

112TH CONGRESS
1ST SESSION

H. R. 2810

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 2011

Mr. SCOTT of South Carolina introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

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

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))
9 is amended by inserting “interfere with” before “re-
10 strain”.

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

4 (1) in subsection (a)—

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

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

17 (2) in subsection (e), by adding at the end the
18 following:

19 “(3) Not later than 36 months after the initial certifi-
20 cation of a labor organization as the exclusive representa-
21 tive of employees in an appropriate bargaining unit, and
22 each 3-year period thereafter, a neutral, private organiza-
23 tion chosen by agreement between the employer and the
24 labor organization involved, after a notice period of not
25 less than 35 days, shall conduct a secret ballot election

1 among such employees to determine whether a majority
2 desire to continue to be represented by such labor organi-
3 zation. The cost to the third party that is conducting the
4 election shall be shared equally by the labor organization
5 and the employer involved. The election shall be conducted
6 without regard to the pendency of any unfair labor prac-
7 tice charge against the employer or the labor organization
8 representative and the Board shall rule on any objections
9 to the election pursuant to its established timeframes for
10 resolving such matters. If a majority of the votes cast re-
11 ject the continuing representation by the labor organiza-
12 tion, the Board shall withdraw the labor organization’s
13 certification.”.

14 (c) FAIR REPRESENTATION IN ELECTIONS.—Section
15 9 of the National Labor Relations Act (29 U.S.C. 159)
16 is amended—

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

19 (2) in subsection (c)—

20 (A) in the flush matter following para-
21 graph (1)(B)—

22 (i) by inserting “of 14 days in ad-
23 vance” after “appropriate hearing upon
24 due notice”;

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

4 (iii) by adding at the end the fol-
5 lowing: “No election shall be conducted
6 less than 40 calendar days following the
7 filing of an election petition. The employer
8 shall provide the Board a list of employee
9 names and home addresses of all eligible
10 voters within 7 days following the Board’s
11 determination of the appropriate unit or
12 following any agreement between the em-
13 ployer and the labor organization regard-
14 ing the eligible voters.”; and

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

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

18 “(i) a hearing is conducted before a qualified
19 hearing officer in accordance with due process on
20 any and all material, factual issues regarding juris-
21 diction, statutory coverage, appropriate unit, unit in-
22 clusion or exclusion, or eligibility of individuals; and

23 “(ii) the issues are resolved by a Regional Di-
24 rector, subject to appeal and review, or by the
25 Board.

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

5 “(i) each pre-election issue not resolved before
6 the election; and

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

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

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

3 (a) DEFINITION.—Section 3(k) of the Labor-Man-
4 agement Reporting and Disclosure Act of 1959 (29 U.S.C.
5 402(k)) is amended by striking “ballot, voting machine,
6 or otherwise, but” and inserting “paper ballot, voting ma-
7 chine, or electronic ballot cast in the privacy of a voting
8 booth and”.

9 (b) RIGHTS OF MEMBERS.—Section 101(a)(1) of the
10 Labor-Management Reporting and Disclosure Act of 1959
11 (29 U.S.C. 411(a)(1)) is amended by adding at the end
12 the following: “Every employee in a bargaining unit rep-
13 resented by a labor organization, regardless of member-
14 ship status in the labor organization, shall have the same
15 right as members to vote by secret ballot regarding wheth-
16 er to ratify a collective bargaining agreement with, or to
17 engage in, a strike or refusal to work of any kind against
18 their employer.”.

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

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

3 “No employee’s union dues, fees, or assessments or
4 other contributions shall be used or contributed to any
5 person, organization, or entity for any purpose not directly
6 germane to the labor organization’s collective bargaining
7 or contract administration functions unless the member,
8 or nonmember required to make such payments as a con-
9 dition of employment, authorizes such expenditure in writ-
10 ing, after a notice period of not less than 35 days. An
11 initial authorization provided by an employee under the
12 preceding sentence shall expire not later than 1 year after
13 the date on which such authorization is signed by the em-
14 ployee. There shall be no automatic renewal of an author-
15 ization under this section.”.

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

20 “(6) LIMITATION.—No strike shall commence with-
21 out the consent of a majority of all employees affected,
22 determined by a secret ballot vote conducted by a neutral,
23 private organization chosen by agreement between the em-
24 ployer and the labor organization involved. In any case
25 in which the employer involved has made an offer for a
26 collective bargaining agreement, the employees involved

1 shall be provided with an opportunity for a secret ballot
2 vote on such offer prior to any vote relating to the com-
3 mencement of a strike. The cost of any such election shall
4 be borne by the labor organization.”.

5 (e) ACTS OF VIOLENCE.—Section 610 of the Labor-
6 Management Reporting and Disclosure Act of 1959 (29
7 U.S.C. 530) is amended—

8 (1) by striking “It shall” and inserting “(a) It
9 shall”; and

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

11 “(b) It shall be unlawful for any person, through the
12 use of force or violence, or threat of the use of force or
13 violence, to restrain, coerce, or intimidate, or attempt to
14 restrain, coerce, or intimidate any person for the purpose
15 of obtaining from any person any right to represent em-
16 ployees or any compensation or other term or condition
17 of employment. Any person who willfully violates this sub-
18 section shall be fined not more than \$100,000 or impris-
19 oned for not more than 10 years, or both.

20 “(c) The lawfulness of a labor organization’s objec-
21 tives shall not remove or exempt from the definition of
22 extortion conduct by the labor organization or its agents
23 that otherwise constitutes extortion as defined by section

1 1951(b)(2) of title 18, United States Code, from the defi-
2 nition of extortion.”.

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