

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1321
 Economic Matters

(Delegate Novotny)

Labor and Employment - Right to Work

This bill specifies that an 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 repeals various provisions of State law that authorize or require an employer, including the State and units of government, to negotiate the payment by an employee of a fee (service, maintenance, or representation fee) to a labor organization to which the employee is not a member. 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: General fund expenditures increase by \$61,300 in FY 2022 for the Office of the Attorney General (OAG). Out-year costs reflect annualization and elimination of one-time costs. The bill’s criminal penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	61,300	71,600	73,800	76,400	79,100
Net Effect	(\$61,300)	(\$71,600)	(\$73,800)	(\$76,400)	(\$79,100)

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

Local Effect: Local finances are not materially affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: 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.

State Employees and Service Fees

State law authorizes collective bargaining with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization generally must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee. Employees may not be required to pay a service fee due to specified religious objections, but instead they must pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization.

However, the U.S. Supreme Court reversed its position in 2018 on the right of a public-sector exclusive representative to collect service fees from nonunion members. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the U.S. Supreme Court found that, while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization’s duties as the collective bargaining representative. More than 40 years later, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. __ (2018) that the state’s collection of agency fees from nonconsenting public employees was a violation of the First Amendment and *Abood* is, therefore, overruled. States and public-sector unions may no longer collect agency fees from nonconsenting employees. Consequently, Maryland no longer collects service fees from nonunion members.

State Expenditures: General fund expenditures increase for OAG by \$61,324 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one administrator to investigate and process complaints. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$55,743
Operating Expenses	<u>5,581</u>
Total FY 2022 State Expenditures	\$61,324

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

As a result of the U.S. Supreme Court ruling in *Janus*, the State no longer requires nonunion State employees to pay service fees. Thus, the bill codifies this existing practice. However, OAG is still tasked with enforcing the bill's ban on the payment of service fees.

Local Fiscal Effect: The circuit courts can likely handle any increase in litigation with existing resources. The criminal penalty provisions of the bill are not expected to materially affect local government finances or operations.

No longer collecting service fees from nonunion public-sector employees has no fiscal impact on local jurisdictions as the U.S. Supreme Court prohibited this practice in *Janus*.

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 2019, the national median weekly earnings for private-sector union members were \$1,025, while nonunion members had median weekly earnings of \$881. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (18.7% of employees are represented by unions), telecommunications (15.3% of employees are represented by unions), and educational services (14.1% of employees are represented by unions).

Additional Information

Prior Introductions: HB 163 of 2020 received an unfavorable report from the House Economic Matters Committee. HB 126 of 2019 and similar bills, HB 264 of 2018 and HB 531 of 2017, received unfavorable reports from the House Economic Matters Committee. In addition, similar bills were introduced in the 2011 through 2016 sessions.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Department of Budget and Management; Maryland Department of Planning; Maryland State Department of Education; Governor's Office; Maryland Department of Health; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Maryland Department of Aging; Maryland Department of Transportation; University System of Maryland; Morgan State University; Baltimore City Public Schools; Charles, Frederick, and Montgomery counties; Maryland Municipal League; City of Havre de Grace; Department of Legislative Services

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