

HB 658-FN - AS INTRODUCED

2015 SESSION

15-0636
06/10

HOUSE BILL

658-FN

AN ACT prohibiting collective bargaining agreements that require employees to join a labor union.

SPONSORS: Rep. Baldasaro, Rock 5; Rep. W. O'Brien, Hills 5; Rep. Tucker, Rock 23; Rep. Boehm, Hills 20; Rep. Kappler, Rock 3; Rep. Spillane, Rock 2; Rep. Seidel, Hills 28; Rep. Eastman, Hills 28; Rep. Leeman, Straf 23

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT prohibiting collective bargaining agreements that require employees to join a labor union.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Right to Work Act. Amend RSA by inserting after chapter 273-C the following
2 new chapter:

3 CHAPTER 273-D

4 RIGHT TO WORK ACT

5 273-D:1 Declaration of Public Policy. It is hereby declared to be the public policy of this state in
6 order to maximize individual freedom of choice in the pursuit of employment and to encourage an
7 employment climate conducive to economic growth, that all persons shall have, and shall be
8 protected in the exercise of, the right freely, and without fear of penalty or reprisal, to form, join, or
9 assist labor organizations, or to refrain from any such activity.

10 273-D:2 Definitions. In this chapter:

11 I. "Employer" means any individual, corporation, association, organization, or entity that
12 employs one or more persons. The term includes, but is not limited to, the state of New Hampshire
13 and its agencies, every district, board, commission, instrumentality, or other unit whose governing
14 body exercises similar governmental powers. The term "employer" includes, but is not limited to,
15 employers of agricultural labor.

16 II. "Labor organization" means any organization of any kind, or agency or employee
17 representation committee or plan, which exists for the purpose, in whole or in part, of dealing with
18 employers concerning grievances, labor disputes, wages, rates of pay, hours of work, or other
19 conditions of employment.

20 273-D:3 Freedom of Choice Guaranteed; Discrimination Prohibited. No person shall be
21 required, as a condition of employment or continuation of employment:

22 I. To resign or refrain from voluntary membership in, voluntary affiliation with, or
23 voluntary financial support of a labor organization;

24 II. To become or remain a member of a labor organization;

25 III. To pay any dues, fees, assessments, or other charges of any kind or amount to a labor
26 organization;

27 IV. To pay any charity or other third party, in lieu of such payments, any amount equivalent
28 to or a pro-rata portion of dues, fees, assessments, or other charges of a labor organization; or

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

30 273-D:4 Voluntary Deductions Protected. It shall be unlawful for any employer to deduct from

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

9 273-D:5 Agreements in Violation, and Actions to Induce Such Agreements, Declared Illegal.
10 Any agreement, understanding or practice, written or oral, implied or expressed, between any labor
11 organization and employer which violates the rights of employees as guaranteed by the provisions of
12 this chapter is hereby declared to be unlawful, null and void, and of no legal effect. Any strike,
13 picketing, boycott, or other action, by a labor organization for the sole purpose of inducing or
14 attempting to induce an employer to enter into any agreement prohibited under this chapter is
15 hereby declared to be for an illegal purpose and is a violation of the provisions of this chapter.

16 273-D:6 Notice to be Posted. It shall be the duty of every employer to post and keep
17 continuously displayed the following notice at such a place or places in the business, establishment,
18 or premises where it may be readily seen by all employees, and it shall be the further duty of every
19 employer to furnish a copy of such notice to each employee at the time the employee is hired:

EMPLOYEES FREEDOM OF CHOICE

20
21 Under the law of the state of New Hampshire, employees are protected in the exercise of their
22 free choice to join or refrain from joining labor unions, and it is unlawful for an employer and a labor
23 union to enter into a contract or agreement requiring them to pay dues, fees, or charges of any kind
24 to a labor union as a condition of obtaining or keeping a job. Under this law, an employer may not
25 discharge or otherwise discriminate against an employee because of joining or refusing to join a labor
26 union, or to pay dues, or other charges to a labor union.

27 273-D:7 Coercion and Intimidation Prohibited. It shall be unlawful for any person, labor
28 organization, or officer, agent or member thereof, or employer, or officer thereof, by any threatened
29 or actual intimidation of an employee or prospective employee, or the employee's parents, spouse,
30 children, grandchildren, or any other persons residing in the employee's or prospective employee's
31 home, or by any damage or threatened damage to property, to compel or attempt to compel such
32 employee to join, affiliate with, or financially support a labor organization or to refrain from doing so,
33 or otherwise forfeit any rights as guaranteed by provisions of this chapter. It shall also be unlawful
34 to cause or attempt to cause an employee to be denied employment or discharged from employment
35 because of support or nonsupport of a labor organization by inducing or attempting to induce any
36 other person to refuse to work with such employees.

37 273-D:8 Penalties. Any person, employer, labor organization, agent, or representative of an

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

5 273-D:9 Civil Remedies. Any person harmed as a result of any violation or threatened violation
6 of the provisions of this chapter shall be entitled to injunctive relief against any and all violators or
7 persons threatening violation, and may also recover any or all damages of any character, including
8 costs and reasonable attorney fees, resulting from such violation or threatened violation, cognizable
9 at common law. Such remedies shall be independent of, and in addition to, the penalties and
10 remedies prescribed in other provisions of this chapter.

11 273-D:10 Duty to Investigate. It shall be the duty of the attorney general and of each county
12 attorney, to investigate any complaints of violation of this chapter, and to prosecute all persons
13 violating any of its provisions, and to use all means at their command to insure effective enforcement
14 of the provisions of this chapter.

15 273-D:11 Existing Contracts. The provisions of this chapter shall apply to all contracts entered
16 into on or after the effective date of this chapter and shall not apply to existing contracts, but shall
17 apply to any renewal or extensions of such existing contracts.

18 273-D:12 Exceptions. The provisions of this chapter shall not apply:

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

20 II. To federal employers and employees.

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

22 IV. To law enforcement officers and firefighters.

23 V. Where they would otherwise conflict with, or be preempted by, federal law.

24 273-D:13 Severability. If any provision of this chapter or the application thereof to any person
25 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the
26 chapter which can be given effect without the invalid provisions or applications, and to this end the
27 provisions of this chapter are severable.

28 2 Effective Date. This act shall take effect January 1, 2016.

HB 658-FN FISCAL NOTE

AN ACT prohibiting collective bargaining agreements that require employees to join a labor union.

FISCAL IMPACT:

The Department of Justice and Judicial Branch state this bill, **as introduced**, may increase state expenditures by an indeterminable amount in FY 2016 and each year thereafter. The Public Employees Labor Relations Board, Department of Administrative Services, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill will have an indeterminable fiscal impact on state, county, and local expenditures. There will be no fiscal impact on state, county, and local revenue.

METHODOLOGY:

The Department of Justice states this bill prohibits any person from being required, as a condition of employment or continuation of employment to: 1) resign or affiliate with a labor union; 2) become or remain a member of a labor union; 3) pay dues or other charges to a labor organization; 4) pay a third party in place of payments to a labor organization; or 5) provide clearance for hire through a labor union. The Attorney General and all county attorneys would have the authority to investigate and prosecute all persons who violate any of its provisions. The Department states it cannot predict how many cases or appeals will result from this bill and therefore cannot determine the impact on state expenditures.

The Judicial Branch states it does not have information on which to estimate how many charges or civil cases would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. This bill allows for civil damages action and contains an unspecified misdemeanor with the potential of imprisonment of up to 90 days. Any unspecified misdemeanor with the potential of imprisonment is treated as a class A misdemeanor. The Judicial Branch has provided the potential case costs associated with this bill, where they can be determined. See the following table for average cost information:

	FY 2016	FY 2017
Class A Misdemeanor	\$69	\$71
Complex Equity Case	\$699	\$712
Complex Civil Case	\$707	\$728

Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		

The Public Employees Labor Relations Board states the fiscal impact of this bill is indeterminable due to a number of unknown factors. The Board states this 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 Board and the state superior and supreme courts. The Board reports that any changes in these areas may result in related expenditure reductions at the state, county, and local level, but the occurrence of such changes and the amount of any related expenditures deductions is speculative. Enforcement provisions of the Act may require new expenditures at the state and county levels to conduct investigations and prosecutions to ensure effective enforcement of the law. However, the amount of activity that will be required cannot be determined based upon the information currently available.

The Department of Administrative Services, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill may have an indeterminable fiscal impact on state, county, and local expenditures if collective bargaining agreements are changed.