

HOUSE BILL 1321

K3
HB 163/20 – ECM

1lr2085

By: **Delegate Novotny**

Introduced and read first time: February 8, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Right to Work**

3 FOR the purpose of prohibiting certain employers from requiring, as a condition of
4 employment or continued employment, an employee or a prospective employee,
5 under certain circumstances, to join or remain a member of a labor organization, pay
6 charges to a labor organization, or pay a certain amount to a third party; prohibiting
7 certain employers from threatening an employee or a prospective employee with
8 certain action; specifying that certain agreements, understandings, or practices
9 between employers and labor organizations are null and void and without legal
10 effect; authorizing an employee or a prospective employee to file an action in a certain
11 circuit court for a certain violation of law; specifying that an employee or a
12 prospective employee is entitled to injunctive relief and to recover certain damages
13 and costs under certain circumstances; providing that a certain violation of law is a
14 misdemeanor and is subject to certain penalties; requiring the Attorney General to
15 take certain action to ensure effective enforcement of certain laws, investigate
16 certain complaints, and try certain prosecutions; specifying that the Attorney
17 General has certain powers and duties relating to criminal prosecutions under
18 certain circumstances; specifying that certain provisions of law are unenforceable
19 under certain circumstances; repealing a certain provision of law that prohibits a
20 court from granting relief under certain circumstances; repealing certain provisions
21 of law relating to fees paid by employees to certain labor organizations; defining
22 certain terms; providing for the application of this Act; and generally relating to the
23 rights of individuals, employee organizations, and employers.

24 BY repealing and reenacting, without amendments,
25 Article – Courts and Judicial Proceedings
26 Section 2–322(a) and (e)(1) and (2)
27 Annotated Code of Maryland
28 (2020 Replacement Volume)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 Article – Courts and Judicial Proceedings
2 Section 2–322(e)(3)(v)
3 Annotated Code of Maryland
4 (2020 Replacement Volume)
- 5 BY repealing and reenacting, with amendments,
6 Article – Education
7 Section 6–407, 6–504, 9.5–704, and 16–414.1(e)(3) and (f)
8 Annotated Code of Maryland
9 (2018 Replacement Volume and 2020 Supplement)
- 10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 15–904(e)
13 Annotated Code of Maryland
14 (2019 Replacement Volume and 2020 Supplement)
- 15 BY repealing and reenacting, with amendments,
16 Article – Labor and Employment
17 Section 4–304
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2020 Supplement)
- 20 BY adding to
21 Article – Labor and Employment
22 Section 4–701 through 4–707 to be under the new subtitle “Subtitle 7. Right to Work”
23 Annotated Code of Maryland
24 (2016 Replacement Volume and 2020 Supplement)
- 25 BY repealing and reenacting, with amendments,
26 Article – Land Use
27 Section 16–309
28 Annotated Code of Maryland
29 (2012 Volume and 2020 Supplement)
- 30 BY repealing
31 Article – Land Use
32 Section 16–316
33 Annotated Code of Maryland
34 (2012 Volume and 2020 Supplement)
- 35 BY repealing and reenacting, with amendments,
36 Article – State Personnel and Pensions
37 Section 3–502
38 Annotated Code of Maryland
39 (2015 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

2–322.

(a) This section applies only in Charles County.

(e) (1) This subsection applies to all full–time, merit system sworn law enforcement officers and correctional officers in the Sheriff’s Office at a rank of sergeant or below.

(2) This subsection does not apply to the following employees in the Sheriff’s Office:

(i) Sworn law enforcement officers or correctional officers in the Sheriff’s Office at a rank of lieutenant or above;

(ii) Employees in appointed positions;

(iii) Civilian merit system employees;

(iv) Full–time reduced hours employees;

(v) Part–time employees;

(vi) Contractual employees;

(vii) Temporary employees;

(viii) Emergency employees; or

(ix) Employees whose employment is administered under the county policies and procedures manual.

(3) (v) [1. A sworn law enforcement officer or correctional officer who is not a member of a bargaining unit with an exclusive representative may be required to pay a proportional service fee for costs associated with the administration and enforcement of any agreement that benefits the affected employees.

2.] An exclusive representative shall be selected in accordance with the procedures set forth in paragraph (5) of this subsection.

Article – Education

6–407.

(a) An employee organization designated as an exclusive representative shall be the negotiating agent of all public school employees in the unit in the county.

(b) (1) An employee organization designated as an exclusive representative shall represent all employees in the unit fairly and without discrimination, whether or not the employees are members of the employee organization.

(2) In addition, in Montgomery County the exclusive representative shall represent fairly and without discrimination all persons actually employed as substitute teachers without regard to whether they are included in § 6–401(e) of this subtitle as public school employees.

[(c) (1) Subject to subsection (d) of this section, the public school employer shall negotiate with the employee organization designated as the exclusive representative for the public school employees in a unit, a requirement of a reasonable service or representation fee, to be charged nonmembers for representing them in negotiations, contract administration, including grievances, and other activities as are required under subsection (b) of this section.

(2) The service or representation fee may not exceed the annual dues of the members of the organization.

(3) An employee who is a substitute teacher and who works on a short-term day-to-day basis is not required to pay a service or representation fee.

(4) An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

(i) Not required to pay a service or representation fee; and

(ii) Required to pay an amount of money as determined in paragraph (2) of this subsection to a nonreligious, nonunion charity or to such other charitable organization as may be mutually agreed upon by the employee and the exclusive representative, and who furnishes to the public school employer and the exclusive representative written proof of such payment.

(5) The exclusive representative shall establish and maintain a procedure that provides nonmembers with:

(i) An adequate explanation of the basis for the service or representation fee; and

(ii) An opportunity to challenge the amount of the fee.

(6) An employee who is a home or hospital teacher and who works on a short-term day-to-day basis is not required to pay a service or representation fee.

(7) The public school employer shall:

(i) Deduct the service or representation fee from the earnings of the nonmember employees in accordance with a schedule provided by the exclusive representative; and

(ii) Promptly transmit the amount deducted to the exclusive representative.

(d) When negotiating the implementation of a service or representation fee under this section, the public school employer and the exclusive bargaining representative shall negotiate whether the fee is applicable to current employees.

(e) (1) This subsection applies to a county in which a service or representation fee was not negotiated before July 1, 2013.

(2) The following employees in a unit are eligible to vote on ratification of the implementing agreement that provides for a service or representation fee:

(i) Members of the employee organization; and

(ii) Nonmembers affected by the service or representation fee.

(3) The implementing agreement that provides for a service or representation fee shall be ratified by a majority of votes cast by the employees eligible to vote under paragraph (2) of this subsection.

(f) In a county in which a service or representation fee has been negotiated before July 1, 2013, the fee shall be implemented under the provisions of the agreement negotiated before July 1, 2013, and consistent with the requirements of this section without the need for further negotiations.]

6-504.

[(a)] A public school employee may refuse to join or participate in the activities of employee organizations.

[(b) (1) Subject to subsection (e) of this section, the public school employer, with respect to noncertificated employees, shall negotiate a structure of required reasonable service or representation fees to be charged nonmembers for representation in negotiations and grievance matters by employee organizations.

(2) An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

(i) Not required to pay a service or representation fee; and

(ii) Required to pay an amount of money that is equal to the service or representation fee to a nonreligious, nonunion charity or to such other charitable organization as may be mutually agreed upon by the employee and the employee organization, and who furnishes to the public school employer and the employee organization written proof of the payment.

(c) The employee organization shall establish and maintain a procedure that provides nonmembers with:

(1) An adequate explanation of the basis for the service or representation fee; and

(2) An opportunity to challenge the amount of the fee.

(d) The public school employer shall:

(1) Deduct the service or representation fee from the earnings of the nonmember employees in accordance with a schedule provided by the employee organization; and

(2) Promptly transmit the amount deducted to the employee organization.

(e) When negotiating the implementation of a service or representation fee under this section, the public school employer and the exclusive bargaining representative shall first negotiate whether the fee is applicable to current employees.

(f) (1) This subsection applies to a county in which a service or representation fee was not negotiated before July 1, 2013.

(2) The following employees in a unit are eligible to vote on ratification of the implementing agreement that provides for a service or representation fee:

(i) Members of the employee organization; and

(ii) Nonmembers affected by the service or representation fee.

(3) The implementing agreement that provides for a service or representation fee shall be ratified by a majority of votes cast by the employees eligible to vote under paragraph (2) of this subsection.

(g) In a county in which a service or representation fee has been negotiated before July 1, 2013, the fee shall be implemented under the provisions of the agreement negotiated before July 1, 2013, and consistent with the requirements of this section without the need for further negotiations.]

1 (a) The Department shall designate appropriate representatives to participate in
2 collective bargaining with the provider organization certified as the exclusive
3 representative of family child care providers.

4 (b) Except as otherwise provided in this subtitle, the parties shall adhere to the
5 bargaining process set forth in § 3-501 of the State Personnel and Pensions Article.

6 (c) The Department shall negotiate in consultation with the Department of
7 Budget and Management regarding all matters that require appropriation of State funds.

8 (d) Collective bargaining shall include all matters related to the terms and
9 conditions of participation by family child care providers in the Maryland Child Care
10 Subsidy Program, including:

11 (1) Reimbursement rates;

12 (2) Benefits;

13 (3) Payment procedures;

14 (4) Contract grievance procedures;

15 (5) Training;

16 (6) Member dues deductions; and

17 (7) Other terms and conditions of participation by family child care
18 providers in the Maryland Child Care Subsidy Program.

19 [(e) (1) (i) Subject to subparagraph (ii) of this paragraph, collective
20 bargaining may include negotiations relating to the right of a provider organization that is
21 the exclusive representative to receive service fees from nonmembers.

22 (ii) The representatives of the State may not reach an agreement
23 containing a service fee provision unless the representatives of the State conclude that the
24 agreement as a whole will not adversely impact nonmember providers.

25 (2) A family child care provider whose religious beliefs are opposed to
26 joining or financially supporting any collective bargaining organization is:

27 (i) Not required to pay a service fee; and

28 (ii) Required to pay an amount of money as determined in collective
29 bargaining negotiations, not to exceed any service fee negotiated under paragraph (1) of
30 this subsection, to any charitable organization exempt from taxation under § 501(c)(3) of
31 the Internal Revenue Code and to furnish to the Department and the exclusive

1 representative written proof of the payment.]

2 **[(f)] (E)** (1) Collective bargaining shall include negotiations that result in the
3 establishment of a fund for the purpose of protecting family child care providers against
4 extreme hardship or loss of livelihood resulting from late State payments.

5 (2) The exclusive representative shall pay for a portion of the fund.

6 (3) The fund:

7 (i) May not be a State fund; but

8 (ii) Shall be established and administered in consultation with the
9 State.

10 (4) All revenues, money, and assets of the fund belong solely to the fund
11 and are held by the fund in trust for family child care providers.

12 (5) The State may not borrow, appropriate, or direct payments from the
13 revenues, money, or assets of the fund for any purpose.

14 (6) The fund shall include funds sufficient to meet the reasonably
15 foreseeable needs of the family child care providers.

16 **[(g)] (F)** Notwithstanding subsection (d) of this section, the representatives of
17 the State:

18 (1) May not be required to negotiate any matter that is inconsistent with
19 applicable law; and

20 (2) May negotiate and reach agreement with regard to any such matter
21 only if it is understood that the agreement with respect to such matter cannot become
22 effective unless the applicable law is amended by the General Assembly.

23 **[(h)] (G)** The parties shall reduce their agreement to a Memorandum of
24 Understanding that complies with the provisions of § 3–601 of the State Personnel and
25 Pensions Article.

26 16–414.1.

27 (e) (3) On behalf of the exclusive representative for payment to the exclusive
28 representative, the public employer shall automatically deduct from the paycheck of each
29 public employee in a bargaining unit represented by an employee organization certified as
30 an exclusive representative for that bargaining unit[:]

31 (i) Any] **ANY** union dues authorized and owed by the employee to

the organization[; and

(ii) Any service fees authorized and owed by the employee to the organization].

(f) Collective bargaining shall include all matters relating to:

(1) Wages, hours, and other terms and conditions of employment; and

(2) The procedures for the employee organization to receive membership dues [and service fees] through payroll deduction.

Article – Health – General

15–904.

(e) [(1) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, collective] **COLLECTIVE** bargaining may **NOT** include negotiations relating to the right of a provider organization that is the exclusive representative to receive service fees from nonmembers.

[(ii) The representatives of the State may not reach an agreement containing a service fee provision unless the representatives of the State conclude that the agreement as a whole will not adversely impact nonmember providers.

(iii) The representatives of the State may only agree to a service fee provision if the service fee provision would require nonmembers to pay service fees on a sliding scale in approximate proportion to the amount each nonmember receives in reimbursement through:

1. The Medicaid Waiver for Older Adults that is jointly administered by the Department and the Department of Aging as established under § 15–132 of this title, or any successor program;

2. The Medicaid Personal Care Program under the State Medical Assistance Program, or any successor program; and

3. The In–Home Aide Service Program administered by the Department of Human Services, or any successor program.

(2) An independent home care provider whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization:

(i) Is not required to pay a service fee; but

(ii) Shall pay an amount of money as determined in collective

bargaining negotiations, not to exceed any service fee negotiated under paragraph (1) of this subsection, to any charitable organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code and to furnish to the State agencies engaged in collective bargaining under this subtitle and the exclusive representative written proof of the payment.

(3) (i) An independent home care provider who provides home care services only to an immediate family member is not required to pay a service fee.

(ii) An independent home care provider who provides services to an immediate family member and any other individual who is not an immediate family member may be required to pay a service fee that is proportionate to the amount the provider receives in reimbursement for the provider's services to any individual who is not an immediate family member.

(iii) An independent home care provider may be required to provide written documentation of the provision of home care services to an immediate family member.]

Article – Labor and Employment

4–304.

(a) In this section, “promise” means any undertaking, whether express or implied or oral or written.

(b) A promise made between an employee or prospective employee and an employer, prospective employer, or any other individual, association, company, corporation, or firm is against the policy of the State if the promise requires either party:

(1) to join or remain a member of an employer or labor organization;

(2) not to join or not to remain a member of an employer or labor organization; or

(3) to withdraw from an employment relation if the party joins or remains a member of an employer or labor organization.

[(c) A court may not grant, on the basis of a promise described in this section, any relief against:

(1) a party to the promise; or

(2) another person who, without the act or threat of fraud or violence, advises, induces, or urges a party to disregard the promise.]

SUBTITLE 7. RIGHT TO WORK.

1 4-701.

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) (1) "EMPLOYER" MEANS:

5 (I) A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A
6 PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE;

7 (II) THE STATE AND UNITS OF THE STATE;

8 (III) A COUNTY AND UNITS OF A COUNTY; OR

9 (IV) A MUNICIPAL GOVERNMENT IN THE STATE.

10 (2) "EMPLOYER" INCLUDES A PERSON THAT ACTS DIRECTLY OR
11 INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

12 (C) (1) "LABOR ORGANIZATION" MEANS AN ORGANIZATION OF ANY KIND
13 THAT EXISTS FOR THE PURPOSE OF INTERACTING WITH AN EMPLOYER ON BEHALF
14 OF THE EMPLOYEES OF THE EMPLOYER CONCERNING WAGES, RATES OF PAY, HOURS
15 OF WORK, OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT.

16 (2) "LABOR ORGANIZATION" INCLUDES ANY PERSON THAT ACTS
17 DIRECTLY OR INDIRECTLY IN THE INTEREST OF A LABOR ORGANIZATION WITH AN
18 EMPLOYER.

19 4-702.

20 (A) THIS SUBTITLE DOES NOT APPLY TO:

21 (1) EMPLOYERS AND EMPLOYEES COVERED BY THE FEDERAL
22 RAILWAY LABOR ACT;

23 (2) FEDERAL EMPLOYERS AND EMPLOYEES; OR

24 (3) EMPLOYERS AND EMPLOYEES ON EXCLUSIVE FEDERAL
25 ENCLAVES.

26 (B) A PROVISION OF THIS SUBTITLE THAT IS IN CONFLICT WITH OR
27 PREEMPTED BY FEDERAL LAW IS UNENFORCEABLE TO THE EXTENT OF THE

1 CONFLICT OR PREEMPTION.

2 4-703.

3 (A) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW,
4 AN EMPLOYER MAY NOT REQUIRE, AS A CONDITION OF EMPLOYMENT OR CONTINUED
5 EMPLOYMENT, AN EMPLOYEE OR A PROSPECTIVE EMPLOYEE TO:

6 (1) JOIN OR REMAIN A MEMBER OF A LABOR ORGANIZATION;

7 (2) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES TO A
8 LABOR ORGANIZATION; OR

9 (3) PAY TO ANY CHARITY OR ANOTHER THIRD PARTY, IN LIEU OF A
10 PAYMENT TO A LABOR ORGANIZATION, ANY AMOUNT EQUIVALENT TO, OR A PRO
11 RATA PORTION OF, THE CHARGE REQUIRED TO BE PAID TO A LABOR ORGANIZATION
12 BY A MEMBER OF THE LABOR ORGANIZATION.

13 (B) AN EMPLOYER MAY NOT THREATEN AN EMPLOYEE OR A PROSPECTIVE
14 EMPLOYEE WITH AN ACTION THAT WOULD BE A VIOLATION OF SUBSECTION (A) OF
15 THIS SECTION.

16 4-704.

17 AN AGREEMENT, AN UNDERSTANDING, OR A PRACTICE BETWEEN AN
18 EMPLOYER AND A LABOR ORGANIZATION THAT VIOLATES § 4-703 OF THIS SUBTITLE
19 IS NULL AND VOID AND WITHOUT LEGAL EFFECT.

20 4-705.

21 (A) AN EMPLOYEE OR A PROSPECTIVE EMPLOYEE MAY FILE AN ACTION
22 AGAINST AN EMPLOYER FOR A VIOLATION OF § 4-703 OF THIS SUBTITLE IN THE
23 CIRCUIT COURT FOR THE JURISDICTION WHERE THE EMPLOYER IS LOCATED.

24 (B) IF AN EMPLOYER IS FOUND LIABLE FOR A VIOLATION OF § 4-703 OF THIS
25 SUBTITLE IN AN ACTION FILED UNDER SUBSECTION (A) OF THIS SECTION, THE
26 EMPLOYEE OR PROSPECTIVE EMPLOYEE WHO FILED THE ACTION IS ENTITLED TO
27 INJUNCTIVE RELIEF, DAMAGES, COURT COSTS, AND REASONABLE ATTORNEY'S
28 FEES.

29 4-706.

30 (A) AN INDIVIDUAL WHO VIOLATES § 4-703 OF THIS SUBTITLE IS GUILTY OF

A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

(B) A PERSON OTHER THAN AN INDIVIDUAL THAT VIOLATES § 4-703 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

4-707.

(A) THE ATTORNEY GENERAL SHALL:

(1) TAKE ANY STEPS NECESSARY TO ENSURE EFFECTIVE ENFORCEMENT OF THIS SUBTITLE;

(2) INVESTIGATE ALL COMPLAINTS REGARDING VIOLATIONS OF § 4-703 OF THIS SUBTITLE; AND

(3) COMMENCE AND TRY ALL PROSECUTIONS FOR VIOLATIONS OF § 4-703 OF THIS SUBTITLE.

(B) WITH RESPECT TO THE COMMENCEMENT AND TRIAL OF THE PROSECUTION UNDER SUBSECTION (A) OF THIS SECTION, THE ATTORNEY GENERAL HAS ALL THE POWERS AND DUTIES VESTED BY LAW IN STATE'S ATTORNEYS WITH RESPECT TO CRIMINAL PROSECUTIONS.

Article – Land Use

16-309.

(a) The Commission and the exclusive representative shall execute a collective bargaining agreement incorporating all matters agreed.

(b) A collective bargaining agreement may include a provision for:

(1) dues [and maintenance or service fees] paid by payroll deduction; and

(2) the arbitration of grievances arising under the collective bargaining agreement.

(c) The collective bargaining agreement supersedes any conflicting rule, regulation, or administrative policy of the Commission.

[16-316.

(a) This subtitle does not preclude the Commission from entering into a collective

bargaining agreement with an exclusive representative that requires an employee, as a condition of employment, to pay a maintenance or service fee as a contribution towards the cost of the negotiation and administration of the collective bargaining agreement.

(b) A maintenance or service fee under subsection (a) of this section may not exceed the annual dues paid to the exclusive representative.

(c) Before the Commission discharges an employee who fails to pay a maintenance or service fee, it shall give the employee:

(1) written notice of the delinquent payment; and

(2) adequate time to correct the delinquency.

(d) If the Commission and an employee are unable to resolve any issue relating to the payment of a maintenance or service fee, the issue shall be submitted to an umpire in accordance with § 16–317 of this subtitle.]

Article – State Personnel and Pensions

3–502.

(a) Collective bargaining shall include all matters relating to:

(1) wages, hours, and other terms and conditions of employment; and

(2) the time and manner of access to a new employee program as required under § 3–307 of this title.

(b) [(1)] Collective bargaining may **NOT** include negotiations relating to the right of an employee organization to receive service fees from nonmembers.

[(2)] An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

(i) not required to pay a service fee; and

(ii) required to pay an amount of money as determined in collective bargaining negotiations, not to exceed any service fee negotiated under paragraph (1) of this subsection, to any charitable organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code and to furnish written proof of the payment to:

1. A. the Department; or

B. in the case of an employee of an institution of higher education specified in § 3–102(a)(1)(v) of this title, the President of the institution or the President’s designee; and

2. the exclusive representative.]

(c) Notwithstanding subsection (a) of this section, the representatives of the State, a system institution, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College:

(1) shall not be required to negotiate over any matter that is inconsistent with applicable law; and

(2) may negotiate and reach agreement with regard to any such matter only if it is understood that the agreement with respect to such matter cannot become effective unless the applicable law is amended by the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any collective bargaining agreement that is entered into before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
October 1, 2021.

October 1, 2021.