115TH CONGRESS
2D SESSION

H. R.

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. POCAN (for himself, Ms. DELAUR, and Mr. NORCROSS) introduced the following bill; which was referred to the Committee on

A BILL

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, 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 “Workplace Democracy

5 Act”.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.

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

(1) in paragraph (3), by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”; and

(2) in paragraph (11)—

(A) by inserting “and for a majority of the individual’s worktime” after “interest of the employer”;

(B) by striking “assign,”; and

(C) by striking “or responsibly to direct them,”.
(b) UNFAIR LABOR PRACTICES; SECONDARY BOYCOTTS AND PICKETING.—

(1) IN GENERAL.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(A) in subsection (a)—

(i) in paragraph (5), by striking the period and inserting “; and”; and

(ii) by adding at the end the following:

“(6) to coerce any employee into attending or participating in campaign activities that are unrelated to the employee’s job duties.”;

(B) in subsection (b)—

(i) by striking paragraphs (4) and (7); and

(ii) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(C) by repealing subsection (e).

(2) PREVENTION OF UNFAIR LABOR PRACTICES.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(A) by striking subsections (k) and (l); and

(B) by redesignating subsection (m) as subsection (k).
(3) FACILITATING COLLECTIVE BARGAINING AGREEMENTS.—Section 8 of the National Labor Relations Act (29 U.S.C. 158), as so amended, is further amended by adding at the end the following:

“(h) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows:

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

“(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a 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 board 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.”.

(c) STREAMLINING CERTIFICATION FOR LABOR ORGANIZATIONS.—The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended—

(1) in section 3(b) (29 U.S.C. 153(b))—

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

(B) by striking “and certify the results thereof,” and inserting “, and to issue certifications as provided for in that section,”; and
(2) in section 9(c) (29 U.S.C. 159(c)), by adding at the end the following:

“(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for purposes of collective bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).

“(7) The Board shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (6).

Such guidelines and procedures shall include—
“(A) model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (6); and

“(B) procedures to be used by the Board to establish the validity of signed authorizations designating bargaining representatives.”.

(d) PREEMPTING STATE RIGHT-TO-WORK FOR LESS LAWS.—Subsection (b) of section 14 of the National Labor Relations Act (29 U.S.C. 164) is repealed.

(e) JOINT AND SEVERAL LIABILITY.—The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following:

“SEC. 20. JOINT AND SEVERAL LIABILITY.

“(a) IN GENERAL.—A joint employer shall be jointly and severally liable under this Act for any violations of this Act involving one or more employees supplied by another employer to perform labor within the joint employer’s usual course of business.

“(b) JOINT EMPLOYER.—An employer shall be considered a joint employer of employees of another employer for purposes of this Act, if such employer possesses, reserves, or exercises enough direct or indirect control over such employees’ essential terms and conditions of employment to permit meaningful collective bargaining between the employer and such employees.”.
SEC. 3. AMENDMENT TO THE LABOR MANAGEMENT RELATIONS ACT, 1947, WITH RESPECT TO SECONDARY BOYCOTTS.

Section 303 of the Labor Management Relations Act, 1947 (29 U.S.C. 187) is repealed.

SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.


(1) in subsection (c), by striking the period at the end and inserting the following: “: Provided, That this subsection shall not exempt from the requirements of this section any arrangement or part of an arrangement in which a party agrees to draft speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees for an object described in subsection (b)(1).”; and

(2) by adding at the end the following:

“(h) Anti-labor Organization Campaigns.—

“(1) Payment report.—

“(A) In general.—An employer who makes any payment (including reimbursed expenses) to a labor relations consultant or other
independent contractor or organization pursuant to an agreement or arrangement described in subsection (a)(4) involving activities to disadvantage a labor organization or weaken the rights of employees to organize and bargain collectively shall, except as provided in subparagraph (C), provide a report described in subparagraph (B) to the Secretary every 7 days if such a payment was made during such 7-day period.

“(B) CONTENTS OF REPORT.—The report described in this subparagraph shall contain—

“(i) the contents of the report described in subsection (a) with respect to any payment described in subparagraph (A) made during the applicable period of the report; and

“(ii) the total amount of all such payments made pursuant to the agreement or arrangement described in such subparagraph.

“(C) REPRESENTATION ELECTIONS.—For the 7-day period immediately prior to the date of a representation election, an employer required to provide a report under subparagraph (A) shall provide such report to the Secretary
every 24 hours if such a payment was made during such 24-hour period.

“(D) THIRD-PARTY ENTITY REPORTING.—

The Secretary shall establish procedures for any third-party entity that enters into an agreement or an arrangement with an employer to engage in activities to disfavor a labor organization or weaken the rights of employees to organize and bargain collectively to provide reports to the Secretary that are consistent with the procedures for the reports required of employers under subparagraphs (A) through (C).

“(2) NEGATIVE INFORMATION.—Not later than 7 days after an employer disseminates to employees information that disfavors a labor organization or the rights of employees to organize and bargain collectively, the employer shall disclose such information, including the names and contact information for employees receiving the information, to the affected labor organization and to the Secretary.

“(3) REGISTRATION AND CERTIFICATION OF PERSUADERS.—

“(A) IN GENERAL.—A labor relations consultant or other independent contractor or organization that provides services pursuant to an
agreement or arrangement described in paragraph (1)(A) shall prior to, and as a condition for, providing such services register with and be certified by the Office of Labor Management Standards.

“(B) Process for registration and certification.—The Secretary shall prescribe a process for the registration and certification required under subparagraph (A). Such process shall include requiring the labor relations consultant, other independent contractor, or organization described in such subparagraph to—

“(i) provide its name, address, business telephone number, and principal place of business;

“(ii) provide the name of its principal officers, if any;

“(iii) provide a general description of its business activities; and

“(iv) submit to a criminal background check conducted by the Secretary at the expense of such consultant, independent contractor, or organization.

“(C) Prohibition against registering and certifying certain persons.—The Of-
Office of Labor Management Standards shall not register and certify under this paragraph any labor relations consultant, independent contractor, or organization that has been convicted of any offense described in section 504(a).”.

(b) PENALTIES.—Section 210 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 440) is amended—

(1) by striking “Whenever” and inserting “(a) Whenever”; and

(2) by adding at the end the following:

“(b)(1) Except as provided in paragraph (2), the Secretary shall impose on any employer that violates paragraph (1) or (2) of section 203(h) a civil penalty in an amount not to exceed $10,000 for each violation.

“(2) An employer shall not be subject to a civil penalty under paragraph (1) if the employer can show a good faith attempt to comply with paragraph (1) or (2) of section 203(h).

“(3) The Secretary shall impose on any labor relations consultant or other independent contractor or organization that violates section 203(h)(3) a civil penalty in the amount of $250 per day for each day the consultant, independent contractor, or organization is not in compliance with such section.”.