

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1203
Economic Matters

(Delegate Chisholm, *et al.*)

Labor and Employment - Private-Sector Employers - Right to Work

This bill specifies that a private-sector employer may not require, as a condition of employment or continued employment, an employee or prospective employee to (1) join or remain a member of a labor organization; (2) pay any dues, fees, assessments, or other charges to a labor organization; or (3) pay any charity or another third party an equivalent amount in lieu of a payment 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, 2021 effective date.

Fiscal Summary

State Effect: The Office of the Attorney General (OAG) can likely handle any increase in workload with existing resources. The bill's criminal penalty provisions are not expected to materially affect State finances.

Local Effect: Local revenues and expenditures for the circuit courts are not likely materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An "employer" does not include the State and units of the State, a county and units of a county, or a municipal corporation in the State.

The bill allows an employee, or prospective employee, to pursue a *civil* cause of action in circuit court against an employer that violates the bill's provisions. If an employer is found

liable for a violation, the employee or prospective employee is entitled to injunctive relief, damages, court costs, and reasonable attorney's fees.

The Attorney General must (1) take any steps necessary to ensure effective enforcement of the bill; (2) investigate all related complaints; and (3) commence and try all related prosecutions. The bill specifies that the Attorney General has all the powers and duties vested in State's Attorneys under law with respect to criminal prosecutions related to the bill's provisions.

An individual who violates the bill's provisions is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. A person other than an individual who violates the bill's provisions is likewise guilty of a misdemeanor but is subject only to a fine of up to \$1,000.

The bill does not apply to (1) employers and employees covered by the federal Railway Labor Act; (2) federal employers and employees; and (3) employers and employees on exclusive federal enclaves. Any provision of the bill that conflicts with or is preempted by federal law is unenforceable.

Current Law: 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.

Union Shops and Closed Shops

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.

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 allows a labor organization to negotiate the assessment of 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. If such fees are not included in a collective bargaining agreement, they may not be assessed. In 2018, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. ___ (2018), that States and public-sector unions may no longer extract agency fees from nonconsenting employees; however, this bill applies only to private sector employees and employers, which are not covered by the *Janus* decision.

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 2021, the national median weekly earnings for private-sector union members were \$1,169, while nonunion members had median weekly earnings of \$975. The effects will be felt most strongly in industries with a strong union presence, such as motion pictures and sound recording industries (18.3% of employees are represented by unions), transportation and utilities (16.8% of employees are represented by unions), and educational services (15.2% of employees are represented by unions).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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