

1 **VOLUNTARY CONTRIBUTIONS ACT**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Chad E. Bennion**

5 **This act modifies labor law and election law to address issues related to labor organizations**
6 **participation in campaigning and elections. This act requires labor organizations to**
7 **establish a separate fund for political purposes and establishes registration and disclosure**
8 **requirements for the fund. This act establishes criminal penalties. This act prohibits public**
9 **employees from authorizing payroll deductions to a labor organization's political fund or**
10 **PAC. This act makes technical changes.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 ENACTS:

13 **20A-11-1401**, Utah Code Annotated 1953

14 **20A-11-1402**, Utah Code Annotated 1953

15 **20A-11-1403**, Utah Code Annotated 1953

16 **20A-11-1404**, Utah Code Annotated 1953

17 **20A-11-1405**, Utah Code Annotated 1953

18 REPEALS AND REENACTS:

19 **34-32-1**, as last amended by Chapter 86, Laws of Utah 2000

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **20A-11-1401** is enacted to read:

22 **Part 14. Voluntary Contributions Act**

23 **20A-11-1401. Title.**

24 This part is known as the "Voluntary Contributions Act."

25 Section 2. Section **20A-11-1402** is enacted to read:

26 **20A-11-1402. Definitions.**

27 (1) As used in this part:

28 (a) "Ballot proposition" includes initiatives, referenda, proposed constitutional
29 amendments, and any other items submitted to the voters for their approval or rejection.

30 (b) "Filing entity" means a candidate, officeholder, political action committee, political
31 issues committee, political party, and each other entity required to report contributions under Title
32 20A, Chapter 11, Campaign and Financial Reporting Requirements.

33 (c) "Fund" means the separate segregated fund established by a labor organization for
34 political purposes according to the procedures and requirements of this part.

35 (d) (i) "Labor organization" means any association or organization of employees, and any
36 agency, employee representation committee, or plan in which employees participate that exists,
37 in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages,
38 rates of pay, hours of employment, or conditions of employment.

39 (ii) Except as provided in Subsection (1)(d)(iii), "labor organization" includes each
40 employee association and union for employees of public and private sector employers.

41 (iii) "Labor organization" does not include organizations governed by the National Labor
42 Relations Act, 29 U.S.C. Sec. 151 et. seq. or the Railroad Labor Act, 45 U.S.C. Sec 151 et seq.

43 (e) "Political activities" means lobbying, electoral activities, independent expenditures, or
44 expenditures made to any candidate, political party, political action committee, political issues
45 committee, voter registration campaign, or any other political or legislative cause, including ballot
46 propositions.

47 (f) "Union dues" means dues, fees, or other monies required as a condition of membership
48 in a labor organization or as a condition of employment.

49 (2) Other terms defined in Section 20A-11-101 apply to this part.

50 Section 3. Section **20A-11-1403** is enacted to read:

51 **20A-11-1403. Limits on labor organization contributions.**

52 (1) Except as provided in Subsection (2), a labor organization may not expend union dues
53 for political activities.

54 (2) (a) A labor organization may only make expenditures for political activities if the labor
55 organization establishes a separate segregated fund that meets the requirements of this part.

56 (b) The labor organization shall ensure that:

57 (i) contributions to the fund are solicited independently from solicitation of union dues and
58 from any other solicitations by the labor organization;

59 (ii) in soliciting contributions for the fund, the solicitor discloses, in clear and
60 unambiguous language on the face of the solicitation, that contributions are voluntary and that the
61 fund is a political fund and will be expended for political activities;

62 (iii) union dues are not used for political activities, transferred to the fund, or intermingled
63 in any way with fund monies;

64 (iv) the cost of administering the fund is paid from fund contributions and not from union
65 dues;

66 (v) contributions to the fund are not made from money collected from payroll deductions
67 by an employer; and

68 (vi) each contribution is voluntary.

69 (3) At the time the labor organization is soliciting contributions for the fund from an
70 employee, the labor organization shall:

71 (a) affirmatively inform the employee, in writing, of the fund's political purpose; and

72 (b) affirmatively inform the employee, in writing, of the employee's right to refuse to
73 contribute without fear of reprisal or loss of membership in the labor organization.

74 (4) The labor organization has the burden of proof to establish that the requirements of
75 Subsections (2)(b) and (3) are met.

76 (5) Notwithstanding the requirements of Subsection (2)(b)(ii), a labor organization may
77 use union dues to communicate directly with its own members about political candidates, ballot
78 propositions, and other political issues.

79 Section 4. Section **20A-11-1404** is enacted to read:

80 **20A-11-1404. Criminal acts -- Penalties.**

81 (1) (a) It is unlawful for a labor organization to make expenditures for political activities
82 by using contributions:

83 (i) secured by physical force or threat of force, job discrimination or threat of job
84 discrimination, membership discrimination or threat of membership discrimination, or economic
85 reprisals or threat of economic reprisals;

86 (ii) from union dues except as provided in Subsection 20A-11-1403(5); or

87 (iii) obtained in any commercial transaction.

88 (b) When a labor organization is soliciting contributions for a fund from an employee, it
89 is unlawful for a labor organization to fail to:

90 (i) affirmatively inform the employee in writing of the fund's political purpose; and

91 (ii) affirmatively inform the employee in writing of the employee's right to refuse to

92 contribute without fear of reprisal or loss of membership in the labor organization.

93 (c) It is unlawful for a labor organization to solicit contributions for the fund from any

94 person other than its members and their families.

95 (d) It is unlawful for a labor organization to pay a member for contributing to the fund by

96 providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect

97 compensation.

98 (2) Any person or entity violating this section is guilty of a class A misdemeanor.

99 Section 5. Section **20A-11-1405** is enacted to read:

100 **20A-11-1405. Registration -- Disclosure.**

101 Each fund established by a labor organization under this part shall:

102 (1) register as a political action committee as required by this chapter; and

103 (2) file the financial reports for political action committees required by this chapter.

104 Section 6. Section **34-32-1** is repealed and reenacted to read:

105 **34-32-1. Voluntary contributions act -- Assignments to labor unions -- Effect.**

106 (1) As used in this section:

107 (a) "Employee" means a person employed by any person, partnership, public, private, or

108 municipal corporation, school district, the state, or any political subdivision of the state.

109 (b) "Employer" means the person or entity employing an employee.

110 (c) (i) "Labor organization" means any association or organization of employees, and any

111 agency, employee representation committee, or plan in which employees participate that exists,

112 in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages,

113 rates of pay, hours of employment, or conditions of employment.

114 (ii) Except as provided in Subsection (1)(c)(iii), "labor organization" includes each

115 employee association and union for employees of public and private sector employers.

116 (iii) "Labor organization" does not include organizations governed by the National Labor

117 Relations Act, 29 U.S.C. Sec. 151 et. seq. or the Railroad Labor Act, 45 U.S.C. Sec. 151 et. seq.

118 (d) "Public employee" means a person employed by the state, a municipal corporation, a

119 county, a municipality, a school district, a special district, or any other political subdivision of the

120 state.

121 (e) "Union dues" means dues, fees, or other monies required as a condition of membership
122 in a labor organization or as a condition of employment.

123 (2) Except as prohibited by Subsection (7), an employee, for each calendar year, may elect
124 to direct his employer to:

125 (a) deduct a specified sum of up to 3% per month from his wages during a specified
126 calendar year; and

127 (b) pay the amount deducted to a labor organization as assignee.

128 (3) If the employee elects to direct the employer to make the deduction authorized by
129 Subsection (2), the employee shall, in the year before the beginning of a calendar year, or during
130 the calendar year:

131 (a) sign a written statement that:

132 (i) directs the employer to make the deduction;

133 (ii) identifies the amount of the deduction;

134 (iii) identifies the person or entity to whom the deduction is to be paid;

135 (iv) directs the employer to pay the deduction to that person or entity; and

136 (v) identifies, on its face, that the authorization to make the deduction expires on

137 December 31 of the calendar year for which it was signed; and

138 (b) personally deliver that written statement to the employee's employer.

139 (4) An employer who receives a written statement shall:

140 (a) keep the statement on file;

141 (b) deduct the specified sum from the employee's salary; and

142 (c) pay the deducted amount to the labor organization designated by the employee.

143 (5) The employer shall continue to make and pay the deduction as directed by the
144 employee until:

145 (a) the employee revokes or modifies the deduction in writing; or

146 (b) the calendar year for which the statement was signed is over.

147 (6) An employer may not make and pay the deduction if:

148 (a) the written statement was given to the employer by anyone other than the employee
149 who signed it; or

150 (b) the calendar year to which the statement is applicable is over.

151 (7) A public employee may not direct an employer to deduct monies from his wages and

- 152 pay them to:
 - 153 (a) a registered political action committee;
 - 154 (b) a fund as defined by Section 20A-11-1402; or
 - 155 (c) any intermediary that contributes to a registered political action committee or to a fund
 - 156 as defined in Section 20A-11-1402.
 - 157 (8) Nothing in this section prohibits an individual from making personal contributions to
 - 158 a registered political action committee or to a fund as defined by Section 20A-11-1402.
-
-

Legislative Review Note
as of 1-18-01 5:44 PM

This legislation raises the following constitutional or statutory concerns:

This bill could be challenged as violating the First Amendment of the United States Constitution and the comparable provisions of Utah’s constitution. At least one court - the United States Court of Appeals for the Sixth Circuit - upheld portions of an Ohio statute with similar provisions when it was challenged on First Amendment grounds. See, *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307 (6th Cir. 1998). Although that case is not binding precedent on Utah’s state or federal courts, it affirmatively demonstrates the possibility that this legislation might be challenged on constitutional grounds and provides an analytical framework that a Utah court could apply to determine its constitutionality.

Office of Legislative Research and General Counsel