
13 unit of any teachers' organization of their choosing. ~~However, subject to the~~
14 ~~provisions of subsection (d) of this section, administrators other than the~~
15 ~~superintendent and assistant superintendent who choose not to join the~~
16 ~~administrators' organization, recognized as the exclusive representative~~
17 ~~pursuant to section 1992 of this chapter, shall pay the agency fee in the same~~
18 ~~manner as administrators who choose to join the administrators' organization~~
19 ~~pay membership fees. The administrators' organization agrees to indemnify~~
20 ~~and hold the school harmless from any and all claims stemming from the~~
21 ~~implementation or administration of the agency fee.~~

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~~(d) A teachers' or administrators' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:~~

~~(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;~~

~~(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;~~

~~(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the teachers' or administrators' organization. [Repealed.]~~

~~(e) Nothing in this section shall require an employer to discharge an employee who does not pay the agency fee. [Repealed.]~~

Sec. 4. 21 V.S.A. chapter 19 is amended to read:

CHAPTER 19. VERMONT STATE LABOR RELATIONS ACT

* * *

§ 1502. DEFINITIONS

As used in this chapter:

* * *

1 (14) ~~“Agency fee” means a fee deducted by an employer from the salary~~
2 ~~or wages of an employee who is not a member of an employee organization,~~
3 ~~which is paid to the employee organization that is the exclusive bargaining~~
4 ~~agent for the bargaining unit of the employee. A collective bargaining service~~
5 ~~fee shall not exceed 85 percent of the amount payable as dues by members of~~
6 ~~the employee organization and shall be deducted in the same manner as dues~~
7 ~~are deducted from the salary or wages of members of the employee~~
8 ~~organization and shall be used to defray the costs of chargeable activities.~~

9 [Repealed.]

10 § 1503. RIGHTS OF EMPLOYEES; MUTUAL DUTY TO BARGAIN

11 (a) Employees shall have the right to self-organization; to form, join, or
12 assist labor organizations; to bargain collectively through representatives of
13 their own choice, and to engage in concerted activities for the purpose of
14 collective bargaining or other mutual aid or protection, and shall also have the
15 right to refrain from any or all such activities, ~~except to the extent that such~~
16 ~~right may be affected by an agreement requiring membership in a labor~~
17 ~~organization as a condition of employment as authorized in subsection 1621(a)~~
18 ~~of this title. An employee who exercises the right not to join the labor~~
19 ~~organization representing the employee’s certified unit pursuant to section~~
20 ~~1581 of this title shall, subject to subsection (b) of this section, pay the agency~~
21 ~~fee to the representative of the bargaining unit in the same manner as~~

1 ~~employees who pay membership fees to the representative. The labor~~
2 ~~organization agrees to indemnify and hold the employer harmless from any and~~
3 ~~all claims stemming from the implementation or administration of the agency~~
4 ~~fee.~~

5 (b) ~~A labor organization shall not charge the agency fee unless it has~~
6 ~~established and maintained a procedure to provide nonmembers with:~~

7 (1) ~~an audited financial statement that identifies the major categories of~~
8 ~~expenses and divides them into chargeable and nonchargeable expenses;~~

9 (2) ~~an opportunity to object to the amount of the agency fee sought, and~~
10 ~~to place in escrow any amount reasonably in dispute;~~

11 (3) ~~prompt arbitration by an arbitrator selected jointly by the objecting fee~~
12 ~~payer and the teachers' or administrators' organization or pursuant to the rules~~
13 ~~of the American Arbitration Association to resolve any objection over the~~
14 ~~amount of the agency fee. The costs of arbitration shall be paid by the labor~~
15 ~~organization. [Repealed.]~~

16 * * *

17 § 1621. UNFAIR LABOR PRACTICES

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

19 * * *

20 (6) ~~Nothing in this chapter or any other statute of this State shall~~
21 ~~preclude an employer from making an agreement with a labor organization~~

1 ~~(not established, maintained or assisted by any action defined in this subsection~~
2 ~~(a) as an unfair labor practice) to require as a condition of employment~~
3 ~~membership in such labor organization on or after the 30th day following the~~
4 ~~beginning of such employment or the effective date of such agreement,~~
5 ~~whichever is the later, (i) if such labor organization is the representative of the~~
6 ~~employees as provided in section 1583 of this chapter, in the appropriate~~
7 ~~collective bargaining unit covered by such agreement when made; and (ii)~~
8 ~~unless following an election held as provided in section 1584 of this chapter~~
9 ~~within one year preceding the effective date of such agreement, the Board shall~~
10 ~~have certified that at least a majority of the employees eligible to vote in such~~
11 ~~election have voted to rescind the authority of such labor organization to make~~
12 ~~such an agreement. Nothing in this section shall require an employer to~~
13 ~~discharge an employee in the absence of such an agreement. An employer~~
14 ~~shall not justify any discrimination against an employee for nonmembership in~~
15 ~~a labor organization:~~

16 ~~(A) if the employer has reasonable grounds for believing that~~
17 ~~membership was not available to the employee on the same terms and~~
18 ~~conditions generally applicable to other members; or~~

19 ~~(B) if the employer has reasonable grounds for believing that~~
20 ~~membership was denied or terminated for reasons other than the failure of the~~

1 ~~employee to tender the periodic dues and the initiation fees uniformly required~~
2 ~~as a condition of acquiring or retaining membership. [Repealed.]~~

3 * * *

4 Sec. 5. 21 V.S.A. chapter 22 is amended to read:

5 CHAPTER 22. VERMONT MUNICIPAL LABOR RELATIONS ACT

6 * * *

7 § 1722. DEFINITIONS

8 As used in this chapter:

9 (1) ~~“Agency service fee” means a fee deducted by an employer from the~~
10 ~~salary or wages of an employee who is not a member of an employee~~
11 ~~organization, which is paid to the employee organization that is the exclusive~~
12 ~~bargaining agent for the bargaining unit of the employee. An agency service~~
13 ~~fee shall not exceed 85 percent of the amount payable as dues by members of~~
14 ~~the employee organization and shall be deducted in the same manner as dues~~
15 ~~are deducted from the salary or wages of members of the employee~~
16 ~~organization and shall be used to defray the costs of chargeable activities.~~

17 [Repealed.]

18 * * *

19 § 1726. UNFAIR LABOR PRACTICES

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

21 * * *

