

The Senate Insurance and Labor Committee offered the following substitute to HB 361:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 34 of the Official Code of Georgia Annotated,
2 relating to membership in labor organizations, so as to provide for definitions; to provide for
3 a statement of rights under federal law; to provide for certain contract and agreement
4 employment rights; to provide for policy concerning passage of laws, ordinances, or
5 contracts that waive or restrict federal labor laws; to provide for changes to agreements and
6 contracts permitting labor organizations to deduct fees from employees' earnings; to amend
7 Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
8 benefits relative to employment security, so as to provide changes to the determination of
9 eligibility for unemployment benefits of certain persons performing certain services; to
10 provide for related matters; to provide for severability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Article 2 of Chapter 6 of Title 34 of the Official Code of Georgia Annotated, relating to
14 membership in labor organizations, is amended in Code Section 34-6-20, relating to
15 definitions, as follows:
16

17 "34-6-20.

18 As used in this article, the term:

19 (1) 'Employee' includes any employee and shall not be limited to the employees of a
20 particular employer.

21 (2) 'Employer' includes any person acting in the interest of an employer, directly or
22 indirectly, but shall not include the United States, a state or any political subdivision
23 thereof, any person subject to the Railway Labor Act, as amended, any transit authority
24 subject to the provisions and requirements of Section 13(c) of the Federal Transit Act, 49
25 U.S.C. Section 5333(b), any labor organization (other than when acting as an employer),
26 or anyone acting in the capacity of officer or agent of such labor organization.

27 (3) 'Employment' means employment by an employer.

28 (4) 'Federal labor laws' means the National Labor Relations Act and the Labor
 29 Management Relations Act, as amended by federal administrative regulations relating to
 30 labor and management or employee and employer issues, and the United States
 31 Constitution as amended and as construed by the federal courts.

32 (5) 'Governmental body' means the State of Georgia or any local government or its
 33 subdivisions, including but not limited to cities, municipalities, counties, and any public
 34 body, agency, board, commission or other governmental, quasi-governmental, or
 35 quasi-public body, or like capacity of local government or its subdivision.

36 ~~(4)~~(6) 'Labor organization' means any organization of any kind or any agency or
 37 employee representation committee or plan in which employees participate and which
 38 exists for the purpose, in whole or in part, of dealing with employers concerning
 39 grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of
 40 work."

41 **SECTION 2.**

42 Said article is further amended by adding a new Code section to read as follows:

43 "34-6-20.1.

44 The rights protected under federal labor laws include, but are not limited to:

45 (1) An employer's or employee's right to express views in favor of or contrary to
 46 unionization and any other labor relations issues to the full extent allowed by the First
 47 Amendment of the United States Constitution and Section 8(c) of the National Labor
 48 Relations Act;

49 (2) An employee's right to participate in, and an employer's right to demand, a secret
 50 ballot election under federal law, including, without limitation, the full procedural
 51 protections afforded by such laws for defining the unit, conducting the election campaign
 52 and election, and making any challenges or objections thereto; and

53 (3) An employer's right to:

54 (A) Oppose the recognition of a labor organization based solely on reviewing
 55 authorization cards absent a secret ballot election conducted in accordance with federal
 56 labor laws;

57 (B) Refuse to release sensitive and private employee information beyond the
 58 requirements of federal labor laws;

59 (C) Maintain the confidentiality of employee information to the maximum extent
 60 allowed by federal labor laws; and

61 (D) Restrict access to its property or business to the maximum extent allowed by
 62 federal labor laws."

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SECTION 3.

Said article is further amended by revising Code Section 34-6-21, relating to membership in or resignation from a labor organization as a condition of employment, as follows:

"34-6-21.

(a) No individual shall be required as a condition of employment or continuance of employment to be or remain a member or an affiliate of a labor organization or to resign from or to refrain from membership in or affiliation with a labor organization.

(b) No governmental body may pass any law, ordinance, or regulation or impose any contractual, zoning, permitting, licensing, or other condition that requires any employer or employee to waive statutory rights under federal labor laws.

(c) No governmental body may pass any law, ordinance, or regulation that would require, in whole or in part, an employer or multiple employer association to accept or otherwise agree to any provisions that are mandatory or nonmandatory subjects of collective bargaining under federal labor laws, including, but not limited to, any limitations on an employer's or multiple employer association's right to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage; provided, however, that the foregoing shall not invalidate or otherwise restrict the application of federal labor laws.

(d) No employer or labor organization shall be forced to enter into any agreement, contract, understanding, or practice, written or oral, implied or expressed, that subverts the established process by which employees may make informed and free decisions regarding representation and collective bargaining rights provided for by federal labor laws."

SECTION 4.

Said article is further amended by revising Code Section 34-6-25, relating to deductions from employees' earnings of fees of labor organizations, as follows:

"34-6-25.

(a) No employer shall deduct from the wages or other earnings of any employee any fee, assessment, or other sum of money whatsoever to be held for or to be paid over to a labor organization except on the ~~individual order or request of the employee, which shall not be irrevocable for a period of more than one year~~ written authorization of the employee. Such authorization may be revoked at any time at the request of the employee.

(b) Nothing in this Code section shall be construed to impair any contract, agreement, or collective bargaining agreement in existence prior to the effective date of this Code section.

(c) This Code section shall not apply to any collective bargaining agreement entered into pursuant to the Railway Labor Act, as amended, any transit authority subject to the provisions and requirements of Section 13(c) of the Federal Transit Act, 49 U.S.C. Section

99 5333(b), or to any professional association whose membership is exclusively composed of
 100 educators, law enforcement officers, or firefighters not engaged or engaging in contracting
 101 or collective bargaining."

102 **SECTION 5.**

103 Said article is further amended by revising Code Section 34-6-26, relating to contracts
 104 allowing deductions from employees' earnings of fees of labor organizations, as follows:

105 "34-6-26.

106 (a) It shall be unlawful for any employer to contract with any labor organization and for
 107 any labor organization to contract with any employer for the deduction of any fee,
 108 assessment, or other sum of money whatsoever from the wages or other earnings of an
 109 employee to be held for or to be paid over to a labor organization except upon the condition
 110 to be embodied in ~~said~~ such contract that such deduction will be made only on the
 111 ~~individual order or request of the employee, which shall not be irrevocable for a period of~~
 112 ~~more than one year~~ written authorization of the employee. Such authorization may be
 113 revoked at any time at the request of the employee and will be effective for the pay period
 114 following such revocation.

115 (b) Nothing in this Code section shall be construed to impair any contract, agreement, or
 116 collective bargaining agreement in existence prior to the effective date of this Code
 117 section."

118 **SECTION 6.**

119 Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
 120 benefits relative to employment security, is amended by revising Code Section 34-8-196,
 121 relating to determination of eligibility for aliens and other person performing certain services,
 122 as follows:

123 "34-8-196.

124 (a) ~~Benefits based on service in educational institutions.~~ Benefits based on service in
 125 employment as defined in subsections (h) and (i) of Code Section 34-8-35 shall be payable
 126 in the same amount, on the same terms, and subject to the same conditions as compensation
 127 payable on the basis of other services subject to this chapter, except as otherwise provided
 128 in this Code section:.

129 (b)(1) With respect to services performed in an instructional, research, or principal
 130 administrative capacity for any educational institution, including those operated by the
 131 United States government or any of its instrumentalities, divisions, or agencies, benefits
 132 shall not be paid during periods of unemployment if services were performed in the prior
 133 year, term, or vacation period and there is a contract or a reasonable assurance of

134 returning to work for an educational institution immediately following the period of
 135 unemployment. Such periods of unemployment include those occurring:

- 136 (A) Between two successive academic terms or years;
 137 (B) During an established and customary vacation period or holiday recess;
 138 (C) During the time period covered by an agreement that provides instead for a similar
 139 period between two regular but not successive terms; or
 140 (D) During a period of paid sabbatical leave provided for in the individual's contract;
 141 ~~and~~

142 (2) With respect to services performed in any other capacity with any educational
 143 institution, including those operated by the United States government or any of its
 144 instrumentalities, divisions, or agencies, benefits shall not be paid during periods of
 145 unemployment if services were performed in the prior year, term, or vacation period and
 146 there is a reasonable assurance of returning to work for an educational institution
 147 immediately following the period of unemployment. If compensation is denied pursuant
 148 to this paragraph to an individual, however, and that individual is not offered an
 149 opportunity to perform services for the educational institution following the unemployed
 150 period, such individual shall be entitled to retroactive payment for each week during that
 151 period of unemployment a timely claim was filed and benefits were denied solely by
 152 reason of this paragraph. Such periods of unemployment include those occurring:

- 153 (A) Between two successive academic years or terms; or
 154 (B) During an established and customary vacation period or holiday recess;
 155 ~~and~~

156 (3) Benefits shall not be paid as specified in paragraphs (1) and (2) of this subsection to
 157 any individual for any week of unemployment if the individual performs such services
 158 in an educational institution while in the employ of an educational service agency. For
 159 the purposes of this paragraph, the term 'educational service agency' means a
 160 governmental agency or governmental entity that is established and operated exclusively
 161 for the purpose of providing such services to one or more educational institutions.

162 (4) For the purposes of this paragraph, the term 'educational institution' includes the
 163 voluntary programs established in paragraph (1) of Code Section 20-1A-4. Benefits shall
 164 not be paid as specified in paragraphs (1) and (2) of this subsection on the basis of
 165 services in any such capacities to any individual who performed those services for a
 166 private employer holding a contractual relationship with the educational institution to
 167 provide services to or on behalf of an educational institution or an institution of higher
 168 education during periods of unemployment if such services were performed in the prior
 169 year, term, or vacation period and there is a reasonable assurance of returning to work for
 170 an educational institution immediately following the period of unemployment. If
compensation is denied pursuant to this paragraph to an individual, however, and that

171 individual is not offered an opportunity to perform services for the educational institution
 172 following the unemployed period, such individual shall be entitled to retroactive payment
 173 for each week during that period of unemployment a timely claim was filed and benefits
 174 were denied solely by reason of this paragraph. Such periods of unemployment include
 175 those occurring:

176 (A) Between two successive academic years or terms; or

177 (B) During an established and customary vacation period or holiday recess.

178 ~~(b)(c)~~ **Benefits based on services in professional sports.** Benefits shall not be paid to an
 179 individual on the basis of any services substantially all of which consist of participating in
 180 professional sports or athletic events or of training or preparing to so participate for any
 181 week which begins during the period between two successive sport seasons or similar
 182 periods if such individual performed such services in the first of such seasons or similar
 183 periods and there is a reasonable assurance that such individual will perform such services
 184 in the later of such seasons or similar periods.

185 ~~(c)(d)~~ **Benefits based on services performed by aliens.**

186 (1) Benefits shall not be paid to an individual based on services performed by an alien
 187 unless such alien was lawfully admitted for permanent residence at the time such services
 188 were performed, was lawfully present for purposes of performing such services, or was
 189 permanently residing in the United States under color of law at the time such services
 190 were performed.

191 (2) Any data or information required of individuals applying for benefits to determine
 192 whether benefits are payable because of their alien status shall be uniformly required
 193 from all applicants for benefits.

194 (3) In the case of an individual whose application for benefits would otherwise be
 195 approved, no determination that benefits to such individual are not payable because of the
 196 individual's alien status shall be made except upon a preponderance of the evidence.

197 ~~(d)~~(e) As used in this Code section, the term 'reasonable assurance' means a written,
 198 verbal, or implied agreement between an employer and its employee that such employee
 199 will be returned to employment following the period of unemployment."

200 SECTION 7.

201 This Act shall be severable as provided by Code Section 1-1-3 of Official Code of Georgia
 202 Annotated.

203 SECTION 8.

204 All laws and parts of laws in conflict with this Act are repealed.