

117TH CONGRESS
1ST SESSION

H. R. 842

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Received; read twice and referred to the Committee on Health, Education,
Labor, and Pensions

AN ACT

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Protecting the Right to Organize Act of 2021”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE NATIONAL LABOR RELATIONS
ACT

Sec. 101. Definitions.

Sec. 102. Reports.

Sec. 103. Appointment.

Sec. 104. Unfair labor practices.

Sec. 105. Representatives and elections.

Sec. 106. Damages for unfair labor practices.

Sec. 107. Enforcing compliance with orders of the board.

Sec. 108. Injunctions against unfair labor practices involving discharge or other
serious economic harm.

Sec. 109. Penalties.

Sec. 110. Limitations on the right to strike.

Sec. 111. Fair share agreements permitted.

TITLE II—AMENDMENTS TO THE LABOR MANAGEMENT RELA-
TIONS ACT, 1947 AND THE LABOR-MANAGEMENT REPORTING
AND DISCLOSURE ACT OF 1959

Sec. 201. Conforming amendments to the Labor Management Relations Act,
1947.

Sec. 202. Amendments to the Labor-Management Reporting and Disclosure Act
of 1959.

TITLE III—OTHER MATTERS

Sec. 301. Electronic voting in Union elections.

Sec. 302. GAO report on sectoral bargaining.

Sec. 303. Severability.

Sec. 304. Authorization of appropriations.

Sec. 305. Rule of Construction.

Sec. 306. Rule of Construction.

Sec. 307. Rule of Construction.

Sec. 308. Rule of Construction.

Sec. 309. GAO Report.

1 **TITLE I—AMENDMENTS TO THE**
2 **NATIONAL LABOR RELATIONS**
3 **ACT**

4 **SEC. 101. DEFINITIONS.**

5 (a) JOINT EMPLOYER.—Section 2(2) of the National
6 Labor Relations Act (29 U.S.C. 152(2)) is amended by
7 adding at the end the following: “Two or more persons
8 shall be employers with respect to an employee if each
9 such person codetermines or shares control over the em-
10 ployee’s essential terms and conditions of employment. In
11 determining whether such control exists, the Board or a
12 court of competent jurisdiction shall consider as relevant
13 direct control and indirect control over such terms and
14 conditions, reserved authority to control such terms and
15 conditions, and control over such terms and conditions ex-
16 ercised by a person in fact: *Provided*, That nothing herein
17 precludes a finding that indirect or reserved control stand-
18 ing alone can be sufficient given specific facts and cir-
19 cumstances.”.

20 (b) EMPLOYEE.—Section 2(3) of the National Labor
21 Relations Act (29 U.S.C. 152(3)) is amended by adding
22 at the end the following: “An individual performing any
23 service shall be considered an employee (except as pro-
24 vided in the previous sentence) and not an independent
25 contractor, unless—

1 “(A) the individual is free from control and
2 direction in connection with the performance of
3 the service, both under the contract for the per-
4 formance of service and in fact;

5 “(B) the service is performed outside the
6 usual course of the business of the employer;
7 and

8 “(C) the individual is customarily engaged
9 in an independently established trade, occupa-
10 tion, profession, or business of the same nature
11 as that involved in the service performed.”.

12 (c) SUPERVISOR.—Section 2(11) of the National
13 Labor Relations Act (29 U.S.C. 152(11)) is amended—

14 (1) by inserting “and for a majority of the indi-
15 vidual’s worktime” after “interest of the employer”;

16 (2) by striking “assign,”; and

17 (3) by striking “or responsibly to direct them,”.

18 **SEC. 102. REPORTS.**

19 Section 3(c) of the National Labor Relations Act is
20 amended—

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

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

24 “(2) Effective January 1, 2023, section 3003 of the
25 Federal Reports Elimination and Sunset Act of 1995

1 (Public Law 166–44; 31 U.S.C. 1113 note) shall not apply
2 with respect to reports required under this subsection.

3 “(3) Each report issued under this subsection shall—

4 “(A) include no less detail than reports issued by the
5 Board prior to the termination of such reports under sec-
6 tion 3003 of the Federal Reports Elimination and Sunset
7 Act of 1995 (Public Law 166–44; 31 U.S.C. 1113 note);

8 “(B) list each case in which the Designated Agency
9 Ethics Official provided advice regarding whether a Mem-
10 ber should be recused from participating in a case or rule-
11 making; and

12 “(C) list each case in which the Designated Agency
13 Ethics Official determined that a Member should be
14 recused from participating in a case or rulemaking.”.

15 **SEC. 103. APPOINTMENT.**

16 Section 4(a) of the National Labor Relations Act (29
17 U.S.C. 154(a)) is amended by striking “, or for economic
18 analysis”.

19 **SEC. 104. UNFAIR LABOR PRACTICES.**

20 Section 8 of the National Labor Relations Act (29
21 U.S.C. 158) is amended—

22 (1) in subsection (a)—

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

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

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

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

6 “(B) to discriminate against an employee
7 who is working or has unconditionally offered to
8 return to work for the employer because the
9 employee supported or participated in such a
10 strike; or

11 “(C) to lockout, suspend, or otherwise
12 withhold employment from employees in order to
13 influence the position of such employees or the
14 representative of such employees in collective
15 bargaining prior to a strike; and

16 “(7) to communicate or misrepresent to an em-
17 ployee under section 2(3) that such employee is ex-
18 cluded from the definition of employee under section
19 2(3).”;

20 (2) in subsection (b)—

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

22 (B) by redesignating paragraphs (5) and
23 (6) as paragraphs (4) and (5), respectively;

1 (C) in paragraph (4), as so redesignated,
2 by striking “affected;” and inserting “affected;
3 and”; and

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

6 (3) in subsection (c), by striking the period at
7 the end and inserting the following: “: *Provided*,
8 That it shall be an unfair labor practice under sub-
9 section (a)(1) for any employer to require or coerce
10 an employee to attend or participate in such employ-
11 er’s campaign activities unrelated to the employee’s
12 job duties, including activities that are subject to the
13 requirements under section 203(b) of the Labor-
14 Management Reporting and Disclosure Act of 1959
15 (29 U.S.C. 433(b)).”;

16 (4) in subsection (d)—

17 (A) by redesignating paragraphs (1)
18 through (4) as subparagraphs (A) through (D),
19 respectively;

20 (B) by striking “For the purposes of this
21 section” and inserting “(1) For purposes of this
22 section”;

23 (C) by inserting “and to maintain current
24 wages, hours, and terms and conditions of em-

1 ployment pending an agreement” after “arising
2 thereunder”;

3 (D) by inserting “: *Provided*, That an em-
4 ployer’s duty to collectively bargain shall con-
5 tinue absent decertification of the labor organi-
6 zation following an election conducted pursuant
7 to section 9” after “making of a concession.”;

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

10 (F) by striking “The duties imposed” and
11 inserting “(2) The duties imposed”;

12 (G) by striking “by paragraphs (2), (3),
13 and (4)” and inserting “by subparagraphs (B),
14 (C), and (D) of paragraph (1)”;

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

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

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

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

23 “(3) Whenever collective bargaining is for the pur-
24 pose of establishing an initial collective bargaining agree-

1 ment following certification or recognition of a labor orga-
2 nization, the following shall apply:

3 “(A) Not later than 10 days after receiving a
4 written request for collective bargaining from an in-
5 dividual or labor organization that has been newly
6 recognized or certified as a representative as defined
7 in section 9(a), or within such further period as the
8 parties agree upon, the parties shall meet and com-
9 mence to bargain collectively and shall make every
10 reasonable effort to conclude and sign a collective
11 bargaining agreement.

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

23 “(C) If after the expiration of the 30-day period
24 beginning on the date on which the request for me-
25 diation is made under subparagraph (B), or such ad-

1 ditional period as the parties may agree upon, the
2 Service is not able to bring the parties to agreement
3 by conciliation, the Service shall refer the dispute to
4 a tripartite arbitration panel established in accord-
5 ance with such regulations as may be prescribed by
6 the Service, with one member selected by the labor
7 organization, one member selected by the employer,
8 and one neutral member mutually agreed to by the
9 parties. The labor organization and employer must
10 each select the members of the tripartite arbitration
11 panel within 14 days of the Service’s referral; if the
12 labor organization or employer fail to do so, the
13 Service shall designate any members not selected by
14 the labor organization or the employer. A majority
15 of the tripartite arbitration panel shall render a deci-
16 sion settling the dispute as soon as practicable and
17 not later than within 120 days, absent extraordinary
18 circumstances or by agreement or permission of the
19 parties, and such decision shall be binding upon the
20 parties for a period of 2 years, unless amended dur-
21 ing such period by written consent of the parties.
22 Such decision shall be based on—
23 “(i) the employer’s financial status and
24 prospects;

1 “(ii) the size and type of the employer’s
2 operations and business;

3 “(iii) the employees’ cost of living;

4 “(iv) the employees’ ability to sustain
5 themselves, their families, and their dependents
6 on the wages and benefits they earn from the
7 employer; and

8 “(v) the wages and benefits other employ-
9 ers in the same business provide their employ-
10 ees.”;

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

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

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

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

6 “(3) to retaliate or threaten to retaliate against
7 an employee for refusing to undertake or promise
8 not to pursue, bring, join, litigate, or support any
9 kind of joint, class, or collective claim arising from
10 or relating to the employment of such employee:
11 *Provided*, That any agreement that violates this sub-
12 section or results from a violation of this subsection
13 shall be to such extent unenforceable and void: *Pro-*
14 *vided further*, That this subsection shall not apply to
15 any agreement embodied in or expressly permitted
16 by a contract between an employer and a labor orga-
17 nization.”;

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

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

22 “(h)(1) The Board shall promulgate regulations re-
23 quiring each employer to post and maintain, in con-
24 spicuous places where notices to employees and applicants
25 for employment are customarily posted both physically and

1 electronically, a notice setting forth the rights and protec-
2 tions afforded employees under this Act. The Board shall
3 make available to the public the form and text of such
4 notice. The Board shall promulgate regulations requiring
5 employers to notify each new employee of the information
6 contained in the notice described in the preceding two sen-
7 tences and to ensure that such notice is provided to em-
8 ployees in a language spoken by such employees.

9 “(2) Whenever the Board directs an election under
10 section 9(c) or approves an election agreement, the em-
11 ployer of employees in the bargaining unit shall, not later
12 than 2 business days after the Board directs such election
13 or approves such election agreement, provide a voter list
14 to a labor organization that has petitioned to represent
15 such employees. Such voter list shall include the names
16 of all employees in the bargaining unit and such employ-
17 ees’ home addresses, work locations, shifts, job classifica-
18 tions, and, if available to the employer, personal landline
19 and mobile telephone numbers, and work and personal
20 email addresses; the voter list must be provided in a
21 searchable electronic format generally approved by the
22 Board unless the employer certifies that the employer does
23 not possess the capacity to produce the list in the required
24 form. Not later than 9 months after the date of enactment
25 of the Protecting the Right to Organize Act of 2021, the

1 Board shall promulgate regulations implementing the re-
2 quirements of this paragraph.

3 “(i) The rights of an employee under section 7 in-
4 clude the right to use electronic communication devices
5 and systems (including computers, laptops, tablets, inter-
6 net access, email, cellular telephones, or other company
7 equipment) of the employer of such employee to engage
8 in activities protected under section 7 if such employer has
9 given such employee access to such devices and systems
10 in the course of the work of such employee, absent a com-
11 pelling business rationale for denying or limiting such
12 use.”.

13 **SEC. 105. REPRESENTATIVES AND ELECTIONS.**

14 Section 9 of the National Labor Relations Act (29
15 U.S.C. 159) is amended—

16 (1) in subsection (c)—

17 (A) by amending paragraph (1) to read as
18 follows:

19 “(1) Whenever a petition shall have been filed, in ac-
20 cordance with such regulations as may be prescribed by
21 the Board, by an employee or group of employees or any
22 individual or labor organization acting in their behalf al-
23 leging that a substantial number of employees (i) wish to
24 be represented for collective bargaining and that their em-
25 ployer declines to recognize their representative as the rep-

1 representative defined in section 9(a), or (ii) assert that the
2 individual or labor organization, which has been certified
3 or is being recognized by their employer as the bargaining
4 representative, is no longer a representative as defined in
5 section 9(a), the Board shall investigate such petition and
6 if it has reasonable cause to believe that a question of rep-
7 resentation affecting commerce exists shall provide for an
8 appropriate hearing upon due notice. Such hearing may
9 be conducted by an officer or employee of the regional of-
10 fice, who shall not make any recommendations with re-
11 spect thereto. If the Board finds upon the record of such
12 hearing that such a question of representation exists, it
13 shall direct an election by secret ballot and shall certify
14 the results thereof. The Board shall find the labor organi-
15 zation's proposed unit to be appropriate if the employees
16 in the proposed unit share a community of interest, and
17 if the employees outside the unit do not share an over-
18 whelming community of interest with employees inside. At
19 the request of the labor organization, the Board shall di-
20 rect that the election be conducted through certified mail,
21 electronically, at the work location, or at a location other
22 than one owned or controlled by the employer. No em-
23 ployer shall have standing as a party or to intervene in
24 any representation proceeding under this section.”;

1 (B) in paragraph (3), by striking “an eco-
2 nomic strike who are not entitled to reinstate-
3 ment” and inserting “a strike”;

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

6 (D) by inserting after paragraph (3) the
7 following:

8 “(4) If the Board finds that, in an election under
9 paragraph (1), a majority of the valid votes cast in a unit
10 appropriate for purposes of collective bargaining have been
11 cast in favor of representation by the labor organization,
12 the Board shall certify the labor organization as the rep-
13 resentative of the employees in such unit and shall issue
14 an order requiring the employer of such employees to col-
15 lectively bargain with the labor organization in accordance
16 with section 8(d). This order shall be deemed an order
17 under section 10(c) of this Act, without need for a deter-
18 mination of an unfair labor practice.

19 “(5)(A) 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 not
22 been cast in favor of representation by the labor organiza-
23 tion, the Board shall certify the results of the election,
24 subject to subparagraphs (B) and (C).

1 “(B) In any case in which a majority of the valid
2 votes cast in a unit appropriate for purposes of collective
3 bargaining have not been cast in favor of representation
4 by the labor organization and the Board determines, fol-
5 lowing a post-election hearing, that the employer has com-
6 mitted a violation of this Act or otherwise interfered with
7 a fair election, and the employer has not demonstrated
8 that the violation or other interference is unlikely to have
9 affected the outcome of the election, the Board shall, with-
10 out ordering a new election, set aside the election and cer-
11 tify the labor organization as the representative of the em-
12 ployees in such unit and issue an order requiring the em-
13 ployer to bargain with the labor organization in accord-
14 ance with section 8(d) if, at any time during the period
15 beginning 1 year preceding the date of the commencement
16 of the election and ending on the date upon which the
17 Board makes the determination of a violation or other in-
18 terference, a majority of the employees in the bargaining
19 unit have signed authorizations designating the labor or-
20 ganization as their collective bargaining representative.

21 “(C) In any case where the Board determines that
22 an election under this paragraph should be set aside, the
23 Board shall direct a new election with appropriate addi-
24 tional safeguards necessary to ensure a fair election proc-

1 ess, except in cases where the Board issues a bargaining
2 order under subparagraph (B).”; and

3 (E) by inserting after paragraph (7), as so
4 redesignated, the following:

5 “(8) Except under extraordinary circumstances—

6 “(A) a pre-election hearing under this sub-
7 section shall begin not later than 8 days after a no-
8 tice of such hearing is served on the labor organiza-
9 tion and shall continue from day to day until com-
10 pleted;

11 “(B) a regional director shall transmit the no-
12 tice of election at the same time as the direction of
13 election, and shall transmit such notice and such di-
14 rection electronically (including transmission by
15 email or facsimile) or by overnight mail if electronic
16 transmission is unavailable;

17 “(C) not later than 2 days after the service of
18 the notice of hearing, the employer shall—

19 “(i) post the Notice of Petition for Elec-
20 tion in conspicuous places, including all places
21 where notices to employees are customarily
22 posted;

23 “(ii) if the employer customarily commu-
24 nicates with employees electronically, distribute
25 such Notice electronically; and

1 “(iii) maintain such posting until the peti-
2 tion is dismissed or withdrawn or the Notice of
3 Petition for Election is replaced by the Notice
4 of Election;

5 “(D) regional directors shall schedule elections
6 for the earliest date practicable, but not later than
7 the 20th business day after the direction of election;
8 and

9 “(E) a post-election hearing under this sub-
10 section shall begin not later than 14 days after the
11 filing of objections, if any.”;

12 (2) in subsection (d), by striking “(e) or” and
13 inserting “(d) or”; and

14 (3) by adding at the end the following:

15 “(f) The Board shall dismiss any petition for an elec-
16 tion with respect to a bargaining unit or any subdivision
17 if, during the 12-month period ending on the date on
18 which the petition is filed—

19 “(1) the employer has recognized a labor orga-
20 nization without an election and in accordance with
21 this Act;

22 “(2) the labor organization and employer en-
23 gaged in their first bargaining session following the
24 issuance of a bargaining order by the Board; or

1 “(3) the labor organization and successor em-
2 ployer engaged in their first bargaining session fol-
3 lowing a succession.

4 “(g) The Board shall dismiss any petition for an elec-
5 tion with respect to a bargaining unit or any subdivision
6 if there is in effect a lawful written collective bargaining
7 agreement between the employer and an exclusive rep-
8 resentative covering any employees in the unit specified
9 in the petition, unless the petition is filed—

10 “(1) on or after the date that is 3 years after
11 the date on which the collective bargaining agree-
12 ment took effect; or

13 “(2) during the 30-day period beginning on the
14 date that is 90 days before the date that is 3 years
15 after the date on which the collective bargaining
16 agreement took effect.

17 “(h) The Board shall suspend the processing of any
18 petition for an election with respect to a bargaining unit
19 or any subdivision if a labor organization files an unfair
20 labor practice charge alleging a violation of section 8(a)
21 and requesting the suspension of a pending petition until
22 the unlawful conduct, if any, is remedied or the charge
23 is dismissed unless the Board determines that employees
24 can, under the circumstances, exercise free choice in an

1 election despite the unlawful conduct alleged in the
2 charge.”.

3 **SEC. 106. DAMAGES FOR UNFAIR LABOR PRACTICES.**

4 Section 10(c) of the National Labor Relations Act
5 (29 U.S.C. 160(c)) is amended by striking “suffered by
6 him” and inserting “suffered by such employee: *Provided*
7 *further*, That if the Board finds that an employer has dis-
8 criminated against an employee in violation of paragraph
9 (3) or (4) of section 8(a) or has committed a violation
10 of section 8(a) that results in the discharge of an employee
11 or other serious economic harm to an employee, the Board
12 shall award the employee back pay without any reduction
13 (including any reduction based on the employee’s interim
14 earnings or failure to earn interim earnings), front pay
15 (when appropriate), consequential damages, and an addi-
16 tional amount as liquidated damages equal to two times
17 the amount of damages awarded: *Provided further*, no re-
18 lief under this subsection shall be denied on the basis that
19 the employee is, or was during the time of relevant em-
20 ployment or during the back pay period, an unauthorized
21 alien as defined in section 274A(h)(3) of the Immigration
22 and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other
23 provision of Federal law relating to the unlawful employ-
24 ment of aliens”.

1 **SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE**
2 **BOARD.**

3 (a) IN GENERAL.—Section 10 of the National Labor
4 Relations Act (29 U.S.C. 160) is further amended—

5 (1) by striking subsection (e);

6 (2) by redesignating subsection (d) as sub-
7 section (e);

8 (3) by inserting after subsection (c) the fol-
9 lowing:

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

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

1 to obey or neglects to obey a final order of the Board,
2 each day such failure or neglect continues shall be deemed
3 a separate offense.

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

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

15 “(B) enjoin such person or entity, officers,
16 agents, or representatives to obedience to the
17 same.”;

18 (4) in subsection (f)—

19 (A) by striking “proceed in the same man-
20 ner as in the case of an application by the
21 Board under subsection (e) of this section,” and
22 inserting “proceed as provided under paragraph
23 (2) of this subsection”;

24 (B) by striking “Any” and inserting the
25 following:

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

3 (C) by adding at the end the following:

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

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

9 (5) in subsection (g), by striking “subsection
 10 (e) or (f) of this section” and inserting “subsection
 11 (d) or (f)”.

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

16 **SEC. 108. INJUNCTIONS AGAINST UNFAIR LABOR PRAC-**
 17 **TICES INVOLVING DISCHARGE OR OTHER SE-**
 18 **RIOUS ECONOMIC HARM.**

19 Section 10 of the National Labor Relations Act (29
 20 U.S.C. 160) is amended—

21 (1) in subsection (j)—

22 (A) by striking “The Board” and inserting
 23 “(1) The Board”; and

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

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

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

21 **SEC. 109. PENALTIES.**

22 (a) IN GENERAL.—Section 12 of the National Labor
23 Relations Act (29 U.S.C. 162) is amended—

24 (1) by striking “SEC. 12. Any person” and in-
25 serting the following:

1 **“SEC. 12. PENALTIES.**

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

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

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

10 “(1) state the findings of fact supporting such
11 determination;

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

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

20 “(c) CIVIL PENALTIES FOR VIOLATIONS.—

21 “(1) IN GENERAL.—Any employer who commits
22 an unfair labor practice within the meaning of sec-
23 tion 8(a) shall, in addition to any remedy ordered by
24 the Board, be subject to a civil penalty in an amount
25 not to exceed \$50,000 for each violation, except
26 that, with respect to an unfair labor practice within

1 the meaning of paragraph (3) or (4) of section 8(a)
2 or a violation of section 8(a) that results in the dis-
3 charge of an employee or other serious economic
4 harm to an employee, the Board shall double the
5 amount of such penalty, to an amount not to exceed
6 \$100,000, in any case where the employer has with-
7 in the preceding 5 years committed another such
8 violation.

9 “(2) CONSIDERATIONS.—In determining the
10 amount of any civil penalty under this subsection,
11 the Board shall consider—

12 “(A) the gravity of the unfair labor prac-
13 tice;

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

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

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

1 established a policy that led to such a violation, or
2 had actual or constructive knowledge of and the au-
3 thority to prevent the violation and failed to prevent
4 the violation.

5 “(d) RIGHT TO CIVIL ACTION.—

6 “(1) IN GENERAL.—Any person who is injured
7 by reason of a violation of paragraph (1), (3), or (4)
8 of section 8(a) may, after 60 days following the fil-
9 ing of a charge with the Board alleging an unfair
10 labor practice, bring a civil action in the appropriate
11 district court of the United States against the em-
12 ployer within 90 days after the expiration of the 60-
13 day period or the date the Board notifies the person
14 that no complaint shall issue, whichever occurs ear-
15 lier, provided that the Board has not filed a petition
16 under section 10(j) of this Act prior to the expira-
17 tion of the 60-day period. No relief under this sub-
18 section shall be denied on the basis that the em-
19 ployee is, or was during the time of relevant employ-
20 ment or during the back pay period, an unauthor-
21 ized alien as defined in section 274A(h)(3) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1324a(h)(3)) or any other provision of Federal law
24 relating to the unlawful employment of aliens.

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

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

7 “(B) front pay (when appropriate);

8 “(C) consequential damages;

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

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

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

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

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

4 “(A) the gravity of the unfair labor prac-
 5 tice;

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

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

11 (b) CONFORMING AMENDMENTS.—Section 10(b) of
 12 the National Labor Relations Act (29 U.S.C. 160(b)) is
 13 amended—

14 (1) by striking “six months” and inserting
 15 “180 days”; and

16 (2) by striking “the six-month period” and in-
 17 serting “the 180-day period”.

18 **SEC. 110. LIMITATIONS ON THE RIGHT TO STRIKE.**

19 Section 13 of the National Labor Relations Act (29
 20 U.S.C. 163) is amended by striking the period at the end
 21 and inserting the following: “: *Provided*, That the dura-
 22 tion, scope, frequency, or intermittence of any strike or
 23 strikes shall not render such strike or strikes unprotected
 24 or prohibited.”.

1 **SEC. 111. FAIR SHARE AGREEMENTS PERMITTED.**

2 Section 14(b) of the National Labor Relations Act
 3 (29 U.S.C. 164(b)) is amended by striking the period at
 4 the end and inserting the following: “: *Provided*, That col-
 5 lective bargaining agreements providing that all employees
 6 in a bargaining unit shall contribute fees to a labor organi-
 7 zation for the cost of representation, collective bargaining,
 8 contract enforcement, and related expenditures as a condi-
 9 tion of employment shall be valid and enforceable notwith-
 10 standing any State or Territorial law.”.

11 **TITLE II—AMENDMENTS TO THE**
 12 **LABOR MANAGEMENT RELA-**
 13 **TIONS ACT, 1947 AND THE**
 14 **LABOR-MANAGEMENT RE-**
 15 **PORTING AND DISCLOSURE**
 16 **ACT OF 1959**

17 **SEC. 201. CONFORMING AMENDMENTS TO THE LABOR MAN-**
 18 **AGEMENT RELATIONS ACT, 1947.**

19 The Labor Management Relations Act, 1947 is
 20 amended—

21 (1) in section 213(a) (29 U.S.C. 183(a)), by
 22 striking “clause (A) of the last sentence of section
 23 8(d) (which is required by clause (3) of such section
 24 8(d)), or within 10 days after the notice under
 25 clause (B)” and inserting “section 8(d)(2)(A) of the
 26 National Labor Relations Act (which is required by

1 section 8(d)(1)(C) of such Act), or within 10 days
 2 after the notice under section 8(d)(2)(B) of such
 3 Act”; and

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

5 **SEC. 202. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
 6 **PORTING AND DISCLOSURE ACT OF 1959.**

7 (a) IN GENERAL.—Section 203(c) of the Labor-Man-
 8 agement Reporting and Disclosure Act of 1959 (29 U.S.C.
 9 433(c)) is amended by striking the period at the end and
 10 inserting the following “: *Provided*, That this subsection
 11 shall not exempt from the requirements of this section any
 12 arrangement or part of an arrangement in which a party
 13 agrees, for an object described in subsection (b)(1), to plan
 14 or conduct employee meetings; train supervisors or em-
 15 ployer representatives to conduct meetings; coordinate or
 16 direct activities of supervisors or employer representatives;
 17 establish or facilitate employee committees; identify em-
 18 ployees for disciplinary action, reward, or other targeting;
 19 or draft or revise employer personnel policies, speeches,
 20 presentations, or other written, recorded, or electronic
 21 communications to be delivered or disseminated to employ-
 22 ees.”.

23 (b) WHISTLEBLOWER PROTECTIONS.—The Labor-
 24 Management Reporting and Disclosure Act of 1959 (29
 25 U.S.C. 401 et seq.) is further amended—

1 (1) by redesignating section 611 (29 U.S.C.
2 531) as section 612; and

3 (2) by inserting after section 610 (29 U.S.C.
4 530), the following new section:

5 “WHISTLEBLOWER PROTECTIONS

6 “SEC. 611.

7 “(a) IN GENERAL.—No employer or labor organiza-
8 tion shall terminate or in any other way discriminate
9 against, or cause to be terminated or discriminated
10 against, any applicant, covered employee, or former cov-
11 ered employee, of the employer or the labor organization
12 by reason of the fact that such applicant, covered em-
13 ployee, or former covered employee does, or the employer
14 or labor organization perceives the employee to do, any
15 of the following:

16 “(1) Provide, cause to be provided, or is about
17 to provide or cause to be provided, information to
18 the labor organization, the employer, the Depart-
19 ment of Labor, or any other State, local, or Federal
20 Government authority or law enforcement agency re-
21 lating to any violation of, or any act or omission
22 that such employee reasonably believes to be a viola-
23 tion of, any provision of this Act.

24 “(2) Testify or plan to testify or otherwise par-
25 ticipate in any proceeding resulting from the admin-
26 istration or enforcement of any provision of this Act.

1 “(3) File, institute, or cause to be filed or insti-
2 tuted, any proceeding under this Act.

3 “(4) Assist in any activity described in para-
4 graphs (1) through (3).

5 “(5) Object to, or refuse to participate in, any
6 activity, policy, practice, or assigned task that such
7 covered employee reasonably believes to be in viola-
8 tion of any provision of this Act.

9 “(b) DEFINITION OF COVERED EMPLOYEE.—For the
10 purposes of this section, the term ‘covered employee’
11 means any employee or agent of an employer or labor or-
12 ganization, including any person with management re-
13 sponsibilities on behalf of the employer or labor organiza-
14 tion.

15 “(c) PROCEDURES AND TIMETABLES.—

16 “(1) COMPLAINT.—

17 “(A) IN GENERAL.—An applicant, covered
18 employee, or former covered employee who be-
19 lieves that he or she has been terminated or in
20 any other way discriminated against by any
21 person in violation of subsection (a) may file (or
22 have any person file on his or her behalf) a
23 complaint with the Secretary of Labor alleging
24 such violation. Such a complaint must be filed
25 not later than either—

1 “(i) 180 days after the date on which
2 such alleged violation occurs; or

3 “(ii) 180 days after the date upon
4 which the employee knows or should rea-
5 sonably have known that such alleged vio-
6 lation in subsection (a) occurred.

7 “(B) ACTIONS OF SECRETARY OF
8 LABOR.—Upon receipt of such a complaint, the
9 Secretary of Labor shall notify, in writing, the
10 person named in the complaint who is alleged
11 to have committed the violation, of—

12 “(i) the filing of the complaint;

13 “(ii) the allegations contained in the
14 complaint;

15 “(iii) the substance of evidence sup-
16 porting the complaint; and

17 “(iv) opportunities that will be af-
18 farded to such person under paragraph
19 (2).

20 “(2) INVESTIGATION BY SECRETARY OF
21 LABOR.—

22 “(A) IN GENERAL.—Not later than 60
23 days after the date of receipt of a complaint
24 filed under paragraph (1), and after affording
25 the complainant and the person named in the

1 complaint who is alleged to have committed the
2 violation that is the basis for the complaint an
3 opportunity to submit to the Secretary of Labor
4 a written response to the complaint and an op-
5 portunity to meet with a representative of the
6 Secretary of Labor to present statements from
7 witnesses, the Secretary of Labor shall—

8 “(i) initiate an investigation and de-
9 termine whether there is reasonable cause
10 to believe that the complaint has merit;
11 and

12 “(ii) notify the complainant and the
13 person alleged to have committed the viola-
14 tion of subsection (a), in writing, of such
15 determination.

16 “(B) GROUNDS FOR DETERMINATION OF
17 COMPLAINTS.—The Secretary of Labor shall
18 dismiss a complaint filed under this subsection,
19 and shall not conduct an investigation otherwise
20 required under paragraph (2), unless the com-
21 plainant makes a prima facie showing that any
22 behavior described in paragraphs (1) through
23 (5) of subsection (a) was a contributing factor
24 in the unfavorable personnel action alleged in
25 the complaint.

1 “(3) BURDENS OF PROOF.—

2 “(A) CRITERIA FOR DETERMINATION.—In
3 making a determination or adjudicating a com-
4 plaint pursuant to this subsection, the Sec-
5 retary, an administrative law judge or a court
6 may determine that a violation of subsection (a)
7 has occurred only if the complainant dem-
8 onstrates that any conduct described in sub-
9 section (a) with respect to the complainant was
10 a contributing factor in the adverse action al-
11 leged in the complaint.

12 “(B) PROHIBITION.—Notwithstanding sub-
13 paragraph (A), a decision or order that is favor-
14 able to the complainant shall not be issued in
15 any administrative or judicial action pursuant
16 to this subsection if the respondent dem-
17 onstrates by clear and convincing evidence that
18 the respondent would have taken the same ad-
19 verse action in the absence of such conduct.

20 “(C) NOTICE OF RELIEF AVAILABLE.—If
21 the Secretary of Labor concludes that there is
22 reasonable cause to believe that a violation of
23 subsection (a) has occurred, the Secretary of
24 Labor shall, together with the notice under
25 paragraph (2)(A)(ii), issue a preliminary order

1 providing the relief prescribed by paragraph
2 (4)(B).

3 “(D) REQUEST FOR HEARING.—Not later
4 than 30 days after the date of receipt of notifi-
5 cation of a determination of the Secretary of
6 Labor under this paragraph, either the person
7 alleged to have committed the violation or the
8 complainant may file objections to the findings
9 or preliminary order, or both, and request a
10 hearing on the record. The filing of such objec-
11 tions shall not operate to stay any reinstate-
12 ment remedy contained in the preliminary
13 order. Any such hearing shall be conducted ex-
14 peditiously, and if a hearing is not requested in
15 such 30-day period, the preliminary order shall
16 be deemed a final order that is not subject to
17 judicial review.

18 “(E) PROCEDURES.—

19 “(i) IN GENERAL.—A hearing re-
20 quested under this paragraph shall be con-
21 ducted expeditiously and in accordance
22 with rules established by the Secretary for
23 hearings conducted by administrative law
24 judges.

1 “(ii) SUBPOENAS; PRODUCTION OF
2 EVIDENCE.— In conducting any such hear-
3 ing, the administrative law judge may issue
4 subpoenas. The respondent or complainant
5 may request the issuance of subpoenas
6 that require the deposition of, or the at-
7 tendance and testimony of, witnesses and
8 the production of any evidence (including
9 any books, papers, documents, or record-
10 ings) relating to the matter under consid-
11 eration.

12 “(4) ISSUANCE OF FINAL ORDERS; REVIEW
13 PROCEDURES.—

14 “(A) TIMING.—Not later than 120 days
15 after the date of conclusion of any hearing
16 under paragraph (2), the Secretary of Labor
17 shall issue a final order providing the relief pre-
18 scribed by this paragraph or denying the com-
19 plaint. At any time before issuance of a final
20 order, a proceeding under this subsection may
21 be terminated on the basis of a settlement
22 agreement entered into by the Secretary of
23 Labor, the complainant, and the person alleged
24 to have committed the violation.

25 “(B) AVAILABLE RELIEF.—

1 “(i) ORDER OF SECRETARY OF
2 LABOR.—If, in response to a complaint
3 filed under paragraph (1), the Secretary of
4 Labor determines that a violation of sub-
5 section (a) has occurred, the Secretary of
6 Labor shall order the person who com-
7 mitted such violation—

8 “(I) to take affirmative action to
9 abate the violation;

10 “(II) to reinstate the complain-
11 ant to his or her former position, to-
12 gether with compensation (including
13 back pay with interest) and restore
14 the terms, conditions, and privileges
15 associated with his or her employ-
16 ment;

17 “(III) to provide compensatory
18 damages to the complainant; and

19 “(IV) expungement of all warn-
20 ings, reprimands, or derogatory ref-
21 erences that have been placed in
22 paper or electronic records or data-
23 bases of any type relating to the ac-
24 tions by the complainant that gave
25 rise to the unfavorable personnel ac-

1 tion, and, at the complainant's direc-
2 tion, transmission of a copy of the de-
3 cision on the complaint to any person
4 whom the complainant reasonably be-
5 lieves may have received such unfavor-
6 able information.

7 “(ii) COSTS AND EXPENSES.—If an
8 order is issued under clause (i), the Sec-
9 retary of Labor, at the request of the com-
10 plainant, shall assess against the person
11 against whom the order is issued, a sum
12 equal to the aggregate amount of all costs
13 and expenses (including attorney fees and
14 expert witness fees) reasonably incurred,
15 as determined by the Secretary of Labor,
16 by the complainant for, or in connection
17 with, the bringing of the complaint upon
18 which the order was issued.

19 “(C) FRIVOLOUS CLAIMS.—If the Sec-
20 retary of Labor finds that a complaint under
21 paragraph (1) is frivolous or has been brought
22 in bad faith, the Secretary of Labor may award
23 to the prevailing employer or labor organization
24 a reasonable attorney fee, not exceeding \$1,000,
25 to be paid by the complainant.

1 “(D) DE NOVO REVIEW.—

2 “(i) FAILURE OF THE SECRETARY TO
3 ACT.—If the Secretary of Labor has not
4 issued a final order within 270 days after
5 the date of filing of a complaint under this
6 subsection, or within 90 days after the
7 date of receipt of a written determination,
8 the complainant may bring an action at
9 law or equity for de novo review in the ap-
10 propriate district court of the United
11 States having jurisdiction, which shall have
12 jurisdiction over such an action without re-
13 gard to the amount in controversy, and
14 which action shall, at the request of either
15 party to such action, be tried by the court
16 with a jury.

17 “(ii) PROCEDURES.—A proceeding
18 under clause (i) shall be governed by the
19 same legal burdens of proof specified in
20 paragraph (3). The court shall have juris-
21 diction to grant all relief necessary to
22 make the employee whole, including injunc-
23 tive relief and compensatory damages, in-
24 cluding—

1 “(I) reinstatement with the same
2 seniority status that the employee
3 would have had, but for the discharge
4 or discrimination;

5 “(II) the amount of back pay,
6 with interest;

7 “(III) compensation for any spe-
8 cial damages sustained as a result of
9 the discharge or discrimination, in-
10 cluding litigation costs, expert witness
11 fees, and reasonable attorney fees;
12 and

13 “(IV) expungement of all warn-
14 ings, reprimands, or derogatory ref-
15 erences that have been placed in
16 paper or electronic records or data-
17 bases of any type relating to the ac-
18 tions by the complainant that gave
19 rise to the unfavorable personnel ac-
20 tion, and, at the complainant’s direc-
21 tion, transmission of a copy of the de-
22 cision on the complaint to any person
23 whom the complainant reasonably be-
24 lieves may have received such unfavor-
25 able information.

1 “(E) OTHER APPEALS.—Unless the com-
2 plainant brings an action under subparagraph
3 (D), any person adversely affected or aggrieved
4 by a final order issued under subparagraph (A)
5 may file a petition for review of the order in the
6 United States Court of Appeals for the circuit
7 in which the violation with respect to which the
8 order was issued, allegedly occurred or the cir-
9 cuit in which the complainant resided on the
10 date of such violation, not later than 60 days
11 after the date of the issuance of the final order
12 of the Secretary of Labor under subparagraph
13 (A). Review shall conform to chapter 7 of title
14 5, United States Code. The commencement of
15 proceedings under this subparagraph shall not,
16 unless ordered by the court, operate as a stay
17 of the order. An order of the Secretary of
18 Labor with respect to which review could have
19 been obtained under this subparagraph shall
20 not be subject to judicial review in any criminal
21 or other civil proceeding.

22 “(5) FAILURE TO COMPLY WITH ORDER.—

23 “(A) ACTIONS BY THE SECRETARY.—If
24 any person has failed to comply with a final
25 order issued under paragraph (4), the Secretary

1 of Labor may file a civil action in the United
2 States district court for the district in which
3 the violation was found to have occurred, or in
4 the United States district court for the District
5 of Columbia, to enforce such order. In actions
6 brought under this paragraph, the district
7 courts shall have jurisdiction to grant all appro-
8 priate relief including injunctive relief, compen-
9 satory and punitive damages.

10 “(B) CIVIL ACTIONS TO COMPEL COMPLI-
11 ANCE.—A person on whose behalf an order was
12 issued under paragraph (4) may commence a
13 civil action against the person to whom such
14 order was issued to require compliance with
15 such order. The appropriate United States dis-
16 trict court shall have jurisdiction, without re-
17 gard to the amount in controversy or the citi-
18 zenship of the parties, to enforce such order.

19 “(C) AWARD OF COSTS AUTHORIZED.—
20 The court, in issuing any final order under this
21 paragraph, may award costs of litigation (in-
22 cluding reasonable attorney and expert witness
23 fees) to any party, whenever the court deter-
24 mines such award is appropriate.

1 “(D) MANDAMUS PROCEEDINGS.—Any
2 nondiscretionary duty imposed by this section
3 shall be enforceable in a mandamus proceeding
4 brought under section 1361 of title 28, United
5 States Code.

6 “(d) UNENFORCEABILITY OF CERTAIN AGREE-
7 MENTS.—Notwithstanding any other provision of law, the
8 rights and remedies provided for in this section may not
9 be waived by any agreement, policy, form, or condition of
10 employment, including by any predispute arbitration
11 agreement.

12 “(e) SAVINGS.—Nothing in this subsection shall be
13 construed to diminish the rights, privileges, or remedies
14 of any employee who exercises rights under any Federal
15 or State law or common law, or under any collective bar-
16 gaining agreement.”.

17 (c) Section 203(b) of the Labor-Management Report-
18 ing and Disclosure Act of 1959 (29 U.S.C. 433(b)) is
19 amended in the matter following paragraph (2)—

20 (1) by striking the period at the end; and

21 (2) by inserting “and shall make such informa-
22 tion available to the public in a readily accessible
23 and searchable electronic format, and through a se-
24 cure software application for use on an electronic de-
25 vice.”.

1 **TITLE III—OTHER MATTERS**

2 **SEC. 301. ELECTRONIC VOTING IN UNION ELECTIONS.**

3 (a) IN GENERAL.—

4 (1) ELECTRONIC VOTING SYSTEM.—Notwith-
5 standing any other provision of law, subject to the
6 provisions of this section, not later than 90 days
7 after the date of the enactment of this Act, the Na-
8 tional Labor Relations Board shall implement a sys-
9 tem and procedures to conduct representation elec-
10 tions remotely using an electronic voting system.

11 (2) PROCEDURES.—The procedures under para-
12 graph (1) shall ensure that each employee voting in
13 a representation election may choose to cast a vote
14 using either an internet voting system or a telephone
15 voting system.

16 (3) NATIONAL MEDIATION BOARD SYSTEM.—If
17 the Board does not implement a system under para-
18 graph (1) before the date that is 60 days after the
19 date of the enactment of this Act, the Board shall
20 enter into a temporary agreement to use the system
21 used by the National Mediation Board to conduct
22 representation elections for the period—

23 (A) beginning on the date that is 60 days
24 after the date of enactment of this Act; and

1 (B) ending on the date that is 90 days
2 after the date of enactment of this Act.

3 (b) REPORT.— Not later than 180 days of the enact-
4 ment of this Act, and in each subsequent report under
5 Section 3(c) of the National Labor Relations Act, as
6 amended, the Board shall submit to Congress a report
7 containing a description of the following:

8 (1) For each representation petition under sec-
9 tion 9 of the National Labor Relations Act filed—

10 (A) the case name and case number;

11 (B) the number of days between the peti-
12 tion and the election;

13 (C) the number of days between the stipu-
14 lation or direction of election and the election;

15 (D) the method of the election;

16 (E) the results of the election; and

17 (F) the number of eligible voters, the num-
18 ber of voters participating in the election, and
19 the method by which each of the voters sub-
20 mitted their vote.

21 (2) The total cost of conducting all elections the
22 Board conducted through the system and procedures
23 required by subsection (a).

24 (c) DEFINITIONS.—In this section:

1 (1) ELECTRONIC VOTING SYSTEM.—The term
2 “electronic voting system”—

3 (A) includes an internet voting system and
4 a telephone voting system; and

5 (B) does not include machines used for
6 casting votes at a polling site or an electronic
7 tabulation system where votes are cast non-elec-
8 tronically but counted electronically (such as a
9 punch card or optical scanning system).

10 (2) INTERNET VOTING SYSTEM.—The term
11 “internet voting system” means an internet-based
12 voting system that allows a participant to cast a bal-
13 lot remotely using a personal computer or other mo-
14 bile electronic device that is connected to the inter-
15 net.

16 (3) TELEPHONE VOTING SYSTEM.—The term
17 “telephone voting system” means a voting system in
18 which participants may cast a vote remotely using a
19 telephone.

20 (4) REMOTELY.—The term “remotely”, used
21 with respect to voting in a representation election,
22 means a vote may be cast at any site chosen by a
23 participant in such election.

24 (5) REPRESENTATION ELECTION.—The term
25 “representation election” means a representation

1 election under section 9 of the National Labor Rela-
2 tions Act (29 U.S.C. 159).

3 **SEC. 302. GAO REPORT ON SECTORAL BARGAINING.**

4 (a) IN GENERAL.—Not later than 3 years after the
5 date of enactment of this Act, the Comptroller General
6 shall conduct a review of collective bargaining at the sec-
7 toral level in a geographically diverse set of countries
8 where sectoral bargaining is facilitated and prepare and
9 submit to Congress a report with respect to such countries
10 that—

11 (1) identifies, analyzes, and compares—

12 (A) the laws and policies governing or re-
13 lated to collective bargaining at the sectoral
14 level;

15 (B) the administrative systems facilitating
16 such bargaining; and

17 (C) the procedures involved in sectoral bar-
18 gaining;

19 (2) to the extent practicable, consider reported
20 effects of the policies and procedures described in
21 paragraph (1) on—

22 (A) the wages and compensation of em-
23 ployees;

24 (B) the number of full-time and part-time
25 employees;

- 1 (C) prices, sales, and revenues;
- 2 (D) employee turnover and retention;
- 3 (E) hiring and training costs;
- 4 (F) productivity and absenteeism; and
- 5 (G) the development of emerging indus-
- 6 tries, including those that engage their
- 7 workforces through technology; and
- 8 (3) describes the methodology used to generate
- 9 the information in the report.

10 **SEC. 303. SEVERABILITY.**

11 If any provision of this Act or the application thereof
12 to any person or circumstance is held invalid, the remain-
13 der of this Act, or the application of that provision to per-
14 sons or circumstances other than those as to which it is
15 held invalid, is not affected thereby.

16 **SEC. 304. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to carry out the provisions of this
19 Act and the amendments made by this Act.

20 **SEC. 305. RULE OF CONSTRUCTION.**

21 The amendments made under this Act shall not be
22 construed to amend section 274A of the Immigration and
23 Nationality Act (8 U.S.C. 1324a).

1 **SEC. 306. RULE OF CONSTRUCTION.**

2 The amendments made by this Act shall not be con-
3 strued to affect the jurisdictional standards of the Na-
4 tional Labor Relations Board, including any standards
5 that measure the size of a business with respect to reve-
6 nues, that are used to determine whether an industry is
7 affecting commerce for purposes of determining coverage
8 under the National Labor Relations Act (29 U.S.C. 151
9 et seq.).

10 **SEC. 307. RULE OF CONSTRUCTION.**

11 Nothing in this Act or the amendments made by this
12 Act shall be construed to affect the privacy of employees
13 with respect to voter lists provided to labor organizations
14 by employers pursuant to elections directed by the Board.

15 **SEC. 308. RULE OF CONSTRUCTION.**

16 The amendments made under this Act shall not be
17 construed to affect the definitions of “employer” or “em-
18 ployee” under the laws of any State that govern the wages,
19 work hours, workers’ compensation, or unemployment in-
20 surance of employees.

21 **SEC. 309. GAO REPORT.**

22 (a) IN GENERAL.—The Comptroller General, through
23 the Government Accountability Office, shall one year after
24 the date of enactment of this Act commence a study on
25 the impact of Section 101(a) and Section 101(b) of this
26 Act regarding—

1 (1) the effect on coverage of employees under of
2 the National Labor Relations Act, and the impact
3 from such change in coverage, on their capacity in
4 various sectors to form unions and collectively bar-
5 gain as a means to improve wages, benefits, work-
6 place safety, and other working conditions; and

7 (2) the effect on employers and other enter-
8 prises regarding the right of employees to organize
9 and collectively bargain over wages, benefits, work-
10 place safety, and other working conditions in such
11 sectors.

12 (b) FACTORS.—Such study shall identify, compare,
13 and analyze impacts from changes implicated by Section
14 101(a) and Section 101(b) on—

15 (1) flexibility for employees with respect to
16 hours, shifts, assignments and working arrange-
17 ments;

18 (2) rates of compensation, health care, and em-
19 ployee benefits;

20 (3) resolution of grievances and disputes, in-
21 cluding employers' ability to terminate and employ-
22 ees' right to due process;

23 (4) use of technology or algorithms, including
24 the adoption of new technology and algorithms; and

25 (5) workplace safety and health.

1 (c) STAKEHOLDER INPUT.—In preparing the report,
2 the Government Accountability Office shall gather infor-
3 mation from impacted stakeholders, including various
4 business enterprises and labor organizations. In devel-
5 oping a list of stakeholders, the Government Account-
6 ability Office shall consult with the House Committee on
7 Education and Labor and the Senate Committee on
8 Health, Education, Labor and Pensions.

9 (d) CONGRESSIONAL REPORT.—Six months after the
10 commencement of the study, the Government Account-
11 ability Office shall transmit its findings and report to the
12 Committee on Education and Labor of the House of Rep-
13 resentatives and the Committee on Health, Education,
14 Labor and Pensions of the Senate, and consistent with
15 its policies, make its findings and report available to the
16 public.

17 (e) PRESIDENTIAL CONSIDERATION.—The President,
18 in consultation with the Department of Labor and other
19 agencies as the President deems appropriate, shall, subse-
20 quent to the issuance of such report, consider such find-
21 ings, and within 60 days may recommend that the House
22 of Representatives and the Senate modify section 101(a)
23 or section 101(b), or both or make no recommendations.

24 (f) SENSE OF THE HOUSE OF REPRESENTATIVES.—
25 It is the sense of the House of Representatives that the

- 1 House of Representatives shall consider whether to accept,
- 2 reject, or modify any recommendations received under (e),
- 3 as it deems appropriate.

Passed the House of Representatives March 9,
2021.

Attest: CHERYL L. JOHNSON,
Clerk.