

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2474  
OFFERED BY MR. SCOTT OF VIRGINIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Protecting the Right  
3 to Organize Act of 2019”.

**4 SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELA-  
5 TIONS ACT.**

6       (a) DEFINITIONS.—

7           (1) JOINT EMPLOYER.—Section 2(2) of the Na-  
8 tional Labor Relations Act (29 U.S.C. 152(2)) is  
9 amended by adding at the end the following: “Two  
10 or more persons shall be employers with respect to  
11 an employee if each such person codetermines or  
12 shares control over the employee’s essential terms  
13 and conditions of employment. In determining  
14 whether such control exists, the Board or a court of  
15 competent jurisdiction shall consider as relevant di-  
16 rect control and indirect control over such terms and  
17 conditions, reserved authority to control such terms  
18 and conditions, and control over such terms and con-

1       ditions exercised by a person in fact: *Provided*, That  
2       nothing herein precludes a finding that indirect or  
3       reserved control standing alone can be sufficient  
4       given specific facts and circumstances.”.

5           (2) EMPLOYEE.—Section 2(3) of the National  
6       Labor Relations Act (29 U.S.C. 152(3)) is amended  
7       by adding at the end the following: “An individual  
8       performing any service shall be considered an em-  
9       ployee (except as provided in the previous sentence)  
10      and not an independent contractor, unless—

11           “(A) the individual is free from control and  
12      direction in connection with the performance of  
13      the service, both under the contract for the per-  
14      formance of service and in fact;

15           “(B) the service is performed outside the  
16      usual course of the business of the employer;  
17      and

18           “(C) the individual is customarily engaged  
19      in an independently established trade, occupa-  
20      tion, profession, or business of the same nature  
21      as that involved in the service performed.”.

22           (3) SUPERVISOR.—Section 2(11) of the Na-  
23      tional Labor Relations Act (29 U.S.C. 152(11)) is  
24      amended—

1 (A) by inserting “and for a majority of the  
2 individual’s worktime” after “interest of the  
3 employer”;

4 (B) by striking “assign,”; and

5 (C) by striking “or responsibly to direct  
6 them,”.

7 (b) REPORTS.—Section 3(c) of the National Labor  
8 Relations Act is amended—

9 (1) by striking “The Board” and inserting “(1)  
10 The Board”; and

11 (2) by adding at the end the following:

12 “(2) Effective January 1, 2021, section 3003 of  
13 the Federal Reports Elimination and Sunset Act of  
14 1995 (Public Law 166–44; 31 U.S.C. 1113 note)  
15 shall not apply with respect to reports required  
16 under this subsection.

17 “(3) Each report issued under this subsection  
18 shall include no less detail than reports issued by the  
19 Board prior to the termination of such reports under  
20 section 3003 of the Federal Reports Elimination and  
21 Sunset Act of 1995 (Public Law 166–44; 31 U.S.C.  
22 1113 note).”.

23 (c) APPOINTMENT.—Section 4(a) of the National  
24 Labor Relations Act (29 U.S.C. 154(a)) is amended by  
25 striking “, or for economic analysis”.

1 (d) UNFAIR LABOR PRACTICES.—Section 8 of the  
2 National Labor Relations Act (29 U.S.C. 158) is amend-  
3 ed—

4 (1) in subsection (a)—

5 (A) in paragraph (5), by striking the pe-  
6 riod and inserting “; and”; and

7 (B) by adding at the end the following:

8 “(6) to promise, threaten, or take any action—

9 “(A) to permanently replace an employee  
10 who participates in a strike as defined by sec-  
11 tion 501(2) of the Labor Management Rela-  
12 tions Act, 1947 (29 U.S.C. 142(2)); or

13 “(B) to discriminate against an employee  
14 who is working or has unconditionally offered to  
15 return to work for the employer because the  
16 employee supported or participated in such a  
17 strike.”;

18 (2) in subsection (b)—

19 (A) by striking paragraphs (4) and (7);

20 (B) by redesignating paragraphs (5) and  
21 (6) as paragraphs (4) and (5), respectively;

22 (C) in paragraph (4), as so redesignated,  
23 by striking “affected;” and inserting “affected;  
24 and”; and

1 (D) in paragraph (5), as so redesignated,  
2 by striking “; and” and inserting a period;

3 (3) in subsection (c), by striking the period at  
4 the end and inserting the following: “: *Provided*,  
5 That it shall be an unfair labor practice under sub-  
6 section (a)(1) for any employer to require or coerce  
7 an employee to attend or participate in such employ-  
8 er’s campaign activities unrelated to the employee’s  
9 job duties, including activities that are subject to the  
10 requirements under section 203(b) of the Labor-  
11 Management Reporting and Disclosure Act of 1959  
12 (29 U.S.C. 433(b)).”;

13 (4) in subsection (d)—

14 (A) by redesignating paragraphs (1)  
15 through (4) as subparagraphs (A) through (D),  
16 respectively;

17 (B) by striking “For the purposes of this  
18 section” and inserting “(1) For purposes of this  
19 section”;

20 (C) by inserting “and to maintain current  
21 wages, hours, and working conditions pending  
22 an agreement” after “arising thereunder”;

23 (D) by inserting “: *Provided*, That an em-  
24 ployer’s duty to collectively bargain shall con-  
25 tinue absent decertification of the labor organi-

1 zation following an election conducted pursuant  
2 to section 9” after “making of a concession.”;

3 (E) by inserting “*further*” before “, That  
4 where there is in effect”;

5 (F) by striking “The duties imposed” and  
6 inserting “(2) The duties imposed”;

7 (G) by striking “by paragraphs (2), (3),  
8 and (4)” and inserting “by subparagraphs (B),  
9 (C), and (D) of paragraph (1)”;

10 (H) by striking “section 8(d)(1)” and in-  
11 serting “paragraph (1)(A)”;

12 (I) by striking “section 8(d)(3)” and in-  
13 serting “paragraph (1)(C)” in each place it ap-  
14 pears;

15 (J) by striking “section 8(d)(4)” and in-  
16 serting “paragraph (1)(D)”;

17 (K) by adding at the end the following:

18 “(3) Whenever collective bargaining is for the pur-  
19 pose of establishing an initial collective bargaining agree-  
20 ment following certification or recognition of a labor orga-  
21 nization, the following shall apply:

22 “(A) Not later than 10 days after receiving a  
23 written request for collective bargaining from an in-  
24 dividual or labor organization that has been newly  
25 recognized or certified as a representative as defined

1 in section 9(a), or within such further period as the  
2 parties agree upon, the parties shall meet and com-  
3 mence to bargain collectively and shall make every  
4 reasonable effort to conclude and sign a collective  
5 bargaining agreement.

6 “(B) If after the expiration of the 90-day pe-  
7 riod beginning on the date on which bargaining is  
8 commenced, or such additional period as the parties  
9 may agree upon, the parties have failed to reach an  
10 agreement, either party may notify the Federal Me-  
11 diation and Conciliation Service of the existence of  
12 a dispute and request mediation. Whenever such a  
13 request is received, it shall be the duty of the Service  
14 promptly to put itself in communication with the  
15 parties and to use its best efforts, by mediation and  
16 conciliation, to bring them to agreement.

17 “(C) If after the expiration of the 30-day period  
18 beginning on the date on which the request for me-  
19 diation is made under subparagraph (B), or such ad-  
20 ditional period as the parties may agree upon, the  
21 Service is not able to bring the parties to agreement  
22 by conciliation, the Service shall refer the dispute to  
23 a tripartite arbitration panel established in accord-  
24 ance with such regulations as may be prescribed by  
25 the Service, with one member selected by the labor

1 organization, one member selected by the employer,  
2 and one neutral member mutually agreed to by the  
3 parties. The labor organization and employer must  
4 each select the members of the tripartite arbitration  
5 panel within 14 days of the Service's referral; if the  
6 labor organization or employer fail to do so, the  
7 Service shall designate any members not selected by  
8 the labor organization or the employer. A majority  
9 of the tripartite arbitration panel shall render a deci-  
10 sion settling the dispute and such decision shall be  
11 binding upon the parties for a period of two years,  
12 unless amended during such period by written con-  
13 sent of the parties. Such decision shall be based  
14 on—

15 “(i) the employer's financial status and  
16 prospects;

17 “(ii) the size and type of the employer's  
18 operations and business;

19 “(iii) the employees' cost of living;

20 “(iv) the employees' ability to sustain  
21 themselves, their families, and their dependents  
22 on the wages and benefits they earn from the  
23 employer; and



1           “(v) the wages and benefits other employ-  
2           ers in the same business provide their employ-  
3           ees.”;

4           (5) by amending subsection (e) to read as fol-  
5           lows:

6           “(e) Notwithstanding chapter 1 of title 9, United  
7           States Code (commonly known as the ‘Federal Arbitration  
8           Act’), or any other provision of law, it shall be an unfair  
9           labor practice under subsection (a)(1) for any employer—

10           “(1) to enter into or attempt to enforce any  
11           agreement, express or implied, whereby prior to a  
12           dispute to which the agreement applies, an employee  
13           undertakes or promises not to pursue, bring, join,  
14           litigate, or support any kind of joint, class, or collec-  
15           tive claim arising from or relating to the employ-  
16           ment of such employee in any forum that, but for  
17           such agreement, is of competent jurisdiction;

18           “(2) to coerce an employee into undertaking or  
19           promising not to pursue, bring, join, litigate, or sup-  
20           port any kind of joint, class, or collective claim aris-  
21           ing from or relating to the employment of such em-  
22           ployee; or

23           “(3) to retaliate or threaten to retaliate against  
24           an employee for refusing to undertake or promise  
25           not to pursue, bring, join, litigate, or support any

1 kind of joint, class, or collective claim arising from  
2 or relating to the employment of such employee:  
3 *Provided*, That any agreement that violates this sub-  
4 section or results from a violation of this subsection  
5 shall be to such extent unenforceable and void: *Pro-*  
6 *vided further*, That this subsection shall not apply to  
7 any agreement embodied in or expressly permitted  
8 by a contract between an employer and a labor orga-  
9 nization.”;

10 (6) in subsection (g), by striking “clause (B) of  
11 the last sentence of section 8(d) of this Act” and in-  
12 serting “subsection (d)(2)(B)”;

13 (7) by adding at the end the following:

14 “(h)(1) The Board shall promulgate regulations re-  
15 quiring each employer to post and maintain, in con-  
16 spicuous places where notices to employees and applicants  
17 for employment are customarily posted both physically and  
18 electronically, a notice setting forth the rights and protec-  
19 tions afforded employees under this Act. The Board shall  
20 make available to the public the form and text of such  
21 notice. The Board shall promulgate regulations requiring  
22 employers to notify each new employee of the information  
23 contained in the notice described in the preceding two sen-  
24 tences.

1           “(2) Whenever the Board directs an election under  
2 section 9(c) or approves an election agreement, the em-  
3 ployer of employees in the bargaining unit shall, not later  
4 than two business days after the Board directs such elec-  
5 tion or approves such election agreement, provide a voter  
6 list to a labor organization that has petitioned to represent  
7 such employees. Such voter list shall include the names  
8 of all employees in the bargaining unit and such employ-  
9 ees’ home addresses, work locations, shifts, job classifica-  
10 tions, and, if available to the employer, personal landline  
11 and mobile telephone numbers, and work and personal  
12 email addresses; the voter list must be provided in a  
13 searchable electronic format generally approved by the  
14 Board unless the employer certifies that the employer does  
15 not possess the capacity to produce the list in the required  
16 form. Not later than nine months after the date of enact-  
17 ment of the Protecting the Right to Organize Act of 2019,  
18 the Board shall promulgate regulations implementing the  
19 requirements of this paragraph.

20           “(i) The rights of an employee under section 7 in-  
21 clude the right to use electronic communication devices  
22 and systems (including computers, laptops, tablets, inter-  
23 net access, email, cellular telephones, or other company  
24 equipment) of the employer of such employee to engage  
25 in activities protected under section 7 if such employer has

1 given such employee access to such devices and systems  
2 in the course of the work of such employee, absent a com-  
3 pelling business rationale.”.

4 (e) REPRESENTATIVES AND ELECTIONS.—Section 9  
5 of the National Labor Relations Act (29 U.S.C. 159) is  
6 amended—

7 (1) in subsection (c)—

8 (A) by amending paragraph (1) to read as  
9 follows:

10 “(1) Whenever a petition shall have been filed, in ac-  
11 cordance with such regulations as may be prescribed by  
12 the Board, by an employee or group of employees or any  
13 individual or labor organization acting in their behalf al-  
14 leging that a substantial number of employees (i) wish to  
15 be represented for collective bargaining and that their em-  
16 ployer declines to recognize their representative as the rep-  
17 resentative defined in section 9(a), or (ii) assert that the  
18 individual or labor organization, which has been certified  
19 or is being recognized by their employer as the bargaining  
20 representative, is no longer a representative as defined in  
21 section 9(a), the Board shall investigate such petition and  
22 if it has reasonable cause to believe that a question of rep-  
23 resentation affecting commerce exists shall provide for an  
24 appropriate hearing upon due notice. Such hearing may  
25 be conducted by an officer or employee of the regional of-

1 fice, who shall not make any recommendations with re-  
2 spect thereto. If the Board finds upon the record of such  
3 hearing that such a question of representation exists, it  
4 shall direct an election by secret ballot and shall certify  
5 the results thereof. The Board shall find the labor organi-  
6 zation’s proposed unit to be appropriate if the employees  
7 in the proposed unit share a community of interest, and  
8 if the employees outside the unit do not share an over-  
9 whelming community of interest with employees inside. No  
10 employer shall have standing as a party or to intervene  
11 in any representation proceeding under this section.”;

12 (B) in paragraph (3), by striking “an eco-  
13 nomic strike who are not entitled to reinstatement”  
14 and inserting “a strike”;

15 (C) by redesignating paragraphs (4) and  
16 (5) as paragraphs (6) and (7), respectively;

17 (D) by inserting after paragraph (3) the  
18 following:

19 “(4) If the Board finds that, in an election under  
20 paragraph (1), a majority of the valid votes cast in a unit  
21 appropriate for purposes of collective bargaining have been  
22 cast in favor of representation by the labor organization,  
23 the Board shall certify the labor organization as the rep-  
24 resentative of the employees in such unit and shall issue  
25 an order requiring the employer of such employees to col-

1 lectively bargain with the labor organization in accordance  
2 with section 8(d). This order shall be deemed an order  
3 under section 10(c) of this Act, without need for a deter-  
4 mination of an unfair labor practice.

5       “(5)(A) If the Board finds that, in an election under  
6 paragraph (1), a majority of the valid votes cast in a unit  
7 appropriate for purposes of collective bargaining have not  
8 been cast in favor of representation by the labor organiza-  
9 tion, the Board shall dismiss the petition, subject to sub-  
10 paragraphs (B) and (C).

11       “(B) In any case in which a majority of the valid  
12 votes cast in a unit appropriate for purposes of collective  
13 bargaining have not been cast in favor of representation  
14 by the labor organization and the Board determines that  
15 the election should be set aside because the employer has  
16 committed a violation of this Act or otherwise interfered  
17 with a fair election, and the employer has not dem-  
18 onstrated that the violation or other interference is un-  
19 likely to have affected the outcome of the election, the  
20 Board shall, without ordering a new election, certify the  
21 labor organization as the representative of the employees  
22 in such unit and issue an order requiring the employer  
23 to bargain with the labor organization in accordance with  
24 section 8(d) if, at any time during the period beginning  
25 one year preceding the date of the commencement of the

1 election and ending on the date upon which the Board  
2 makes the determination of a violation or other inter-  
3 ference, a majority of the employees in the bargaining unit  
4 have signed authorizations designating the labor organiza-  
5 tion as their collective bargaining representative.

6 “(C) In any case where the Board determines that  
7 an election under this paragraph should be set aside, the  
8 Board shall direct a new election with appropriate addi-  
9 tional safeguards necessary to ensure a fair election proc-  
10 ess, except in cases where the Board issues a bargaining  
11 order under subparagraph (B).”; and

12 (E) by inserting after paragraph (7), as so  
13 redesignated, the following:

14 “(8) Except under extraordinary circumstances—

15 “(A) a pre-election hearing under this sub-  
16 section shall begin not later than eight days after a  
17 notice of such hearing is served on the labor organi-  
18 zation; and

19 “(B) a post-election hearing under this sub-  
20 section shall begin not later than 14 days after the  
21 filing of objections, if any.”; and

22 (2) in subsection (d), by striking “(e) or” and  
23 inserting “(d) or”.

24 (f) PREVENTION OF UNFAIR LABOR PRACTICES.—

25 Section 10(c) of the National Labor Relations Act (29

1 U.S.C. 160(c)) is amended by striking “suffered by him”  
2 and inserting “suffered by such employee: *Provided fur-*  
3 *ther*, That if the Board finds that an employer has dis-  
4 criminated against an employee in violation of paragraph  
5 (3) or (4) of section 8(a) or has committed a violation  
6 of section 8(a) that results in the discharge of an employee  
7 or other serious economic harm to an employee, the Board  
8 shall award the employee back pay without any reduction  
9 (including any reduction based on the employee’s interim  
10 earnings or failure to earn interim earnings), front pay  
11 (when appropriate), consequential damages, and an addi-  
12 tional amount as liquidated damages equal to two times  
13 the amount of damages awarded: *Provided further*, no re-  
14 lief under this subsection shall be denied on the basis that  
15 the employee is, or was during the time of relevant em-  
16 ployment or during the back pay period, an unauthorized  
17 alien as defined in section 274A(h)(3) of the Immigration  
18 and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other  
19 provision of Federal law relating to the unlawful employ-  
20 ment of aliens”.

21 (g) ENFORCING COMPLIANCE WITH ORDERS OF THE  
22 BOARD.—

23 (1) IN GENERAL.—Section 10 of the National  
24 Labor Relations Act (29 U.S.C. 160) is further  
25 amended—



1 (A) by striking subsection (e);

2 (B) by redesignating subsection (d) as sub-  
3 section (e);

4 (C) by inserting after subsection (c) the  
5 following:

6 “(d)(1) Each order of the Board shall take effect  
7 upon issuance of such order, unless otherwise directed by  
8 the Board, and shall remain in effect unless modified by  
9 the Board or unless a court of competent jurisdiction  
10 issues a superseding order.

11 “(2) Any person who fails or neglects to obey an  
12 order of the Board shall forfeit and pay to the Board a  
13 civil penalty of not more than \$10,000 for each violation,  
14 which shall accrue to the United States and may be recov-  
15 ered in a civil action brought by the Board to the district  
16 court of the United States in which the unfair labor prac-  
17 tice or other subject of the order occurred, or in which  
18 such person or entity resides or transacts business. No ac-  
19 tion by the Board under this paragraph may be made until  
20 30 days following the issuance of an order. Each separate  
21 violation of such an order shall be a separate offense, ex-  
22 cept that, in the case of a violation in which a person fails  
23 to obey or neglects to obey a final order of the Board,  
24 each day such failure or neglect continues shall be deemed  
25 a separate offense.

1           “(3) If, after having provided a person or entity with  
2 notice and an opportunity to be heard regarding a civil  
3 action under subparagraph (2) for the enforcement of an  
4 order, the court determines that the order was regularly  
5 made and duly served, and that the person or entity is  
6 in disobedience of the same, the court shall enforce obedi-  
7 ence to such order by an injunction or other proper proc-  
8 ess, mandatory or otherwise, to—

9           “(A) restrain such person or entity or the offi-  
10 cers, agents, or representatives of such person or en-  
11 tity, from further disobedience to such order; or

12           “(B) enjoin such person or entity, officers,  
13 agents, or representatives to obedience to the  
14 same.”;

15           (D) in subsection (f)—

16           (i) by striking “proceed in the same  
17 manner as in the case of an application by  
18 the Board under subsection (e) of this sec-  
19 tion,” and inserting “proceed as provided  
20 under paragraph (2) of this subsection”;

21           (ii) by striking “Any” and inserting  
22 the following:

23           “(1) Within 30 days of the issuance of an  
24 order, any”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(2) No objection that has not been urged before the  
4 Board, its member, agent, or agency shall be considered  
5 by a court, unless the failure or neglect to urge such objec-  
6 tion shall be excused because of extraordinary cir-  
7 cumstances. The findings of the Board with respect to  
8 questions of fact if supported by substantial evidence on  
9 the record considered as a whole shall be conclusive. If  
10 either party shall apply to the court for leave to adduce  
11 additional evidence and shall show to the satisfaction of  
12 the court that such additional evidence is material and  
13 that there were reasonable grounds for the failure to ad-  
14 duce such evidence in the hearing before the Board, its  
15 member, agent, or agency, the court may order such addi-  
16 tional evidence to be taken before the Board, its member,  
17 agent, or agency, and to be made a part of the record.  
18 The Board may modify its findings as to the facts, or  
19 make new findings, by reason of additional evidence so  
20 taken and filed, and it shall file such modified or new find-  
21 ings, which findings with respect to questions of fact if  
22 supported by substantial evidence on the record considered  
23 as a whole shall be conclusive, and shall file its rec-  
24 ommendations, if any, for the modification or setting aside  
25 of its original order. Upon the filing of the record with

1 it the jurisdiction of the court shall be exclusive and its  
2 judgment and decree shall be final, except that the same  
3 shall be subject to review by the appropriate United States  
4 court of appeals if application was made to the district  
5 court, and by the Supreme Court of the United States  
6 upon writ of certiorari or certification as provided in sec-  
7 tion 1254 of title 28, United States Code.”; and

8 (E) in subsection (g), by striking “sub-  
9 section (e) or (f) of this section” and inserting  
10 “subsection (d) or (f)”.

11 (2) CONFORMING AMENDMENT.—Section 18 of  
12 the National Labor Relations Act (29 U.S.C. 168)  
13 is amended by striking “ section 10(e) or (f)” and  
14 inserting “subsection (d) or (f) of section 10”.

15 (h) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-  
16 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-  
17 NOMIC HARM.—Section 10 of the National Labor Rela-  
18 tions Act (29 U.S.C. 160) is amended—

19 (1) in subsection (j)—

20 (A) by striking “The Board” and inserting  
21 “(1) The Board”; and

22 (B) by adding at the end the following:

23 “(2) Notwithstanding subsection (m), whenever it is  
24 charged that an employer has engaged in an unfair labor  
25 practice within the meaning of paragraph (1) or (3) of

1 section 8(a) that significantly interferes with, restrains, or  
2 coerces employees in the exercise of the rights guaranteed  
3 under section 7, or involves discharge or other serious eco-  
4 nomic harm to an employee, the preliminary investigation  
5 of such charge shall be made forthwith and given priority  
6 over all other cases except cases of like character in the  
7 office where it is filed or to which it is referred. If, after  
8 such investigation, the officer or regional attorney to  
9 whom the matter may be referred has reasonable cause  
10 to believe such charge is true and that a complaint should  
11 issue, such officer or attorney shall bring a petition for  
12 appropriate temporary relief or restraining order as set  
13 forth in paragraph (1). The district court shall grant the  
14 relief requested unless the court concludes that there is  
15 no reasonable likelihood that the Board will succeed on  
16 the merits of the Board’s claim.”; and

17 (2) by repealing subsections (k) and (l).

18 (i) PENALTIES.—

19 (1) IN GENERAL.—Section 12 of the National  
20 Labor Relations Act (29 U.S.C. 162) is amended—

21 (A) by striking “**SEC. 12.** Any person” and  
22 inserting the following:

23 “**SEC. 12. PENALTIES.**

24 “(a) VIOLATIONS FOR INTERFERENCE WITH  
25 BOARD.—Any person”; and

1 (B) by adding at the end the following:

2 “(b) VIOLATIONS FOR POSTING REQUIREMENTS AND  
3 VOTER LIST.—If the Board, or any agent or agency des-  
4 ignated by the Board for such purposes, determines that  
5 an employer has violated section 8(h) or regulations issued  
6 thereunder, the Board shall—

7 “(1) state the findings of fact supporting such  
8 determination;

9 “(2) issue and cause to be served on such em-  
10 ployer an order requiring that such employer comply  
11 with section 8(h) or regulations issued thereunder;  
12 and

13 “(3) impose a civil penalty in an amount deter-  
14 mined appropriate by the Board, except that in no  
15 case shall the amount of such penalty exceed \$500  
16 for each such violation.

17 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC  
18 HARM TO EMPLOYEES.—

19 “(1) IN GENERAL.—Any employer who commits  
20 an unfair labor practice within the meaning of para-  
21 graph (3) or (4) of section 8(a), or a violation of  
22 section 8(a) that results in the discharge of an em-  
23 ployee or other serious economic harm to an em-  
24 ployee, shall, in addition to any remedy ordered by  
25 the Board, be subject to a civil penalty in an amount

1 not to exceed \$50,000 for each violation, except that  
2 the Board shall double the amount of such penalty,  
3 to an amount not to exceed \$100,000, in any case  
4 where the employer has within the preceding five  
5 years committed another such violation.

6 “(2) CONSIDERATIONS.—In determining the  
7 amount of any civil penalty under this subsection,  
8 the Board shall consider—

9 “(A) the gravity of the unfair labor prac-  
10 tice;

11 “(B) the impact of the unfair labor prac-  
12 tice on the charging party, on other persons  
13 seeking to exercise rights guaranteed by this  
14 Act, and on the public interest; and

15 “(C) the gross income of the employer.

16 “(3) DIRECTOR AND OFFICER LIABILITY.—If  
17 the Board determines, based on the particular facts  
18 and circumstances presented, that a director or offi-  
19 cer’s personal liability is warranted, a civil penalty  
20 for a violation described in this subsection may also  
21 be assessed against any director or officer of the em-  
22 ployer who directed or committed the violation, had  
23 established a policy that led to such a violation, or  
24 had actual or constructive knowledge of and the au-

1       thority to prevent the violation and failed to prevent  
2       the violation.

3       “(d) RIGHT TO CIVIL ACTION.—

4             “(1) IN GENERAL.—Any person who is injured  
5       by reason of a violation of paragraph (1) or (3) of  
6       section 8(a) may, after 60 days following the filing  
7       of a charge with the Board alleging an unfair labor  
8       practice, bring a civil action in the appropriate dis-  
9       trict court of the United States against the employer  
10      within 90 days after the expiration of the 60-day pe-  
11      riod or the date the Board notifies the person that  
12      no complaint shall issue, whichever occurs earlier,  
13      provided that the Board has not filed a petition  
14      under section 10(j) of this Act prior to the expira-  
15      tion of the 60-day period. No relief under this sub-  
16      section shall be denied on the basis that the em-  
17      ployee is, or was during the time of relevant employ-  
18      ment or during the back pay period, an unauthor-  
19      ized alien as defined in section 274A(h)(3) of the  
20      Immigration and Nationality Act (8 U.S.C.  
21      1324a(h)(3)) or any other provision of Federal law  
22      relating to the unlawful employment of aliens.

23             “(2) AVAILABLE RELIEF.—Relief granted in an  
24      action under paragraph (1) may include—



1           “(A) back pay without any reduction, in-  
2           cluding any reduction based on the employee’s  
3           interim earnings or failure to earn interim earn-  
4           ings;

5           “(B) front pay (when appropriate);

6           “(C) consequential damages;

7           “(D) an additional amount as liquidated  
8           damages equal to two times the cumulative  
9           amount of damages awarded under subpara-  
10          graphs (A) through (C);

11          “(E) in appropriate cases, punitive dam-  
12          ages in accordance with paragraph (4); and

13          “(F) any other relief authorized by section  
14          706(g) of the Civil Rights Act of 1964 (42  
15          U.S.C. 2000e-5(g)) or by section 1977A(b) of  
16          the Revised Statutes (42 U.S.C. 1981a(b)).

17          “(3) ATTORNEY’S FEES.—In any civil action  
18          under this subsection, the court may allow the pre-  
19          vailing party a reasonable attorney’s fee (including  
20          expert fees) and other reasonable costs associated  
21          with maintaining the action.

22          “(4) PUNITIVE DAMAGES.—In awarding puni-  
23          tive damages under paragraph (2)(E), the court  
24          shall consider—

1           “(A) the gravity of the unfair labor prac-  
2           tice;

3           “(B) the impact of the unfair labor prac-  
4           tice on the charging party, on other persons  
5           seeking to exercise rights guaranteed by this  
6           Act, and on the public interest; and

7           “(C) the gross income of the employer.”.

8           (2) CONFORMING AMENDMENTS.—Section  
9           10(b) of the National Labor Relations Act (29  
10          U.S.C. 160(b)) is amended—

11           (A) by striking “six months” and inserting  
12           “180 days”; and

13           (B) by striking “the six-month period” and  
14           inserting “the 180-day period”.

15          (j) LIMITATIONS.—Section 13 of the National Labor  
16          Relations Act (29 U.S.C. 163) is amended by striking the  
17          period at the end and inserting the following: “: *Provided*,  
18          That the duration, scope, frequency, or intermittence of  
19          any strike or strikes shall not render such strike or strikes  
20          unprotected or prohibited.”.

21          (k) FAIR SHARE AGREEMENTS PERMITTED.—Sec-  
22          tion 14(b) of the National Labor Relations Act (29 U.S.C.  
23          164(b)) is amended by striking the period at the end and  
24          inserting the following: “: *Provided*, That collective bar-  
25          gaining agreements providing that all employees in a bar-

1 gaining unit shall contribute fees to a labor organization  
2 for the cost of representation, collective bargaining, con-  
3 tract enforcement, and related expenditures as a condition  
4 of employment shall be valid and enforceable notwith-  
5 standing any State or Territorial law.”.

6 **SEC. 3. CONFORMING AMENDMENTS TO THE LABOR MAN-**  
7 **AGEMENT RELATIONS ACT, 1947.**

8 The Labor Management Relations Act, 1947 is  
9 amended—

10 (1) in section 213(a) (29 U.S.C. 183(a)), by  
11 striking “clause (A) of the last sentence of section  
12 8(d) (which is required by clause (3) of such section  
13 8(d)), or within 10 days after the notice under  
14 clause (B)” and inserting “section 8(d)(2)(A) of the  
15 National Labor Relations Act (which is required by  
16 section 8(d)(1)(C) of such Act), or within 10 days  
17 after the notice under section 8(d)(2)(B) of such  
18 Act”; and

19 (2) by repealing section 303 (29 U.S.C. 187).

20 **SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**  
21 **PORTING AND DISCLOSURE ACT OF 1959.**

22 Section 203(c) of the Labor-Management Reporting  
23 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended  
24 by striking the period at the end and inserting the fol-  
25 lowing “: *Provided*, That this subsection shall not exempt

1 from the requirements of this section any arrangement or  
2 part of an arrangement in which a party agrees, for an  
3 object described in subsection (b)(1), to plan or conduct  
4 employee meetings; train supervisors or employer rep-  
5 resentatives to conduct meetings; coordinate or direct ac-  
6 tivities of supervisors or employer representatives; estab-  
7 lish or facilitate employee committees; identify employees  
8 for disciplinary action, reward, or other targeting; or draft  
9 or revise employer personnel policies, speeches, presen-  
10 tations, or other written, recorded, or electronic commu-  
11 nications to be delivered or disseminated to employees.”.

12 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

13       There are authorized to be appropriated such sums  
14 as may be necessary to carry out the provisions of this  
15 Act, including any amendments made by this Act.

