WEST VIRGINIA CODE CHAPTER 21 ARTICLE 1A

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§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.

(a) It is hereby declared to be the public policy of this state and the purposes of this article to encourage the practice and procedure of collective bargaining by protecting the exercise by employees of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; to prescribe the legitimate rights of both employees and employers in their relations; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other; to protect the rights of individual employees in their relations with labor organizations; to define and prescribe practices on the part of labor and management which are inimical to the welfare, prosperity, health and peace of the people of this state; and to protect the rights of the public in connection with labor disputes. This article shall be deemed an exercise of the police power of the state for the protection of the welfare, prosperity, health and peace of the people of this state.

(b) The commissioner of labor or his designated representative may investigate and mediate labor disputes between an employer and a labor organization, whether or not a collective bargaining agreement exists between such parties providing both parties to such dispute request in writing such intervention or provided the commissioner offers such service to both parties and both parties to the dispute agree in writing to the investigation or mediation. The commissioner may arbitrate such disputes or arrange for the selection of boards of arbitration on such terms as all of the parties to such disputes may agree upon. Records of the department relating to labor disputes shall be confidential.

(c) This article is patterned after the provisions of the "National Labor Relations Act," as amended, and except insofar as the provisions of this article differ from the provisions of said act, as amended, the decisions of the national labor relations board and of the courts with respect to said act, as amended, shall be authoritative in the interpretation, administration and application of the provisions of this article.

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§21-1A-2. Definitions; determination of agency.

(a) When used in this article:

(1) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(2) "Employer" includes any person acting as an agent of an employer, directly or indirectly, who employs fifteen or more persons, but shall not include the United States or any wholly owned United States government corporation, or any federal reserve bank, or any person subject to the provisions of the "National Labor Relations Act," as amended, unless the national labor relations board has declined to assert jurisdiction over such person, or any person subject to the "Railway Labor Act," as amended from time to time, or any labor organization, other than when acting as an employer, or the State of West Virginia or any political subdivision or agency thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

(3) "Employee" includes any employee, and shall not be limited to the employees of a particular employer, unless otherwise explicitly provided in this article, and among others shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed in the production of agricultural products or the processing or marketing of agricultural products by the producer thereof, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by any person who is not an employer as herein defined.

(4) "Representative" includes any individual or labor organization.

(5) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) "Unfair labor practice" means any unfair labor practice specified in section four of this article.

(7) "Labor dispute" or "dispute" includes any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of

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employer and employee.

(8) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(9) "Professional employee" means (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in (iv) of (a) of this subdivision (9), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in (a) of this subdivision (9).

(b) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, for any purpose under this article including suits by or against labor organizations, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

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§21-1A-3. Rights of employees.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, including the right to refrain from paying any dues, fees, assessments or other similar charges however denominated of any kind or amount to a labor organization or to any third party including, but not limited to, a charity in lieu of a payment to a labor organization.

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§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization;

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section three of this article: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his or her employees subject to the provisions of subsection (a), section five of this article;

(4) (i) To engage in, or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this

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section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his or her employees unless such labor organization has been certified as the representative of such employees under the provisions of section five of this article: Provided, That nothing contained in this paragraph may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his or her employees if another labor organization has been certified as the representative of such employees under the provisions of section five of this article;

(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other

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labor organization and a question concerning representation may not appropriately be raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid election under subsection (c), section five of this article has been conducted; or

(C) Where such picketing has been conducted without a petition under subsection (c), section five of this article being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: Provided, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making a concession: Provided, That where there is in effect a collective bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the Commissioner of Labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees and labor organizations by this subdivision and subdivisions (2) and (3) of this subsection shall become inapplicable upon an intervening certification of the

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board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of subsection (a), section five of this article, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his or her status as an employee of the employer engaged in the particular labor dispute, for the purposes of this section and sections three and five of this article, but such loss of status for such employee shall terminate if and when he or she is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person and any such contract or agreement entered into heretofore or hereafter shall be to such extent unenforceable and void.

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§21-1A-5. Representatives and elections.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) The board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior board determination, unless a majority of the employees in the proposed craft unit vote against separate representation; or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(A) By an employee or group of employees or any individual or labor organization acting in their behalf alleging that employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) By an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the board shall investigate such petition and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice. If the board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) Any labor organization may intervene in the procedures provided for in this subsection upon the filing with the board of a petition alleging that it represents one or more employees in the unit with respect to which a question of representation exists. If the board finds the

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allegation to be valid and the unit to be appropriate, it shall order an election and shall order that the name of such intervening labor organization be included among the choices on the secret ballot to be used in such election. If the board finds that the petition is invalid, the board may dismiss the petition or permit such petition to be amended in accordance with the procedures established by such board.

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find consistent with the purposes and provisions of this article in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing contained in this section shall be construed as prohibiting the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations of the board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

(d) Upon the filing with the board, by thirty per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to subdivision (3), subsection (a), section four of this article, of a petition alleging that they desire that such authority be rescinded, the board shall take a secret ballot of the employees in such unit and certify the results thereof. No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

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§21-1A-6. Prevention of unfair labor practices.

(a) The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice specified in section four of this article. The authority and power to prevent unfair labor practices prescribed in this article is exclusively vested in the board, and shall be limited to the procedures provided in this section, except for the rights of action explicitly granted to and against employers and labor organizations by section seven of this article: Provided, That nothing contained in this article shall be deemed to preempt, limit or restrict any person in the enforcement or prosecution of any action now or at any time in the future in any court of this state to enforce any legal right or cause of action heretofore or otherwise existing under law, including, but not limited to, any right to injunctive relief against violence, threats of violence, mass picketing, obstruction, or injury or threatened injury to property or person, in connection with labor disputes.

(b) Whenever it is charged by a charge filed with the board that any person has engaged in or is engaging in any such unfair labor practice, the board's executive secretary, provided for in article one-b of this chapter, shall have power to investigate such charge and if he concludes that there is probable cause to believe that such person has engaged in or is engaging in such unfair labor practice, to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board, at a place therein fixed, not less than ten days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the six months' period shall be computed from the day of his discharge. Any such complaint may be amended by the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise at a hearing scheduled thereon and give testimony. Any such hearing may be conducted by the board, any member thereof or any agent of the board designated by the board for such purpose. In the discretion of the board, member or agent conducting the hearing, any other person may be allowed to intervene in the said proceeding and present testimony. Any scheduled hearing may be continued by the board, member or agent conducting the hearing upon its or his own motion or for good cause shown by any person thereto.

(c) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection, with the following modifications or exceptions:

(1) Any such proceeding shall, so far as is practicable, be conducted in accordance with the rules of evidence as applied in civil cases in the circuit courts of this state; and

(2) The testimony taken by the board, member or agent conducting the hearing shall in

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every case be reduced to writing and filed with the board.

(d) For the purpose of conducting any such hearing any member of the board or agent designated to conduct such hearing shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(e) Subsequent to the conclusion of the hearing, the board, in its discretion, may upon notice take further testimony or hear argument.

(f) If upon consideration of the record by the board, and upon a preponderance of the evidence, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue and cause to be served upon such person, by certified mail, return receipt requested, an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees, with or without back pay, as will effectuate the purposes of this article. Such order may further require such person to make reports from time to time showing the extent to which such person has complied with the order. If upon the preponderance of the evidence the board shall not be of opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue an order dismissing the said complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

(g) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of subsection (h) of this section.

(h) The board shall have power to petition the circuit court of any county wherein the unfair labor practice in question occurred, for the enforcement of such order and for appropriate temporary relief or a restraining order. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the circuit court of any county wherein the unfair labor practice in question was alleged to have occurred, and such review may be had only in such court notwithstanding the provisions of section four, article five, chapter twenty-nine-a of this code. Upon the filing of any such petition for enforcement or review, the court shall have jurisdiction and power to grant such temporary relief or restraining order as it deems just and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the board. Except as provided above in this subsection any petition for review shall be governed by the provisions of section four, article five, chapter twenty-nine-a of this code with like effect as if the provisions of said section four were set forth in this

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subsection (h).

(i) The board shall have the power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition the circuit court of the county wherein the unfair labor practice in question is alleged to have occurred or to be occurring for appropriate temporary injunction or a restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the board such temporary injunction or restraining order as it deems just and proper.

(j) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subparagraphs (A), (B) or (C), subdivision (4), subsection (b), section four of this article, or subsection (e) of said section four or subdivision (7), subsection (b) of said section four, the preliminary investigation of such charge shall be made forthwith and given priority over all cases except cases of like character. If, after such investigation, the executive secretary of the board has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the circuit court of any county wherein the unfair labor practice in question has occurred or is occurring, for appropriate temporary injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the circuit court shall have jurisdiction to grant such temporary injunctive relief or temporary restraining order as it deems just and proper.

(k) An appeal from any decision of a circuit court pursuant to this article may be had, notwithstanding the provisions of section one, article six, chapter twenty-nine-a of this code, by filing a petition for a writ of certiorari with the Supreme Court of Appeals of West Virginia within sixty days of the date of entry of final order by the circuit court.

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§21-1A-7. Suits by or against labor organizations.

(a) Suits for violation of contracts between an employer and a labor organization, or between labor organizations, may be brought in any circuit court of this state having jurisdiction of the parties.

(b) It shall be unlawful for any labor organization to engage in any activity or conduct defined as an unfair labor practice in subdivision (4), subsection (b), section four of this article; and whoever shall be injured in his business or property by reason of any such violation may sue therefor in the circuit court of any county wherein such unfair labor practice occurred, and shall recover the damages by him sustained and the cost of the suit.

(c) Any labor organization and any employer shall be bound by the acts of its agents. Notwithstanding any other provision of law or rule to the contrary, any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents. Any money judgment against a labor organization in a suit under this section shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(d) For the purposes of actions and proceedings by or against labor organizations, the circuit courts of this state shall be deemed to have jurisdiction of a labor organization in the county in which such organization maintains its principal offices, or in any county in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(e) The service of summons, subpoena, or other legal process of any circuit court of this state upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

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§21-1A-8. Severability.

If any provision of this article, or the application of any provision to any person or circumstance, shall be held invalid, the remainder of this article, or the application of any such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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