
Minnesota Business Leaders

A coalition powered by the U.S. Chamber of Commerce along with chambers, associations, and businesses to save the secret ballot.



Update: Week of August 3

MBL Coalition Members are taking action TODAY to stop this misnamed and misguided legislation

The coalition of business organizations is your go to source for EFCA information and updates. Sign up today if you would like to join the fight to save the secret ballot!

Albert Lea-Freeborn County Chamber
Alexandria Lakes Area Chamber
Apple Valley Chamber
Austin Area Chamber
Brainerd Lakes Chamber
Burnsville Chamber
Chamber of Commerce of Fargo Moorhead
Chamber Grand Forks/East Grand Forks

Recess for Congress = Your Chance to Make Your Voice Heard

A message from Doug Loon, US Chamber, Midwest Region

Congress is now in recess and Members of Congress are back in their home districts. Media outlets across the country are reporting on town hall meetings that have turned disastrous because of voter anger. Much of this anxiety is driven by recent proposals to reform our nation's health care system, but the issue of EFCA/Card Check is also on voter's minds as they turn out for events this August.

Earlier this week, **Workday Minnesota**, a website/newsletter supported by Minnesota's labor unions at the University of Minnesota, ran the story below about proposed compromises to

Dakota County Regional Chamber
 Duluth Area Chamber
 Eden Prairie Chamber
 Edina Chamber
 Elk River Area Chamber
 Fairmont Area Chamber
 Faribault Area Chamber
 Greater Wayzata Area Chamber
 Grand Rapids Area Chamber
 Hastings Area Chamber
 Hutchinson Area Chamber
 I-94 West Chamber
 International Falls Area Chamber
 Lakeville Area Chamber
 Litchfield Chamber
 Marshall Area Chamber
 MetroNorth Chamber
 Midway Chamber
 Minneapolis Regional Chamber
 Minnesota Chamber
 MN Associated Builders & Contractors
 MN Automobile Dealers Association
 MN Beverage Association
 MN Business Partnership
 MN Grocers Association
 MN Lodging Association
 MN Restaurant Association
 MN Trucking Association
 MN Warehouse Association
 North Hennepin Area Chamber
 Northfield Area Chamber
 Owatonna Area Chamber
 Printing Industry of MN
 Redwood Area Chamber
 Richfield Chamber
 River Heights Chamber
 Rochester Area Chamber
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 Wahpeton Breckenridge Area Chamber
 White Bear Area Chamber
 Willmar Lakes Area Chamber

EFCA/Card Check.

The article references a call by MN AFL-CIO to its supporters not to believe the rumors of a “compromise” and that they are committed to getting a vote on the full bill in the U.S. Senate. This tactic by the state’s AFL-CIO is consistent with comments by SEIU's President Andy Stern when he said that bill is “going through the usual legislative process, and we expect a vote on a majority sign-up provisions [Card Check] in the final bill.”

What does this tell us? First, there is no acceptable compromise by organized labor and that they will insist that the Senate not dump the objectionable Card Check provisions from the bill.

Second, proponents of the bill will be pressing for the Senate to vote on EFCA this year because the “chances of passing grow slimmer as the Congressional midterm elections in 2010 loom closer” according to the MN AFL-CIO. Clearly, they see the concerns of voters detrimental to the bill’s future.

If you have a chance to see Members of the MN Congressional Delegation during the recess, take the opportunity to remind them of your personal opposition to the bill. Moreover, even if the Card Check provision is left out, the binding arbitration provision is equally offensive. Congressional consideration is coming and the proponents of the bill want a vote soon. Make sure the MN Congressional Delegation knows that you are watching and how strongly you oppose this bill, or any alternative to it.

Rumors Fly, Clock Ticks on Employee Free Choice Act

By Rose Friedman, Workday Minnesota, August 4, 2009

http://www.workdayminnesota.org/index.php?news_6_4121

Winona Area Chamber
Worthington Area Chamber

Take Action Now!

Clearly we have reached a critical point in EFCA legislation. Please take action and let your opinion be heard! To contact Senator Franken's office:

1. Go to www.mnbusinessleaders.com.
2. Click on "Take Action Now!"
3. Send Senator Franken a message urging him to reconsider his stance of EFCA.
4. Pass the link on to your friends and colleagues.

MBL Resource Website

Visit the coalition's new website TODAY!

www.mnbusinessleaders.com

is your information source for all things card check. The site has all of the EFCA resources and information you and your members will need. Powered by the U.S. Chamber, you will find links to the Chamber's card check Toolkit, EFCA facts and figures, and all of the latest news on the legislation.

America's Leading Newspapers Weigh In

The editorial boards of some of the nation's leading newspapers, such as The Wall Street Journal, the L.A. Times, and The Washington Post, took a look at the Card Check bill. They concluded decisively that the legislation effectively eliminates private ballots. See the link below and read for yourself.

ST. PAUL - The most major piece of labor legislation in decades is quickly being eclipsed by the congressional debates on health care reform and Judge Sonia Sotomayor's confirmation.

At the moment, the success of the Employee Free Choice Act depends on Senate Democrats' ability to collect 60 votes for the bill – and on their ability to do it in a timely manner.

There are increasing indications that passage of the Employee Free Choice Act, which supporters say would restore balance to the process by which workers organize unions and bargain contracts with their employers, will require compromise on some of its provisions. A July 17 article in The New York Times reported that six senators are considering dropping the provision of the bill that provides for majority sign-up – often called "card check," but keeping its other tenets intact.

Card-check gives workers the power to form a union by signing cards authorizing union representation. It is the most controversial part of the bill, and labor leaders say it gives employees – not employers – the choice of if and how they form unions.

Possible replacements for card check, according to the Times article, include giving union organizers access to company property and barring employers from holding mandatory anti-union sessions – so-called "captive audience meetings" – with their employees. But the AFL-CIO says not to believe a compromise has been agreed on.

"What we have is a New York Times article," said Candace Lund, organizing director for the Minnesota AFL-CIO, "not a bill."

The AFL-CIO is asking its supporters not to believe rumors of a compromise. It is still focused on getting the full bill to the Senate for a vote, and is optimistic that as long as pro-labor senators Ted

» [Read the editorials](#)

Have you joined the Virtual March Against Card Check yet?



<http://secretballot.voteforbusiness.net/>

Minnesota Business Leaders: Your Go-To Resource

Click [here](#) for a list of the coalition's contacts.

Kennedy and Robert Byrd, both of whom have been absent from the Senate on account of illness, participate in the vote, the bill will pass through the body in late September.

If labor agrees to a compromise, it must include what the AFL-CIO sees as the three central values of the act: making an easier path toward unionization for workers (card-check is one form of this), ramped-up penalties for employers who use illegal anti-union tactics and mandatory contracts within a year of unionization.

"If the compromise doesn't have those core principles, we'll just have to go ahead with the vote," Lund said.

Josh Goldstein of American Rights at Work, a nonpartisan group that advocates for workers' organizing rights, said leaders in the Senate will determine what a compromise bill – if there is one – might entail. "But in our organization, it will be judged on the fundamental principles of EFCA. We are still advocating the bill the way it is," Goldstein said.

Goldstein added that ARW is open to improvements to the bill if they garner more support for it in the Senate.

The Employee Free Choice Act has 41 co-sponsors in the Senate, and three senators who say they support it. It needs 60 votes to avoid a filibuster, but only 51 votes to pass from the Senate to the House of Representatives, where Lund predicts it will have "no problem."

Time is running out, however. The AFL-CIO was hoping to pass the Employee Free Choice Act before the Senate's August recess, but now other battles are taking priority.

Lund predicts that a vote will happen by late September, but she acknowledges that its chances of passing grow slimmer as the Congressional

midterm elections in 2010 loom closer. "The window of time is contracting fast," she said, "and health care is dwarfing everything, although it is also a top priority for us.

"The New York Times article is unfortunate because it has emboldened the Chamber of Commerce to campaign against the bill," Lund added. "But reports of the death of card check have been prematurely exaggerated.

"We don't have a compromise, just an article."

Rose Friedman is an intern with The Union Advocate, the official publication of the St. Paul Regional Labor Federation.

From the *Wall Street Journal*...

Don't Employers Deserve Free Speech? Another downside to the misnamed 'Free Choice Act.'

By *JOHN S. IRVING*

The debate over the Employee Free Choice Act (EFCA) is being reframed now that the notorious "card check" provision—which would have taken away the right to secret ballots on union representation—will be pulled from the bill. Business groups and members of Congress on the fence will now come under tremendous pressure to support the act, although equally objectionable provisions, such as mandatory arbitration, remain.

Yet there has been virtually no debate over the bill's onerous and unprecedented penalties against employers who may fall afoul of vague National Labor Relations Board (NLRB) rules as workers try to unionize. These penalties will stifle employer free speech. Would an employer be willing to inform employees about the potential downsides of unionization in the face of fines, treble damages, injunctions and costly litigation levied by EFCA?

Today, according to the National Labor Relations Act—as amended in 1947—employers are permitted to express themselves to their employees with “views, argument, or opinion . . . if such expression contains no threat of reprisal or force or promise of benefit.” Of course, this leaves unclear just what constitutes lawful opinion versus unlawful threats or promises. And over the years, the shifting composition of the NLRB—and of the courts—has caused disagreements over what permissible free speech is.

For example, employers who might sincerely assert to their employees that “unions cause plant shutdowns” or “could cause loss of customers” may or may not be exercising lawful free speech, depending on the views of the labor board at the time. If employers fall afoul of the law today, they face only nonpunitive “make-whole” and “cease and desist” sanctions.

But EFCA dramatically escalates these penalties. Under the new bill, the employer could be subject to a \$20,000 fine for each questionable statement, and to near-automatic injunction proceedings based on union-filed unfair labor practice charges.

Under EFCA, employers would risk federal injunction litigation even before the labor board has considered whether there was a threat or promise. Based on union-filed unfair labor practice charges, if the board’s general counsel—one person—determines that there is “reasonable cause” to believe an employer threat or promise may have been made, EFCA requires the general counsel to seek an immediate federal court injunction.

Only much later, perhaps years later, after a costly trial, briefing and appeals will the NLRB and courts decide whether the statements were lawful and whether fines are to be imposed.

There is no provision in current law for punitive fines and treble damages. Nor is there any requirement, as there would be under EFCA, that nondiscretionary injunctions be sought against employers based solely upon the NLRB general counsel's determination of "reasonable cause."

Under current law, the general counsel is neither required nor authorized to seek such injunctions without permission from the board. Exposure to EFCA's punitive terms would not only expose employers to new costly litigation and uncertain outcomes, it would also provide unions with new propaganda and leverage advantages.

Faced with these draconian penalties, employers—particularly smaller employers—will be forced to remain silent. EFCA's penalty provisions deserve careful scrutiny in light of statutory and constitutional free speech protections. Their net effect will be to deny free speech to employers and to deprive employees of the advantages of meaningful debate before they make important choices affecting their livelihood.

Mr. Irving was general counsel of the National Labor Relations Board from 1975-79.

Card Check in the News

Roll Call: [Speed May Be Key to Labor Bill](#)

Wall Street Journal: [Chances that Congress will vote on a union-organizing bill this year are dimming as lawmakers make health care and appropriations the top priorities..](#)

CBS News: [Card Check "Lite" Is A Non-Starter](#) (Op-ed by US Chamber General Counsel, Steven Law)

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