



House of Representatives

General Assembly

File No. 843

January Session, 2007

Substitute House Bill No. 7326

House of Representatives, May 16, 2007

The Committee on Appropriations reported through REP. MERRILL of the 54th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FREEDOM IN THE WORKPLACE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) (a) As used in this
2 section:

3 (1) "Employer" means a person engaged in business who has
4 employees, including the state and any political subdivision of the
5 state;

6 (2) "Employee" means any person engaged in service to an employer
7 in a business of such employer;

8 (3) "Politics" means the activities or affairs engaged in by
9 government or a political party;

10 (4) "Political" means relative to, involving or characteristic of politics
11 or politicians;

12 (5) "Political matters" means political party affiliation or the decision

13 to join or not join any lawful political or social group or activity;

14 (6) "Social group" includes, but is not limited to, civic associations,
15 community groups, religious groups and mutual benefit organizations;

16 (7) "Require" means order, direct or insist or threaten to insist, on
17 penalty of discharge or discipline or other adverse employment action;
18 and

19 (8) "Employer-sponsored meeting" means a meeting between the
20 employer, or one or more agents, representatives or designees of the
21 employer, and one or more employees that is held at the behest of the
22 employer or an agent, representative or designee of the employer.

23 (b) Except as provided in subsection (f) of this section, no employer,
24 and no agent, representative or designee of such employer, shall
25 require its employees to attend an employer-sponsored meeting with
26 the employer or its agent, representative or designee, the primary
27 purpose of which is to communicate the employer's opinion
28 concerning religious or political matters, except that an employer or its
29 agent, representative or designee may communicate to its employees
30 any information concerning religious or political matters that the
31 employer is required by law to communicate, but only to the extent of
32 such legal requirement.

33 (c) No employer, and no agent, representative or designee of such
34 employer, shall discharge, discipline or otherwise penalize, or threaten
35 to discharge, discipline or otherwise penalize, any employee because
36 the employee, or a person acting on behalf of the employee, makes a
37 good faith report, orally or in writing, of a violation or a suspected
38 violation of this section. The provisions of this subsection shall not
39 apply when the employee knows that such report is false.

40 (d) Any employee who is discharged, disciplined or otherwise
41 penalized in violation of the provisions of this section may bring a civil
42 action, not later than ninety days after the date of the alleged violation,
43 in the superior court for the judicial district where the violation is

44 alleged to have occurred or where the employer has its principal office.
45 The court may award a prevailing employee all appropriate relief,
46 including rehiring or reinstatement of the employee to the employee's
47 former position, back pay and reestablishment of any employee
48 benefits to which the employee would otherwise have been eligible if
49 such violation had not occurred. The court shall award a prevailing
50 employee treble damages, together with reasonable attorney's fees and
51 costs.

52 (e) Nothing in this section shall be construed to limit an employee's
53 right to bring a common law cause of action against an employer for
54 wrongful termination or to diminish or impair the rights of a person
55 under any collective bargaining agreement.

56 (f) Nothing in this section shall prohibit: (1) A religious organization
57 from requiring its employees to attend a meeting sponsored by such
58 religious organization or to participate in any communications with
59 such religious organization or its agent, representative or designee, the
60 primary purpose of which is to communicate such religious
61 organization's religious beliefs, practices or tenets; (2) a political or
62 other mission-driven organization from requiring its employees to
63 attend a meeting sponsored by such political or other mission-driven
64 organization or to participate in any communications with such
65 political or other mission-driven organization or its agent,
66 representative or designee, the primary purpose of which is to
67 communicate such political or other mission-driven organization's
68 political or mission-driven tenets or purposes; (3) an institution of
69 higher education, or any agent, representative or designee of such
70 institution, from meeting with or participating in any communications
71 with its employees concerning political or religious matters that are
72 part of the regular coursework or any symposia or academic program
73 at such institution; or (4) casual conversations between employees or
74 between an employee and an agent, representative or designee of an
75 employer, provided participation in such conversations is not required
76 and such conversations occur in the normal course of the employee's
77 duties.

78 (g) If any provision of this section or its application to any person or
79 circumstance is held invalid, such invalidity shall not affect other
80 provisions or applications of this section that can be given effect
81 without the invalid provision or application, and to this end the
82 provisions of this section are severable.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	New section

APP *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Various State Agencies	Various Funds - Potential Cost	Minimal	Minimal
Attorney General; Judicial Dept.; Labor Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
All Municipalities	STATE MANDATE - Potential Cost	Minimal	Minimal

Explanation

The bill prohibits the state and municipalities from holding “captive audience” meetings. It gives any employee of the state or municipality a private cause of action to recover triple damages and attorney’s fees if the employee makes a good faith report of a violation under the bill and the state or municipality retaliates against the employee.

It is anticipated that few, if any, such instances would occur in violation of the new law. However, to the extent that the bill bolsters these types of claims and entitles claimants to receive certain awards (e.g., triple damages) if they prevail, the bill increases the legal liability of the state and municipalities.

The Office of the Attorney General could provide legal representation to the state in these types of actions without requiring additional staffing. Any litigation expenses incurred for expert witnesses, contracted legal counsel, court fees, etc., would be passed on to the state agencies involved or statewide accounts that might be

used to pay settlements. Municipalities might incur litigation costs under the bill.

The Department of Labor may be required to investigate or hear a prohibited practice claim in front of the Labor Relations Board as a result of the bill. Few such investigations or hearings are anticipated and, as a consequence, could be accommodated by the agency without requiring additional resources.

The Judicial Department would not need to hire additional staff or spend more to process potential civil suits brought under the bill. Consequently, there is no fiscal impact on that agency.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 7326

AN ACT CONCERNING FREEDOM IN THE WORKPLACE.

SUMMARY:

This bill prohibits employers from requiring employees to attend meetings primarily about the employer's position on religious or political matters. The bill defines political matters as political party affiliation or the decision to join or not join any lawful political or social group or activity. A social group includes, but is not limited to, a civic association, community group, religious group, or mutual benefit organization. (This might include fraternal or social organizations and labor unions that provide benefits to their members, see BACKGROUND.)

The bill covers all private-sector employers and the state and its political subdivisions. It defines an employee as anyone working for an employer.

It also provides protection for employees who make a good-faith report of a violation of the bill.

An aggrieved employee may enforce the bill's provisions through a Superior Court civil action brought within 90 days of the alleged violation. The court may award a prevailing employee all appropriate relief, including rehiring or reinstatement, and it must award a prevailing employee triple damages and reasonable attorneys' fees and costs.

The bill makes its provisions severable; thus if any individual provision or application is ruled invalid, that does not affect other provisions or applications that can still be given effect.

EFFECTIVE DATE: October 1, 2007

BAN ON FORCED MEETINGS

The bill bans an employer, or his agent, representative, or designee, from requiring that employees attend employer-sponsored meetings with the employer or his agent, representative, or designee for the primary purpose of communicating the employer's opinion on religious or political matters. (Generally, such forced meetings are referred to as "captive audience" meetings.)

EXCEPTIONS

The bill provides exceptions when the employer or its agent is communicating about religious or political matters that it is required to by law, but only to the extent of the legal requirement. It also exempts casual conversation between employees, and between employees and agents of employers, provided participation in the conversations is not required and they occur in the normal course of the employee's business.

It also provides exceptions for three types of employers:

1. a religious organization may require its employees to attend a meeting or to participate in communications with the employer or its agents to communicate the employer's religious beliefs, practices, or tenets;
2. a political or other mission-driven organization may require its employees to attend a meeting or to participate in communications with the employer or its agents to communicate the employer's political or mission-driven tenets or purposes; and
3. an institution of higher education or its agent may meet with or participate in communications with its employees about political or religious matters that are part of the institution's regular coursework or academic programs.

EMPLOYEE PROTECTION

The bill bans employers or their agents, representatives, or designees from discharging, disciplining, or otherwise penalizing an employee or threatening to do so because the employee, or a person acting on the employee's behalf, makes a good faith report, verbally or in writing, of a suspected violation of the bill. This protection does not apply if the employee knows the report is false.

ENFORCEMENT

The bill allows any employee who has been discharged, disciplined, or otherwise penalized to seek enforcement of the bill through a Superior Court civil action brought within 90 days of the alleged violation. The action must be brought in the judicial district where the violation is alleged to have taken place or where the employer has its principal office.

The court may award an employee all appropriate relief, including rehiring or reinstatement to his or her former position, back pay, and reestablishment of any employee benefits to which he or she would otherwise have been eligible but for the violation. The court must award a prevailing employee triple monetary damage and reasonable attorney's fees and costs.

The bill does not (1) limit an employee's right to a common law cause of action for wrongful termination or (2) impair rights under a collective bargaining agreement.

BACKGROUND***Mutual Benefit Organization***

The bill and current law do not define the term "mutual benefit organization." It could include fraternal or social organizations that provide benefits to their members (*Black's Law Dictionary, Seventh Edition*). A federal court stated that tax-exempt "mutual benefit organizations" under the federal tax code include social clubs, consumer cooperatives, labor unions, and trade associations (*Hammond v. U.S.*, 584 F.Supp. 163, fn 19 (D.Conn. 1984)). The *Internal Revenue*

Manual states that labor organizations are exempt from income tax because they in part operate as mutual benefit organizations providing benefits to members in the event of strikes, lockouts, death, sickness, and other reasons (*Internal Revenue Manual*, § 7.25.5.2.5).

NLRA

The National Labor Relations Act (NLRA) guarantees the employer's right to express an opinion about unionization as long as the employer does not also threaten reprisal or promise a benefit to coerce employees.

The NLRA governs private-sector union organizing and collective bargaining rights, and delineates what is an unfair labor practice. The NLRA created the National Labor Relations Board (NLRB) to administer the law and rule on specific cases alleging unfair labor practices.

Captive Audience Meetings

The NLRB allows captive audience meetings more than 24 hours before a union election as long as the employer does not commit an unfair labor practice (such as threatening reprisal for supporting a union). The NLRB has ruled that an employer (or a union) holding a captive audience meeting of employees within 24 hours of a union election is not an unfair labor practice, but it is grounds for the NLRB to void the election results and order a new vote.

Legislative History

The House referred the bill (File 540) to the Appropriations Committee, which reported a substitute which specifies that "political matters" means, rather than includes, political party affiliation or the decision to join or not join any lawful political or social group or activity.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 17 (03/30/2007)

Appropriations Committee

Joint Favorable Substitute

Yea 25 Nay 17 (04/30/2007)