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Reprinted
January 21, 2012

SENATE BILL No. 269

DIGEST OF SB 269 (Updated January 20, 2012 2:49 pm - DI 102)

Citations Affected: IC 22-6.

Synopsis: Employee's right to work. Makes it a Class A misdemeanor to require an individual to: (1) become or remain a member of a labor organization; (2) pay dues, fees, or other charges to a labor organization; or (3) pay to a charity or another third party an amount that represents dues, fees, or other charges required of members of a labor organization; as a condition of employment or continuation of employment. Provides that the Indiana department of labor may investigate and issue administrative orders for violations or threatened violations. Establishes a separate private right of action for violations or threatened violations. Provides that the statute does not apply to federal employees, employees subject to certain federal laws, certain employees over whom the federal government has jurisdiction, state employees, and employees of a political subdivision. Provides that the statute does not apply to the extent it is in conflict with or preempted by federal law. Provides that the statute is not intended, and should not be construed, to change or affect any other law concerning collective bargaining or collective bargaining agreements in the building and construction industry.

Effective: Upon passage.

Yoder, Walker, Schneider, Boots, Banks, Kruse, Smith J

January 4, 2012, read first time and referred to Committee on Pensions and Labor.
January 9, 2012, reported favorably — Do Pass.
January 20, 2012, read second time, amended, ordered engrossed.

C o p y

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 269

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 6. Right to Work

Sec. 1. This chapter does not apply to the following:

(1) An employee of the United States or a wholly owned corporation of the United States.

(2) An:

(A) employee; and

(B) employer;

subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).

(3) An employee employed on property over which the United States government has exclusive jurisdiction for the purpose of labor relations.

(4) An employee of the state.

(5) An employee of a political subdivision (as defined in

IC 36-1-2-13).

Sec. 2. This chapter does not apply to the extent that it:

(1) conflicts with; or

(2) is preempted by;

federal law.

Sec. 3. Nothing in this chapter is intended, or should be construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry other than:

(1) a law that permits agreements that would require membership in a labor organization;

(2) a law that permits agreements that would require the payment of dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) a law that permits agreements that would require the payment to a charity or a third party of an amount that is equivalent to or a pro rata part of dues, fees, assessment, or other charges required of members of a labor organization;

as a condition of employment.

Sec. 4. As used in this chapter, "employer" means:

(1) a person employing at least one (1) individual in Indiana; or

(2) an agent of an employer described in subdivision (1).

Sec. 5. As used in this chapter, "labor organization" means:

(1) an organization;

(2) an agency;

(3) a union; or

(4) an employee representation committee;

that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

Sec. 6. As used in this chapter, "person" means:

(1) an individual;

(2) a proprietorship;

(3) a partnership;

(4) a firm;

(5) an association;

(6) a corporation;

(7) a labor organization; or

(8) another legal entity.

Sec. 7. As used in this chapter, "the state" includes:

(1) a board;

C o p y

(2) a branch;
(3) a commission;
(4) a department;
(5) a division;
(6) a bureau;
(7) a committee;
(8) an agency;
(9) an institution (including a state educational institution as defined in IC 21-7-13-32);
(10) an authority; or
(11) another instrumentality;

of the state.

Sec. 8. A person may not require an individual to:

(1) become or remain a member of a labor organization;
(2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or
(3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization;

as a condition of employment or continuation of employment.

Sec. 9. A contract, agreement, understanding, or practice, written or oral, express or implied, between:

(1) a labor organization; and
(2) an employer;

that violates section 8 of this chapter is unlawful and void.

Sec. 10. A person that knowingly or intentionally, directly or indirectly, violates section 8 of this chapter commits a Class A misdemeanor.

Sec. 11. An individual who is employed by an employer may file a complaint that alleges a violation or threatened violation of this chapter with the attorney general, the department of labor, or the prosecuting attorney of the county in which the individual is employed. Upon receiving a complaint under this section, the attorney general, department of labor, or prosecuting attorney may:

(1) investigate the complaint; and
(2) enforce compliance if a violation of this chapter is found.

In addition to any other remedy available under this chapter, if the department of labor determines that a violation or a threatened violation of this chapter has occurred, the department of labor may issue an administrative order providing for any of the civil remedies described in section 11 of this chapter. The department

C o p y

of labor may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out its responsibilities under this chapter.

Sec. 12. (a) If an individual suffers an injury:

(1) as the result of any act or practice that violates this chapter; or

(2) from a threatened violation of this chapter;

the individual may bring a civil action.

(b) A court may order an award of any or all of the following to an individual who prevails in an action under subsection (a):

(1) The greater of:

(A) actual and consequential damages resulting from the violation or threatened violation; or

(B) liquidated damages of not more than one thousand dollars ($1,000).

(2) Reasonable attorney's fees, litigation expenses, and costs.

(3) Declaratory or equitable relief, including injunctive relief.

(4) Other relief the court considers proper.

(c) The remedies and penalties set forth in subsection (b) are:

(1) cumulative; and

(2) in addition to other remedies and penalties imposed for a violation of this chapter.

Sec. 13. Sections 8 through 12 of this chapter:

(1) apply to a written or oral contract or agreement entered into, modified, renewed, or extended after March 14, 2012; and

(2) do not apply to or abrogate a written or oral contract or agreement in effect on March 14, 2012.

SECTION 2. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 269, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 269 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 6, Nays 4.

SENATE MOTION

Madam President: I move that Senate Bill 269 be amended to read as follows:

Page 3, line 20, delete "shall" and insert "**may**".

(Reference is to SB 269 as printed January 10, 2012.)

YODER

SENATE MOTION

Madam President: I move that Senate Bill 269 be amended to read as follows:

Page 3, line 17, delete "general" and insert "**general, the department of labor,**".

Page 3, line 19, delete "general" and insert "**general, department of labor,**".

Page 3, between lines 22 and 23, begin a new line blocked left and insert:

"**In addition to any other remedy available under this chapter, if the department of labor determines that a violation or a threatened violation of this chapter has occurred, the department of labor may issue an administrative order providing for any of the civil remedies described in section 11 of this chapter. The department of labor may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out its responsibilities under this chapter.**".

Page 3, delete lines 30 through 33, begin a new line block indented

C o p y

and insert:

"**(1) The greater of:**

(A) actual and consequential damages resulting from the violation or threatened violation; or

(B) liquidated damages of not more than one thousand dollars ($1,000).".

Page 3, line 34, delete "(3)" and insert "**(2)**".

Page 3, line 35, delete "(4)" and insert "**(3)**".

Page 3, line 36, delete "(5)" and insert "**(4)**".

(Reference is to SB 269 as printed January 10, 2012.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 269 be amended to read as follows:

Page 2, line 6, after "3." insert "**Nothing in this chapter is intended, or should be construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry other than:**

(1) a law that permits agreements that would require membership in a labor organization;

(2) a law that permits agreements that would require the payment of dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) a law that permits agreements that would require the payment to a charity or a third party of an amount that is equivalent to or a pro rata part of dues, fees, assessment, or other charges required of members of a labor organization;

as a condition of employment.

Sec. 4.".

Page 2, line 10, delete "4." and insert "**5.**".

Page 2, line 18, delete "5." and insert "**6.**".

Page 2, line 27, delete "6." and insert "**7.**".

Page 2, line 41, delete "7." and insert "**8.**".

Page 3, line 7, delete "8." and insert "**9.**".

Page 3, line 11, delete "7" and insert "**8**".

Page 3, line 12, delete "9." and insert "**10.**".

Page 3, line 13, delete "7" and insert "**8**".

C o p y

Page 3, line 15, delete "10." and insert "**11.**".
Page 3, line 23, delete "11." and insert "**12.**".
Page 3, line 41, delete "12." and insert "**13.**".
Page 3, line 41, delete "7" and insert "**8**".
Page 3, line 41, delete "11" and insert "**12**".

(Reference is to SB 269 as printed January 10, 2012.)

HERSHMAN

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