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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Protecting the Right to Organize Act of 2021”.

(b) Table of Contents.—The table of contents for 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 RELATIONS ACT, 1947 AND THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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

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.
TITLE I—AMENDMENTS TO THE
NATIONAL LABOR RELATIONS
ACT

SEC. 101. DEFINITIONS.

(a) JOINT EMPLOYER.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended by adding at the end the following: “Two or more persons shall be employers with respect to an employee if each such person codetermines or shares control over the employee’s essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: Provided, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.”.

(b) EMPLOYEE.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—
“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

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

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”.

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

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

(2) by striking “assign,”; and

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

**SEC. 102. REPORTS.**

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

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

(2) by adding at the end the following:

“(2) Effective January 1, 2023, section 3003 of the Federal Reports Elimination and Sunset Act of 1995
(Public Law 166–44; 31 U.S.C. 1113 note) shall not apply with respect to reports required under this subsection.

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

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

“(B) list each case in which the Designated Agency Ethics Official provided advice regarding whether a Member should be recused from participating in a case or rulemaking; and

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

SEC. 103. APPOINTMENT.

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

SEC. 104. UNFAIR LABOR PRACTICES.

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

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting “;”;

(B) by adding at the end the following:
“(6) to promise, threaten, or take any action—

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

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

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

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

(2) in subsection (b)—

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

(B) by redesignating paragraphs (5) and

(6) as paragraphs (4) and (5), respectively;
(C) in paragraph (4), as so redesignated, by striking “affected;” and inserting “affected; and”; and

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

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

(4) in subsection (d)—

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

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

(C) by inserting “and to maintain current wages, hours, and terms and conditions of em-
ployment pending an agreement” after “arising thereunder”;  
(D) by inserting “: Provided, That an employer’s duty to collectively bargain shall continue absent decertification of the labor organization following an election conducted pursuant to section 9” after “making of a concession:”; 
(E) by inserting “further” before “, That where there is in effect”;  
(F) by striking “The duties imposed” and inserting “(2) The duties imposed”;  
(G) by striking “by paragraphs (2), (3), and (4)” and inserting “by subparagraphs (B), (C), and (D) of paragraph (1)”;
(H) by striking “section 8(d)(1)” and inserting “paragraph (1)(A)”;
(I) by striking “section 8(d)(3)” and inserting “paragraph (1)(C)” in each place it appears;  
(J) by striking “section 8(d)(4)” and inserting “paragraph (1)(D)”; and  
(K) by adding at the end the following:  
“(3) Whenever collective bargaining is for the purpose of establishing an initial collective bargaining agree-
ment following certification or recognition of a labor organ-
ization, the following shall apply:

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

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

“(C) If after the expiration of the 30-day period
beginning on the date on which the request for me-
diation is made under subparagraph (B), or such ad-
ditional period as the parties may agree upon, the
Service is not able to bring the parties to agreement
by conciliation, the Service shall refer the dispute to
a tripartite arbitration panel established in accord-
ance with such regulations as may be prescribed by
the Service, with one member selected by the labor
organization, one member selected by the employer,
and one neutral member mutually agreed to by the
parties. The labor organization and employer must
each select the members of the tripartite arbitration
panel within 14 days of the Service’s referral; if the
labor organization or employer fail to do so, the
Service shall designate any members not selected by
the labor organization or the employer. A majority
of the tripartite arbitration panel shall render a deci-
sion settling the dispute as soon as practicable and
not later than within 120 days, absent extraordinary
circumstances or by agreement or permission of the
parties, and such decision shall be binding upon the
parties for a period of 2 years, unless amended dur-
ing such period by written consent of the parties.
Such decision shall be based on—
“(i) the employer’s financial status and
prospects;
“(ii) the size and type of the employer’s operations and business;

“(iii) the employees’ cost of living;

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

“(v) the wages and benefits other employers in the same business provide their employees.”;

(5) by amending subsection (e) to read as follows:

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

“(1) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, an employee undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee in any forum that, but for such agreement, is of competent jurisdiction;
“(2) to coerce an employee into undertaking or promising not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee; or

“(3) to retaliate or threaten to retaliate against an employee for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee: Provided, That any agreement that violates this subsection or results from a violation of this subsection shall be to such extent unenforceable and void: Provided further, That this subsection shall not apply to any agreement embodied in or expressly permitted by a contract between an employer and a labor organization.”;

(6) in subsection (g), by striking “clause (B) of the last sentence of section 8(d) of this Act” and inserting “subsection (d)(2)(B)” and

(7) by adding at the end the following:

“(h)(1) The Board shall promulgate regulations requiring each employer to post and maintain, in conspicuous places where notices to employees and applicants for employment are customarily posted both physically and
electronically, a notice setting forth the rights and protections afforded employees under this Act. The Board shall make available to the public the form and text of such notice. The Board shall promulgate regulations requiring employers to notify each new employee of the information contained in the notice described in the preceding two sentences and to ensure that such notice is provided to employees in a language spoken by such employees.

“(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than 2 business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees’ home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers, and work and personal email addresses; the voter list must be provided in a searchable electronic format generally approved by the Board unless the employer certifies that the employer does not possess the capacity to produce the list in the required form. Not later than 9 months after the date of enactment of the Protecting the Right to Organize Act of 2021, the
Board shall promulgate regulations implementing the requirements of this paragraph.

“(i) The rights of an employee under section 7 include the right to use electronic communication devices and systems (including computers, laptops, tablets, internet access, email, cellular telephones, or other company equipment) of the employer of such employee to engage in activities protected under section 7 if such employer has given such employee access to such devices and systems in the course of the work of such employee, absent a compelling business rationale for denying or limiting such use.”

SEC. 105. REPRESENTATIVES AND ELECTIONS.

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

(1) in subsection (c)—

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

“(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the rep-
resentative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a), the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Board shall find the labor organization’s proposed unit to be appropriate if the employees in the proposed unit share a community of interest, and if the employees outside the unit do not share an overwhelming community of interest with employees inside. At the request of the labor organization, the Board shall direct that the election be conducted through certified mail, electronically, at the work location, or at a location other than one owned or controlled by the employer. No employer shall have standing as a party or to intervene in any representation proceeding under this section.”;}
(B) in paragraph (3), by striking “an economic strike who are not entitled to reinstatement” and inserting “a strike”;
(C) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;
(D) by inserting after paragraph (3) the following:
“(4) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have been cast in favor of representation by the labor organization, the Board shall certify the labor organization as the representative of the employees in such unit and shall issue an order requiring the employer of such employees to collectively bargain with the labor organization in accordance with section 8(d). This order shall be deemed an order under section 10(c) of this Act, without need for a determination of an unfair labor practice.
“(5)(A) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization, the Board shall certify the results of the election, subject to subparagraphs (B) and (C).
“(B) In any case in which a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization and the Board determines, following a post-election hearing, that the employer has committed a violation of this Act or otherwise interfered with a fair election, and the employer has not demonstrated that the violation or other interference is unlikely to have affected the outcome of the election, the Board shall, without ordering a new election, set aside the election and certify the labor organization as the representative of the employees in such unit and issue an order requiring the employer to bargain with the labor organization in accordance with section 8(d) if, at any time during the period beginning 1 year preceding the date of the commencement of the election and ending on the date upon which the Board makes the determination of a violation or other interference, a majority of the employees in the bargaining unit have signed authorizations designating the labor organization as their collective bargaining representative.

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

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

“(8) Except under extraordinary circumstances—

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

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

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

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

“(ii) if the employer customarily commu-
nicates with employees electronically, distribute
such Notice electronically; and
“(iii) maintain such posting until the petition is dismissed or withdrawn or the Notice of Petition for Election is replaced by the Notice of Election;

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

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

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

(3) by adding at the end the following:

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

“(1) the employer has recognized a labor organization without an election and in accordance with this Act;

“(2) the labor organization and employer engaged in their first bargaining session following the issuance of a bargaining order by the Board; or
“(3) the labor organization and successor employer engaged in their first bargaining session following a succession.

“(g) The Board shall dismiss any petition for an election with respect to a bargaining unit or any subdivision if there is in effect a lawful written collective bargaining agreement between the employer and an exclusive representative covering any employees in the unit specified in the petition, unless the petition is filed—

“(1) on or after the date that is 3 years after the date on which the collective bargaining agreement took effect; or

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

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

SEC. 106. DAMAGES FOR UNFAIR LABOR PRACTICES.

Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking “suffered by him” and inserting “suffered by such employee: Provided further, That if the Board finds that an employer has discriminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee’s interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded: Provided further, no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens”.

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SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE BOARD.

(a) In General.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is further amended—

(1) by striking subsection (e);

(2) by redesignating subsection (d) as subsection (e);

(3) by inserting after subsection (e) the following:

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

“(2) Any person who fails or neglects to obey an order of the Board shall forfeit and pay to the Board a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Board to the district court of the United States in which the unfair labor practice or other subject of the order occurred, or in which such person or entity resides or transacts business. No action by the Board under this paragraph may be made until 30 days following the issuance of an order. Each separate violation of such an order shall be a separate offense, except that, in the case of a violation in which a person fails
to obey or neglects to obey a final order of the Board, each day such failure or neglect continues shall be deemed a separate offense.

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

“(A) restrain such person or entity or the officers, agents, or representatives of such person or entity, from further disobedience to such order; or

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

(4) in subsection (f)—

(A) by striking “proceed in the same manner as in the case of an application by the Board under subsection (e) of this section,” and inserting “proceed as provided under paragraph (2) of this subsection”;

(B) by striking “Any” and inserting the following:
“(1) Within 30 days of the issuance of an order, any”; and

(C) by adding at the end the following:

“(2) No objection that has not been urged before the Board, its member, agent, or agency shall be considered by a court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside
of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.”; and

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

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

SEC. 108. INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES INVOLVING DISCHARGE OR OTHER SERIOUS ECONOMIC HARM.

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

(1) in subsection (j)—

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

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

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

SEC. 109. PENALTIES.

(a) In General.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(1) by striking “SEC. 12. Any person” and inserting the following:
“SEC. 12. PENALTIES.

“(a) Violations for Interference With Board.—Any person”; and

(2) by adding at the end the following:

“(b) Violations for Posting Requirements and Voter List.—If the Board, or any agent or agency designated by the Board for such purposes, determines that an employer has violated section 8(h) or regulations issued thereunder, the Board shall—

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

“(2) issue and cause to be served on such employer an order requiring that such employer comply with section 8(h) or regulations issued thereunder; and

“(3) impose a civil penalty in an amount determined appropriate by the Board, except that in no case shall the amount of such penalty exceed $500 for each such violation.

“(c) Civil Penalties for Violations.—

“(1) In general.—Any employer who commits an unfair labor practice within the meaning of section 8(a) shall, in addition to any remedy ordered by the Board, be subject to a civil penalty in an amount not to exceed $50,000 for each violation, except that, with respect to an unfair labor practice within
the meaning of paragraph (3) or (4) of section 8(a)
or a violation of section 8(a) that results in the dis-
charge of an employee or other serious economic
harm to an employee, the Board shall double the
amount of such penalty, to an amount not to exceed
$100,000, in any case where the employer has with-
in the preceding 5 years committed another such
violation.

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

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

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

“(C) the gross income of the employer.

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

“(d) RIGHT TO CIVIL ACTION.—

“(1) IN GENERAL.—Any person who is injured by reason of a violation of paragraph (1), (3), or (4) of section 8(a) may, after 60 days following the filing of a charge with the Board alleging an unfair labor practice, bring a civil action in the appropriate district court of the United States against the employer within 90 days after the expiration of the 60-day period or the date the Board notifies the person that no complaint shall issue, whichever occurs earlier, provided that the Board has not filed a petition under section 10(j) of this Act prior to the expiration of the 60-day period. No relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens.
“(2) AVAILABLE RELIEF.—Relief granted in an action under paragraph (1) may include—

“(A) back pay without any reduction, including any reduction based on the employee’s interim earnings or failure to earn interim earnings;

“(B) front pay (when appropriate);

“(C) consequential damages;

“(D) an additional amount as liquidated damages equal to two times the cumulative amount of damages awarded under subparagraphs (A) through (C);

“(E) in appropriate cases, punitive damages in accordance with paragraph (4); and

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

“(3) ATTORNEY’S FEES.—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney’s fee (including expert fees) and other reasonable costs associated with maintaining the action.
“(4) PUNITIVE DAMAGES.—In awarding punitive damages under paragraph (2)(E), the court shall consider—

“(A) the gravity of the unfair labor practice;

“(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

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

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

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

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

SEC. 110. LIMITATIONS ON THE RIGHT TO STRIKE.

Section 13 of the National Labor Relations Act (29 U.S.C. 163) is amended by striking the period at the end and inserting the following: “: Provided, That the duration, scope, frequency, or intermittence of any strike or strikes shall not render such strike or strikes unprotected or prohibited.”.
SEC. 111. FAIR SHARE AGREEMENTS PERMITTED.

Section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) is amended by striking the period at the end and inserting the following: “: Provided, That collective bargaining agreements providing that all employees in a bargaining unit shall contribute fees to a labor organization for the cost of representation, collective bargaining, contract enforcement, and related expenditures as a condition of employment shall be valid and enforceable notwithstanding any State or Territorial law.”.

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

SEC. 201. CONFORMING AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947.

The Labor Management Relations Act, 1947 is amended—

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

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

SEC. 202. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

(a) IN GENERAL.—Section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended by striking the period at the end and inserting the following “: Provided, That this subsection shall not exempt from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in subsection (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.”.

(b) WHISTLEBLOWER PROTECTIONS.—The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.) is further amended—
(1) by redesignating section 611 (29 U.S.C. 531) as section 612; and

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

"WHISTLEBLOWER PROTECTIONS

"Sec. 611.

"(a) In General.—No employer or labor organization shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any applicant, covered employee, or former covered employee, of the employer or the labor organization by reason of the fact that such applicant, covered employee, or former covered employee does, or the employer or labor organization perceives the employee to do, any of the following:

"(1) Provide, cause to be provided, or is about to provide or cause to be provided, information to the labor organization, the employer, the Department of Labor, or any other State, local, or Federal Government authority or law enforcement agency relating to any violation of, or any act or omission that such employee reasonably believes to be a violation of, any provision of this Act.

"(2) Testify or plan to testify or otherwise participate in any proceeding resulting from the administration or enforcement of any provision of this Act.
“(3) File, institute, or cause to be filed or instituted, any proceeding under this Act.

“(4) Assist in any activity described in paragraphs (1) through (3).

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

“(b) Definition of Covered Employee.—For the purposes of this section, the term ‘covered employee’ means any employee or agent of an employer or labor organization, including any person with management responsibilities on behalf of the employer or labor organization.

“(c) Procedures and Timetables.—

“(1) Complaint.—

“(A) In general.—An applicant, covered employee, or former covered employee who believes that he or she has been terminated or in any other way discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such violation. Such a complaint must be filed not later than either—
“(i) 180 days after the date on which such alleged violation occurs; or

“(ii) 180 days after the date upon which the employee knows or should reasonably have known that such alleged violation in subsection (a) occurred.

“(B) Actions of Secretary of Labor.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

“(i) the filing of the complaint;

“(ii) the allegations contained in the complaint;

“(iii) the substance of evidence supporting the complaint; and

“(iv) opportunities that will be afforded to such person under paragraph (2).

“(2) Investigation by Secretary of Labor.—

“(A) In general.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the
complaint who is alleged to have committed the
violation that is the basis for the complaint an
opportunity to submit to the Secretary of Labor
a written response to the complaint and an op-
portunity to meet with a representative of the
Secretary of Labor to present statements from
witnesses, the Secretary of Labor shall—

“(i) initiate an investigation and de-
determine whether there is reasonable cause
to believe that the complaint has merit;
and

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

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

“(A) Criteria for determination.—In making a determination or adjudicating a complaint pursuant to this subsection, the Secretary, an administrative law judge or a court may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any conduct described in subsection (a) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint.

“(B) Prohibition.—Notwithstanding subparagraph (A), a decision or order that is favorable to the complainant shall not be issued in any administrative or judicial action pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

“(C) Notice of relief available.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under paragraph (2)(A)(ii), issue a preliminary order
providing the relief prescribed by paragraph (4)(B).

“(D) Request for Hearing.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

“(E) Procedures.—

“(i) In general.—A hearing requested under this paragraph shall be conducted expeditiously and in accordance with rules established by the Secretary for hearings conducted by administrative law judges.
“(ii) Subpoenas; production of evidence.—In conducting any such hearing, the administrative law judge may issue subpoenas. The respondent or complainant may request the issuance of subpoenas that require the deposition of, or the attendance and testimony of, witnesses and the production of any evidence (including any books, papers, documents, or recordings) relating to the matter under consideration.

“(4) Issuance of final orders; review procedures.—

“(A) Timing.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

“(B) Available relief.—
“(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

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

“(II) to reinstate the complainant to his or her former position, together with compensation (including back pay with interest) and restore the terms, conditions, and privileges associated with his or her employment;

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

“(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel ac-
tion, and, at the complainant’s direc-
tion, transmission of a copy of the de-
cision on the complaint to any person
whom the complainant reasonably be-
lieves may have received such unfavor-
able information.

“(ii) **C O S T S A N D E X P E N S E S.**—If an
order is issued under clause (i), the Sec-
retary of Labor, at the request of the com-
plainant, shall assess against the person
against whom the order is issued, a sum
equal to the aggregate amount of all costs
and expenses (including attorney fees and
expert witness fees) reasonably incurred,
as determined by the Secretary of Labor,
by the complainant for, or in connection
with, the bringing of the complaint upon
which the order was issued.

“(C) **F R I V O L O U S C L A I M S.**—If the Sec-
retary of Labor finds that a complaint under
paragraph (1) is frivolous or has been brought
in bad faith, the Secretary of Labor may award
to the prevailing employer or labor organization
a reasonable attorney fee, not exceeding $1,000,
to be paid by the complainant.
“(D) De novo review.—

“(i) Failure of the Secretary to act.—If the Secretary of Labor has not issued a final order within 270 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

“(ii) Procedures.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—
“(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

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

“(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

“(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.
“(E) Other Appeals.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

“(5) Failure to Comply with Order.—

“(A) Actions by the Secretary.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary
of Labor may file a civil action in the United
States district court for the district in which
the violation was found to have occurred, or in
the United States district court for the District
of Columbia, to enforce such order. In actions
brought under this paragraph, the district
courts shall have jurisdiction to grant all appro-
priate relief including injunctive relief, compen-
satory and punitive damages.

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

“(C) AWARD OF COSTS AUTHORIZED.—
The court, in issuing any final order under this
paragraph, may award costs of litigation (in-
cluding reasonable attorney and expert witness
fees) to any party, whenever the court deter-
mines such award is appropriate.
“(D) Mandamus Proceedings.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(d) Unenforceability of Certain Agreements.—Notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

“(e) Savings.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.”.

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

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

(2) by inserting “and shall make such information available to the public in a readily accessible and searchable electronic format, and through a secure software application for use on an electronic device.”.
TITLE III—OTHER MATTERS

SEC. 301. ELECTRONIC VOTING IN UNION ELECTIONS.

(a) In General.—

(1) Electronic Voting System.—Notwithstanding any other provision of law, subject to the provisions of this section, not later than 90 days after the date of the enactment of this Act, the National Labor Relations Board shall implement a system and procedures to conduct representation elections remotely using an electronic voting system.

(2) Procedures.—The procedures under paragraph (1) shall ensure that each employee voting in a representation election may choose to cast a vote using either an internet voting system or a telephone voting system.

(3) National Mediation Board System.—If the Board does not implement a system under paragraph (1) before the date that is 60 days after the date of the enactment of this Act, the Board shall enter into a temporary agreement to use the system used by the National Mediation Board to conduct representation elections for the period—

(A) beginning on the date that is 60 days after the date of enactment of this Act; and
(B) ending on the date that is 90 days after the date of enactment of this Act.

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

(1) For each representation petition under section 9 of the National Labor Relations Act filed—

(A) the case name and case number;
(B) the number of days between the petition and the election;
(C) the number of days between the stipulation or direction of election and the election;
(D) the method of the election;
(E) the results of the election; and
(F) the number of eligible voters, the number of voters participating in the election, and the method by which each of the voters submitted their vote.

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

(c) DEFINITIONS.—In this section:
(1) **Electronic voting system.**—The term “electronic voting system”—

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

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

(2) **Internet voting system.**—The term “internet voting system” means an internet-based voting system that allows a participant to cast a ballot remotely using a personal computer or other mobile electronic device that is connected to the internet.

(3) **Telephone voting system.**—The term “telephone voting system” means a voting system in which participants may cast a vote remotely using a telephone.

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

(5) **Representation election.**—The term “representation election” means a representation
election under section 9 of the National Labor Relations Act (29 U.S.C. 159).

SEC. 302. GAO REPORT ON SECTORAL BARGAINING.

(a) In General.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall conduct a review of collective bargaining at the sectoral level in a geographically diverse set of countries where sectoral bargaining is facilitated and prepare and submit to Congress a report with respect to such countries that—

(1) identifies, analyzes, and compares—

(A) the laws and policies governing or related to collective bargaining at the sectoral level;

(B) the administrative systems facilitating such bargaining; and

(C) the procedures involved in sectoral bargaining;

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

(A) the wages and compensation of employees;

(B) the number of full-time and part-time employees;
(C) prices, sales, and revenues;
(D) employee turnover and retention;
(E) hiring and training costs;
(F) productivity and absenteeism; and
(G) the development of emerging industries, including those that engage their workforces through technology; and

(3) describes the methodology used to generate the information in the report.

SEC. 303. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 305. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to amend section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a).
SEC. 306. RULE OF CONSTRUCTION.

The amendments made by this Act shall not be construed to affect the jurisdictional standards of the National Labor Relations Board, including any standards that measure the size of a business with respect to revenues, that are used to determine whether an industry is affecting commerce for purposes of determining coverage under the National Labor Relations Act (29 U.S.C. 151 et seq.).

SEC. 307. RULE OF CONSTRUCTION.

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

SEC. 308. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to affect the definitions of “employer” or “employee” under the laws of any State that govern the wages, work hours, workers’ compensation, or unemployment insurance of employees.

SEC. 309. GAO REPORT.

(a) IN GENERAL.—The Comptroller General, through the Government Accountability Office, shall one year after the date of enactment of this Act commence a study on the impact of Section 101(a) and Section 101(b) of this Act regarding—
(1) the effect on coverage of employees under of
the National Labor Relations Act, and the impact
from such change in coverage, on their capacity in
various sectors to form unions and collectively bar-
gain as a means to improve wages, benefits, work-
place safety, and other working conditions; and

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

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

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

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

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

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

(5) workplace safety and health.
(c) Stakeholder Input.—In preparing the report, the Government Accountability Office shall gather information from impacted stakeholders, including various business enterprises and labor organizations. In developing a list of stakeholders, the Government Accountability Office shall consult with the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor and Pensions.

(d) Congressional Report.—Six months after the commencement of the study, the Government Accountability Office shall transmit its findings and report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate, and consistent with its policies, make its findings and report available to the public.

(e) Presidential Consideration.—The President, in consultation with the Department of Labor and other agencies as the President deems appropriate, shall, subsequent to the issuance of such report, consider such findings, and within 60 days may recommend that the House of Representatives and the Senate modify section 101(a) or section 101(b), or both or make no recommendations.

(f) Sense of the House of Representatives.—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.