

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 494
 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, 2023 effective date.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Attorney General (OAG) increase by \$104,900 in FY 2024. Future years reflect annualization and the elimination of one-time costs. The bill does not otherwise materially affect State finances or operations.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	104,900	127,400	133,100	138,900	146,200
Net Effect	(\$104,900)	(\$127,400)	(\$133,100)	(\$138,900)	(\$146,200)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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 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.

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.

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.

State Expenditures: OAG advises that it requires an assistant Attorney General to enforce the bill, which includes investigations of complaints and prosecutions of violations. Accordingly, general fund expenditures increase by \$104,909 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one assistant Attorney General to enforce the bill and handle related complaints and prosecutions. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$97,500
Operating Expenses	<u>7,409</u>
Total FY 2024 State Expenditures	\$104,909

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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. According to the Bureau of Labor Statistics, in 2022, the national median weekly earnings for private-sector union members was \$1,153, while nonunion members had median weekly earnings of \$1,018. Earnings for union members and employees who are not union members, but whose jobs are covered by a union or an employee association contract, are generally similar.

The effects will be felt most strongly in industries with a strong union presence and/or where the difference in earnings is most significant, such as motion pictures and sound recording industries (17.8% of employees are represented by unions, nearly \$1,000 per week earnings difference), transportation and utilities (16.1% of employees are represented

by unions, \$300 per week earnings difference), and educational services (14.4% of employees are represented by unions, \$140 per week earnings difference).

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1203 of 2022; HB 1321 of 2021; and HB 163 of 2020.

Designated Cross File: None.

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

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km/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510