

108TH CONGRESS  
1ST SESSION

# S. 1925

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2003

Mr. KENNEDY (for himself, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. EDWARDS, Mrs. CLINTON, Mr. INOUE, Mr. LEAHY, Mr. LEVIN, Mr. KERRY, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. BAYH, Mr. CORZINE, Mr. DAYTON, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, 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 Free Choice  
5 Act”.

1 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

2 (a) IN GENERAL.—Section 9(c) of the National  
3 Labor Relations Act (29 U.S.C. 159(c)) is amended by  
4 adding at the end the following:

5 “(6) Notwithstanding any other provision of this sec-  
6 tion, whenever a petition shall have been filed by an em-  
7 ployee or group of employees or any individual or labor  
8 organization acting in their behalf alleging that a majority  
9 of employees in a unit appropriate for the purposes of col-  
10 lective bargaining wish to be represented by an individual  
11 or labor organization for such purposes, the Board shall  
12 investigate the petition. If the Board finds that a majority  
13 of the employees in a unit appropriate for bargaining has  
14 signed authorizations designating the individual or labor  
15 organization specified in the petition as their bargaining  
16 representative and that no other individual or labor orga-  
17 nization is currently certified or recognized as the exclu-  
18 sive representative of any of the employees in the unit,  
19 the Board shall not direct an election but shall certify the  
20 individual or labor organization as the representative de-  
21 scribed in subsection (a).

22 “(7) The Board shall develop guidelines and proce-  
23 dures for the designation by employees of a bargaining  
24 representative in the manner described in paragraph (6).  
25 Such guidelines and procedures shall include—

1 “(A) model collective bargaining authorization  
 2 language that may be used for purposes of making  
 3 the designations described in paragraph (6); and

4 “(B) procedures to be used by the Board to es-  
 5 tablish the authenticity of signed authorizations des-  
 6 ignating bargaining representatives.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) NATIONAL LABOR RELATIONS BOARD.—Sec-  
 9 tion 3(b) of the National Labor Relations Act (29  
 10 U.S.C. 153(b)) is amended, in the second sentence—

11 (A) by striking “and to” and inserting  
 12 “to”; and

13 (B) by striking “and certify the results  
 14 thereof,” and inserting “, and to issue certifi-  
 15 cations as provided for in that section,”.

16 (2) UNFAIR LABOR PRACTICES.—Section 8(b)  
 17 of the National Labor Relations Act (29 U.S.C.  
 18 158(b)) is amended—

19 (A) in paragraph (7)(B) by striking “, or”  
 20 and inserting “or a petition has been filed  
 21 under section 9(c)(6), or”; and

22 (B) in paragraph (7)(C) by striking “when  
 23 such a petition has been filed” and inserting  
 24 “when such a petition other than a petition  
 25 under section 9(c)(6) has been filed”.

1 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**  
2 **AGREEMENTS.**

3 Section 8 of the National Labor Relations Act (29  
4 U.S.C. 158) is amended by adding at the end the fol-  
5 lowing:

6 “(h) Whenever collective bargaining is for the pur-  
7 pose of establishing an initial agreement following certifi-  
8 cation or recognition, the provisions of subsection (d) shall  
9 be modified as follows:

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

19 “(2) If after the expiration of the 90-day period  
20 beginning on the date on which bargaining is com-  
21 menced, or such additional period as the parties may  
22 agree upon, the parties have failed to reach an  
23 agreement, either party may notify the Federal Me-  
24 diation and Conciliation Service of the existence of  
25 a dispute and request mediation. Whenever such a  
26 request is received, it shall be the duty of the Service

promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

“(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties.”.

#### **SEC. 4. STRENGTHENING ENFORCEMENT.**

(a) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES DURING ORGANIZING DRIVES.—

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

(1) in the second sentence, by striking “If, after such” and inserting the following:

“(2) If, after such”; and

(2) by striking the first sentence and inserting the following:

“(1) Whenever it is charged—

“(A) that any employer—

“(i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8;

“(ii) threatened to discharge or to otherwise discriminate against an employee in violation of subsection (a)(1) of section 8; or

“(iii) engaged in any other unfair labor practice within the meaning of subsection (a)(1) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in section 7;

while employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative defined in section 9(a) until the first collective bargaining contract is entered into between the employer and the representative; or

“(B) that any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B) or (C) of section 8(b)(4), section 8(e), or section 8(b)(7);

1 the preliminary investigation of such charge shall be made  
 2 forthwith and given priority over all other cases except  
 3 cases of like character in the office where it is filed or  
 4 to which it is referred.”.

5 (2) CONFORMING AMENDMENT.—Section 10(m)  
 6 of the National Labor Relations (29 U.S.C. 160(m))  
 7 is amended by inserting “under circumstances not  
 8 subject to section 10(l)” after “section 8”.

9 (b) REMEDIES FOR VIOLATIONS.—

10 (1) BACKPAY.—Section 10(c) of the National  
 11 Labor Relations Act (29 U.S.C. 160(c)) is amended  
 12 by striking “*And provided further,*” and inserting  
 13 “*Provided further,* That if the Board finds that an  
 14 employer has discriminated against an employee in  
 15 violation of subsection (a)(3) of section 8 while em-  
 16 ployees of the employer were seeking representation  
 17 by a labor organization, or during the period after  
 18 a labor organization was recognized as a representa-  
 19 tive defined in subsection (a) of section 9 until the  
 20 first collective bargaining contract was entered into  
 21 between the employer and the representative, the  
 22 Board in such order shall award the employee back  
 23 pay and, in addition, 2 times that amount as liq-  
 24 uidated damages: *Provided further,*”.

1           (2) CIVIL PENALTIES.—Section 12 of the Na-  
 2           tional Labor Relations Act (29 U.S.C. 162) is  
 3           amended—

4                   (A) by striking “Any” and inserting “(a)  
 5           Any”; and

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

7           “(b) Any employer who willfully or repeatedly com-  
 8           mits any unfair labor practice within the meaning of sub-  
 9           sections (a)(1) or (a)(3) of section 8 while employees of  
 10          the employer are seeking representation by a labor organi-  
 11          zation or during the period after a labor organization has  
 12          been recognized as a representative defined in subsection  
 13          (a) of section 9 until the first collective bargaining con-  
 14          tract is entered into between the employer and the rep-  
 15          resentative shall, in addition to any make-whole remedy  
 16          ordered, be subject to a civil penalty of not to exceed  
 17          \$20,000 for each violation. In determining the amount of  
 18          any penalty under this section, the Board shall consider  
 19          the gravity of the unfair labor practice and the impact  
 20          of the unfair labor practice on the charging party, on other  
 21          persons seeking to exercise rights guaranteed by this Act,  
 22          or on the public interest.”.

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