

117TH CONGRESS
2D SESSION

S. 3889

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

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2022

Mr. SCOTT of South Carolina (for himself, Mr. McCONNELL, Mr. THUNE, Mr. BARRASSO, Mr. BURR, Mr. BRAUN, Mr. MARSHALL, Mr. MORAN, Mr. TUBERVILLE, Mr. RISCH, Mr. CRAPO, Mr. CORNYN, Mr. DAINES, Ms. LUMMIS, Mrs. HYDE-SMITH, Mr. HAGERTY, Mr. BOOZMAN, Mr. WICKER, Mr. TILLIS, Mr. CRAMER, Mr. ROMNEY, Mr. COTTON, Mr. INHOFE, Mr. JOHNSON, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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. TABLE OF CONTENTS.**

6 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

- Sec. 101. Enhanced Employee Rights.
- Sec. 102. Interference with commerce by threats or violence.
- Sec. 103. Additional labor rights under the National Labor Relations Act.

TITLE II—EMPLOYEE BENEFITS AND ADVANCEMENT

- Sec. 201. Payment of higher wages.
- Sec. 202. Employment relationships.
- Sec. 203. Preventing Federal actions that cause job losses.

TITLE III—STRUCTURAL REFORMS

- Sec. 301. Tribal Sovereignty.
- Sec. 302. Labor organizations required to file Form T-1 Trust Annual Reports.

TITLE IV—ADDITIONAL REFORMS TO EXISTING LABOR RIGHTS AND PROTECTIONS

- Sec. 401. Notice of rights and protections; voter registration lists.
- Sec. 402. Labor organization use of personal information.
- Sec. 403. Notices for labor organization cards declaring purpose and disclosure of dues and fees.

1 **TITLE I—ENHANCING**
 2 **EMPLOYEE RIGHTS**

3 **SEC. 101. ENHANCED EMPLOYEE RIGHTS.**

4 (a) AMENDMENTS TO THE NATIONAL LABOR RELA-
5 TIONS ACT.—

6 (1) UNFAIR LABOR PRACTICES.—Section
7 8(b)(1) of the National Labor Relations Act (29
8 U.S.C. 158(b)(1)) is amended by striking “restrain
9 or” and inserting “interfere with, restrain, or”.

10 (2) REPRESENTATIVES AND ELECTIONS.—The
11 National Labor Relations Act is amended—

12 (A) in section 8 (29 U.S.C. 158), by add-
13 ing at the end the following:

14 “(h)(1) Except as described in paragraph (3), it shall
15 not be an unfair labor practice under subsection (a) for

1 an employer that, not more than 90 days prior to the expi-
2 ration of a collective bargaining agreement in effect be-
3 tween a representative of employees of the employer in a
4 bargaining unit and the employer, receives evidence that
5 the majority of the employees in the unit do not support
6 the representative for purposes of collective bargaining to
7 refuse to bargain collectively with the representative prior
8 to the expiration of the agreement for the purpose of nego-
9 tiating a new or renewed collective bargaining agreement.

10 “(2) An employer that refuses to bargain collectively
11 in accordance with paragraph (1) shall provide notice of
12 the refusal to the representative of the bargaining unit on
13 the date of such refusal.

14 “(3)(A) It shall be an unfair labor practice for an
15 employer described in paragraph (1) to refuse to bargain
16 collectively with the representative of the bargaining unit
17 described in such paragraph for the purpose of negotiating
18 a new or renewed collective bargaining agreement prior
19 to the expiration of the agreement in effect between the
20 representative and the employer if the representative rees-
21 tablishes in accordance with subparagraph (B) that a ma-
22 jority of the employees in the unit for purposes of collec-
23 tive bargaining support the representative.

24 “(B) A representative reestablishes majority support
25 under subparagraph (A), if, not more than 45 days after

1 the date of the notice of refusal under paragraph (2), the
2 representative, in accordance with section 9, files a peti-
3 tion with the Board and is selected for purposes of collec-
4 tive bargaining by secret ballot, in an election conducted
5 by the Board, by the majority of the employees in the
6 unit.”; and

7 (B) in section 9(a) (29 U.S.C. 159(a))—

8 (i) by striking “designated or selected
9 for the purposes of collective bargaining”
10 and inserting “for the purposes of collec-
11 tive bargaining selected by secret ballot in
12 an election conducted by the Board,”; and

13 (ii) by inserting before the period the
14 following: “: *Provided further*, That, for
15 purposes of determining the majority of
16 the employees in a secret ballot election in
17 a unit, the term ‘majority’ shall mean the
18 majority of all the employees in the unit,
19 and not the majority of employees voting
20 in the election: *Provided further*, That, for
21 any bargaining unit that is voluntarily rec-
22 ognized for the purposes of collective bar-
23 gaining as of the date of enactment of the
24 Employee Rights Act, the Board shall, not
25 later than 120 days after such date of en-

1 actment, conduct a secret ballot election
2 among the represented employees in the
3 bargaining unit and, if a majority of the
4 votes cast in such election reject the con-
5 tinuing representation by the labor organi-
6 zation, the labor organization shall cease
7 representation of employees in the bar-
8 gaining unit and any obligations to or on
9 behalf of the labor organization in a collec-
10 tively bargained contract then in effect
11 shall terminate”.

12 (3) FAIR REPRESENTATION IN ELECTIONS.—
13 Section 9 of the National Labor Relations Act (29
14 U.S.C. 159) is amended—

15 (A) in subsection (b), by inserting “prior
16 to an election” after “in each case”; and

17 (B) in subsection (c)—

18 (i) in the flush matter following para-
19 graph (1)(B)—

20 (I) by inserting “of 14 days in
21 advance” after “appropriate hearing
22 upon due notice”;

23 (II) by inserting “, and a review
24 of post-hearing appeals,” after “the
25 record of such hearing”; and

1 (III) by adding at the end the
2 following: “The employer shall provide
3 the Board a list consisting only of em-
4 ployee names and home addresses of
5 all eligible voters within 7 days fol-
6 lowing the Board’s determination of
7 the appropriate unit or following any
8 agreement between the employer and
9 the labor organization regarding the
10 eligible voters. Any employee may
11 elect to be excluded from such list by
12 notifying the employer in writing.”;
13 and

14 (ii) by adding at the end the fol-
15 lowing:

16 “(6)(A) No election shall take place after the filing
17 of any petition unless and until—

18 “(i) a hearing is conducted before a qualified
19 hearing officer in accordance with due process on
20 any and all material, factual issues regarding juris-
21 diction, statutory coverage, appropriate unit, unit in-
22 clusion or exclusion, or eligibility of individuals; and

23 “(ii) the issues are resolved by a regional direc-
24 tor, subject to appeal and review, or by the Board.

1 “(B) No election results shall be final and no labor
2 organization shall be certified as the bargaining represent-
3 ative of the employees in an appropriate unit unless and
4 until—

5 “(i) the Board has ruled on each pre-election
6 issue not resolved before the election; and

7 “(ii) the Board conducts a hearing in accord-
8 ance with due process and resolves each issue per-
9 taining to the conduct or results of the election.”.

10 (4) PENALTIES.—Section 10(c) of the National
11 Labor Relations Act (29 U.S.C. 160(c)) is amended
12 by inserting before “*And provided further*” the fol-
13 lowing: “*Provided further*, That in a case the Board
14 has found that any labor organization has interfered
15 with, restrained, or coerced employees in the exercise
16 of their rights under section 7 to form or join a
17 labor organization or to refrain therefrom, including
18 the filing of a decertification petition, the Board
19 shall order the labor organization to be liable to the
20 affected employees for wages lost and labor organi-
21 zation dues or fees collected unlawfully, if any, and
22 an additional amount as liquidated damages: *Pro-*
23 *vided further*, That any labor organization found to
24 have interfered with, restrained, or coerced an em-
25 ployee in connection with the filing of a decertifica-

1 tion petition shall be prohibited from filing objec-
2 tions to an election held pursuant to such petition.”.

3 (b) AMENDMENTS TO THE LABOR-MANAGEMENT RE-
4 PORTING AND DISCLOSURE ACT OF 1959.—

5 (1) DEFINITION.—Section 3(k) of the Labor-
6 Management Reporting and Disclosure Act of 1959
7 (29 U.S.C. 402(k)) is amended by striking “ballot,
8 voting machine, or otherwise, but” and inserting
9 “paper ballot, voting machine, or electronic ballot
10 cast in the privacy of a voting booth and”.

11 (2) RIGHTS OF MEMBERS.—Section 101(a)(1)
12 of the Labor-Management Reporting and Disclosure
13 Act of 1959 (29 U.S.C. 411(a)(1)) is amended by
14 adding at the end the following “Every employee in
15 a bargaining unit represented by a labor organiza-
16 tion, regardless of membership status in the labor
17 organization, shall have the same right as members
18 to vote by secret ballot regarding whether to ratify
19 a collective bargaining agreement with, or to engage
20 in a strike or refusal to work of any kind against,
21 their employer.”.

22 (3) RIGHT NOT TO SUBSIDIZE LABOR ORGANI-
23 ZATION NONREPRESENTATIONAL ACTIVITIES.—Title
24 I of the Labor-Management Reporting and Dislo-

1 sure Act of 1959 (29 U.S.C. 411 et seq.) is amended
2 by adding at the end the following:

3 **“SEC. 106. RIGHT NOT TO SUBSIDIZE LABOR ORGANIZA-**
4 **TION NONREPRESENTATIONAL ACTIVITIES.**

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

19 (4) LIMITATIONS.—Section 101(a) of the
20 Labor-Management Reporting and Disclosure Act of
21 1959 (29 U.S.C. 411(a)) is amended by adding at
22 the end the following:

23 “(6) LIMITATION.—No strike shall commence with-
24 out the consent of a majority of all represented unit em-
25 ployees affected, determined by a secret ballot vote con-

1 ducted by a neutral, private organization chosen by agree-
 2 ment between the employer and the labor organization in-
 3 volved. In any case in which the employer involved has
 4 made an offer for a collective bargaining agreement, the
 5 represented unit employees involved shall be provided the
 6 opportunity for a secret ballot vote on such offer prior to
 7 any vote relating to the commencement of a strike. The
 8 cost of any such election shall be borne by the labor orga-
 9 nization.”.

10 (5) REPORTING BY LABOR ORGANIZATIONS.—

11 Section 201(c) of the Labor-Management Reporting
 12 and Disclosure Act of 1959 (29 U.S.C. 431(c)) is
 13 amended—

14 (A) by inserting “and the independently
 15 verified annual audit report of the labor organi-
 16 zation’s financial condition and operations”
 17 after “required to be contained in such report”;

18 (B) by inserting “and represented unit
 19 nonmembers” after “members”;

20 (C) by inserting “and represented unit
 21 nonmember” after “any member”;

22 (D) by inserting “or represented unit non-
 23 member” after “to permit such member”;

24 (E) by striking “and” after “any books,
 25 records,”; and

1 (F) by striking “necessary to verify such
2 report” and inserting “, and independently
3 verified annual audit report of the labor organi-
4 zation’s financial condition and operations nec-
5 essary to verify such report required to be sub-
6 mitted under this title”.

7 (6) ACTS OF VIOLENCE.—Section 610 of the
8 Labor-Management Reporting and Disclosure Act of
9 1959 (29 U.S.C. 530) is amended—

10 (A) by striking “It shall” and inserting
11 “(a) It shall”; and

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

13 “(b) It shall be unlawful for any person, through the
14 use of force or violence, or threat of the use of force or
15 violence, to restrain, coerce, or intimidate, or attempt to
16 restrain, coerce, or intimidate any person for the purpose
17 of obtaining from any person any right to represent em-
18 ployees or any compensation or other term or condition
19 of employment. Any person who willfully violates this sub-
20 section shall be fined not more than \$100,000 or impris-
21 oned for not more than 10 years, or both.

22 “(c) The lawfulness of a labor organization’s objec-
23 tives shall not remove or exempt from the definition of
24 extortion conduct by the labor organization or its agents

1 that otherwise constitutes extortion as defined by section
 2 1951(b)(2) of title 18, United States Code.”.

3 **SEC. 102. INTERFERENCE WITH COMMERCE BY THREATS**
 4 **OR VIOLENCE.**

5 Section 1951 of title 18, United States Code, is
 6 amended to read as follows:

7 **“§ 1951. Interference with commerce by threats or vi-**
 8 **olence**

9 “(a) PROHIBITION.—Except as provided in sub-
 10 section (c), whoever in any way or degree obstructs,
 11 delays, or affects commerce or the movement of any article
 12 or commodity in commerce, by robbery or extortion, or at-
 13 tempts or conspires so to do, or commits or threatens
 14 physical violence to any person or property in furtherance
 15 of a plan or purpose to do anything in violation of this
 16 section, shall be fined not more than \$100,000, imprisoned
 17 for a term of not more than 20 years, or both.

18 “(b) DEFINITIONS.—For purposes of this section—

19 “(1) the term ‘commerce’ means any—

20 “(A) commerce within the District of Co-
 21 lumbia, or any territory or possession of the
 22 United States;

23 “(B) commerce between any point in a
 24 State, territory, possession, or the District of
 25 Columbia and any point outside thereof;

1 “(C) commerce between points within the
2 same State through any place outside that
3 State; and

4 “(D) other commerce over which the
5 United States has jurisdiction;

6 “(2) the term ‘extortion’ means the obtaining of
7 property from any person, with the consent of that
8 person, if that consent is induced—

9 “(A) by actual or threatened use of force
10 or violence, or fear thereof;

11 “(B) by wrongful use of fear not involving
12 force or violence; or

13 “(C) under color of official right;

14 “(3) the term ‘labor dispute’ has the same
15 meaning as in section 2(9) of the National Labor
16 Relations Act (29 U.S.C. 152(9)); and

17 “(4) the term ‘robbery’ means the unlawful tak-
18 ing or obtaining of personal property from the per-
19 son or in the presence of another, against his or her
20 will, by means of actual or threatened force or vio-
21 lence, or fear of injury, immediate or future—

22 “(A) to his or her person or property, or
23 property in his or her custody or possession; or

24 “(B) to the person or property of a relative
25 or member of his or her family, or of anyone in

1 his or her company at the time of the taking or
2 obtaining.

3 “(c) EXEMPTED CONDUCT.—

4 “(1) IN GENERAL.—Subsection (a) does not
5 apply to any conduct that—

6 “(A) is incidental to otherwise peaceful
7 picketing during the course of a labor dispute;

8 “(B) consists solely of minor bodily injury,
9 or minor damage to property, or threat or fear
10 of such minor injury or damage; and

11 “(C) is not part of a pattern of violent con-
12 duct or of coordinated violent activity.

13 “(2) STATE AND LOCAL JURISDICTION.—Any
14 violation of this section that involves any conduct de-
15 scribed in paragraph (1) shall be subject to prosecu-
16 tion only by the appropriate State and local authori-
17 ties.

18 “(d) EFFECT ON OTHER LAW.—Nothing in this sec-
19 tion shall be construed—

20 “(1) to repeal, amend, or otherwise affect—

21 “(A) section 6 of the Clayton Act (15
22 U.S.C. 17);

23 “(B) section 20 of the Clayton Act (29
24 U.S.C. 52);

1 “(C) any provision of the Norris-
2 LaGuardia Act (29 U.S.C. 101 et seq.);

3 “(D) any provision of the National Labor
4 Relations Act (29 U.S.C. 151 et seq.); or

5 “(E) any provision of the Railway Labor
6 Act (45 U.S.C. 151 et seq.); or

7 “(2) to preclude Federal jurisdiction over any
8 violation of this section, on the basis that the con-
9 duct at issue—

10 “(A) is also a violation of State or local
11 law; or

12 “(B) occurred during the course of a labor
13 dispute or in pursuit of a legitimate business or
14 labor objective.”.

15 **SEC. 103. ADDITIONAL LABOR RIGHTS UNDER THE NA-**
16 **TIONAL LABOR RELATIONS ACT.**

17 (a) **RELIGIOUS CONSCIENTIOUS EXEMPTION.**—Sec-
18 tion 19 of the National Labor Relations Act (29 U.S.C.
19 169) is amended—

20 (1) by striking “Any employee” and inserting
21 “(a) Any employee”;

22 (2) by striking “; except that” and all that fol-
23 lows through “chosen by the employee”; and

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

1 “(b)(1) Notwithstanding any other provision in this
2 Act, a qualified employer shall not be required to comply
3 with any provision in this Act that requires the employer
4 to recognize, bargain with, or financially support any labor
5 organization.

6 “(2) For purposes of this subsection—

7 “(A) the term ‘qualified employer’ means an
8 employer—

9 “(i) that has a board of directors, of which
10 a majority of the individuals serving on such
11 board are qualified individuals;

12 “(ii) that has a stock, of which the major-
13 ity is owned or controlled by a qualified indi-
14 vidual or qualified individuals; or

15 “(iii) whose management is controlled, in
16 majority, by a qualified individual or qualified
17 individuals; and

18 “(B) the term ‘qualified individual’ means an
19 individual who is a member of and adheres to estab-
20 lished and traditional tenets or teachings of a bona
21 fide religion, body, or sect which has historically held
22 conscientious objections to recognizing, bargaining
23 with, or financially supporting labor organizations.”.

24 (b) NEW ELECTIONS IN CASES OF LABOR ORGANIZA-
25 TION MISCONDUCT.—Section 9(c) of the National Labor

1 Relations Act (29 U.S.C. 159(c)), as amended by section
 2 101(a)(3)(B), is further amended by adding at the end
 3 the following:

4 “(7) In any case in which the Board determines that
 5 the results of an election under this subsection were influ-
 6 enced by the misconduct of a labor organization, including
 7 misconduct through interference, restraint, or coercion of
 8 an employee with respect to such election, the Board shall
 9 set aside the results of such election and order a new elec-
 10 tion with appropriate additional safeguards necessary to
 11 ensure a fair election process.”.

12 (c) RIGHTS OF EMPLOYERS REGARDING EMPLOYER-
 13 ISSUED TECHNOLOGY.—The National Labor Relations
 14 Act (29 U.S.C. 151 et seq.) is amended—

15 (1) by inserting after section 7 (29 U.S.C. 157)
 16 the following:

17 **“SEC. 7A. RIGHTS OF EMPLOYERS REGARDING EMPLOYER-**
 18 **ISSUED TECHNOLOGY.**

19 “An employer shall have the right to determine how
 20 technology issued by the employer (including communica-
 21 tion devices and systems) is used by employees and to pro-
 22 hibit employees from using any such technology for efforts
 23 to form, join, or assist a labor organization.”; and

1 (2) in section 8 (29 U.S.C. 158), as amended
2 by section 101(a)(2)(A), by adding at the end the
3 following:

4 “(i) It shall be an unfair labor practice for an em-
5 ployee or a labor organization to interfere with the right
6 of an employer under section 7A, including by violating
7 or encouraging employees to violate a prohibition of an
8 employer described in such section.”.

9 (d) REJECTING ARBITRATED FIRST COLLECTIVE
10 BARGAINING AGREEMENTS.—Section 9 of the National
11 Labor Relations Act (29 U.S.C. 159) is amended by add-
12 ing at the end the following:

13 “(f) Notwithstanding any other provision of law, in
14 the case of any collective bargaining agreement that was
15 made through arbitration and that is the first such agree-
16 ment between an employer and a labor organization, the
17 employees covered by such agreement shall have the right
18 to vote on the ratification of such agreement through a
19 secret ballot election. In the case that such employees ex-
20 ercise such right and a majority of the employees vote
21 against ratifying the agreement, the agreement shall be
22 null and void.”.

23 (e) WAITING PERIOD AFTER FAILED LABOR ORGA-
24 NIZATION VOTE.—Section 9(c) of the National Labor Re-

1 lations Act (29 U.S.C. 159(c)), as amended by subsection
2 (b), is further amended—

3 (1) in paragraph (3), by striking the first sen-
4 tence; and

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

6 “(8)(A) Subject to subparagraph (B), no election
7 shall be conducted pursuant to this subsection in any bar-
8 gaining unit within which, in the preceding 2-year period,
9 a valid election was held and a majority of the employees
10 in such bargaining unit voted against representation.

11 “(B) An election may be held in a case described in
12 subparagraph (A) during the period described in such sub-
13 paragraph if the bargaining unit described in such sub-
14 paragraph experiences turnover, expansion, or alteration
15 by merger of unit represented employees exceeding 50 per-
16 cent of the bargaining unit on the date on which the elec-
17 tion resulting in a majority of the employees in the unit
18 voting against representation occurred.”.

19 (f) COLLECTIVE OR CLASS ACTIONS.—Section 7 of
20 the National Labor Relations Act (29 U.S.C. 157) is
21 amended by adding at the end the following: “Nothing in
22 this section shall confer the right of an employee to sup-
23 port or engage in a class or collective action.”.

1 **TITLE II—EMPLOYEE BENEFITS**
 2 **AND ADVANCEMENT**

3 **SEC. 201. PAYMENT OF HIGHER WAGES.**

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

6 (1) by inserting “(1)” after “(a)”; and

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

8 “(2) Notwithstanding a labor organization’s exclusive
 9 representation of employees in a unit, or the terms and
 10 conditions of any collective bargaining contract or agree-
 11 ment then in effect, nothing in either—

12 “(A) paragraph (1) or (5) of section 8(a), or

13 “(B) a collective bargaining contract or agree-
 14 ment renewed or entered into after the date of en-
 15 actment of the Employee Rights Act,

16 shall prohibit an employer from paying an employee in the
 17 unit greater wages, pay, or other compensation for, or by
 18 reason of, his or her services as an employee of such em-
 19 ployer, than provided for in such contract or agreement.”.

20 **SEC. 202. EMPLOYMENT RELATIONSHIPS.**

21 (a) AMENDMENTS TO THE FAIR LABOR STANDARDS
 22 ACT OF 1938 TO HARMONIZE THE DEFINITION OF EM-
 23 PLOYEE.—

24 (1) DEFINITION OF EMPLOYEE.—Section
 25 3(e)(1) of the Fair Labor Standards Act of 1938

1 (29 U.S.C. 203(e)(1)) is amended by inserting be-
2 fore the period the following: “, as determined under
3 the usual common law rules”.

4 (2) DEFINITION OF EMPLOY.—Section 3(g) of
5 the Fair Labor Standards Act of 1938 (29 U.S.C.
6 203(g)) is amended by inserting “an employee” after
7 “permit”.

8 (b) CLARIFICATION OF JOINT EMPLOYMENT.—

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

12 (A) by striking “The term ‘employer’ ” and
13 inserting “(A) The term ‘employer’ ”; and

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

15 “(B) An employer may be considered a joint employer
16 of the employees of another employer only if each employer
17 directly, actually, and immediately, and not in a limited
18 and routine manner, exercises significant control over the
19 essential terms and conditions of employment of the em-
20 ployees of the other employer, such as hiring such employ-
21 ees, discharging such employees, determining the rate of
22 pay and benefits of such employees, supervising such em-
23 ployees on a day-to-day basis, assigning such employees
24 a work schedule, position, or task, or disciplining such em-
25 ployees.”.

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

4 (A) by striking “‘Employer’ includes” and
5 inserting “(1) ‘Employer’ includes”; and

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

7 “(2) An employer may be considered a joint employer
8 of the employees of another employer for purposes of this
9 Act only if each employer meets the criteria set forth in
10 section 2(2)(B) of the National Labor Relations Act (29
11 U.S.C. 152(2)(B)) except that, for purposes of deter-
12 mining joint-employer status under this Act, the terms
13 ‘employee’ and ‘employer’ referenced in such section shall
14 have the meanings given such terms in this section.”.

15 (c) BENEFITS FOR INDIVIDUALS ACCESSING WORK
16 THROUGH A DIGITAL MARKETPLACE COMPANY.—

17 (1) IN GENERAL.—Notwithstanding any other
18 provision of law, the fact that an individual access-
19 ing work through a digital marketplace company re-
20 ceives retirement or fringe benefits from such digital
21 marketplace company shall not establish, or support
22 the establishment of, an employee and employer re-
23 lationship between the individual accessing work
24 through a digital marketplace company and the dig-
25 ital marketplace company, respectively, under the

1 Fair Labor Standards Act of 1938 (29 U.S.C. 201
 2 et seq.), the National Labor Relations Act (29
 3 U.S.C. 151 et seq.), or any other Federal law.

4 (2) DEFINITIONS.—In this subsection:

5 (A) DIGITAL MARKETPLACE COMPANY.—

6 The term “digital marketplace company” means
 7 a business entity affecting commerce that—

8 (i)(I) maintains an online-enabled ap-
 9 plication or platform to facilitate the ex-
 10 change of goods or services by users of the
 11 online-enabled application or platform; or

12 (II) licenses access to an online-en-
 13 abled application or platform to facilitate
 14 the exchange of goods or services; and

15 (ii) does not require a licensee using
 16 the online-enabled application or platform
 17 to generate business to accept any specific
 18 job request as a condition of maintaining
 19 access to the entity’s online-enabled appli-
 20 cation or platform.

21 (B) INDIVIDUAL ACCESSING WORK

22 THROUGH A DIGITAL MARKETPLACE COM-
 23 PANY.—The term “individual accessing work
 24 through a digital marketplace company” means
 25 an individual who—

1 (i) is provided with the option to ac-
2 cept or reject job requests through an on-
3 line-enabled application or platform main-
4 tained by a digital marketplace company;
5 and

6 (ii) provides services to digital plat-
7 form consumers upon connection through a
8 digital network maintained by the digital
9 marketplace company in exchange for com-
10 pensation or payment of a fee.

11 (d) 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, neither 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 (e) PROTECTION OF EMPLOYER RIGHTS.—

14 (1) PURPOSES.—The purposes of this sub-
15 section are—

16 (A) to preserve the balance of rights be-
17 tween employers, employees, and labor organi-
18 zations; and

19 (B) to alleviate pressure on employers to
20 hire individuals who seek or gain employment in
21 order to disrupt the workplace of the employer
22 or otherwise inflict economic harm designed to
23 put the employer out of business.

24 (2) CLARIFICATION OF EMPLOYER RIGHTS RE-
25 GARDING HIRING.—Section 8 of the National Labor

1 Relations Act (29 U.S.C. 158), as amended by sec-
2 tion 103(c)(2), is further amended by adding at the
3 end the following:

4 “(j) Nothing in subsection (a) shall be construed as
5 requiring an employer to employ any person who seeks or
6 has sought employment with the employer in furtherance
7 of other employment or membership in a labor organiza-
8 tion.”.

9 **SEC. 203. PREVENTING FEDERAL ACTIONS THAT CAUSE**
10 **JOB LOSSES.**

11 (a) DEFINITIONS.—In this section:

12 (1) AGENCY; RULE.—The terms “agency” and
13 “rule” have the meanings given those terms in sec-
14 tion 551 of title 5, United States Code.

15 (2) DIRECTOR.—The term “Director” means
16 the Director of the Office of Management and Budg-
17 et.

18 (3) EMPLOYER.—The term “employer” has the
19 meaning given the term in section 2 of the Worker
20 Adjustment and Retraining Notification Act (29
21 U.S.C. 2101).

22 (4) MASS LAYOFF; PLANT CLOSING.—The
23 terms “mass layoff” and “plant closing” have the
24 meanings given those terms in section 2 of the
25 Worker Adjustment and Retraining Notification Act

1 (29 U.S.C. 2101), except that those terms do not in-
 2 clude a mass layoff or plant closing described in sec-
 3 tion 4 of that Act (29 U.S.C. 2103).

4 (5) RESCISSION RESOLUTION.—The term “re-
 5 scission resolution” means a joint resolution—

6 (A) relating to an Executive order for
 7 which the Director has submitted notice to Con-
 8 gress under subsection (d)(2) that the Execu-
 9 tive order is likely to result in an employer or-
 10 dering a plant closing or mass layoff;

11 (B) which does not have a preamble;

12 (C) the title of which is as follows: “Joint
 13 resolution relating to nullifying the Executive
 14 Order relating to _____.”, the blank space
 15 being filled in with the title of the Executive
 16 order; and

17 (D) the matter after the resolving clause of
 18 which is as follows: “That—

19 “(1) effective as if enacted on the date on which
 20 the Executive Order was issued, the provisions of
 21 Executive Order _____, entitled ‘_____’
 22 are rescinded and shall have no force or effect; and

23 “(2) none of the funds appropriated or other-
 24 wise made available by any Act may be used to im-
 25 plement, administer, or otherwise carry out the Ex-

1 Executive Order described in paragraph (1), or any
2 successor Executive order or regulation.”, the blank
3 spaces being filled in with the number and title, re-
4 spectively, of the Executive order.

5 (6) STATE.—The term “State” means—

6 (A) a State;

7 (B) the District of Columbia;

8 (C) the Commonwealth of Puerto Rico;

9 and

10 (D) any other territory or possession of the

11 United States.

12 (b) REVIEW PROCESS OF AGENCY RULES.—

13 (1) IN GENERAL.—The head of an agency shall
14 include in each report relating to a rule submitted
15 to each House of Congress and the Comptroller Gen-
16 eral of the United States under section 801(a)(1)(A)
17 of title 5, United States Code, a regulatory impact
18 statement that includes—

19 (A) a determination of whether the rule is
20 likely to result in an employer ordering—

21 (i) a plant closing; or

22 (ii) a mass layoff; and

23 (B) if the head of the agency makes a
24 positive determination under subparagraph (A),
25 a list of each State in which an employer is

1 likely to order a plant closing or mass layoff as
2 a result of the rule.

3 (2) CONSIDERATIONS.—In making a determina-
4 tion on a rule under paragraph (1)(A), the head of
5 an agency shall consider comments received from the
6 public.

7 (3) NOTIFICATION.—Not later than the date on
8 which the head of an agency issues a rule for which
9 the head of the agency makes a positive determina-
10 tion under paragraph (1)(A), the head of the agency
11 shall notify—

12 (A) the Governor of any State included in
13 a list described in paragraph (1)(B) of the like-
14 lihood of an employer ordering a plant closing
15 or mass layoff in that State as a result of the
16 rule; and

17 (B) any employees likely to be impacted by
18 an employer ordering a plant closing or mass
19 layoff that may occur as a result of the rule.

20 (c) TIME LIMIT FOR CONGRESSIONAL REVIEW INAP-
21 PLICABLE.—With respect to a rule for which the head of
22 an agency makes a positive determination under sub-
23 section (b)(1)(A), the period during which a joint resolu-
24 tion described in section 802(a) of title 5, United States

1 Code, relating to the rule may be introduced shall be un-
2 limited.

3 (d) REVIEW PROCESS OF EXECUTIVE ORDERS.—

4 (1) IN GENERAL.—Not later than 7 days after
5 the date on which the President issues an Executive
6 order, the Director shall determine whether the Ex-
7 ecutive order is likely to result in an employer order-
8 ing a mass layoff or plant closing.

9 (2) NOTIFICATION.—Not later than 15 days
10 after the date on which the President issues an Ex-
11 ecutive order for which the Director makes a positive
12 determination under paragraph (1), the Director
13 shall submit a notice to Congress and the Governor
14 of any State in which an employer is likely to order
15 a plant closing or mass layoff as a result of the Ex-
16 ecutive order, which shall contain the following mes-
17 sage:

18 “In accordance with section 203 of the Em-
19 ployee Rights Act, I am notifying you that the Presi-
20 dent has issued Executive Order Number _____,
21 which I have determined would likely result in an
22 employer ordering a plant closing or mass layoff at
23 _____.”, the blank spaces being filled in with
24 the number of the Executive order and the address
25 of the single site of employment at which an em-

1 employer is likely to order a plant closing or mass lay-
2 off, respectively.

3 (e) NULLIFICATION OF EXECUTIVE ACTIONS.—

4 (1) IN GENERAL.—It shall be in order, not later
5 than 60 days (excluding days either House of Con-
6 gress is adjourned for more than 3 days during a
7 session of Congress) after the date on which the Di-
8 rector notifies Congress of an Executive order that
9 is likely to result in an employer ordering a plant
10 closing or mass layoff under subsection (d)(2), to in-
11 troduce a rescission resolution in the House of Rep-
12 resentatives or the Senate with respect to the Execu-
13 tive order.

14 (2) CONGRESSIONAL CONSIDERATION OF PRO-
15 POSED RESCISSION RESOLUTIONS.—

16 (A) PROCEDURE IN HOUSE AND SEN-
17 ATE.—

18 (i) REFERRAL.—Any rescission reso-
19 lution introduced under paragraph (1)
20 shall be referred to the appropriate com-
21 mittee of the House of Representatives or
22 the Senate, as the case may be.

23 (ii) DISCHARGE OF COMMITTEE.—

24 (I) IN GENERAL.—If the com-
25 mittee to which a rescission resolution

1 with respect to an Executive order has
2 been referred has not reported it at
3 the end of 25 calendar days of contin-
4 uous session of the Congress after its
5 introduction, it is in order to move
6 to—

7 (aa) discharge the com-
8 mittee from further consideration
9 of the rescission resolution; or

10 (bb) discharge the com-
11 mittee from further consideration
12 of any other rescission resolution
13 with respect to the same Execu-
14 tive order, which has been re-
15 ferred to the committee.

16 (II) MOTION TO DISCHARGE.—A
17 motion to discharge may be made only
18 by an individual favoring the rescis-
19 sion resolution and may be made only
20 if supported by one-fifth of the Mem-
21 bers of the House involved (a quorum
22 being present). The motion is highly
23 privileged in the House and privileged
24 in the Senate (except that it may not
25 be made after the committee has re-

1 reported a rescission resolution with re-
2 spect to the same Executive order)
3 and debate thereon shall be limited to
4 not more than 1 hour, the time to be
5 divided in the House equally between
6 those favoring and those opposing the
7 rescission resolution, and to be divided
8 in the Senate equally between, and
9 controlled by, the majority leader and
10 the minority leader or their designees.
11 An amendment to the motion is not in
12 order, and it is not in order to move
13 to reconsider the vote by which the
14 motion is agreed to or disagreed to.

15 (iii) FLOOR CONSIDERATION IN THE
16 HOUSE.—

17 (I) When the committee of the
18 House of Representatives has re-
19 ported, or has been discharged from
20 further consideration of a rescission
21 resolution, it shall at any time there-
22 after be in order (even though a pre-
23 vious motion to the same effect has
24 been disagreed to) to move to proceed
25 to the consideration of the rescission

1 resolution. The motion shall be highly
2 privileged and not debatable. An
3 amendment to the motion shall not be
4 in order, nor shall it be in order to
5 move to reconsider the vote by which
6 the motion is agreed to or disagreed
7 to.

8 (II) Debate on a rescission reso-
9 lution shall be limited to not more
10 than 2 hours, which shall be divided
11 equally between those favoring and
12 those opposing the rescission resolu-
13 tion or resolution. A motion further to
14 limit debate shall not be debatable. It
15 shall not be in order to move to recon-
16 sider the vote by which a rescission
17 resolution is agreed to or disagreed to.

18 (III) Motions to postpone, made
19 with respect to the consideration of a
20 rescission resolution, and motions to
21 proceed to the consideration of other
22 business, shall be decided without de-
23 bate.

24 (IV) All appeals from the deci-
25 sions of the Chair relating to the ap-

1 plication of the Rules of the House of
2 Representatives to the procedure re-
3 lating to any rescission resolution
4 shall be decided without debate.

5 (V) Except to the extent specifi-
6 cally provided in the preceding provi-
7 sions of this subsection, consideration
8 of any rescission resolution and
9 amendments thereto (or any con-
10 ference report thereon) shall be gov-
11 erned by the Rules of the House of
12 Representatives applicable to other re-
13 scission resolutions and resolutions,
14 amendments, and conference reports
15 in similar circumstances.

16 (iv) FLOOR CONSIDERATION IN THE
17 SENATE.—

18 (I) Debate in the Senate on any
19 rescission resolution, and all amend-
20 ments thereto and debatable motions
21 and appeals in connection therewith,
22 shall be limited to not more than 10
23 hours. The time shall be equally di-
24 vided between, and controlled by, the

1 majority leader and the minority lead-
2 er or their designees.

3 (II) Debate in the Senate on any
4 amendment to a rescission resolution
5 shall be limited to 2 hours, to be
6 equally divided between, and con-
7 trolled by, the mover and the manager
8 of the rescission resolution. Debate on
9 any amendment to an amendment, to
10 such a rescission resolution, and de-
11 bate on any debatable motion or ap-
12 peal in connection with such a rescis-
13 sion resolution shall be limited to 1
14 hour, to be equally divided between,
15 and controlled by, the mover and the
16 manager of the rescission resolution,
17 except that in the event the manager
18 of the rescission resolution is in favor
19 in any such amendment, motion, or
20 appeal, the time in opposition thereto,
21 shall be controlled by the minority
22 leader or his designee. No amendment
23 that is not germane to the provisions
24 of a rescission resolution shall be re-
25 ceived. Such leaders, or either of

1 them, may, from the time under their
2 control on the passage of a rescission
3 resolution, allot additional time to any
4 Senator during the consideration of
5 any amendment, debatable motion, or
6 appeal.

7 (III) A motion to further limit
8 debate is not debatable. A motion to
9 recommit a rescission resolution (ex-
10 cept a motion to recommit with in-
11 structions to report back within a
12 specified number of days, not to ex-
13 ceed 3, excluding any day on which
14 the Senate is not in session) is not in
15 order. Debate on any such motion to
16 recommit shall be limited to one hour,
17 to be equally divided between, and
18 controlled by, the mover and the man-
19 ager of the concurrent resolution.

20 (IV) The conference report on
21 any rescission resolution shall be in
22 order in the Senate at any time after
23 the third day (excluding Saturdays,
24 Sundays, and legal holidays) following
25 the day on which such a conference

1 report is reported and is available to
2 Members of the Senate. A motion to
3 proceed to the consideration of the
4 conference report may be made even
5 though a previous motion to the same
6 effect has been disagreed to.

7 (V) During Senate consideration
8 of the conference report on any rescis-
9 sion resolution, debate shall be limited
10 to 2 hours, to be equally divided be-
11 tween, and controlled by, the majority
12 leader and minority leader or their
13 designees. Debate on any debatable
14 motion or appeal related to the con-
15 ference report shall be limited to 30
16 minutes, to be equally divided be-
17 tween, and controlled by, the mover
18 and the manager of the conference re-
19 port.

20 (VI) Should the conference re-
21 port be defeated, debate on any re-
22 quest for a new conference and the
23 appointment of conferees shall be lim-
24 ited to one hour, to be equally divided,
25 between, and controlled by, the man-

1 ager of the conference report and the
2 minority leader or his designee, and
3 should any motion be made to instruct
4 the conferees before the conferees are
5 named, debate on such motion shall
6 be limited to 30 minutes, to be equally
7 divided between, and controlled by,
8 the mover and the manager of the
9 conference report. Debate on any
10 amendment to any such instructions
11 shall be limited to 20 minutes, to be
12 equally divided between, and con-
13 trolled by the mover and the manager
14 of the conference report. In all cases
15 when the manager of the conference
16 report is in favor of any motion, ap-
17 peal, or amendment, the time in oppo-
18 sition shall be under the control of the
19 minority leader or his designee.

20 (VII) In any case in which there
21 are amendments in disagreement,
22 time on each amendment shall be lim-
23 ited to 30 minutes, to be equally di-
24 vided between, and controlled by, the
25 manager of the conference report and

1 the minority leader or his designee.
2 No amendment that is not germane to
3 the provisions of such amendments
4 shall be received.

5 (3) CONTINUITY OF SESSION OF CONGRESS.—
6 For the purpose of this subsection, continuity of a
7 session of the Congress shall be considered as bro-
8 ken only by an adjournment of the Congress sine
9 die.

10 **TITLE III—STRUCTURAL** 11 **REFORMS**

12 **SEC. 301. TRIBAL SOVEREIGNTY.**

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

15 (1) in paragraph (2), by inserting “or any In-
16 dian tribe, or any enterprise or institution owned
17 and operated by an Indian tribe and located on its
18 Indian lands,” after “subdivision thereof,”; and

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

20 “(15) The term ‘Indian tribe’ means any Indian
21 tribe, band, nation, pueblo, or other organized group
22 or community which is recognized as eligible for the
23 special programs and services provided by the
24 United States to Indians because of their status as
25 Indians.

1 “(16) The term ‘Indian’ means any individual
2 who is a member of an Indian tribe.

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

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

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

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

15 **SEC. 302. LABOR ORGANIZATIONS REQUIRED TO FILE**
16 **FORM T-1 TRUST ANNUAL REPORTS.**

17 Section 201 of the Labor-Management Reporting and
18 Disclosure Act of 1959 (29 U.S.C. 431) is amended by
19 adding at the end the following:

20 “(d) FORM T-1 ANNUAL TRUST REPORT.—

21 “(1) DEFINITION OF COVERED LABOR ORGANI-
22 ZATION.—In this subsection, the term ‘covered labor
23 organization’ means a labor organization whose total
24 annual receipts equal or exceed \$250,000.

1 “(2) CONDITIONS.—Each covered labor organi-
2 zation shall file an annual report containing the in-
3 formation described in paragraph (3) for each trust
4 in which a labor organization is interested if the
5 labor organization (alone or in combination with
6 other labor organizations)—

7 “(A) has, at any time during or prior to
8 the reporting period, selected or appointed the
9 majority of the governing board of the trust in
10 office at any time during the reporting period;
11 or

12 “(B) contributes more than 50 percent of
13 the receipts of the trust during the reporting
14 period.

15 “(3) REPORT.—A report required under para-
16 graph (2) shall contain information pertaining to the
17 financial operations of the labor organization and
18 the trust, including any transactions or major re-
19 ceipts or disbursements by the trust during the re-
20 porting period.”.

1 **TITLE IV—ADDITIONAL RE-**
2 **FORMS TO EXISTING LABOR**
3 **RIGHTS AND PROTECTIONS**

4 **SEC. 401. NOTICE OF RIGHTS AND PROTECTIONS; VOTER**
5 **REGISTRATION LISTS.**

6 Section 8 of the National Labor Relations Act (29
7 U.S.C. 158), as amended by section 202(e), is further
8 amended by adding at the end the following:

9 “(k)(1) The Board shall promulgate regulations re-
10 quiring each employer to post and maintain, in con-
11 spicuous places where notices to employees and applicants
12 for employment are customarily posted both physically and
13 electronically, a notice setting forth the rights and protec-
14 tions afforded to employees under this Act, which shall
15 include the right and process to rescind the authority of
16 a labor organization under section 9(e), an explanation
17 that any employee in a collective bargaining unit may be
18 exempt from the activities of the labor organization, and
19 that any fees collected by such labor organization may not
20 be used for political activities, and with respect to a State
21 or Territory in which membership in a labor organization
22 may not be a condition of employment, an employee may
23 opt out of any such fees, and with respect to a State or
24 Territory in which such membership may be a condition
25 of employment, such fees may only be used by the labor

1 organization for collective bargaining and representational
2 activities.

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

21 “(3) It shall be an unfair labor practice for an em-
22 ployer to violate any requirement under this subsection.”.

1 **SEC. 402. LABOR ORGANIZATION USE OF PERSONAL INFOR-**
2 **MATION.**

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

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

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

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

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

16 **SEC. 403. NOTICES FOR LABOR ORGANIZATION CARDS DE-**
17 **CLARING PURPOSE AND DISCLOSURE OF**
18 **DUES AND FEES.**

19 Section 8 of the National Labor Relations Act (29
20 U.S.C. 158), as amended by section 401, is further
21 amended by adding at the end the following:

22 “(1)(1) Labor organization authorization cards shall
23 be accompanied by a written notice—

24 “(A) specifying that such cards will be used to
25 certify the labor organization as the exclusive bar-
26 gaining representative of the employee; and

1 “(B) clarifying the rights of the employee and
2 the total monthly dues and fees charged by the labor
3 organization.

4 “(2) A card shall not be considered valid without the
5 written notice required under paragraph (1).

6 “(3) Failure by a labor organization to comply with
7 paragraph (1) shall constitute an unfair labor practice.”.

○