

HB 323-FN – AS INTRODUCED

2013 SESSION

13-0247
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HOUSE BILL **323-FN**

AN ACT establishing the Franklin Partin right-to-work act.

SPONSORS: Rep. W. O'Brien, Hills 5; Rep. Baldasaro, Rock 5; Rep. Warden, Hills 39;
Rep. Boehm, Hills 20; Rep. Cebrowski, Hills 7; Rep. Kappler, Rock 3;
Rep. Comerford, Rock 33

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill prohibits collective bargaining agreements that require employees to join a labor union.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 V. To be recommended, approved, referred, or cleared by or through a labor organization.

2 273-D:5 Voluntary Deductions Protected. It shall be unlawful for any employer to deduct from
3 the wages, earnings, or compensation of any employee any dues, fees, assessments, or other charges,
4 to be held for, transferred to, or paid over to a labor organization, unless the employee has first
5 presented, and the employer has received, a signed written authorization of such deductions, which
6 authorization may be revoked by the employee at any time by giving written notice of such
7 revocation 30 days in advance of its effective date. Every employer who receives such an
8 authorization from an employee shall have a duty to promptly notify that employee in writing that
9 the employee may revoke an authorization at any time by giving the employer 30 days written
10 notice.

11 273-D:6 Agreements in Violation, and Actions to Induce Such Agreements, Declared Illegal.
12 Any agreement, understanding or practice, written or oral, implied or expressed, between any labor
13 organization and employer which violates the rights of employees as guaranteed by the provisions of
14 this chapter is hereby declared to be unlawful, null and void, and of no legal effect. Any strike,
15 picketing, boycott, or other action, by a labor organization for the sole purpose of inducing or
16 attempting to induce an employer to enter into any agreement prohibited under this chapter is
17 hereby declared to be for an illegal purpose and is a violation of the provisions of this chapter.

18 273-D:7 Notice to be Posted. It shall be the duty of every employer to post and keep
19 continuously displayed the following notice at such a place or places in the business, establishment,
20 or premises where it may be readily seen by all employees, and it shall be the further duty of every
21 employer to furnish a copy of such notice to each employee at the time the employee is hired:

EMPLOYEES FREEDOM OF CHOICE

22
23 Under the law of the state of New Hampshire, employees are protected in the exercise of their
24 free choice to join or refrain from joining labor unions, and it is unlawful for an employer and a labor
25 union to enter into a contract or agreement requiring them to pay dues, fees, or charges of any kind
26 to a labor union as a condition of obtaining or keeping a job. Under this law, an employer may not
27 discharge or otherwise discriminate against an employee because of joining or refusing to join a labor
28 union, or to pay dues, or other charges to a labor union.

29 273-D:8 Coercion and Intimidation Prohibited. It shall be unlawful for any person, labor
30 organization, or officer, agent or member thereof, or employer, or officer thereof, by any threatened
31 or actual intimidation of an employee or prospective employee, or the employee's parents, spouse,
32 children, grandchildren, or any other persons residing in the employee's or prospective employee's
33 home, or by any damage or threatened damage to property, to compel or attempt to compel such
34 employee to join, affiliate with, or financially support a labor organization or to refrain from doing so,
35 or otherwise forfeit any rights as guaranteed by provisions of this chapter. It shall also be unlawful
36 to cause or attempt to cause an employee to be denied employment or discharged from employment
37 because of support or nonsupport of a labor organization by inducing or attempting to induce any

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1 other person to refuse to work with such employees.

2 273-D:9 Penalties. Any person, employer, labor organization, agent, or representative of an
3 employer or labor organization, who directly or indirectly imposes upon any person any requirement
4 prohibited by this chapter shall be guilty of a misdemeanor, and, notwithstanding RSA 651:2, shall
5 be subject for each offense to a fine not exceeding \$1,000, or to imprisonment not exceeding 90 days,
6 or both.

7 273-D:10 Civil Remedies. Any person harmed as a result of any violation or threatened
8 violation of the provisions of this chapter shall be entitled to injunctive relief against any and all
9 violators or persons threatening violation, and may also recover any or all damages of any character,
10 including costs and reasonable attorney fees, resulting from such violation or threatened violation,
11 cognizable at common law. Such remedies shall be independent of, and in addition to, the penalties
12 and remedies prescribed in other provisions of this chapter.

13 273-D:11 Duty to Investigate. It shall be the duty of the attorney general and of each county
14 attorney, to investigate any complaints of violation of this chapter, and to prosecute all persons
15 violating any of its provisions, and to use all means at their command to insure effective enforcement
16 of the provisions of this chapter.

17 273-D:12 Existing Contracts. The provisions of this chapter shall apply to all contracts entered
18 into on or after the effective date of this chapter and shall not apply to existing contracts, but shall
19 apply to any renewal or extensions of such existing contracts.

20 273-D:13 Exceptions. The provisions of this chapter shall not apply:

21 I. To employers and employees covered by the federal Railway Labor Act.

22 II. To federal employers and employees.

23 III. To employers and employees on exclusive federal enclaves.

24 IV. Where they would otherwise conflict with, or be preempted by, federal law.

25 273-D:14 Severability. If any provision of this chapter or the application thereof to any person
26 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the
27 chapter which can be given effect without the invalid provisions or applications, and to this end the
28 provisions of this chapter are severable.

29 3 Effective Date. This act shall take effect January 1, 2014.

HB 323-FN - FISCAL NOTE

AN ACT establishing the Franklin Partin right-to-work act.

FISCAL IMPACT:

The Department of Justice, Department of Labor, Judicial Branch, Judicial Council, New Hampshire Association of Counties, and the New Hampshire Municipal Association state this bill, **as introduced**, may increase state, county, and local expenditures by an indeterminable amount in FY 2014 and each year thereafter. The Public Employees Labor Relations Board states this bill will have indeterminable fiscal impact on state, county and local expenditures in FY 2014 and each year thereafter. There will be no impact on state, county and local revenue.

METHODOLOGY:

The Department of Justice states this bill will prohibit any person from being required, as a condition of employment or continuation of employment: 1) To resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; 2) To become or remain a member of a labor organization; 3) To pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization; 4) To pay any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges of a labor organization; or 5) To be recommended, approved, referred, or cleared by or through a labor organization. This bill will also prohibit employers from deducting certain fees or assessments without written authorization and also requires the Attorney General and all county attorneys to investigate any complaints of violations and prosecute all persons who violate any of its provisions. The Department of Justice states this bill will have an indeterminable increase on state and county expenditures because the number of investigations, prosecutions, and appeals is unknown.

The Department of Labor states this bill would have an indeterminable increase in expenditures for the Department because employees with wage grievances would come to the Department to file wage claims. The Department states there is no way of determining how much such activity would increase if this bill were passed and what the cost would be to the state.

The Judicial Branch states it does not have information on which to estimate how many additional misdemeanor prosecutions may result from this bill. The Judicial Branch asserts

the proposed bill contemplates a class A misdemeanor because a conviction could result in imprisonment for up to 90 days. The Judicial Branch states the cost to process a class A misdemeanor case in the district division of the circuit court will be \$62.71 in FY 2014 and \$64.40 in FY 2015. The Branch states if the proposed bill results in 160 new class A misdemeanors, the Branch would see a fiscal impact exceeding \$10,000 annually. Likewise, the Branch has no information on which to estimate how many new complex civil cases will be brought because of the proposed bill. The Judicial Branch states the cost to process a complex civil case in the superior court will be \$656.99 in FY 2014 and \$672.69 in FY 2015. At those rates, the Judicial Branch states if this proposed bill resulted in 16 new complex civil cases in FY 2014 and 15 cases in FY 2015, the fiscal impact would exceed \$10,000 annually. Another civil case type potentially arising under the proposed bill is an equitable action for injunctive relief in the superior court. The Judicial Branch estimates processing an equity case in the superior court would cost \$636.90 in FY 2014 and \$648.60 in FY 2015. The Branch states if this bill resulted in 16 new equity cases at those rates for either year, the Judicial Branch would see an impact exceeding \$10,000. According to the Judicial Branch, the estimated costs presented above do not consider the cost of any appeals to the superior court or supreme court, or both. The potential for appeals makes the number of cases needed for a fiscal impact to the Judicial Branch in excess of \$10,000 significantly fewer. The Branch also notes the cost estimates are based on data that is more than seven years old in some cases and does not reflect the changes to the courts over that same period of time, the impact these changes may have on processing these types of cases, or the increase in self-represented litigants.

The Judicial Council states the fiscal impact of this bill is indeterminable. The Judicial Council assumes this bill would not generate delinquency petitions in the Family Courts and also assumes anyone violating the provisions of this proposed bill would be ineligible for assistance of counsel at state expense because violators would do so within the context of their employment and probably would not meet the eligibility requirements. Nevertheless, the Council states if an individual is found to be indigent, the state would be subject to a flat fee of \$275 for each misdemeanor case handled by a public defender or contract attorney. If an assigned counsel attorney is used, the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney, and assigned counsel rates for Supreme Court appeals is \$2,000 per case. State expenditures would increase if assigned counsel attorneys receive permission to exceed the fee cap. Expenditures would increase if services are requested by counsel and approved during the defense of a case or during an appeal.

The Public Employees Labor Relations Board (PELRB) states the fiscal impact of this bill is indeterminable due to a number of unknown factors. The PELRB states this proposed bill may

directly or indirectly affect the extent to which employee organizations provide representation to bargaining unit employees in collective bargaining and grievance proceedings, matters commonly brought before the PELRB and the state superior and supreme courts. The PELRB asserts any changes in these areas might result in related expenditure reductions at the state, county, and local level, but the occurrence of such changes and the amount of any related expenditure reductions is speculative. Enforcement provisions of the Act may require new expenditures at the state and county levels in order to conduct investigations, prosecutions, and enforcement of the law. However, the extent to which such activity will be required cannot be determined based upon the information currently available.

The New Hampshire Association of Counties states this bill may have an impact on county expenditures related to collective bargaining but the impact is indeterminable. The Association states this bill will increase county expenditures related to investigations and prosecutions conducted by county attorneys and, to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted, or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The New Hampshire Municipal Association states the impact of this bill on local expenditures may have some effect on collective bargaining costs, but the fiscal impact is indeterminable because they cannot predict what that effect will be.

The Department of Administrative Services states this bill appears to have no fiscal impact on state, county, or local expenditures or revenue.