

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 660
Finance

(Senator Kittleman)

Labor and Employment - Right to Work

This bill specifies that an employer may not refuse to employ or continue employing an individual based on the individual's membership or nonmembership in a labor organization and may not require an individual to join a labor union or prohibit an individual from joining a labor union. An employer also may not require an individual to pay dues, fees, or other charges to a labor organization.

The bill applies only prospectively and may not be interpreted to apply to a collective bargaining agreement entered into before the bill's October 1, 2011 effective date.

Fiscal Summary

State Effect: None. Any increase in workload for the Office of the Attorney General can be carried out with existing resources. No effect on revenues.

Local Effect: None. The circuit courts can likely handle any potential increase in litigation with existing resources.

Small Business Effect: Potential meaningful. Prohibiting an employer or labor organization from requiring employees to join, remain members of, or pay dues to a labor organization may reduce wages and thereby lower operating costs for small businesses. The effects will be felt most strongly in industries with a strong union presence, such as construction.

Analysis

Bill Summary: The bill allows an employee to pursue a civil cause of action against an employer that (1) denied the individual employment; (2) required the individual to refrain from joining or to become a member of a labor organization; or (3) required the individual to pay dues, fees, or other charges to a labor organization in violation of the bill. A court may award the employee actual damages, punitive damages, injunctive relief, reasonable attorney’s fees, and other reasonably incurred litigation costs. The Attorney General may seek an injunction in a civil action to prohibit an employer that has engaged in a violation from engaging in further violations.

Current Law/Background: State law specifies that it is the policy of the State that negotiation of terms and conditions of employment should result from a voluntary agreement between employees and the employer and, thus, each individual worker must be fully free to associate, organize, and designate a representative for negotiation of terms and conditions of employment. This process must be free from coercion, interference, or restraint by an employer in (1) designation of a representative; (2) self-organization; and (3) other concerted activity for the purpose of collective bargaining or other mutual aid or protection. State law establishes a procedure for certifying a labor organization as the bargaining representative for a workplace, and a majority of employees must vote in favor of joining a union in order for a workplace to unionize.

The federal Taft-Hartley Act of 1947 banned “closed shops,” which are places of employment bound by an agreement to hire only the members of a particular union. However, the Taft-Hartley Act, as amended, allowed for the continued existence of “union shops,” which are places of employment that require employees to join a union within a certain number of days after being hired. Many states have banned union shops; these states are referred to as “right-to-work” states. **Exhibit 1** depicts the 22 states that have established right-to-work laws that include provisions similar to the bill.

Exhibit 1 States with Established “Right to Work” Laws

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|----------|-------------|----------------|----------|
| Alabama | Iowa | North Carolina | Texas |
| Arizona | Kansas | North Dakota | Utah |
| Arkansas | Louisiana | Oklahoma | Virginia |
| Florida | Mississippi | South Carolina | Wyoming |
| Georgia | Nebraska | South Dakota | |
| Idaho | Nevada | Tennessee | |

Source: Department of Legislative Services

Maryland law does not prohibit the existence of union shops. In cases where a union exists in a workplace but employees are not required to join, State law does not prohibit a labor organization from assessing a fee – sometimes called a service fee, shop fee, or agency fee – to nonmember employees who receive wage increases and/or additional benefits residually due to a collective bargaining agreement that is successfully negotiated by a labor organization on behalf of its members.

The bill does not specify that the State or units of government are subject to the bill's provisions. Thus, Legislative Services advises that the bill applies only to private-sector businesses in the State and not to employers that are units of government.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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