

Thank you Mr. Chair and members of the committee,

My name is Josh Cunningham and I am a project director for the National Conference of State Legislatures. I work in NCSL's Employment, Labor and Retirement program. NCSL serves as the bipartisan membership organization for the nation's state legislators and legislative staff. I come before you today at the invitation of the Chairman to discuss the national landscape of state policy as it relates to public employee organizing and collective bargaining. I want to preface my remarks by noting that NCSL does not take positions on state policy matters, including the bills being discussed today, and only seeks to inform the committee on relevant actions in other states.

I thought I'd start today with a quick overview of union participation across the country. Over the last roughly 40 years, union membership has declined by about half as a percentage of the overall workforce. According to the Bureau of Labor Statistics, in 2020 10.8% of the workforce belonged to an organized union. If we dig into that figure a little more, you will see that 6.3% of private sector workers are union members, while 34.8% of public sector workers belong to a union. I will note that these numbers are for union membership, but the number of workers represented by a union are higher.

### **National Trends**

NCSL has identified at least 356 enacted bills in 39 states and Washington, D.C. relating to public employee unions. These bills addressed a number of issues including collective bargaining rights, CBA parameters, union certification and recertification, and labor organization political activity.

### **State Actions Relevant to Today's Hearing**

In searching for legislation relevant to today's hearing, we identified three states that have enacted measures similar to some of the legislation under consideration here today. I will discuss a bill from Tennessee that addressed maintenance of membership clauses, Iowa's approach to certification and recertification and a bill in Kansas that limited the use of dues funds for political activities.

#### **Tennessee:**

Tennessee HB 1605, enacted in 2011, prohibits any collective bargaining agreement in the state from containing a maintenance of membership clause that restricts an employee's ability to leave the union prior to the end of the bargaining agreement. Tennessee's bill applied to all private and public sector employee organizations with no exceptions for corrections officers or public safety workers.

#### **Iowa:**

Iowa overhauled its public employee union law in 2017 with the enactment of House File 291. A key part of the legislation related to certification and recertification of an employee organization. The bill changed the threshold of support for a petition to organize from 10% of a bargaining unit to 30%. Additionally, the bill states that to certify or recertify a bargaining representative, a majority of the public employees in the bargaining unit must vote yes. This was a change from the previous requirement that it must only be a majority of those who vote. In

other words, under the new law, those in the bargaining unit who abstain from the vote are essentially counted as no votes.

In addition to union elections, the bill also limits what issues can be included in a negotiated agreement, including prohibiting payroll deductions for political action committees and other political contributions and activities. This provision does not apply to bargaining units comprised of at least 30% public safety employees.

**Kansas:**

The last state I want to highlight is Kansas, which enacted legislation in 2013 limiting public employee unions from using dues collected from member payroll deductions to fund partisan political activities. This includes endorsing political candidates and advocating for or against any political candidates. The unions can create separate Political Action Committee accounts but they must be funded through voluntary contributions and cannot be a condition of membership. Public employee unions are still permitted to use dues payments to communicate with their own members about political candidates or to solicit member donations to the PAC. The Kansas law provides no exceptions for corrections officers or public safety workers.

I have provided the committee with links to the text of these three bills for your reference. I will just conclude by thanking the Chairman and the committee for inviting NCSL here today. I look forward to answering any additional questions you may have.

Thank you.



# Public Employee Unions

State Policies and Practices

Pennsylvania House Labor and Industry Committee

Public Hearing, November 15, 2021

## Union Participation

### Union membership:

1983 = 17.7 million workers (20.1%)

2020 = 14.3 million workers (10.8%)

### Share of Labor Force:

Public Sector = 34.8%

Private Sector = 6.3%

\*Data from U.S. Bureau of Labor Statistics, January 2021



## Noteworthy

Many factors can be attributed to declining union participation, including – shifting nature of work, technology, globalization and policy landscape.

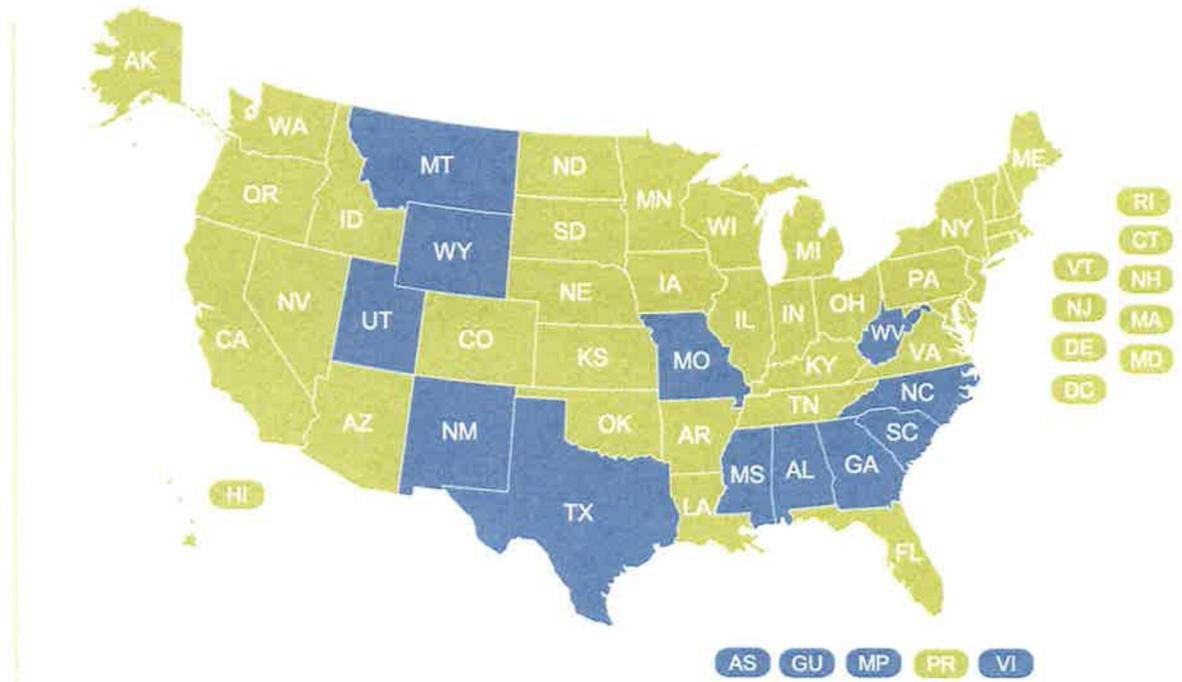
# National Trends

Since 2011, NCSL has tracked at least 356 bills enacted by 39 states, Washington, D.C. and Puerto Rico related to public employee unions. State legislation was a mix of clarifications of qualified employees, union certification rules, and negotiable items.

40

## States Enacting Bills

Of the 356 bills identified, 135 (38%) were in California, Hawaii, and Illinois. These tended to be memoranda of understanding or changing definitions of employees.

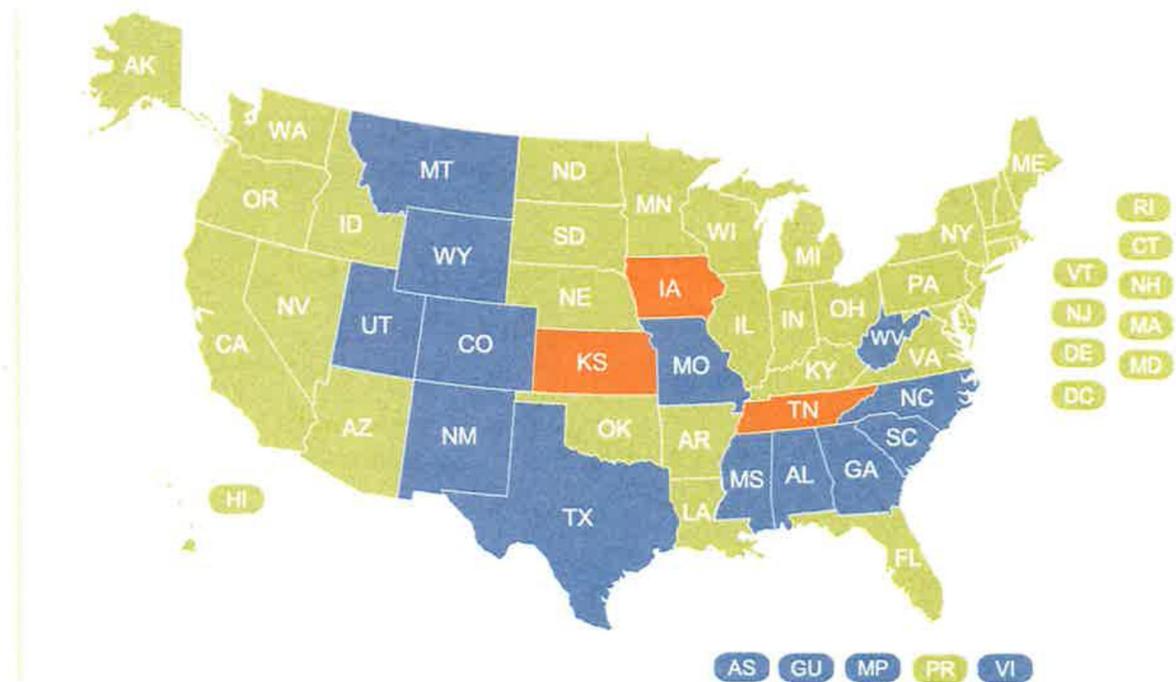


# Relevant to Today's Hearing

3

## Enacted Similar Bills

- Tennessee** - maintenance of membership
- Iowa** - public employee union elections
- Kansas** - political activity funded with dues.





Available by Unknown Author. Licensed under CC BY-SA 4.0

# Tennessee

## House Bill 1605

- Enacted 2011.
- Applies to public and private sector employers.
- Prohibits collective bargaining agreements from containing maintenance of membership clauses.
- Cannot prohibit an employee from withdrawing from their union prior to the expiration of the CBA.
- No exceptions for corrections officers or public safety employees.

- Enacted 2017.
- Required unions to recertify prior to the end of each bargaining agreement.
- If dissolved, two years must elapse before next petition may be initiated.
- Determined by majority of all employees represented, including non-voting employees.



Iowa

House File 291



# Kansas

## House Bill 2022

- Enacted 2013.
- Prohibits any public employee union from using dues deducted from employee paychecks to engage in “partisan political activity”.
  - Endorsing candidates.
  - Advocating or opposing candidates.
- May keep separate PAC accounts, contributions must be voluntary and not condition of membership.
- Applies to all public employee unions.

Thank You

Email

[Josh.Cunningham@ncsl.org](mailto:Josh.Cunningham@ncsl.org)

Josh Cunningham  
Project Manager, NCSL

HOUSE BILL 1605

By White

AN ACT to amend Tennessee Code Annotated, Title 50,  
Chapter 1, Part 2, relative to the right to work.

WHEREAS, the state of Tennessee is a right to work state; and

WHEREAS, Tennessee's Right to Work laws are premised on the belief that employees should be permitted to decide for themselves whether or not to join or financially support a union or employee organization; and

WHEREAS, Maintenance of Membership Clauses (MOM), which prohibit union members from leaving a union or employee organization and choosing not to pay their dues for the life of the collective bargaining agreement, frustrate the purpose of Tennessee's Right to Work laws; and

WHEREAS, MOM clauses can compromise union accountability in the very industries where employees may be most vulnerable; and

WHEREAS, the state has a public interest in protecting an employee's inherent right to choose to forfeit his or her union or employee membership at any time for any reason; and

WHEREAS, MOM clauses pose a direct threat to Tennessee's workforce and the overall business environment of the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-1-204, is amended by redesignating it as § 50-1-205.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 1, Part 2, is amended by adding the following new section thereto:

50-1-204.

It is unlawful for any business or organization operating in the state of Tennessee to execute an agreement with a union or employee organization of any kind that includes a maintenance of membership clause prohibiting employees from withdrawing from a union or employee organization prior to the agreement's expiration.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

Senate Substitute for HOUSE BILL No. 2022

AN ACT concerning employees; relating to certain employee organizations; political activities; certain deductions from wages; amending K.S.A. 75-4333 and K.S.A. 2012 Supp. 44-319 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) It shall be a prohibited practice for any professional employees' organization, as defined in K.S.A. 72-5413, and amendments thereto, or public employee organization, as defined in K.S.A. 75-4322, and amendments thereto, to use any dues, fees, money or other assessments deducted from a member's paycheck for the purpose of engaging in partisan or political purposes as defined in subsection (d). A professional employees' organization or public employee organization may not require any contribution to a candidate, personal campaign committee, political action committee, registered political party, or political fund as a condition of membership or participation in the professional employees' organization or public employee organization.

(b) (1) A professional employees' organization or a public employee organization wishing to make expenditures for partisan or political purposes shall establish a political fund.

(2) Each professional employee's organization or public employee organization that establishes a political fund shall:

(A) Maintain the political fund as a separate, segregated account apart from any account containing money received by a professional employee's organization or a public employee organization as union dues;

(B) ensure that each contribution to the political fund is voluntary; and

(C) establish the political fund as a political action committee.

(3) (A) A professional employee's organization or a public employee organization may only make expenditures for partisan or political purposes from a political fund established in accordance with this section.

(B) A professional employee's organization or a public employee organization may not expend union dues for partisan or political purposes or transfer union dues to a political fund.

(c) (1) Nothing in this section precludes a professional employees' organization or a public employee organization from making expenditures of union dues to communicate directly with its own members about political candidates or political issues.

(2) Nothing in this section precludes a professional employees' organization or public employee organization from making expenditures of union dues either for the establishment of a political fund or to solicit contributions from its members to a political fund.

(d) (1) "Partisan or political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election.

(2) "Political fund" means a separate segregated fund established by a professional employees' organization or a public employee organization for partisan and political purposes that meets the requirements of this section.

(3) "Union dues" means dues, fees, money, or other assessments required as a condition of membership or participation in a professional employees' organization or a public employee organization.

(e) This section as it relates to public employee organizations shall be supplemental to the provisions of K.S.A. 75-4333, and amendments thereto, and shall be enforced pursuant to the provisions of K.S.A. 75-4334, and amendments thereto.

(f) This section as it relates to professional employees' organizations shall be supplemental to the provisions of K.S.A. 72-5430, and amendments thereto, and shall be enforced pursuant to the provisions of K.S.A. 72-5430a, and amendments thereto.

Sec. 2. K.S.A. 75-4333 is hereby amended to read as follows: 75-4333.

(a) The commission of any prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324, *and amendments thereto*;

(2) dominate, interfere or assist in the formation, existence, or administration of any employee organization;

(3) encourage or discourage membership in any employee organization, committee, association or representation plan by discrimination in hiring, tenure or other conditions of employment, or by blacklisting;

(4) discharge or discriminate against an employee because ~~he or she~~ *such employee* has filed any affidavit, petition or complaint or given any information or testimony under this act, or because ~~he or she~~ *such employee* has formed, joined or chosen to be represented by any employee organization;

(5) refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327, *and amendments thereto*;

(6) deny the rights accompanying certification or formal recognition granted in K.S.A. 75-4328, *and amendments thereto*;

(7) deliberately and intentionally avoid mediation, fact-finding, and arbitration endeavors as provided in K.S.A. 75-4332, *and amendments thereto*; or

(8) institute or attempt to institute a lockout.

(c) It shall be a prohibited practice for public employees or employee organizations willfully to:

(1) Interfere with, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324, *and amendments thereto*;

(2) interfere with, restrain or coerce a public employer with respect to management rights granted in K.S.A. 75-4326, *and amendments thereto*, or with respect to selecting a representative for the purposes of meeting and conferring or the adjustment of grievances;

(3) refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327, *and amendments thereto*;

(4) deliberately and intentionally avoid mediation, fact-finding and arbitration efforts as provided in K.S.A. 75-4332, *and amendments thereto*; or

(5) engage in a strike.

(d) (1) It shall be a prohibited practice for a public employee organization to endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or engage in any kind of activity advocating or opposing the election of candidates for any public office.

(2) *For the purposes of this section, "partisan or political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary or election.*

(e) In the application and construction of this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment shall be regarded as binding or controlling precedent.

New Sec. 3. If any provision of this act, including any amendment made by this act, or the application of any such provision to any person or circumstance, is held invalid, the validity of any other provision of this act, or the application of such provision to other persons and circumstances, shall not be affected thereby.

Sec. 4. K.S.A. 2012 Supp. 44-319 is hereby amended to read as follows: 44-319. (a) *Except as provided in subsections (b) and (c)*, no employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee; or (4) the deductions are for contributions attributable to automatic enrollment, as defined in K.S.A. 2012 Supp. 44-319a, and amendments thereto, in a retirement plan established by the employer described in sections 401(k), 403(b), 408, 408A or 457 of the internal revenue code.

(b) *Subject to the provisions of subsection (e), pursuant to a signed written agreement between the employer and employee, an employer may*

*withhold, deduct or divert any portion of an employee's wages for the following purposes:*

*(1) To allow the employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment;*

*(2) to allow for recovery of payroll overpayment; and*

*(3) to compensate the employer for the replacement cost or unpaid balance of the cost of the employer's merchandise or uniforms purchased by the employee.*

*(c) Subject to the provisions of subsection (e), upon providing a written notice and explanation, an employer may withhold, deduct or divert any portion of an employee's final wages for the following purposes:*

*(1) To recover the employer's property provided to the employee in the course of the employer's business including, but not limited to, tools of the trade or profession, personal safety equipment, computers, electronic devices, mobile phones, proprietary information such as client or customer lists and intellectual property, security information, keys or access cards or materials until such time as such property is returned by the employee to the employer. Upon return of the employer's property, the employer shall relinquish the wages withheld to the employee;*

*(2) to allow an employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment;*

*(3) to allow for the recovery of payroll overpayment; or*

*(4) to compensate the employer for the replacement cost or unpaid balance of the cost of the employer's merchandise, uniforms, company property, equipment, tools of the trade or other materials intentionally purchased by the employee.*

*(d) Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations; nor shall this section prohibit deductions by check-off of dues to labor organizations or service fees, where such is not otherwise prohibited by law.*

*(e) Amounts withheld under this section shall not reduce wages paid to below the minimum wage required under the federal fair labor standards act, 29 U.S.C.A. § 201 et seq., or the minimum wage required under K.S.A. 44-1203, and amendments thereto, whichever is applicable.*

Sec. 5. K.S.A. 75-4333 and K.S.A. 2012 Supp. 44-319 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*