

118TH CONGRESS  
1ST SESSION

# S. 1201

To reform the labor laws of the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 19, 2023

Mr. SCOTT of South Carolina (for himself, Mr. CRAMER, Mr. CASSIDY, Ms. LUMMIS, Mr. BRAUN, Mr. JOHNSON, Mr. THUNE, Mrs. HYDE-SMITH, Mr. HAGERTY, Mr. BUDD, Mr. TUBERVILLE, Mr. CRAPO, Mr. RISCH, Mr. LEE, Mr. BARRASSO, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To reform the labor laws of the United States, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employee Rights Act”.

5 **SEC. 2. ENHANCED EMPLOYEE RIGHTS.**

6 Section 9(a) of the National Labor Relations Act (29  
7 U.S.C. 159(a)) is amended by striking “designated or se-  
8 lected for the purposes of collective bargaining” and in-

1 serring “for the purposes of collective bargaining selected  
2 by secret ballot, in an election conducted by the Board,”.

3 **SEC. 3. EMPLOYEE PRIVACY.**

4 (a) NOTICE OF RIGHTS AND PROTECTIONS; VOTER  
5 REGISTRATION LISTS.—Section 8 of the National Labor  
6 Relations Act (29 U.S.C. 158) is amended by adding at  
7 the end the following:

8 “(h)(1) Whenever the Board directs an election under  
9 section 9(c) or approves an election agreement, the em-  
10 ployer of employees in the bargaining unit shall, not later  
11 than two business days after the Board directs such elec-  
12 tion or approves such election agreement, provide a voter  
13 list to a labor organization that has petitioned to represent  
14 such employees. Such voter list shall include the names  
15 of all employees in the bargaining unit and not more than  
16 one additional form of personal contact information for  
17 the employee (such as a telephone number, an email ad-  
18 dress, or a mailing address) chosen by the employee in  
19 writing. The voter list shall be provided in a searchable  
20 electronic format generally approved by the Board unless  
21 the employer certifies that the employer does not possess  
22 the capacity to produce the list in the required form. Not  
23 later than nine months after the date of enactment of the  
24 Employee Rights Act, the Board shall promulgate regula-  
25 tions implementing the requirements of this paragraph.

1       “(2) It shall be an unfair labor practice for an em-  
2 ployer to violate any requirement under paragraph (1).”.

3       (b) LABOR ORGANIZATION USE OF PERSONAL IN-  
4 FORMATION.—Section 8(b) of the National Labor Rela-  
5 tions Act (29 U.S.C. 158(b)) is amended—

6           (1) in paragraph (6), by striking “; and” and  
7 inserting a semicolon;

8           (2) in paragraph (7), by striking “8(b).” and  
9 inserting “8(b); and”; and

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

11           “(8) to fail to protect the personal information  
12 of an employee received for an organizing drive, to  
13 use such information for any reason other than a  
14 representation proceeding, or to use such informa-  
15 tion after the conclusion of a representation pro-  
16 ceeding.”.

17       (c) RIGHT NOT TO SUBSIDIZE LABOR ORGANIZA-  
18 TION NONREPRESENTATIONAL ACTIVITIES.—Title I of  
19 the Labor-Management Reporting and Disclosure Act of  
20 1959 (29 U.S.C. 411 et seq.) is amended by adding at  
21 the end the following:

22       **“SEC. 106. RIGHT NOT TO SUBSIDIZE LABOR ORGANIZA-  
23 TION NONREPRESENTATIONAL ACTIVITIES.**

24       “‘No employee’s labor organization dues, fees, assess-  
25 ments, or other contributions shall be used or contributed

1 to any person, organization, or entity for any purpose not  
 2 directly related to the labor organization’s collective bar-  
 3 gaining or contract administration functions on behalf of  
 4 the represented unit employee unless the employee mem-  
 5 ber, or nonmember required to make such payments as  
 6 a condition of employment, authorizes such expenditure in  
 7 writing, after a notice period of not less than 35 days.  
 8 An initial authorization provided by an employee under  
 9 the preceding sentence shall expire not later than 1 year  
 10 after the date on which such authorization is signed by  
 11 the employee. There shall be no automatic renewal of an  
 12 authorization under this section.”.

13 **SEC. 4. EMPLOYMENT RELATIONSHIPS.**

14 (a) AMENDMENTS TO THE FAIR LABOR STANDARDS  
 15 ACT OF 1938 TO HARMONIZE THE DEFINITION OF EM-  
 16 PLOYEE.—

17 (1) DEFINITION OF EMPLOYEE.—Section  
 18 3(e)(1) of the Fair Labor Standards Act of 1938  
 19 (29 U.S.C. 203(e)(1)) is amended by inserting be-  
 20 fore the period the following: “, as determined under  
 21 the usual common law rules”.

22 (2) DEFINITION OF EMPLOY.—Section 3(g) of  
 23 the Fair Labor Standards Act of 1938 (29 U.S.C.  
 24 203(g)) is amended by inserting “an employee” after  
 25 “permit”.

1 (b) CLARIFICATION OF JOINT EMPLOYMENT.—

2 (1) NATIONAL LABOR RELATIONS ACT.—Sec-  
3 tion 2(2) of the National Labor Relations Act (29  
4 U.S.C. 152(2)) is amended—

5 (A) by striking “The term ‘employer’” and  
6 inserting “(A) The term ‘employer’”; and

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

8 “(B) An employer may be considered a  
9 joint employer of the employees of another em-  
10 ployer only if each employer directly, actually,  
11 and immediately, and not in a limited and rou-  
12 tine manner, exercises significant control over  
13 the essential terms and conditions of employ-  
14 ment of the employees of the other employer,  
15 such as hiring such employees, discharging such  
16 employees, determining the rate of pay and ben-  
17 efits of such employees, supervising such em-  
18 ployees on a day-to-day basis, assigning such  
19 employees a work schedule, position, or task, or  
20 disciplining such employees.”.

21 (2) FAIR LABOR STANDARDS ACT OF 1938.—  
22 Section 3(d) of the Fair Labor Standards Act of  
23 1938 (29 U.S.C. 203(d)) is amended—

24 (A) by striking “‘Employer’ includes” and  
25 inserting “(1) ‘Employer’ includes”; and

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

2 “(2) An employer may be considered a joint  
3 employer of the employees of another employer for  
4 purposes of this Act only if each employer meets the  
5 criteria set forth in section 2(2)(B) of the National  
6 Labor Relations Act (29 U.S.C. 152(2)(B)) except  
7 that, for purposes of determining joint-employer sta-  
8 tus under this Act, the terms ‘employee’ and ‘em-  
9 ployer’ referenced in such section shall have the  
10 meanings given such terms in this section.”.

11 (c) PROVISION OF TECHNICAL ASSISTANCE.—Not-  
12 withstanding any other provision of law, under the Fair  
13 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.),  
14 the National Labor Relations Act (29 U.S.C. 151 et seq.),  
15 or any other Federal law, none of the following may be  
16 construed, alone or in combination with any other factor,  
17 as establishing an employer and employee relationship be-  
18 tween a franchisor (or any employee of the franchisor) and  
19 a franchisee (or any employee of the franchisee):

20 (1) The franchisor (or any employee of the  
21 franchisor) provides the franchisee (or any employee  
22 of the franchisee) with, or requires such franchisee  
23 (or any employee of the franchisee) to use, a hand-  
24 book, or other training, on sexual harassment,  
25 human trafficking, workplace violence, discrimina-

1 tion, or opportunities for apprenticeships or scholar-  
2 ships.

3 (2) The franchisor (or any employee of the  
4 franchisor) requires the franchisee (or any employee  
5 of the franchisee) to adopt a policy on sexual harass-  
6 ment, human trafficking, workplace violence, dis-  
7 crimination, opportunities for apprenticeships or  
8 scholarships, child care, or paid leave, including a  
9 requirement for such franchisee (or any employee of  
10 the franchisee) to report to the franchisor (or any  
11 employee of the franchisor) any violations or sus-  
12 pected violations of such policy.

13 **SEC. 5. TRIBAL SOVEREIGNTY.**

14 Section 2 of the National Labor Relations Act (29  
15 U.S.C. 152), as amended by section 4(b)(1), is further  
16 amended—

17 (1) in paragraph (2)(A), by inserting “or any  
18 Indian Tribe, or any enterprise or institution owned  
19 and operated by an Indian Tribe and located on its  
20 Indian lands,” after “subdivision thereof,”; and

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

22 “(15) The term ‘Indian Tribe’ means any In-  
23 dian Tribe, band, nation, pueblo, or other organized  
24 group or community which is recognized as eligible  
25 for the special programs and services provided by

1 the United States to Indians because of their status  
2 as Indians.

3 “(16) The term ‘Indian’ means any individual  
4 who is a member of an Indian Tribe.

5 “(17) The term ‘Indian lands’ means—

6 “(A) all lands within the limits of any In-  
7 dian reservation;

8 “(B) any lands title to which is either held  
9 in trust by the United States for the benefit of  
10 any Indian Tribe or Indian or held by any In-  
11 dian Tribe or Indian subject to restriction by  
12 the United States against alienation; and

13 “(C) any lands in the State of Oklahoma  
14 that are within the boundaries of a former res-  
15 ervation (as defined by the Secretary of the In-  
16 terior) of a federally recognized Indian Tribe.”.

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