

WORKERS' PAYCHECK PROTECTION ACT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Evan L. Olsen

AN ACT RELATING TO LABOR AND ELECTION LAW; REQUIRING LABOR ORGANIZATIONS TO ESTABLISH A SEPARATE FUND FOR POLITICAL PURPOSES; ESTABLISHING REGISTRATION AND DISCLOSURE REQUIREMENTS FOR THE FUND; PROVIDING CRIMINAL PENALTIES; MODIFYING AUTOMATIC PAYROLL DEDUCTIONS PROVISIONS; PROHIBITING AUTOMATIC PAYROLL DEDUCTIONS FOR CONTRIBUTIONS TO A LABOR ORGANIZATION'S POLITICAL FUND; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

34-32-1, as enacted by Chapter 85, Laws of Utah 1969

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

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

Part 14. Workers' Paycheck Protection Act

20A-11-1401. Title.

This part is known as the "Workers' Paycheck Protection Act."

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

20A-11-1402. Definitions.

(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, either verbally or in clear
60 and unambiguous language on the face of the solicitation, that the fund is a political fund and will
61 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, verbally and in writing, of the fund's political
72 purpose; and

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

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

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

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

81 **20A-11-1404. Criminal acts -- Penalties.**

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

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

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

88 (iii) obtained in any commercial transaction.

89 (b) When a labor organization is soliciting contributions for a fund from an employee, it

90 is unlawful for a labor organization to fail to:

91 (i) affirmatively inform the employee of the fund's political purpose; and

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

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

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

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

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

101 **20A-11-1405. Registration -- Disclosure.**

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

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

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

105 Section 6. Section **34-32-1** is amended to read:

106 **34-32-1. Workers' Paycheck Protection Act -- Assignments to labor unions -- Effect.**

107 [Whenever an employee of any person, firm, school district, private or municipal
108 corporation within the state of Utah executes and delivers to his employer an instrument in writing
109 whereby such employer is directed to]

110 (1) As used in this section:

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

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

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

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

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

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

123 (d) "Union dues" means dues, fees, or other monies required as a condition of membership
124 in a labor organization or as a condition of employment.

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

127 (a) deduct a specified sum [at the rate not exceeding] of up to 3% per month from his
128 wages during a specified calendar year; and [to]

129 (b) pay the [same] amount deducted to a labor organization [or union or any other
130 organization of employees] as assignee[, it shall be the duty of such employer to make such
131 deduction and to pay the same monthly or as designated by employee to such assignee and to
132 continue to do so until otherwise directed by the employee through an instrument in writing].

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

136 (a) sign a written statement that:

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

138 (ii) identifies the amount of the deduction;

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

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

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

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

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

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

145 (a) keep the statement on file;

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

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

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

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

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

- 152 (6) An employer may not make and pay the deduction if:
153 (a) the written statement was given to the employer by anyone other than the employee
154 who signed it; or
155 (b) the calendar year to which the statement is applicable is over.
156 (7) Notwithstanding Subsection (1), an employee may not direct an employer to deduct
157 monies from his wages and pay them to:
158 (a) a registered political action committee;
159 (b) a fund as defined by Section 20A-11-1402; or
160 (c) any intermediary that contributes to a registered political action committee or to a fund
161 as defined in Section 20A-11-1402.
162 (8) Nothing in this section prohibits an individual from making personal contributions to
163 a registered political action committee or to a fund as defined by Section 20A-11-1402.
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Legislative Review Note
as of 1-26-99 5:30 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. However, at least one court – the United States Court of Appeals for the Sixth Circuit – upheld an Ohio statute with similar provisions when it was challenged on First Amendment grounds. *See, Toledo Area AFL-CIO Council v. Pizza*, 6th Cir., No. 97-3298 (8/19/98). Although that case is not binding precedent on Utah's state or federal courts, it affirmatively demonstrates both the possibility that this legislation might be challenged on constitutional grounds and an analytical framework that a Utah court could use to uphold its constitutionality.

Office of Legislative Research and General Counsel