

HOUSE BILL 435

K3
HB 318/13 – ECM

4r1006

By: **Delegates W. Miller, Afzali, Aumann, Bates, Boteler, Dwyer, Eckardt, Elliott, Frank, George, Glass, Haddaway–Riccio, Impallaria, Kipke, Krebs, McComas, McDonough, McMillan, Norman, Parrott, Ready, Schuh, Schulz, Smigiel, Stocksdale, Vitale, and Wood**

Introduced and read first time: January 27, 2014

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

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

25 BY repealing and reenacting, without amendments,
26 Article – Courts and Judicial Proceedings
27 Section 2–309(j)(5)(i) and (ii)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2013 Replacement Volume and 2013 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Courts and Judicial Proceedings
5 Section 2–309(j)(5)(iii)
6 Annotated Code of Maryland
7 (2013 Replacement Volume and 2013 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Education
10 Section 6–407, 6–504, and 16–414.1(e)(3) and (f)
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2013 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Family Law
15 Section 5–595.3
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2013 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 15–904(e)
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2013 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Labor and Employment
25 Section 4–304
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2013 Supplement)

28 BY adding to
29 Article – Labor and Employment
30 Section 4–701 through 4–707 to be under the new subtitle “Subtitle 7. Right to
31 Work”
32 Annotated Code of Maryland
33 (2008 Replacement Volume and 2013 Supplement)

34 BY repealing and reenacting, with amendments,
35 Article – Land Use
36 Section 16–309
37 Annotated Code of Maryland
38 (2012 Volume and 2013 Supplement)

39 BY repealing

1 Article – Land Use
 2 Section 16–316
 3 Annotated Code of Maryland
 4 (2012 Volume and 2013 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – State Personnel and Pensions
 7 Section 3–502
 8 Annotated Code of Maryland
 9 (2009 Replacement Volume and 2013 Supplement)

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

12 **Article – Courts and Judicial Proceedings**

13 2–309.

14 (j) (5) (i) This paragraph applies to all full–time, merit system sworn
 15 law enforcement officers and correctional officers in the Charles County Sheriff’s
 16 Office at a rank of sergeant or below.

17 (ii) This paragraph does not apply to the following employees in
 18 the Charles County Sheriff’s Office:

- 19 1. Sworn law enforcement officers or correctional officers
 20 in the Charles County Sheriff’s Office at a rank of lieutenant or above;
- 21 2. Employees in appointed positions;
- 22 3. Civilian merit system employees;
- 23 4. Full–time reduced hours employees;
- 24 5. Part–time employees;
- 25 6. Contractual employees;
- 26 7. Temporary employees;
- 27 8. Emergency employees; or
- 28 9. Employees whose employment is administered under
 29 the county policies and procedures manual.

30 (iii) 1. A sworn law enforcement officer or correctional officer
 31 subject to this paragraph has the right to:

1 A. Take part in or refrain from taking part in forming,
2 joining, supporting, or participating in any employee organization or its lawful
3 activities;

4 B. Be represented by an exclusive representative, if any,
5 in collective bargaining; and

6 C. Engage in other concerted activities for the purpose of
7 collective bargaining.

8 2. Sworn law enforcement officers and correctional
9 officers subject to this paragraph may seek recognition in order to organize and
10 bargain collectively in good faith with the Sheriff or the Sheriff's designee concerning
11 the following matters:

12 A. Compensation, excluding salary, wages, and those
13 benefits determined, offered, administered, controlled, or managed by the County
14 Commissioners of Charles County;

15 B. Leave, holidays, and vacations; and

16 C. Hours, working conditions, and job security.

17 3. A sworn law enforcement officer or correctional officer
18 who is a member of a bargaining unit with an exclusive representative may discuss
19 any matter with the employer without the intervention of the exclusive representative.

20 4. [A sworn law enforcement officer or correctional
21 officer who is not a member of a bargaining unit with an exclusive representative may
22 be required to pay a proportional service fee for costs associated with the
23 administration and enforcement of any agreement that benefits the affected
24 employees.] An exclusive representative shall be selected in accordance with the
25 procedures set forth in subparagraph (v) of this paragraph.

26 5. This paragraph does not require that sworn law
27 enforcement officers and correctional officers be represented by the same exclusive
28 representative.

29 **Article – Education**

30 6–407.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) The public school employer shall:

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

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

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

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

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

13 (i) Members of the employee organization; and

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

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

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

22 6-504.

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

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

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

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

32 (ii) Required to pay an amount of money that is equal to the
33 service or representation fee to a nonreligious, nonunion charity or to such other

1 charitable organization as may be mutually agreed upon by the employee and the
2 employee organization, and who furnishes to the public school employer and the
3 employee organization written proof of the payment.

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

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

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

9 (d) The public school employer shall:

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

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

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

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

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

22 (i) Members of the employee organization; and

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

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

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

31 16-414.1.

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

5 (i) Any] ANY union dues authorized and owed by the employee
6 to the organization[; and

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

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

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

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

13 Article – Family Law

14 5–595.3.

15 (a) The State Department of Education shall designate appropriate
16 representatives to participate in collective bargaining with the provider organization
17 certified as the exclusive representative of family child care providers.

18 (b) Except as otherwise provided in this Part XI of this subtitle, the parties
19 shall adhere to the bargaining process set forth in § 3–501 of the State Personnel and
20 Pensions Article.

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

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

27 (1) reimbursement rates;

28 (2) benefits;

29 (3) payment procedures;

30 (4) contract grievance procedures;

1 (5) training;

2 (6) member dues deductions; and

3 (7) other terms and conditions of participation by family child care
4 providers in the Maryland Child Care Subsidy Program.

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

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

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

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

15 (ii) required to pay an amount of money as determined in
16 collective bargaining negotiations, not to exceed any service fee negotiated under
17 paragraph (1) of this subsection, to any charitable organization exempt from taxation
18 under § 501(c)(3) of the Internal Revenue Code and to furnish to the State Department
19 of Education and the exclusive representative written proof of the payment.

20 (f) (1) Collective bargaining shall include negotiations that result in the
21 establishment of a fund for the purpose of protecting family child care providers
22 against extreme hardship or loss of livelihood resulting from late State payments.

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

24 (3) The fund:

25 (i) may not be a State fund; but

26 (ii) shall be established and administered in consultation with
27 the State.

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

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

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

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

5 (1) may not be required to negotiate any matter that is inconsistent
6 with applicable law; and

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

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

13 **Article – Health – General**

14 15–904.

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

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

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

27 1. The Medicaid Waiver for Older Adults that is jointly
28 administered by the Department and the Department of Aging as established under §
29 15–132 of this title, or any successor program;

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

32 3. The Living at Home Waiver Program under Subtitle 8
33 of this title, or any successor program; and

1 4. The In-Home Aide Service Program administered by
2 the Department of Human Resources, or any successor program.

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

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

6 (ii) Shall pay an amount of money as determined in collective
7 bargaining negotiations, not to exceed any service fee negotiated under paragraph (1)
8 of this subsection, to any charitable organization exempt from taxation under §
9 501(c)(3) of the Internal Revenue Code and to furnish to the State agencies engaged in
10 collective bargaining under this subtitle and the exclusive representative written proof
11 of the payment.

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

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

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

22 Article – Labor and Employment

23 4-304.

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

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

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

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

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

1 **(1) EMPLOYERS AND EMPLOYEES COVERED BY THE FEDERAL**
2 **RAILWAY LABOR ACT;**

3 **(2) FEDERAL EMPLOYERS AND EMPLOYEES; AND**

4 **(3) EMPLOYERS AND EMPLOYEES ON EXCLUSIVE FEDERAL**
5 **ENCLAVES.**

6 **(B) A PROVISION OF THIS SUBTITLE THAT IS IN CONFLICT WITH OR**
7 **PREEMPTED BY FEDERAL LAW IS UNENFORCEABLE TO THE EXTENT OF THE**
8 **CONFLICT OR PREEMPTION.**

9 **4-703.**

10 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL**
11 **LAW, AN EMPLOYER MAY NOT REQUIRE, AS A CONDITION OF EMPLOYMENT OR**
12 **CONTINUED EMPLOYMENT, AN EMPLOYEE OR A PROSPECTIVE EMPLOYEE TO:**

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

14 **(2) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES TO**
15 **A LABOR ORGANIZATION; OR**

16 **(3) PAY TO ANY CHARITY OR ANOTHER THIRD PARTY, IN LIEU OF**
17 **A PAYMENT TO A LABOR ORGANIZATION, ANY AMOUNT EQUIVALENT TO OR PRO**
18 **RATA PORTION OF THE CHARGE REQUIRED TO BE PAID TO A LABOR**
19 **ORGANIZATION BY A MEMBER OF THE LABOR ORGANIZATION.**

20 **(B) AN EMPLOYER MAY NOT THREATEN AN EMPLOYEE OR A**
21 **PROSPECTIVE EMPLOYEE WITH AN ACTION THAT WOULD BE A VIOLATION OF**
22 **SUBSECTION (A) OF THIS SECTION.**

23 **4-704.**

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

27 **4-705.**

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

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

6 **4-706.**

7 **(A) AN INDIVIDUAL WHO VIOLATES § 4-703 OF THIS SUBTITLE IS**
8 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
9 **EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR, OR BOTH.**

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

13 **4-707.**

14 **(A) THE ATTORNEY GENERAL SHALL:**

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

17 **(2) INVESTIGATE ALL COMPLAINTS REGARDING VIOLATIONS OF §**
18 **4-703 OF THIS SUBTITLE; AND**

19 **(3) COMMENCE AND TRY ALL PROSECUTIONS FOR VIOLATIONS OF**
20 **§ 4-703 OF THIS SUBTITLE.**

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

25 **Article - Land Use**

26 **16-309.**

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

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

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

6 1. A. the Department; or

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

10 2. the exclusive representative.]

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

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

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

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

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2014.