# Senate

General Assembly

**File No. 360**

***January Session, 2019***

Senate Bill No. 64

*Senate, April 3, 2019*

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## *AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2019*) (a) As used in this section:

(1) "Employer" means a person engaged in business who has more than one employee, including the state and any political subdivision of the state;

(2) "Employee" means any person engaged in service to an employer in a business of such employer;

(3) "Political matters" means matters relating to: Elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political, civic, community, fraternal or labor organization; and

(4) "Religious matters" means matters relating to religious affiliation and practice and the decision to join or support any religious organization or association.

(b) Except as provided in subsection (f) of this section, no employer, or agent, representative or designee of such employer shall require an employee to attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer's opinion concerning political or religious matters, except that an employer or its agent, representative or designee may communicate to an employee any information concerning political or religious matters that the employer is required by law to communicate, but only to the extent of such legal requirement.

(c) No employer, or agent, representative or designee of such employer, shall discharge, discipline or penalize, or threaten to discharge, discipline or penalize, any employee because the employee, or a person acting on behalf of the employee, makes a good-faith report, orally or in writing, of a violation or a suspected violation of the provisions of this section. The provisions of this subsection shall not apply when the employee knows that such report is false.

(d) Any employee who is discharged, disciplined or penalized in violation of the provisions of this section may bring a civil action, not later than ninety days after the date of the alleged violation, in the superior court for the judicial district where the violation is alleged to have occurred or where the employer has its principal office. The court may award a prevailing employee all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position, back pay and reestablishment of any employee benefits to which the employee would otherwise have been eligible if such violation had not occurred. The court shall award a prevailing employee treble damages, together with reasonable attorney's fees and costs.

(e) Nothing in this section shall be construed to limit an employee's right to bring a common law cause of action against an employer for wrongful termination or to diminish or impair the rights of a person under any collective bargaining agreement.

(f) Nothing in this section shall prohibit: (1) A religious organization from requiring its employees to attend a meeting sponsored by such religious organization or to participate in any communications with such religious organization or its agent, representative or designee, the primary purpose of which is to communicate such religious organization's religious beliefs, practices or tenets; (2) a political organization from requiring its employees to attend a meeting sponsored by such political organization or to participate in any communications with such political organization or its agent, representative or designee, the primary purpose of which is to communicate such political organization's political tenets or purposes; (3) an institution of higher education, or any agent, representative or designee of such institution, from meeting with or participating in any communications with its employees concerning political or religious matters that are part of the regular coursework or any symposia or academic program at such institution; (4) casual conversations between employees, between an employee and an employer or between an employee and an agent, representative or designee of an employer, provided participation in such conversations is not required and such conversations occur in the normal course of the employee's duties; (5) an employer from discussing legislation, regulations, executive orders or other government actions with an employee that may directly impact the employer's business, how the employer's business may be conducted or how an employee's work may be performed; or (6) a requirement limited to the employer's managerial and supervisory employees.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *October 1, 2019* | New section |

***LAB*** *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

## *OFA Fiscal Note*

***State Impact:*** None

***Municipal Impact:*** None

### *Explanation*

The bill, which prohibits employers from requiring employees to attend certain meetings and allows any employee who was discharged, disciplined, or otherwise penalized in violation of the bill to bring a civil action before the court, does not result in a fiscal impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to need additional resources.

### *The Out Years*

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis**

**SB 64**

***AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS.***

## SUMMARY

This bill generally prohibits employers, including the state and its political subdivisions, from requiring their employees to attend an employer-sponsored meeting with the employer if the meeting's primary purpose is to communicate the employer's opinion about political or religious matters (i.e., "captive audience" meetings; see BACKGROUND). Under the bill, "employers" also include the employer's agents, representatives, or designees.

Under the bill:

1. "political matters" relate to (a) elections for political office, (b) political parties, (c) legislation, (d) regulation, and (e) decisions to join or support any political party or political, civic, community, fraternal, or labor organization and

2. "religious matters" relate to (a) religious affiliation and practice and (b) decisions to join or support any religious organization or association.

The bill provides certain exceptions to its prohibition, such as allowing (1) employers and employees to discuss political or religious matters in casual, non-mandatory conversations and (2) employers that are religious organizations to require their employees to attend meetings about the organization's religious beliefs, practices, or tenets.

The bill establishes certain job protections for employees who report violations of the bill and allows them to bring a civil suit against an employer who violates the protections. (However, it is unclear if the

bill provides any enforcement mechanism against employers who violate its prohibition on holding captive audience meetings.)

EFFECTIVE DATE: October 1, 2019

## EXCEPTIONS

The bill allows exceptions to its prohibition on captive audience meetings if the law requires the employer to communicate about religious or political matters, but only to the extent of the legal requirement. It also exempts casual conversations between employees, and between employees and employer, as long as they are not required and occur in the normal course of the employees' duties.

Employers may also (1) discuss with an employee legislation, regulations, executive orders, or other government actions that may directly impact the employer's business and how it may be conducted, or how an employee's work may be performed and (2) require captive audience meetings that are limited to the employer's managerial and supervisory employees.

The bill also provides exceptions specific to certain types of organizations and their agents, representatives, or designees. These allow:

1. a religious organization to require its employees to communicate with it or attend a meeting it sponsors if the primary purposes is to communicate the organization's religious beliefs, practices, or tenets;

2. a political organization to require its employees to communicate with it or attend a meeting it sponsors if the primary purpose is to communicate the organization's political tenets or purposes; and

3. an institution of higher education to communicate or meet with its employees about political or religious matters that are part of the institution's regular coursework, symposia, or academic

programs.

## EMPLOYEE PROTECTIONS

The bill prohibits employers from discharging, disciplining, or otherwise penalizing an employee or threatening to do so because the employee, or a person acting on the employee's behalf, makes a good faith verbal or written report about a violation or suspected violation of the bill. This protection does not apply if the employee knows the report is false. (It is unclear to whom the employee would report, as the bill does not require any state agency to investigate complaints about prohibited captive audience meetings or otherwise enforce the ban against them.)

## ENFORCEMENT

The bill allows an employee who was discharged, disciplined, or otherwise penalized in violation of the bill, to bring a civil action within 90 days after the alleged violation. (Since the bill only explicitly prohibits employers from discharging, disciplining, or penalizing employees who report a captive audience meeting, it is unclear if the bill also allows an employee to bring a civil suit alleging that he or she was (1) required to attend a captive audience meeting or (2) discharged, disciplined, or penalized for refusing to attend one.)

The action must be brought in the Superior Court for the judicial district where the violation is alleged to have occurred or where the employer has its principal office. The court may award a prevailing employee all appropriate relief, including rehire or reinstatement to his or her former position, back pay, and reestablishment of any employee benefits that the employee would have been eligible for if the violation had not occurred. The court must also award triple monetary damages plus reasonable attorney's fees and costs to a prevailing employee.

The bill does not (1) limit an employee's right to a common law cause of action for wrongful termination or (2) impair rights under a collective bargaining agreement.

## BACKGROUND

### *The National Labor Relations Act and Federal Preemption*

The federal National Labor Relations Act (NLRA) governs private-sector union organizing and collective bargaining rights and delineates unfair labor practices. The NLRA created the National Labor Relations Board (NLRB) to administer the law and rule on specific cases alleging unfair labor practices.

The NLRB and federal courts have generally allowed captive audience meetings as long as they are held more than 24 hours before a union election and the employer does not commit an unfair labor practice, such as threatening reprisal for supporting a union (See, e.g., Peerless Plywood Co., 107 NLRB 427 (1953); *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1966); and *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008)).

In 2018, Attorney General Jepsen issued a formal opinion on HB 5473 (2018), and concluded that a court would likely determine that the bill (which has identical language to this bill) is preempted by federal law (Opinion 2018-02).

## COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 9 Nay 5 (03/14/2019)