

115TH CONGRESS
1ST SESSION

S. 1774

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

SEPTEMBER 7, 2017

Mr. HATCH (for himself, Mr. ALEXANDER, Mr. CORNYN, Mr. CRUZ, Mr. ROBERTS, Mr. YOUNG, Mr. LANKFORD, Mr. SCOTT, Mr. HELLER, Mr. RUBIO, Mr. SHELBY, Mr. PERDUE, Mr. SASSE, Mr. ISAKSON, and Mr. RISCH) 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 striking “restrain or” and inserting “inter-
 2 fere with, restrain, or”.

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 bargaining
3 agreement in effect between a labor organization rep-
4 resentative and an employer, the Board shall conduct a
5 secret paper ballot election among the represented employ-
6 ees in the bargaining unit between the 120th day and
7 110th day prior to the collective bargaining agreement's
8 expiration or prior to the conclusion of three years, which-
9 ever occurs earlier, or (B) there is no negotiated collective
10 bargaining agreement then in effect between a labor orga-
11 nization and an employer, the Board shall conduct a secret
12 paper ballot election among the represented employees in
13 the bargaining unit within 30 days. Thereafter, a secret
14 ballot election shall again be conducted under the same
15 conditions and procedures whenever the recognized bar-
16 gaining unit experiences turnover, expansion, or alteration
17 by merger of unit represented employees exceeding 50 per-
18 cent of the bargaining unit then in existence at the time
19 of the preceding secret paper ballot election. The election
20 shall be conducted without regard to the pendency of any
21 unfair labor practice charge against the employer or the
22 labor organization representative and the Board shall rule
23 on any objections to the election pursuant to its estab-
24 lished timeframes for resolving such matters. If a majority
25 of the votes cast in a valid election reject the continuing

1 representation by the labor organization, the Board shall
 2 withdraw the labor organization's certification, the labor
 3 organization shall cease representation of employees in the
 4 bargaining unit, and any obligations to or on behalf of
 5 the labor organization in a collectively bargained contract
 6 then in effect shall terminate.”.

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 labor organization dues or fees collected unlawfully, if any,
 13 and an additional amount as liquidated damages. Any
 14 labor organization found to have interfered with, re-
 15 strained, or coerced an employee in connection with the
 16 filing of a decertification petition shall be prohibited from
 17 filing objections to an election held pursuant to such peti-
 18 tion.”.

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

21 (a) DEFINITION.—Section 3(k) of the Labor-Man-
 22 agement Reporting and Disclosure Act of 1959 (29 U.S.C.
 23 402(k)) is amended by striking “ballot, voting machine,
 24 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 LABOR ORGANIZATION NONREPRESENTATIONAL 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 LABOR ORGANIZATION NONREPRESENTATIONAL ACTIVITIES.

“No employee’s labor organization 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

1 member, or nonmember required to make such payments
2 as a condition of employment, authorizes such expenditure
3 in writing, after a notice period of not less than 35 days.
4 An initial authorization provided by an employee under
5 the preceding sentence shall expire not later than 1 year
6 after the date on which such authorization is signed by
7 the employee. There shall be no automatic renewal of an
8 authorization 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 inserting “and represented unit non-
 13 member” after “such member”;

14 (5) by striking “and” after “any books,
 15 records,”; and

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

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

23 (1) by striking “It shall” and inserting “(a) It
 24 shall”; and

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

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

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

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