

SENATE BILL 1674

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 47; Title 49 and Title 50, Chapter 1, to protect the right of agency employees to conduct elections by secret ballot.

WHEREAS, Article IV, Section 4 of the Constitution of the State of Tennessee provides that all elections in Tennessee shall be by ballot; and

WHEREAS, the Tennessee Supreme Court has interpreted the right to vote by ballot as requiring a "method of conducting elections that will guarantee the secrecy and integrity of the ballot;" and

WHEREAS, the Tennessee Supreme Court has held that once the right to secret balloting has been made a part of the voting franchise granted by the State, that right may not be withdrawn in ways inconsistent with the equal protection clause of the Fourteenth Amendment; and

WHEREAS, Tennesseans have fought and died bravely around the globe and here at home in service to our nation for the right to freedom and self-determination by secret ballot, rightfully earning our state the nickname, "The Volunteer State;" now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1 , is amended by adding Sections 2 through 8 of this act as a new Part 7.

SECTION 2. This part shall be known and may be cited as "The Secret Ballot Protection Act of 2009".

SECTION 3. It is hereby declared to be the public policy of the state of Tennessee:

(1) That individual freedom of choice in employment-related matters must be guarded and maintained;

(2) That employees have the right to use a secret-ballot election when selecting an exclusive bargaining representative;

(3) That a secret-ballot election upholds the sanctity of worker free choice:

(4) That employees be given the opportunity to cast a vote in accordance with their conscience in secret-ballot elections free from coercion, intimidation, threats, misinformation, or interference from outside influences;

(5) That a labor organization not be able to pressure an employer to recognize the labor organization as an exclusive bargaining representative based solely on a stated showing of interest by employees without a secret-ballot election; and

(6) That an employer not bargain away its employees' rights to secret-ballot elections for labor representation purposes.

SECTION 3. For the purposes of this act:

(1) "Agency" means the state and every political subdivision thereof, including without limitation, every town, city, municipality, county, municipal corporation, governmental subdivision, district, public and quasi-public corporation, public agency and public service corporation, and residential areas located within counties whether incorporated or not and whether chartered or not.

(2) "Commissioner" means the commissioner of labor and workforce development.

(3) "Department" means the department of labor and workforce development.

(4) "Employee" means any individual employed by an employer.

(5) "Employer" means any agency, as defined subdivision (1), any private employer or any group or association of employers which is an employer within the meaning of any law of Tennessee or of the United States; such term but does not include the United States government or any corporation wholly owned by the United States government.

(6) "Exclusive bargaining representative" means any labor organization, including any labor organization that has been selected by employees of an agency or designated by the state pursuant to Tennessee law as the representative of the employees in an appropriate collective bargaining unit to represent the employees in their employment relations with employers.

(7) "Labor organization" means an employee representation committee, organization, or union in which employees participate and which exists for the purpose, in whole or in part, of dealing with an employer concerning employee wages, rates of pay, hours of work, other forms of compensation, grievances, labor disputes, or other conditions of employment.

(8) "Secret ballot" means the expression by ballot or voting machine, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

#### SECTION 4.

(a) All employees, when seeking to select for themselves an exclusive bargaining representative, have the right to make that selection in a secret-ballot election.

(b) Any agreement, understanding, or practice, written or oral, implied or expressed, between any labor organization and employer that violates the rights of

employees as guaranteed by provisions of this part is hereby declared to be unlawful, null and void, and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization or members of a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement prohibited under this part is hereby declared to be for an illegal purpose and is a violation of the provisions of this part.

#### SECTION 5.

(a) It shall be an unfair labor practice by the employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it or to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret-ballot election.

(b) It shall be an unfair labor practice by the labor organization to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret-ballot election.

(c) Any employee may file an unfair labor practice complaint with the department if such employee has reasonable cause to believe that an employer is engaging in an unfair labor practice as set out by this section.

(d) The department shall respond to any unfair labor practice complaint referred to in this section, pursuant to rules and regulations of the department, which the commissioner is hereby authorized to promulgate for the purposes set forth in this part. Such rules shall be promulgated in accordance with the uniform administrative procedures act, title 4, chapter 5.

#### SECTION 6.

(a) It is an offense for any person to directly or indirectly violate any provision

of this part.

(b) A violation of subsection (a) is a Class C misdemeanor.

SECTION 7. Any employee or employer harmed as a result of any violation or threatened violation of this part shall be entitled to relief, including injunctive relief, in the chancery court of the jurisdiction in which the harm arose or where the labor organization maintains its principal office, against any and all violators or persons threatening violations and may in addition thereto 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 prescribed in other provisions of this part.

SECTION 8. This act shall not apply to collective bargaining relationships in which a labor organization was lawfully recognized as an exclusive bargaining representative before the effective date of this act.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application. and to that end the provisions of this act are declared to be severable.

SECTION 10. Section 6 shall take effect July 1, 2009, the public welfare requiring it. All other provisions of this act shall take effect upon becoming a law, the public welfare requiring it.