

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 1

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

[Passed February 5, 2016;
in effect 90 days from passage.]

1 AN ACT 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 and §21-5G-7, all relating to
4 establishing the West Virginia Workplace Freedom Act; removing certain provisions under
5 the Labor-Management Relations Act for the Private Sector to be consistent with the West
6 Virginia Workplace Freedom Act; clarifying what constitutes an unfair labor practice under
7 the Labor-Management Relations Act for the Private Sector to be consistent with the West
8 Virginia Workplace Freedom Act; eliminating the statutory provisions that allow an
9 employment agreement to require membership in a labor organization as a condition of
10 employment; granting employees the right to refrain from paying any dues, fees,
11 assessments or other similar charges, however denominated, of any kind or amount to a
12 labor organization as a condition or continuation of employment; granting employees the
13 right to refrain from paying any dues, fees, assessments or other similar charges, however
14 denominated, of any kind or amount to any third party, including a charity, in lieu of
15 payment to a labor organization as a condition or continuation of employment; eliminating
16 statutory provisions that allow, as an exception to the prohibitions against unfair labor
17 practices by an employer, an employment agreement to require membership in a labor
18 organization as a condition of employment; eliminating statutory provisions that allow an
19 employer to justify discrimination against an employee for nonmembership in a labor
20 organization in certain circumstances; prohibiting any requirement that a person become
21 or remain a member of a labor organization as a condition or continuation of employment;
22 prohibiting any requirement that a person pay any dues, fees, assessments or other
23 similar charges, however denominated, of any kind or amount to a labor organization as
24 a condition or continuation of employment; prohibiting any requirement that, as a condition
25 or continuation of employment, a person pay any charity or third party in lieu of paying
26 dues, fees, assessments or other similar charges, however denominated, of any kind or

27 amount that is equivalent to or a pro rata portion of dues, fees, assessments or other
28 charges required of members of a labor organization; providing that any agreement,
29 contract, understanding or practice of any kind between any labor organization and an
30 employer or public body which provides for the exclusion from employment of any person
31 because of membership in, affiliation with, resignation from, or refusal to join or affiliate
32 with any labor organization or employee organization of any kind to be unlawful, null and
33 void, and of no legal effect; creating a criminal offense for any person who knowingly
34 requires another person, as a condition or continuation of employment, to perform any
35 conduct prohibited by the West Virginia Workplace Freedom Act; providing for criminal
36 penalties; providing for civil relief; establishing a civil cause of action which, if proven in a
37 court of competent jurisdiction, may permit a person to recover damages, including
38 compensatory and punitive damages, costs and attorney's fees, injunctive relief or other
39 appropriate equitable relief against any person or persons violating or threatening to
40 violate the West Virginia Workplace Freedom Act; providing for exceptions to the
41 application of the West Virginia Workplace Freedom Act; defining terms; establishing
42 provisions addressing the construction, applicability and severability of the West Virginia
43 Workplace Freedom Act; clarifying application of the West Virginia Workplace Freedom
44 Act to collective bargaining or collective bargaining agreements in the building and
45 construction industry; and providing that the West Virginia Workplace Freedom Act applies
46 to any written or oral contract or agreement entered into, modified, renewed or extended
47 after July 1, 2016, and shall not otherwise apply or abrogate a written or oral contract or
48 agreement in effect on or before June 30, 2016.

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 and §21-5G-7, all to
4 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, including
5 the right to refrain from paying any dues, fees, assessments or other similar charges however
6 denominated of any kind or amount to a labor organization or to any third party including, but not
7 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;

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 subsection (a), section five of this article.

14 (b) It shall be 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 section
16 three of this article: *Provided*, That this subdivision shall not impair the right of a labor organization
17 to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B)
18 an employer in the selection of his or her representatives for the purposes of collective bargaining
19 or the adjustment of grievances;

20 (2) To cause or attempt to cause an employer to discriminate against an employee in
21 violation of subdivision (3), subsection (a) of this section or to discriminate against an employee
22 with respect to whom membership in such organization has been denied or terminated on some
23 ground other than his or her failure to tender the periodic dues and the initiation fees uniformly
24 required as a 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 subsection (a), section five of this article;

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 the provisions of section five of this article;

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 be construed to
50 make unlawful a refusal by any person to enter upon the premises of any employer (other than
51 his or her own employer), if the employees of such employer are engaged in a strike ratified or
52 approved by a representative of such employees whom such employer is required by law to
53 recognize;

54 (5) To require of employees covered by an agreement authorized under subdivision (3),
55 subsection (a) of this section, the payment, as a condition precedent to becoming a member of
56 such organization, of a fee in an amount which the board finds excessive or discriminatory under
57 all the circumstances. In making such a finding, the board shall consider, among other relevant
58 factors, 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 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 subsection (c), section five of this article;

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 subsection (c),
75 section five of this article being filed within a reasonable period of time not to exceed fifteen days
76 from the commencement of such picketing: *Provided*, That when such a petition has been filed
77 the board shall forthwith, without regard to the provisions of said subsection 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 be construed to permit any act which would otherwise be an unfair labor practice
81 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 not constitute or be evidence of an unfair
84 labor practice, or be prohibited under this article, if such expression contains no threat of reprisal
85 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 obligation does not compel either party to agree to a proposal or require the making a
92 concession: *Provided*, That where there is in effect a collective bargaining contract covering
93 employees, the duty to bargain collectively shall also mean that no party to such contract shall
94 terminate or modify such contract, unless the party desiring such termination or modification:

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

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

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

101 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms
102 and conditions of the existing contract for a period of sixty days after such notice is given or until
103 the expiration date of such contract, whichever occurs later. The duties imposed upon employers,
104 employees and labor organizations by this subdivision and subdivisions (2) and (3) of this
105 subsection shall become inapplicable upon an intervening certification of the board, under which
106 the labor organization or individual, which is a party to the contract, has been superseded as or
107 ceased to be the representative of the employees subject to the provisions of subsection (a),
108 section five of this article, and the duties so imposed shall not be construed as requiring either
109 party to discuss or agree to any modification of the terms and conditions contained in a contract
110 for a fixed period, if such modification is to become effective before such terms and conditions
111 can be reopened under the provisions of the contract. Any employee who engages in a strike
112 within the sixty-day period specified in this subsection shall lose his or her status as an employee
113 of the employer engaged in the particular labor dispute, for the purposes of this section and
114 sections three and five of this article, but such loss of status for such employee shall terminate if
115 and when he or she is reemployed by such employer.

116 (e) It shall be an unfair labor practice for any labor organization and any employer to enter

117 into any contract or agreement, express or implied, whereby such employer ceases or refrains or
118 agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any
119 of the products of any other employer, or to cease doing business with any other person and any
120 such contract or agreement entered into heretofore or hereafter shall be to such extent
121 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 Any person who knowingly requires another person, as a condition or continuation of
2 employment, to perform any of the conduct enumerated in section two of this article, is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
4 \$5,000.

§21-5G-5. Civil relief; damages.

1 Any person injured as a result of any violation or threatened violation of this article shall
2 have a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to the
3 following relief against a person or persons violating or threatening to violate this article:

4 (1) Compensatory damages;

5 (2) Costs and reasonable attorney fees, which shall be awarded if the injured person
6 substantially prevails;

7 (3) Punitive damages in accordance with the provisions of section twenty-nine, article
8 seven, chapter fifty-five of this code;

9 (4) Preliminary and permanent injunctive relief; and

10 (5) Any other appropriate equitable relief.

§21-5G-6. Exceptions.

11 This article does not apply:

12 (1) To any employee or employer covered by the federal Railway Labor Act, 45 U. S. C.
13 §151, *et seq.*;

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

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

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

§21-5G-7. 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.