SPONSOR: Sen. Bonini
Sens. Hocker, Lawson, Simpson, Venables; Reps. Dukes, Gray, Wilson

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

# SENATE BILL NO. 250

AN ACT TO AMEND TITLES 14 AND 19 OF THE DELAWARE CODE RELATING TO THE RIGHT TO WORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part 1, Title 19, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

## CHAPTER 18. RIGHT TO WORK ACT.

### § 1801. Definitions.

As used in this Chapter the following terms shall have the meanings designated in this section:

(1) "Employer" means all persons, firms, associations, corporations, public employers as defined in § 1302 of this Title, public school employers as defined in § 4002 of Title 14, and public colleges, universities, institutions, and education agencies.

(2) "Labor organization" means any organization of any kind, or agency or employee representation committee or union, which exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

### § 1802. Right to refrain.

No person shall be required, as a condition or continuation of employment, to:

(1) become or remain a member of a labor organization;

(2) pay any dues, fees, assessments, or other similar charges, however denominated, of any kind or amount to a labor organization; or

(3) pay to any charity or other third party, in lieu of such payments, any amount equivalent to or *pro rata* portion of dues, fees, assessments, or other charges required of members of a labor organization.

§ 1803. Agreements in violation.

Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and employer which violates the rights of employees as guaranteed by provisions of this Chapter is hereby declared to be unlawful, null and void, and of no legal effect.

§ 1804. Penalty, jurisdiction.

Any person who directly or indirectly violates any provision of this Chapter shall be guilty of an unclassified misdemeanor. Superior Court shall have jurisdiction to hear and determine any violation of this Chapter.

§ 1805. Injunctive relief.

Any person injured as a result of any violation or threatened violation of the provisions of this Chapter shall be entitled to injunctive relief against any and all violators or persons threatening violations.

§ 1806. Damages.

Any person injured as a result of any violation or threatened violation of the provisions of this Chapter may recover any and all damages, including costs and reasonable attorney fees, of any character resulting from such violation or threatened violation. Such remedies shall be independent of and in addition to the penalties and remedies proscribed in other provisions of this Chapter.

§ 1807. Duty to investigate and enforce.

It shall be the duty of the Attorney General of this State to investigate complaints of violation or threatened violations of this Chapter and to prosecute all persons violating any of its provisions, and to take all means at his or her command to ensure effective enforcement.

§ 1808. Exceptions.

The provisions of this Chapter shall not apply:

(1) to employers and employees covered by the Federal Railway Labor Act;

(2) to federal employers and employees;

(3) to employers and employees on exclusive federal enclaves;

(4) where they would otherwise conflict with, or be pre-empted by, federal law; or

(5) to any employment contract entered into before the effective date of this Chapter. However, the provisions of this Chapter shall apply to any renewal or extension of any existing contract.

Section 2. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 4002(k) "Fair share fee" means a fee that a nonmember shall be required to pay to the exclusive representative to offset the nonmember's per capita share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular membership dues that a member of the exclusive representative is required to pay, including payments to the exclusive representative's affiliated organizations, or such lesser amount as is prescribed by the exclusive representative in compliance with the procedures contained herein.~~

~~§ 4019 Fair share fees.~~

~~(a) If the provisions of a collective bargaining agreement so provide, each nonmember of a bargaining unit shall be required to pay the exclusive representative a fair share fee.~~

~~(b) To implement fair share fee agreements in accordance with subsection (a), the exclusive representative shall provide the public school employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that the nonmember is obligated to pay and a reasonable and lawful schedule for deducting said amount from the salary or wages of such nonmember. The public school employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.~~

~~(c) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a procedure that:~~

~~(1) Provides nonmembers with an adequate explanation of the basis for the fee;~~

~~(2) Provides nonmembers with a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker; and~~

~~(3) Provides an escrow for the amounts reasonably in dispute while such challenges are pending.~~

~~A public school employer shall not refuse to carry out its obligations under subsection (b) on the grounds that the exclusive representative has not satisfied its responsibilities under this subsection.~~

~~(d) Since fair share fees are collected each school year, in order to avoid undue delays in the receipt of, and determination of the validity of, fair share fees, any suit challenging a fair share fee must be filed within 6 months after receipt of the notice described in subsection (c), or within 6 months after the nonmember exhausts the procedure described in subsection (c), whichever is later.~~

Section 3. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 1302(k) "Fair share fee" means a fee that a nonmember shall be required to pay to the nonmember's exclusive representative to offset the nonmember's pro rata share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular membership dues that a member of the exclusive representative's affiliated organizations, provided that the exclusive representative establishes and maintains a procedure by which any nonmember fee payer may obtain a rebate.~~

~~§ 1302(q) "Rebate" means that portion of a nonmember's pro rata share of the expenditures of the exclusive representative which are not made for purposes pertaining to the collective bargaining process, contract administration or pursuit of matters affecting wages, hours and other conditions of employment.~~

~~§ 1319 Fair share fees.~~

~~(a) Where the provisions of a collective bargaining agreement so provide, a public employer shall deduct a fair share fee from each nonmember's salary or wages and promptly transmit this amount to the exclusive representative.~~

~~(b) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a procedure that:~~

~~(1) Provides nonmembers with an adequate explanation of the basis for the fee and any rebate;~~

~~(2) Provides nonmembers with a reasonably prompt opportunity to challenge the amount of the fee and any rebate before an impartial decision maker; and~~

~~(3) Provides an escrow for the amounts reasonably in dispute while such challenges are pending.~~

~~A public employer shall not refuse to carry out its obligations under subsection (a) of this section on the grounds that the exclusive representative has not satisfied its responsibilities under this subsection.~~

~~(c) In order to avoid undue delays in the receipt of and determination of the validity of fair share fees or rebates, any suit challenging a fair share fee or rebate must be filed within 6 months after receipt of the notice described in subsection (b) of this section or within 6 months after the nonmember exhausts the procedure described in subsection (b) of this section, whichever is later.~~

Section 4. Severability Clause. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a Court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

SYNOPSIS

This Bill creates a right to work law in Delaware.

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