

JAN 18 2013

S.B. NO. 261

A BILL FOR AN ACT

RELATING TO LABOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature believes that all employees
2 within the State should be protected in their employment and
3 should be free to independently decide whether or not they wish
4 to belong, or pay dues, to a labor organization. Regardless of
5 an individual's determination on membership, the individual's
6 right to work must be protected. Currently, the citizens of
7 twenty-two U.S. states enjoy a freedom of choice in this regard;
8 those citizens enjoy a right to work, and a right to make an
9 independent decision as to whether or not they shall join or
10 financially support a labor organization. It is time that this
11 freedom of choice be made available to the citizens of this
12 State. The purpose of this Act is to protect the employability
13 of persons who are not members of labor organizations.

14 SECTION 2. Chapter 377, Hawaii Revised Statutes, is
15 amended by adding a new part to be appropriately designated and
16 to read as follows:

17 "PART . RIGHT TO WORK



1 **§377- Definitions.** In this part, unless the context
2 otherwise requires:

3 "Labor organization" means any organization of any kind, or
4 any agency or employee representation committee or plan, in
5 which employees participate and which exists for the purpose, in
6 whole or in part, of dealing with employers concerning
7 grievances, labor disputes, wages, rates of pay, hours of
8 employment, or other conditions of employment.

9 "Person" includes a natural person, a corporation,
10 association, company, firm, or labor organization.

11 **§377- Prohibition of agreements denying employment**
12 **because of nonmembership in labor organization.** No person shall
13 be denied the opportunity to obtain or retain employment because
14 of nonmembership in a labor organization, nor shall the State or
15 any subdivision thereof, or any corporation, individual, or
16 association of any kind, enter into an agreement, written or
17 oral, which excludes a person from employment or continuation of
18 employment because of nonmembership in a labor organization.

19 **§377- Illegality of acts or agreements violating this**
20 **part; strike or picketing for illegal purpose.** Any act or
21 provision in an agreement which is in violation of this part is
22 illegal and void.



1 **§377- Prohibition of threatened or actual interference**

2 with a person, the person's family, or property, to compel that
3 person to join a labor organization, strike, or leave

4 employment. It is unlawful for an employee, labor organization,
5 or officer, agent, or member thereof, by any directly or

6 indirectly threatened or actual interference with the person,

7 the person's immediate family, or property, to compel or attempt

8 to compel the person to join a labor organization, to strike

9 against the person's will, to leave employment, or to dissuade

10 the person from crossing the picket line.

11 **§377- Prohibition of conspiracy against persons not**

12 members of labor organization. It is unlawful for two or more

13 persons to conspire for the following purposes:

14 (1) To induce any other person to refuse to work with a
15 person who is not a member of a labor organization;

16 (2) To cause the discharge of any person who is not a
17 member of a labor organization; or

18 (3) To cause a person who is not a member of a labor
19 organization to be denied employment because of the
20 person's nonmembership.

21 **§377- Civil liability of person violating this part. A**

22 person who violates any section of this part, or who enters into



1 an agreement containing a provision that is in violation of any
2 section of this part, or who brings about the discharge of or
3 denial of employment to any person because of nonmembership in a
4 labor organization shall be liable to the person injured as the
5 result of the act or agreement and may be sued therefor, and in
6 the action, any labor organization, subdivision, or local
7 thereof, shall be bound by the acts of its duly authorized
8 agents acting within the scope of their authority, and may sue
9 or be sued in its common name.

10 **§377- Injunctive relief from injury resulting from**
11 **violation of this part.** A person injured or threatened with any
12 type of injury or loss by an act declared illegal by this part
13 shall, notwithstanding any other provision of law to the
14 contrary, be entitled to injunctive relief."

15 SECTION 3. Chapter 377, Hawaii Revised Statutes, is amended
16 by designating sections 377-1 through 377-18 as "Part I. General
17 Provisions."

18 SECTION 4. Section 377-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§377-4 Rights of employees.** Employees shall have the
21 right of self-organization and the right to form, join, or
22 assist labor organizations, to bargain collectively through



1 representatives of their own choosing, and to engage in lawful,
2 concerted activities for the purpose of collective bargaining or
3 other mutual aid or protection, and such employees shall also
4 have the right to refrain from any and all such activities[
5 ~~provided that employees may be required to join a union under an~~
6 ~~all-union agreement as provided in section 377-6(3)]]."~~

7 SECTION 5. Section 377-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§377-6 Unfair labor practices of employers.** It shall be
10 an unfair labor practice for an employer individually or in
11 concert with others:

12 (1) To interfere with, restrain, or coerce the employer's
13 employees in the exercise of the rights guaranteed in
14 section 377-4;

15 (2) To initiate, create, dominate, or interfere with the
16 formation or administration of any labor organization
17 or contribute financial support to it, but an employer
18 shall not be prohibited from reimbursing employees at
19 their prevailing wage rate for time spent conferring
20 with the employer, nor from cooperating with
21 representatives of at least a majority of the
22 employer's employees in a collective bargaining unit,



1 at their request, by permitting employee
2 organizational activities on employer premises or the
3 use of employer facilities where the activities or use
4 create no additional expense to the employer;

- 5 (3) To encourage or discourage membership in any labor
6 organization by discrimination in regard to hiring,
7 tenure, or other terms or conditions of employment.

8 An employer, however, may enter into an all-union
9 agreement with the bargaining representative of the
10 employer's employees in a collective bargaining unit,
11 unless the board has certified that at least a
12 majority of the employees have voted to rescind the
13 authority of their bargaining representative to
14 negotiate such all-union agreement within one year
15 preceding the date of the agreement~~[-]~~; provided that
16 such agreement shall not displace employees who are
17 not union members. No employer shall justify any
18 discrimination against any employee for nonmembership
19 in a labor organization ~~[if the employer has~~
20 ~~reasonable grounds for believing that:~~



1 ~~(A) Such membership was not available to the employee~~
 2 ~~on the same terms and conditions generally~~
 3 ~~applicable to other members;~~

4 ~~(B) Or that membership was denied or terminated for~~
 5 ~~reasons other than the failure of the employee to~~
 6 ~~tender periodic dues and the initiation fees~~
 7 ~~uniformly required as a condition for acquiring~~
 8 ~~or retaining membership];~~

9 (4) To refuse to bargain collectively with the
 10 representative of a majority of the employer's
 11 employees in any collective bargaining unit provided
 12 that if the employer has good faith doubt that a union
 13 represents a majority of the employees, the employer
 14 may file a representation petition for an election and
 15 shall not be deemed guilty of refusal to bargain;

16 (5) To bargain collectively with the representatives of
 17 less than a majority of the employer's employees in a
 18 collective bargaining unit, or to enter into an all-
 19 union agreement except in the manner provided in
 20 paragraph (3);

21 (6) To violate the terms of a collective bargaining
 22 agreement;



(7) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the board or of any tribunal of competent jurisdiction;

(8) To discharge or otherwise discriminate against an employee because the employee has filed charges or given information or testimony under the provisions of this chapter;

(9) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;

(10) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter;

(11) To make, circulate, or cause to be circulated a blacklist;

(12) To offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute; or



(13) Based on employment or willingness to be employed during a labor dispute, to give employment preference to one person over another who:

(A) Was an employee at the commencement of the dispute;

(B) Exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization engaged in the dispute; and

(C) Continues to work for or has unconditionally offered to return to work for the employer."

SECTION 6. Section 377-4.5, Hawaii Revised Statutes, is repealed.

~~["§377-4.5 Religious exemption from labor organization membership. Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment, except that an employee may be required in a contract between an~~



~~employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code, chosen by an employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If any employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using the procedure."]~~

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY: 



S.B. NO. 261

Report Title:

Labor; Right to Work

Description:

Protects individual's right to gainful employment regardless of nonmembership in any labor organization.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

