This revised analysis replaces the analysis dated 11-30-95.

House
Legislative
Analysis
Section

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WAGE DEDUCTIONS FOR CORPORATE, LABOR PACS

House Bill 5352 as introduced
Revised First Analysis (12-1-95)

Sponsor: Rep. John Llewellyn
Committee: House Oversight and Ethics

THE APPARENT PROBLEM:

Public Act 117 of 1994 (enrolled House Bill 5416) made significant amendments to the Campaign Finance Act, including a requirement for affirmative consent to allow payroll deductions. More specifically, the act amended Section 55(5) of the act to say that corporations, joint stock companies, or labor organizations "shall not solicit or obtain contributions for a separate segregated fund . . . on an automatic or passive basis including but not limited to a payroll deduction plan or reverse checkoff method" unless the individual contributing to the fund "affirmatively consents to the contribution at least once in every calendar year." Although the act was due to go into effect on April 1, 1995, the U.S. District Court, Eastern District of Michigan, Southern Division, issued an order on March 31 to prevent the enforcement of this section (and two other sections) of P.A. 117.

However, while the legislature amended the campaign finance act, it did not amend the wages and fringe benefits act (Public Act 390 of 1978), which also addresses the issue of payroll deductions. Legislation has been introduced that would put into place in the wages and fringe benefits act restrictions similar to those made to the Campaign Finance Act in 1994.

THE CONTENT OF THE BILL:

The wages and fringe benefits act (Public Act 390 of 1978) prohibits employers from deducting from employee wages, directly or indirectly, any amount (except for those deductions required or expressly permitted by law or a collective bargaining agreement) without "the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction." The bill would amend the wages and fringe benefits act to explicitly include in the prohibited deductions employee contributions to "separate segregated funds" (often called political action committees or PACs) established by a corporation or labor organization under the Michigan Campaign Finance Act.

MCL 408.477

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Businesses have argued for some time that labor unions should be treated the same way as corporations when it comes to the issue of fundraising for political activities. Last year, the legislature amended the Michigan Campaign Finance Act to require that people affirmatively consent before a check-off system could be used to generate political contributions from members of unions or employee associations. Proponents of that 1994 change to the Campaign Finance Act argued that people should not have to object to prevent the use of their money for political purposes, but instead should be consulted in advance. However, while the Campaign Finance Act was amended, the wages and fringe benefits act was not. The wages and fringe benefits act currently prohibits employers from deducting from the wages of an employee, directly or indirectly, any amount without the full, free, and written consent of the employee. However, the act does allow two exceptions to this prohibition: those deduction required or expressly permitted by law or by a collective bargaining agreement. Unless this act is changed, unions still could get automatic payroll deductions through collective bargaining agreements. Since corporations don't have this avenue for collecting contributions, if corporations and labor unions are to be treated the same under the law, the wages and fringe benefits act needs

to be amended to ensure that unions can't get around the prohibitions in the Campaign Finance Act by using collective bargaining agreements under the wages and fringe benefits act. The bill would close this loophole.

Against:

Labor organizations challenged the 1994 amendments to the Campaign Finance Act, arguing that these amendments would significantly curtail their political activities in violation of the First (free expression and free association) and Fourteenth (equal protection) Amendments to the U.S. Constitution. The 1994 amendments were to take effect on April 1, 1995. On March 31, 1995, U.S. District Court Judge Borman issued an order (docket number 95-70574) to prevent the enforcement of several sections of P.A. 117 of 1994, including the section that requires annual affirmative consent to reverse checkoff contributions to separate segregated funds (which are voluntary contributions of individuals to corporate or union political action committees). The court concluded, in part, that "[t]here is no compelling state interest to justify legislation impacting the free political choices of its working citizens by limiting their political commitment via reverse checkoff to one year at a time," arguing "that in requiring that every individual must reaffirm an intention to contribute to an SSF, the section 55(5) amendment oversteps the limit of legislative control permissible in an area permeated with First Amendment rights and protections. In essence the state has designated itself as the guardian over a working person's political contributions to an SSF, and threatened the SSF and its directors with criminal felony prosecution if the legislative provision is not strictly adhered to. . . . [T]he government has entered the realm of an individual's political speech and association, and concluded that an individual citizen is incapable of setting a political course for more than one year. The Court finds this provision offensive to the concept of freedom from unnecessary government intrusion into the lives of its citizens in the most sacred area of freedom of speech."

The court also found that the section of the Campaign Finance Act under consideration also would create "a significant bureaucratic requirement, necessitating paperwork, time, recordkeeping and calendaring which must be checked time and again, for the failure to timely adhere to this provision as to even one individual subjects the SSF to a serious criminal penalty. This 'big brother' provision is a clear violation of an individual's First Amendment rights to free speech and free association." The court also noted that there might also be problems of vagueness (as evidenced by a four-page letter to the secretary of state from the Michigan Chamber of Commerce "requesting declaratory rulings to clarify many unclear aspects regarding this provision.")

Finally, the court found that there was no evidence supporting the claim that the reverse checkoff system in existence before the 1994 amendment to the Campaign Finance Act improperly coerced individuals into making political contributions. The court held that this amendment to the Campaign Finance Act was "improperly restrictive and violative of [the unions'] rights under the First and Fourteenth Amendments," and that the "legislature's concern about the potential for coercion could have been dealt with through significantly less restrictive alternatives, [for example,] requiring that an annual notice accompany the worker's paycheck stating that an individual could terminate the reverse checkoff for political activity at any time."

POSITIONS:

The Michigan State Chamber of Commerce supports the bill. (11-28-95)

The Michigan AFL-CIO opposes the bill. (11-28-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.