
HOUSE BILL 3153

State of Washington

58th Legislature

2004 Regular Session

By Representatives Conway, Cody, Ruderman, Simpson, G., McDermott, Wood, Chase, Santos, Edwards and Kenney

Read first time 01/30/2004. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to health care facilities that use public funds to
2 encourage or discourage unionization; adding a new chapter to Title 49
3 RCW; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the state
6 currently places no limitation on the use of its funds to either
7 encourage or discourage unionization, and as a result, public funds
8 have been used by health care facilities when there are efforts to
9 unionize their work force.

10 (2) The legislature declares that it is the policy of this state to
11 recognize the right of employees to freedom of association in the
12 workplace and freedom of choice in who will represent employees in
13 collective bargaining.

14 (3) The legislature further declares that the expenditure of public
15 funds to support a health care facility's support or opposition to
16 unionization of the health care facility's workers does not serve the
17 purposes for which the public funds were provided to the employer and,
18 thus, the expenditure of those funds to support or oppose unionization
19 is a misuse and waste of public funds.

1 (4) For these reasons, the legislature intends to ensure that
2 public funds are not used to encourage or discourage such employees
3 from choosing union representation.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Health care facility" means the following facilities, or any
7 part of the facility, including such facilities if owned and operated
8 by a political subdivision or instrumentality of the state, that
9 operate on a twenty-four hours per day, seven days per week basis:

- 10 (a) Hospices licensed under chapter 70.127 RCW;
- 11 (b) Hospitals licensed under chapter 70.41 RCW;
- 12 (c) Home health agencies licensed under chapter 70.127 RCW;
- 13 (d) Rural health care facilities as defined in RCW 70.175.020;
- 14 (e) Psychiatric hospitals licensed under chapter 71.12 RCW;
- 15 (f) State hospitals as defined in RCW 72.23.010;
- 16 (g) State veterans' homes as defined in RCW 72.36.035;
- 17 (h) The residential habilitation centers listed in RCW 71A.20.020,
18 71A.20.030, and 71A.20.040;
- 19 (i) Nursing homes licensed under chapter 18.51 RCW;
- 20 (j) Community mental health centers licensed under chapter 71.24
21 RCW;

22 (k) Facilities owned and operated by the department of corrections
23 or by a governing unit as defined in RCW 70.48.020 in a correctional
24 institution as defined in RCW 9.94.049(1) that provide health care
25 services to inmates as defined in RCW 72.09.015 or to jail inmates; and

26 (l) Facilities owned and operated by the department of social and
27 health services in community facilities as defined in RCW 72.05.020, or
28 owned and operated by a county detention facility under contract with
29 the department of social and health services, that provide health care
30 services to juveniles committed to the custody of the department under
31 RCW 13.40.185.

32 (2) "Public funds" means funds received for state purchased health
33 care as defined in RCW 41.05.011.

34 (3) "Receive public funds" means to receive public funds pursuant
35 to a payment to a health care provider, a grant, a competitively bid
36 contract, or reimbursement for services, and also includes receipt by

1 a subcontractor of payment for the performance of services purchased by
2 or funded by the state.

3 (4) "Unionization" means organization of employees for the purpose
4 of collective bargaining.

5 NEW SECTION. **Sec. 3.** (1) A health care facility that receives
6 public funds may not use, either directly or indirectly, those funds,
7 either in whole or in part, to encourage or discourage unionization by
8 that health care facility's employees or any other employee.

9 (2) A recipient of public funds is deemed to use the public funds
10 if the recipient applies the funds, in whole or in part, to operating
11 or capital expenses.

12 (3) A use of public funds is deemed to encourage or discourage
13 unionization if the funds are used, either directly or indirectly, for:

14 (a) Any communication in any form that advocates directly or by
15 implication suggests that employees should vote for or against
16 representation by a union for purposes of collective bargaining;

17 (b) Hiring or consulting legal counsel or other consultants to
18 advise on how to assist or deter unionization or how to assist or
19 impede a labor organization that represents employees from fulfilling
20 its representation responsibilities;

21 (c) Holding meetings to influence employees to join or not to join
22 or form or not to form a labor organization for the purpose of
23 collective bargaining; or

24 (d) Planning or conducting activities by health care facility
25 supervisors to assist or deter the activities of a labor organization.

26 (4) Nothing in this chapter limits the right of individuals who are
27 not supervisors, managers, consultants, attorneys, advisers, or
28 contractors of a recipient of public funds to advocate for or against
29 unionization in the facilities of the recipient to the extent not
30 precluded by applicable law.

31 (5) Nothing in this chapter limits the right of any health care
32 facility or union to engage in lawful activities relating to the
33 negotiation and enforcement of a collective bargaining agreement.

34 (6) Every contract for the payment of public funds to a health care
35 facility shall contain a covenant that the health care facility will
36 comply with this chapter.

1 (7) Nothing in this chapter prohibits a health care facility from
2 granting voluntary recognition to a union as a representative of the
3 health care facility's employees.

4 NEW SECTION. **Sec. 4.** Each health care facility that is a
5 recipient of public funds shall account for the public funds in
6 accordance with the following:

7 (1) Public funds designated by the state for use for, or to
8 reimburse, a specific expenditure of the health care facility shall be
9 accounted for as being allocated to that expenditure.

10 (2) Public funds that are not so designated shall be allocated on
11 a pro rata basis to all expenditures of the health care facility that
12 support or are related to the purpose for which the public funds are
13 received.

14 NEW SECTION. **Sec. 5.** The director of the department of labor and
15 industries shall adopt rules to implement the requirements of this
16 chapter.

17 NEW SECTION. **Sec. 6.** (1) A labor organization or collective
18 bargaining representative at any time may file a complaint with the
19 director of the department of labor and industries alleging that a
20 health care facility that has a contract with the state is in violation
21 of section 3 of this act.

22 (2) Within thirty days of receiving a complaint under subsection
23 (1) of this section, the director shall conduct a hearing to determine
24 whether the alleged violation has occurred.

25 (3) The director shall make a determination and render a decision
26 within ten days following conclusion of the hearing.

27 (4) If the director determines, by a preponderance of the evidence,
28 that it appears likely that the health care facility has violated
29 section 3 of this act, the director shall order the health care
30 facility thereafter to keep accurate and complete records of the health
31 care facility's expenditures of all public funds received by the health
32 care facility. The records shall be sufficient to show whether the
33 health care facility has used public funds to encourage or discourage
34 unionization.

1 (5) Each health care facility subject to the recordkeeping
2 requirements of subsection (4) of this section during a calendar
3 quarter shall prepare and submit to the director, within thirty days
4 following the end of the quarter, a report specifying each expenditure
5 of public funds and each expenditure of funds to encourage or
6 discourage unionization made by the health care facility during the
7 reported quarter.

8 (6) The report required by subsection (5) of this section shall
9 include a statement that the representations made are true, correct,
10 and contain no material omissions of fact to the best knowledge and
11 belief of the health care facility submitting the certification. A
12 violation of this subsection is a misdemeanor.

13 (7) The director, on his or her own initiative or in response to a
14 complaint the director deems credible, may at any time audit the
15 records of a health care facility subject to the requirements of this
16 section to ensure compliance with this chapter.

17 (8) Following a certification by the director that any health care
18 facility has willfully or materially failed to comply with the
19 recordkeeping requirements of subsection (4) of this section or the
20 reporting requirements of subsection (5) of this section, or has failed
21 or refused to promptly provide the director or his or her designated
22 representative access to the health care facility's records for the
23 purpose of conducting an audit under subsection (7) of this section,
24 the person shall be ineligible to receive public funds until the
25 director certifies that the health care facility is in full compliance
26 with those requirements.

27 NEW SECTION. **Sec. 7.** (1) Any health care facility that knowingly
28 authorizes or permits an expenditure of public funds in violation of
29 this chapter is liable to the state for civil damages equal to twice
30 the amount of the expenditure, plus reasonable attorneys' fees and
31 costs.

32 (2) Any taxpayer may bring an action to recover these civil damages
33 on behalf of the state provided that both of the following conditions
34 exist:

35 (a) The taxpayer has first served a copy of the complaint on the
36 attorney general with a written disclosure of substantially all
37 material evidence and information the taxpayer possesses; and

1 (b) The attorney general has either notified the taxpayer that the
2 attorney general has agreed to bring an action to recover funds
3 expended in violation of this chapter or, after thirty days, the
4 attorney general has failed to agree to bring an action to recover the
5 funds expended in violation of this chapter.

6 (3) If the attorney general agrees to bring an action to recover
7 the funds expended in violation of this chapter, the action shall be
8 brought within sixty days of notifying the taxpayer of the intent of
9 the attorney general to do so and the taxpayer may intervene in the
10 action.

11 (4) In any action brought under subsection (2) of this section all
12 of the following provisions apply:

13 (a) The attorney general may intervene in any action brought by a
14 taxpayer at any time;

15 (b) The action may be dismissed only if the court and the attorney
16 general give written consent to the dismissal and their reasons for
17 that consent;

18 (c) The attorney general has the primary responsibility for
19 prosecuting any action that the attorney general initiates or in which
20 he or she intervenes, and is not bound by an act of the person bringing
21 the action;

22 (d) The attorney general may dismiss the action notwithstanding the
23 objections of the taxpayer initiating the action if the taxpayer has
24 been notified by the attorney general of the filing of the motion and
25 the court has provided the person with an opportunity for a hearing on
26 the motion;

27 (e) The attorney general may settle the action with the defendant
28 notwithstanding the objections of the taxpayer initiating the action if
29 the court determines, after a hearing, that the proposed settlement is
30 fair, adequate, and reasonable under all the circumstances; and

31 (f) Upon a showing by the attorney general or a defendant that
32 unrestricted participation during the course of the litigation by the
33 taxpayer initiating the action would interfere with or unduly delay the
34 prosecution of the case, or would be repetitious, irrelevant, or for
35 purposes of harassment, the court may, in its discretion, impose
36 appropriate limitations on the taxpayer's participation.

37 (5) In any action brought under subsection (2) of this section in

1 which the defendant is found to have violated this chapter, the
2 taxpayer shall recover as part of the judgment his or her attorneys'
3 fees and costs.

4 (6) A final judgment of a court of competent jurisdiction stating
5 that a health care facility has violated section 3 of this act is a
6 ground for debarment of public funds for three years from the date the
7 judgment is entered.

8 NEW SECTION. **Sec. 8.** This chapter does not apply to contracts
9 entered into before September 1, 2004.

10 NEW SECTION. **Sec. 9.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 10.** If any part of this act is found to be in
15 conflict with federal requirements that are a prescribed condition to
16 the allocation of federal funds to the state, the conflicting part of
17 this act is inoperative solely to the extent of the conflict and with
18 respect to the agencies directly affected, and this finding does not
19 affect the operation of the remainder of this act in its application to
20 the agencies concerned. Rules adopted under this act must meet federal
21 requirements that are a necessary condition to the receipt of federal
22 funds by the state.

23 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2004.

24 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
25 constitute a new chapter in Title 49 RCW.

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