

SB 11-FN - AS INTRODUCED

2017 SESSION

17-0133

06/03

SENATE BILL

11-FN

AN ACT

prohibiting collective bargaining agreements that require employees to join or contribute to a labor union.

SPONSORS:

Sen. Reagan, Dist 17; Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Sen. Bradley, Dist 3; Sen. Daniels, Dist 11; Sen. French, Dist 7; Sen. Gannon, Dist 23; Sen. Giuda, Dist 2; Sen. Gray, Dist 6; Sen. Innis, Dist 24; Sen. Morse, Dist 22; Sen. Sanborn, Dist 9; Sen. Ward, Dist 8; Rep. McGuire, Merr. 29; Rep. Spillane, Rock. 2; Rep. Dean-Bailey, Rock. 32; Rep. L. Turcotte, Straf. 4; Rep. Itse, Rock. 10

COMMITTEE:

Commerce

ANALYSIS

This bill prohibits collective bargaining agreements that require employees to join or contribute to 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Seventeen

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

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

1 1 Name of Act. It is the intent of the general court that this act be known as “The New
2 Hampshire Right to Work Act.”

3 2 New Chapter; Right to Work Act. Amend RSA by inserting after chapter 273-C the following
4 new chapter:

5 CHAPTER 273-D

6 RIGHT TO WORK ACT

7 273-D:1 Short Title. This act may be cited as the “Right to Work Act.”

8 273-D:2 Declaration of Public Policy. It is hereby declared to be the public policy of this state in
9 order to maximize individual freedom of choice in the pursuit of employment and to encourage an
10 employment climate conducive to economic growth, that all persons shall have, and shall be
11 protected in the exercise of, the right freely, and without fear of penalty or reprisal, to form, join, or
12 assist labor organizations, or to refrain from any such activity.

13 273-D:3 Definitions. In this chapter:

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

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

23 273-D:4 Freedom of Choice Guaranteed; Discrimination Prohibited. No person shall be
24 required, as a condition of employment or continuation of employment:

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

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

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

30 IV. To pay any charity or other third party, in lieu of such payments, any amount

1 equivalent to or a pro-rata portion of dues, fees, assessments, or other charges of a labor
2 organization; or

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

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

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

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

24 EMPLOYEES FREEDOM OF CHOICE

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

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

1 employment because of support or nonsupport of a labor organization by inducing or attempting to
2 induce any other person to refuse to work with such employees.

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

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

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

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

21 273-D:13 Exceptions. The provisions of this chapter shall not apply:

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

23 II. To federal employers and employees.

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

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

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

30 3 Effective Date. This act shall take effect upon its passage.

**SB 11-FN- FISCAL NOTE
AS INTRODUCED**

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

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill prohibits collective bargaining agreements that require employees to join or contribute to a labor union. No person shall be required, as a condition of employment, to resign or refrain from membership in a labor organization, or become or remain a member of a labor organization or pay dues, fees, assessments or other charges to a labor organization. It requires authorization of the employee before any such fees can be collected via payroll deduction. The bill also provides for civil and criminal penalties.

The Department of Administrative Services states the impact on State revenues and expenditures is indeterminable because the Department does not know how this will impact collective bargaining with the State's four unions.

The Department of Labor states there would be an indeterminable increase in expenditures due to a miniscule cost of printing and mailing posters upon request.

The Public Employee Labor Relations Board has jurisdiction limited to public sector collective bargaining in the state and not private sector bargaining under the National Labor Relations Act. The fiscal impact is indeterminable due to unknown factors such as how public sector

employees and employee organizations/unions will conduct themselves and their business. It may or may not directly or indirectly affect the extent to which employee organizations provide representation to bargaining unit employees in the bargaining process, in grievance proceedings, in matters commonly filed with the PELRB, and the State Superior and Supreme Courts. Expenditure reductions in these areas are indeterminable. Any enforcement provisions may also require new expenditures at the State and County level in order to conduct investigations of complaints, conduct prosecutions and effective enforcement.

The New Hampshire Municipal Association states it is possible the legislation will have some effect on municipal costs for collective bargaining, but cannot predict what the effect will be. There is no effect on municipal revenue.

The penalties contained in this bill may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Class B Misdemeanor	\$49	\$50
Class A Misdemeanor	\$71	\$72
Complex Civil Case	\$727	\$735
Equitable Action for Injunctive Relief	\$734	\$740
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same time period of time or the impact these changes may have on processing the various case types.		
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

The Judicial Council assumes charges against an individual for violation of this legislation would occur in the context of the individual's occupation and gainful employment, and it would be unlikely to trigger eligibility standards for the appointment of counsel. The legislation regulates employment and labor activities and although it could conceivably lead to future prosecutions, historically, the indigent defense delivery system has not provided representation to defendants charged with crimes who have allegedly violated some aspect of the law

regulating the collective bargaining process. Anyone charged with a crime in the context of a business or occupation would likely be defended by their insurer or by their employer and obtain private counsel. One or two misdemeanor cases would not trigger the need for additional appropriations to the Public Defender Program and any cases not handled by that program may result in a small cost increase.

The Department of Justice states that it is uncertain how many investigations and prosecutions would take place as a result of the bill. While the bill would likely result in some additional investigative and prosecutorial responsibilities, the Department has no basis upon which to estimate the extent of the that extra work, thus the fiscal impact is indeterminable.

AGENCIES CONTACTED:

Department of Administrative Service, Department of Labor, Public Employee Labor Relations Board, New Hampshire Municipal Association, Judicial Branch, New Hampshire Association of Counties, Judicial Council, and Department of Justice