

Representative Chad E. Bennion proposes to substitute the following bill:

VOLUNTARY CONTRIBUTIONS ACT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

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

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

ENACTS:

20A-11-1401, Utah Code Annotated 1953

20A-11-1402, Utah Code Annotated 1953

20A-11-1403, Utah Code Annotated 1953

20A-11-1404, Utah Code Annotated 1953

20A-11-1405, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

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

Part 14. Voluntary Contributions Act

20A-11-1401. Title.

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

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

60 (ii) union dues are not used for political activities, transferred to the fund, or intermingled
61 in any way with fund monies;

62 (iii) the cost of administering the fund is paid from fund contributions and not from union
63 dues; and

64 (iv) each contribution is voluntary.

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

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

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

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

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

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

76 **20A-11-1404. Criminal acts -- Penalties.**

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

79 (i) secured by physical force or threat of force, job discrimination or threat of job
80 discrimination, membership discrimination or threat of membership discrimination, or economic
81 reprisals or threat of economic reprisals; or

82 (ii) from union dues except as provided in Subsection 20A-11-1403(5).

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

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

86 (ii) affirmatively inform the employee in writing of the employee's right to refuse to
87 contribute without fear of reprisal or loss of membership in the labor organization.

88 (c) It is unlawful for a labor organization to solicit contributions for the fund from any
89 person other than its members and their families.

90 (d) It is unlawful for a labor organization to pay a member for contributing to the fund by
91 providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect
92 compensation.

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

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

95 **20A-11-1405. Registration -- Disclosure.**

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

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

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

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

100 **34-32-1. Voluntary contributions act -- Assignments to labor unions -- Effect.**

101 (1) As used in this section:

102 (a) "Employee" means a person employed by any person, partnership, public, private, or
103 municipal corporation, school district, the state, or any political subdivision of the state.

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

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

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

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

113 (d) "Public employee" means a person employed by the state, a municipal corporation, a
114 county, a municipality, a school district, a special district, or any other political subdivision of the
115 state.

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

118 (2) Except as prohibited by Subsection (6), an employee may elect to direct his employer

119 to:

120 (a) deduct a specified sum of up to 3% per month from his wages; and

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

122 (3) If the employee elects to direct the employer to make the deduction authorized by

123 Subsection (2), the employee shall sign a written statement that:

124 (a) directs the employer to make the deduction;

125 (b) identifies the amount of the deduction;

126 (c) identifies the person or entity to whom the deduction is to be paid; and

127 (d) directs the employer to pay the deduction to that person or entity.

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

129 (a) keep the statement on file;

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

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

132 (5) The employer shall continue to make and pay the deduction as directed by the

133 employee until the employee revokes or modifies the deduction in writing.

134 (6) A public employee may not direct an employer to deduct monies from his wages and
135 pay them to:

136 (a) a registered political action committee;

137 (b) a fund as defined by Section 20A-11-1402; or

138 (c) any intermediary that contributes to a fund as defined in Section 20A-11-1402.

139 (7) Nothing in this section prohibits an individual from making personal contributions to
140 a registered political action committee or to a fund as defined by Section 20A-11-1402.

Legislative Review Note**as of 1-26-01 5:38 PM**

This bill could be challenged as violating the First Amendment and Equal Protection Clause 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