INDIANA'S RIGHT-TO-WORK BATTLE HEATS UP

January 9, 2012 Indiana's Right-to-Work Battle Heats Up The Indiana General Assembly is "Ground Zero" in the epic battle over the so-called "Right-to-Work" legislation. So much has been written about "Right-to-Work" that it makes some sense to understand what the Indiana proposed legislation actually says. Some Background about "Right-to-Work" Most private non-governmental employers are covered by the provisions of the National Labor Relations Act, sometimes referred to as the Taft Hartley Act. Until 1947, the law allowed a union and an employer to agree that employees must join the union within 30 days or be fired. That law still allows a "Union Security Clause" to be included in collective bargaining agreements, but in 1947 a provision was added to the law that permitted states to prohibit agreements that would require union membership as a condition of employment. In other words, a state could pass a law that gave employees the "right to work" without having to become a union member. Since then, 22 states have passed Right-to-Work laws. Oklahoma was the last state to pass a Right-to-Work law in 2001. Indiana actually was a Right–to-Work state from 1957 until 1964 when it was repealed. None of the states adjoining Indiana are Right-to-Work states. What the Proposed Indiana Right-to-Work Law Provides The proposed law makes it a Class A misdemeanor to require an individual to: (1) become or remain a member of a labor organization; (2) pay dues, fees or other charges to a labor organization; or (3) pay to a charity or another third party an amount that represents dues, fees or other charges required of members of a labor organization, as a condition of employment or continuation of employment. It establishes a separate private right of action for violations or threatened violations. It does not apply to federal employees, employees subject to the Railway Labor Act, certain employees over whom the federal government has jurisdiction, state employees and employees of a political subdivision. Generally, county and municipal employees would be employees of a political subdivision of the state of Indiana. Significantly, the law applies only to agreements entered into, modified, renewed or extended after March 14, 2012. It does not apply to or abrogate agreements in effect on March 14, 2012. Nothing in the proposed law prohibits employees from choosing to voluntarily become union members and pay dues. We will continue to follow the debate in the General Assembly and keep you advised as this drama unfolds. The full text of Indiana's H.B. No. 1001 with significant provisions highlighted is below. HOUSE BILL No. 1001 ---------- A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety. Be it enacted by the General Assembly of the State of Indiana: SECTION 1. IC 22-6-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Chapter 6. Right to Work Sec. 1. This chapter does not apply to the following: (1) An employee of the United States or a wholly owned corporation of the United States. (2) An: (A) employee; and (B) employer; subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.). (3) An employee employed on property over which the United States government has exclusive jurisdiction for the purpose of labor relations. (4) An employee of the state. (5) An employee of a political subdivision (as defined in IC 36-1-2-13). Sec. 2. This chapter does not apply to the extent that it: (1) conflicts with; or (2) is preempted by; federal law. Sec. 3. As used in this chapter, "employer" means: (1) a person employing at least one (1) individual in Indiana; or (2) an agent of an employer described in subdivision (1). Sec. 4. As used in this chapter, "labor organization" means: (1) an organization; (2) an agency; (3) a union; or (4) an employee representation committee; that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment. Sec. 5. As used in this chapter, "person" means: (1) an individual; (2) a proprietorship; (3) a partnership; (4) a firm; (5) an association; (6) a corporation; (7) a labor organization; or (8) another legal entity. Sec. 6. As used in this chapter, "the state" includes: (1) a board; (2) a branch; (3) a commission; (4) a department; (5) a division; (6) a bureau; (7) a committee; (8) an agency; (9) an institution (including a state educational institution as defined in IC 21-7-13-32); (10) an authority; or (11) another instrumentality; of the state. Sec. 7. A person may not require an individual to: (1) become or remain a member of a labor organization (2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or (3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization; as a condition of employment or continuation of employment. Sec. 8. A contract, agreement, understanding, or practice, written or oral, express or implied, between: (1) a labor organization; and (2) an employer; that violates section 7 of this chapter is unlawful and void. Sec. 9. A person that knowingly or intentionally, directly or indirectly, violates section 7 of this chapter commits a Class A misdemeanor. Sec. 10. An individual who is employed by an employer may file a complaint that alleges a violation or threatened violation of this chapter with the attorney general or the prosecuting attorney of the county in which the individual is employed. Upon receiving a complaint under this section, the attorney general or prosecuting attorney shall: (1) investigate the complaint; and (2) enforce compliance if a violation of this chapter is found. Sec. 11. (a) If an individual suffers an injury: (1) as the result of any act or practice that violates this chapter; or (2) from a threatened violation of this

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chapter; the individual may bring a civil action. (b) A court may order an award of any or all of the following to an individual who prevails in an action under subsection (a): (1) Actual and consequential damages resulting from the violation or threatened violation. (2) A civil penalty against the violator of not more than one thousand dollars ($1,000). (3) Reasonable attorney's fees, litigation expenses, and costs. (4) Declaratory or equitable relief, including injunctive relief. (5) Other relief the court considers proper. (c) The remedies and penalties set forth in subsection (b) are: (1) cumulative; and (2) in addition to other remedies and penalties imposed for a violation of this chapter. Sec. 12. Sections 7 through 11 of this chapter: (1) apply to a written or oral contract or agreement entered into, modified, renewed, or extended after March 14, 2012; and (2) do not apply to or abrogate a written or oral contract or agreement in effect on March 14, 2012. SECTION 2. An emergency is declared for this act. Should you have questions, please contact your regular Hall Render attorney or a member of our Employment and Labor Section: Steve Lyman slyman@HallRender.com Sam DeShazer sdeshazer@HallRender.com John Ryan jryan@HallRender.com Michael Kim mkim@HallRender.com Robin Sheridan rsheridan@HallRender.com Bruce Bagdady bbagdady@HallRender.com Craig Williams cwilliams@HallRender.com Travis Meek tmeek@HallRender.com Larry Jensen ljensen@HallRender.com Jennifer Gonzalez jgonzalez@HallRender.com Carrie Turner cturner@HallRender.com Jon Bumgarner jbumgarn@HallRender.com Kevin Stella kastella@HallRender.com Dana Stutzman dstutzma@HallRender.com Jon Rabin jrabin@HallRender.com Jennifer Richter jrichter@HallRender.com Natalie Dressel ndressel@HallRender.com Mary Kate McNamara mmcnamara@HallRender.com Employee Benefits Attorneys: Fred Bachmann fbachmann@HallRender.com Bill Roberts ebplans@HallRender.com Tara Slone tslone@HallRender.com Calvin Chambers cchambers@HallRender.com

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