

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 842

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

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

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## 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           employment 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)”; and

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 reinstatement”  
3 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                           forded 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.*