

114TH CONGRESS
1ST SESSION

S. 1874

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

JULY 28, 2015

Mr. HATCH (for himself, Mr. ALEXANDER, Mr. McCONNELL, Mr. MCCAIN, Mr. ENZI, Mr. CRUZ, Mr. WICKER, Mr. ISAKSON, Mr. COATS, Mr. JOHNSON, Mr. GARDNER, Mr. ROBERTS, Mr. RISCH, Mr. LANKFORD, Mr. CORNYN, Mr. COCHRAN, and Mr. PERDUE) 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”.

5 **SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELA-** 6 **TIONS ACT.**

7 (a) UNFAIR LABOR PRACTICES.—Section 8(b)(1) of
8 the National Labor Relations Act (29 U.S.C. 158(b)(1))

1 is amended by inserting “interfere with” before “re-
2 strain”.

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

6 (1) in subsection (a)—

7 (A) by striking “designated or selected for
8 the purposes of collective bargaining” and in-
9 serting “for the purposes of collective bar-
10 gaining selected by secret ballot in an election
11 conducted by the Board,”; and

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

19 (2) in subsection (e), by adding at the end the
20 following:

21 “(3) Whenever any certified or voluntarily recognized
22 bargaining unit existing on or after the date of enactment
23 of the Employee Rights Act experiences turnover, expan-
24 sion, or alteration by merger of unit represented employ-
25 ees exceeding 50 percent of the bargaining unit on such

1 date and (A) the unit represented employees are covered
2 by a negotiated and agreed-upon collective agreement in
3 effect between a labor organization representative and an
4 employer, the Board shall conduct a secret paper ballot
5 election among the represented employees in the bar-
6 gaining unit between the 120th day and 110th day prior
7 to the collective agreement's expiration or prior to the con-
8 clusion of three years, whichever occurs earlier, or (B)
9 there is no negotiated collective agreement then in effect
10 between a labor organization and an employer, the Board
11 shall conduct a secret paper ballot election among the rep-
12 resented employees in the bargaining unit within 30 days.
13 Thereafter, a secret ballot election shall again be con-
14 ducted under the same conditions and procedures when-
15 ever the recognized bargaining unit experiences turnover,
16 expansion, or alteration by merger of unit represented em-
17 ployees exceeding 50 percent of the bargaining unit then
18 in existence at the time of the preceding secret paper bal-
19 lot election. The election shall be conducted without regard
20 to the pendency of any unfair labor practice charge
21 against the employer or the labor organization representa-
22 tive and the Board shall rule on any objections to the elec-
23 tion pursuant to its established timeframes for resolving
24 such matters. If a majority of the votes cast in a valid
25 election reject the continuing representation by the labor

1 organization, the Board shall withdraw the labor organiza-
 2 tion’s certification, the labor organization shall cease rep-
 3 resentation of employees in the bargaining unit, and any
 4 obligations to or on behalf of the labor organization in a
 5 collectively bargained contract then in effect shall termi-
 6 nate.”.

7 (c) FAIR REPRESENTATION IN ELECTIONS.—Section
 8 9 of the National Labor Relations Act (29 U.S.C. 159)
 9 is amended—

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

12 (2) in subsection (c)—

13 (A) in the flush matter following para-
 14 graph (1)(B)—

15 (i) by inserting “of 14 days in ad-
 16 vance” after “appropriate hearing upon
 17 due notice”;

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

21 (iii) by adding at the end the fol-
 22 lowing: “The employer shall provide the
 23 Board a list consisting only of employee
 24 names and home addresses of all eligible
 25 voters within 7 days following the Board’s

1 determination of the appropriate unit or
2 following any agreement between the em-
3 ployer and the labor organization regard-
4 ing the eligible voters. Any employee may
5 elect to be excluded from such list by noti-
6 fying the employer in writing.”; and

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

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

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

15 “(ii) the issues are resolved by a Regional Di-
16 rector, subject to appeal and review, or by the
17 Board.

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

22 “(i) each pre-election issue not resolved before
23 the election; and

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

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

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

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

1 (b) RIGHTS OF MEMBERS.—Section 101(a)(1) of the
 2 Labor-Management Reporting and Disclosure Act of 1959
 3 (29 U.S.C. 411(a)(1)) is amended by adding at the end
 4 the following “Every employee in a bargaining unit rep-
 5 resented by a labor organization, regardless of member-
 6 ship status in the labor organization, shall have the same
 7 right as members to vote by secret ballot regarding wheth-
 8 er to ratify a collective bargaining agreement with, or to
 9 engage in, a strike or refusal to work of any kind against
 10 their employer.”.

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

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

18 “No employee’s union dues, fees, or assessments or
 19 other contributions shall be used or contributed to any
 20 person, organization, or entity for any purpose not directly
 21 related to the labor organization’s collective bargaining or
 22 contract administration functions on behalf of the rep-
 23 resented unit employee unless the employee member, or
 24 nonmember required to make such payments as a condi-
 25 tion of employment, authorizes such expenditure in writ-

1 ing, after a notice period of not less than 35 days. An
 2 initial authorization provided by an employee under the
 3 preceding sentence shall expire not later than 1 year after
 4 the date on which such authorization is signed by the em-
 5 ployee. There shall be no automatic renewal of an author-
 6 ization under this section.”.

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

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

23 (e) REPORTING BY LABOR ORGANIZATIONS.—Section
 24 201(c) of the Labor-Management Reporting and Dislo-
 25 sure Act of 1959 (29 U.S.C. 431(c)) is amended—

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

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

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

9 (4) by striking “and” after “any books,
10 records,”; and

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

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

18 (1) by striking “It shall” and inserting “(a) It
19 shall”; and

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

21 “(b) It shall be unlawful for any person, through the
22 use of force or violence, or threat of the use of force or
23 violence, to restrain, coerce, or intimidate, or attempt to
24 restrain, coerce, or intimidate any person for the purpose
25 of obtaining from any person any right to represent em-

1 ployees or any compensation or other term or condition
2 of employment. Any person who willfully violates this sub-
3 section shall be fined not more than \$100,000 or impris-
4 oned for not more than 10 years, or both.

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

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