

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 668
Finance

(Senator Kittleman, *et al.*)

Labor and Employment - Right to Work

This bill prohibits an employer from refusing to employ or continuing to employ an individual based on the individual's membership or nonmembership in a labor organization. It also bars an employer from requiring (1) an individual to join or to refrain from joining a labor organization and (2) an individual to pay dues, fees, or other charges to a labor organization. An individual may pursue a civil cause of action against an employer that violates the individual's rights under the bill; if successful, the individual may be awarded actual damages, punitive damages, injunctive relief, reasonable attorney's fees, and other reasonable litigation costs. The Attorney General may seek an injunction against an employer that has violated the bill to prevent further violations.

The bill applies only prospectively and does not affect any collective bargaining agreements entered into before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: Any increase in workload for the Office of the Attorney General can be carried out with existing resources. No effect on revenues.

Local Effect: The circuit courts can likely handle any potential increase in litigation with existing resources.

Small Business Effect: Potential meaningful. Small businesses may benefit from reduced labor costs.

Analysis

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.

“Right-to-Work” Laws

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 sometimes referred to as “right-to-work” states. **Exhibit 1** depicts the 24 states that have established right-to-work laws that include provisions similar to the bill; Michigan became the latest state to enact a similar law in December 2012.

Exhibit 1 States with “Right-to-Work” Laws

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

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.

Prevalence of Unions

According to the U.S. Bureau of Labor Statistics, 10.6% of employees in Maryland were *members of unions* and 12.3% of employees in Maryland were *represented by unions* (which includes those paying service fees) in 2012. These percentages are slightly lower than the national average of 11.3% and 12.5%, respectively. **Exhibit 2** shows the percentage of union members and workers represented by unions in Maryland and its surrounding states, including the District of Columbia.

Exhibit 2
Union Rates in Maryland and Surrounding States
2012

	<u>Union Members</u>	Represented by <u>Unions</u>
Delaware	10.4%	11.8%
District of Columbia	8.6%	10.3%
Maryland	10.6%	12.3%
Pennsylvania	13.5%	14.4%
Virginia	4.4%	5.5%
West Virginia	12.1%	13.1%

Source: U.S. Department of Labor

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

Small Business Effect: 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. In 2012, the national median weekly earnings for union members were \$943, while nonunion members had median weekly earnings of \$742. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (20.6% of employees are union members) and construction (13.2% of employees are union members).

Additional Information

Prior Introductions: A similar bill, SB 715 of 2012, received a hearing in the Senate Finance Committee, but no further action was taken. Another similar bill, SB 660 of 2011, received an unfavorable report from the Senate Finance Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 19, 2013
mc/mcr

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