

113TH CONGRESS
1ST SESSION

S. 1712

To provide protections for workers with respect to their right to select or refrain from selecting representation by a labor organization.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2013

Mr. HATCH (for himself, Mr. ALEXANDER, Mr. McCONNELL, Mr. BARRASSO, Mr. BOOZMAN, Mr. BURR, Mr. CHAMBLISS, Mr. COBURN, Mr. COCHRAN, Mr. CORNYN, Mr. ENZI, Mr. GRAHAM, Mr. HELLER, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON of Wisconsin, Mr. LEE, Mr. MCCAIN, Mr. PAUL, Mr. RISCH, Mr. RUBIO, Mr. SCOTT, Mr. THUNE, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide protections for workers with respect to their right to select or refrain from selecting representation by a labor organization.

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”.

1 **SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELA-**
 2 **TIONS ACT.**

3 (a) UNFAIR LABOR PRACTICES.—Section 8(b)(1) of
 4 the National Labor Relations Act (29 U.S.C. 158(b)(1))
 5 is amended by inserting “interfere with” before “re-
 6 strain”.

7 (b) REPRESENTATIVES AND ELECTIONS.—Section 9
 8 of the National Labor Relations Act (29 U.S.C. 159) is
 9 amended—

10 (1) in subsection (a)—

11 (A) by striking “designated or selected for
 12 the purposes of collective bargaining” and in-
 13 serting “for the purposes of collective bar-
 14 gaining selected by secret ballot in an election
 15 conducted by the Board,”; and

16 (B) by inserting before the period the fol-
 17 lowing: “: *Provided further*, That, for purposes
 18 of determining the majority of the employees in
 19 a secret ballot election in a unit, the term ‘ma-
 20 jority’ shall mean the majority of all the em-
 21 ployees in the unit, and not the majority of em-
 22 ployees voting in the election”; and

23 (2) in subsection (e), by adding at the end the
 24 following:

25 “(3) Whenever any certified or voluntarily recognized
 26 bargaining unit existing on or after the date of enactment

1 of the Employee Rights Act experiences turnover, expansion,
2 sion, or alteration by merger of unit represented employees
3 exceeding 50 percent of the bargaining unit on such
4 date and (A) the unit represented employees are covered
5 by a negotiated and agreed-upon collective agreement in
6 effect between a labor organization representative and an
7 employer, the Board shall conduct a secret paper ballot
8 election among the represented employees in the bargaining
9 unit between the 120th day and 110th day prior
10 to the collective agreement's expiration or prior to the conclusion
11 of three years, whichever occurs earlier, or (B) there is no
12 negotiated collective agreement then in effect between a labor
13 organization and an employer, the Board shall conduct a secret
14 paper ballot election among the represented employees in the
15 bargaining unit within 30 days. Thereafter, a secret ballot
16 election shall again be conducted under the same conditions and
17 procedures whenever the recognized bargaining unit experiences
18 turnover, expansion, or alteration by merger of unit represented
19 employees exceeding 50 percent of the bargaining unit then
20 in existence at the time of the preceding secret paper ballot
21 election. The election shall be conducted without regard
22 to the pendency of any unfair labor practice charge against
23 the employer or the labor organization representative and the
24 Board shall rule on any objections to the election.

tion pursuant to its established timeframes for resolving such matters. If a majority of the votes cast in a valid election reject the continuing representation by the labor organization, the Board shall withdraw the labor organization's certification, the labor organization shall cease representation of employees in the bargaining unit, and any obligations to or on behalf of the labor organization in a collectively bargained contract then in effect shall terminate.'".

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

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

(2) in subsection (c)—

(A) in the flush matter following paragraph (1)(B)—

(i) by inserting “of 14 days in advance” after “appropriate hearing upon due notice”;

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

(iii) by adding at the end the following: “The employer shall provide the

1 Board a list consisting only of employee
2 names and home addresses of all eligible
3 voters within 7 days following the Board's
4 determination of the appropriate unit or
5 following any agreement between the em-
6 ployer and the labor organization regard-
7 ing the eligible voters. Any employee may
8 elect to be excluded from such list by noti-
9 fying the employer in writing.”; and

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

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

13 “(i) a hearing is conducted before a qualified
14 hearing officer in accordance with due process on
15 any and all material, factual issues regarding juris-
16 diction, statutory coverage, appropriate unit, unit in-
17 clusion or exclusion, or eligibility of individuals; and

18 “(ii) the issues are resolved by a Regional Di-
19 rector, subject to appeal and review, or by the
20 Board.

21 “(B) No election results shall be final and no labor
22 organization shall be certified as the bargaining represent-
23 ative of the employees in an appropriate unit unless and
24 until the Board has ruled on—

1 “(i) each pre-election issue not resolved before
2 the election; and

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

6 (d) PENALTIES.—Section 10 of the National Labor
7 Relations Act (29 U.S.C. 160) is amended by inserting
8 after the second sentence following the second proviso, the
9 following: “Any labor organization found to have inter-
10 fered with, restrained, or coerced employees in the exercise
11 of their rights under section 7 to form or join a labor orga-
12 nization or to refrain therefrom, including the filing of a
13 decertification petition, shall be liable for wages lost and
14 union dues or fees collected unlawfully, if any, and an ad-
15 ditional amount as liquidated damages. Any labor organi-
16 zation found to have interfered with, restrained, or coerced
17 an employee in connection with the filing of a decertifica-
18 tion petition shall be prohibited from filing objections to
19 an election held pursuant to such petition.”.

20 **SEC. 3. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
21 **PORTING AND DISCLOSURE ACT OF 1959.**

22 (a) DEFINITION.—Section 3(k) of the Labor-Man-
23 agement Reporting and Disclosure Act of 1959 (29 U.S.C.
24 402(k)) is amended by striking “ballot, voting machine,
25 or otherwise, but” and inserting “paper ballot, voting ma-

chine, or electronic ballot cast in the privacy of a voting booth and”.

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

(c) RIGHT NOT TO SUBSIDIZE UNION NON-REPRESENTATIONAL ACTIVITIES.—Title I of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 411 et seq.) is amended by adding at the end the following:

“SEC. 106. RIGHT NOT TO SUBSIDIZE UNION NON-REPRESENTATIONAL ACTIVITIES.

“No employee’s union dues, fees, or assessments or other contributions shall be used or contributed to any person, organization, or entity for any purpose not directly related to the labor organization’s collective bargaining or contract administration functions on behalf of the represented unit employee unless the employee member, or

1 nonmember required to make such payments as a condi-
2 tion of employment, authorizes such expenditure in writ-
3 ing, after a notice period of not less than 35 days. An
4 initial authorization provided by an employee under the
5 preceding sentence shall expire not later than 1 year after
6 the date on which such authorization is signed by the em-
7 ployee. There shall be no automatic renewal of an author-
8 ization under this section.”.

9 (d) LIMITATIONS.—Section 101(a) of the Labor-
10 Management Reporting and Disclosure Act of 1959 (29
11 U.S.C. 411(a)) is amended by adding at the end the fol-
12 lowing:

13 “(6) LIMITATION.—No strike shall commence with-
14 out the consent of a majority of all represented unit em-
15 ployees affected, determined by a secret ballot vote con-
16 ducted by a neutral, private organization chosen by agree-
17 ment between the employer and the labor organization in-
18 volved. In any case in which the employer involved has
19 made an offer for a collective bargaining agreement, the
20 represented unit employees involved shall be provided the
21 opportunity for a secret ballot vote on such offer prior to
22 any vote relating to the commencement of a strike. The
23 cost of any such election shall be borne by the labor orga-
24 nization.”.

1 (e) REPORTING BY LABOR ORGANIZATIONS.—Section
 2 201(c) of the Labor-Management Reporting and Disclo-
 3 sure Act of 1959 (29 U.S.C. 431(c)) is amended—

4 (1) by inserting “and the independently verified
 5 annual audit report of the labor organization’s fi-
 6 nancial condition and operations” after “required to
 7 be contained in such report”;

8 (2) by inserting “and represented unit nonmem-
 9 bers” after “members”;

10 (3) by inserting “and represented unit non-
 11 member” after “any member”;

12 (4) by striking “and” after “any books,
 13 records,”; and

14 (5) by inserting “, and independently verified
 15 annual audit report of the labor organization’s fi-
 16 nancial condition and operations” before “necessary
 17 to verify such report.”.

18 (f) ACTS OF VIOLENCE.—Section 610 of the Labor-
 19 Management Reporting and Disclosure Act of 1959 (29
 20 U.S.C. 530) is amended—

21 (1) by striking “It shall” and inserting “(a) It
 22 shall”; and

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

24 “(b) It shall be unlawful for any person, through the
 25 use of force or violence, or threat of the use of force or

1 violence, to restrain, coerce, or intimidate, or attempt to
2 restrain, coerce, or intimidate any person for the purpose
3 of obtaining from any person any right to represent em-
4 ployees or any compensation or other term or condition
5 of employment. Any person who willfully violates this sub-
6 section shall be fined not more than \$100,000 or impris-
7 oned for not more than 10 years, or both.

8 “(c) The lawfulness of a labor organization’s objec-
9 tives shall not remove or exempt from the definition of
10 extortion conduct by the labor organization or its agents
11 that otherwise constitutes extortion as defined by section
12 1951(b)(2) of title 18, United States Code, from the defi-
13 nition of extortion.”.

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