

115TH CONGRESS
2D SESSION

H. R. 5728

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

MAY 9, 2018

Mr. POCAN (for himself, Ms. DELAURO, Mr. NORCROSS, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. TAKANO, Ms. KAPTUR, Ms. LEE, Mr. DESAULNIER, Mr. ELLISON, Ms. SCHAKOWSKY, Mrs. WATSON COLEMAN, Ms. WASSERMAN SCHULTZ, Mr. SCOTT of Virginia, Ms. CLARK of Massachusetts, Mr. ESPAILLAT, Mr. KHANNA, and Mr. RASKIN) introduced the following bill; which was referred to the Committee on Education and the Workforce

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”.

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

3 (a) COVERAGE.—Section 2 of the National Labor Re-
4 lations Act (29 U.S.C. 152) is amended—

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

10 “(A) the individual is free from control and di-
11 rection in connection with the performance of the
12 service, both under the contract for the performance
13 of service and in fact;

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

16 “(C) the individual is customarily engaged in an
17 independently established trade, occupation, profes-
18 sion, or business of the same nature as that involved
19 in the service performed.”; and

20 (2) in paragraph (11)—

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

24 (B) by striking “assign,”; and

25 (C) by striking “or responsibly to direct
26 them,”.

1 (b) UNFAIR LABOR PRACTICES; SECONDARY BOY-
2 COTTS AND PICKETING.—

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

5 (A) in subsection (a)—

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

8 (ii) by adding at the end the fol-
9 lowing:

10 “(6) to coerce any employee into attending or partici-
11 pating in campaign activities that are unrelated to the em-
12 ployee’s job duties.”;

13 (B) in subsection (b)—

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

15 and

16 (ii) by redesignating paragraphs (5)

17 and (6) as paragraphs (4) and (5), respec-

18 tively; and

19 (C) by repealing subsection (e).

20 (2) PREVENTION OF UNFAIR LABOR PRAC-
21 TICES.—Section 10 of the National Labor Relations
22 Act (29 U.S.C. 160) is amended—

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

24 (B) by redesignating subsection (m) as
25 subsection (k).

1 (3) FACILITATING COLLECTIVE BARGAINING
2 AGREEMENTS.—Section 8 of the National Labor Re-
3 lations Act (29 U.S.C. 158), as so amended, is fur-
4 ther amended by adding at the end the following:

5 “(h) Whenever collective bargaining is for the pur-
6 pose of establishing an initial agreement following certifi-
7 cation or recognition, the provisions of subsection (d) shall
8 be modified as follows:

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

18 “(2) If after the expiration of the 90-day period
19 beginning on the date on which bargaining is com-
20 menced, or such additional period as the parties may
21 agree upon, the parties have failed to reach an
22 agreement, either party may notify the Federal Me-
23 diation and Conciliation Service of the existence of
24 a dispute and request mediation. Whenever such a
25 request is received, it shall be the duty of the Service

1 promptly to put itself in communication with the
2 parties and to use its best efforts, by mediation and
3 conciliation, to bring them to agreement.

4 “(3) If after the expiration of the 30-day period
5 beginning on the date on which the request for me-
6 diation is made under paragraph (2), or such addi-
7 tional period as the parties may agree upon, the
8 Service is not able to bring the parties to agreement
9 by conciliation, the Service shall refer the dispute to
10 an arbitration board established in accordance with
11 such regulations as may be prescribed by the Serv-
12 ice. The arbitration board shall render a decision
13 settling the dispute and such decision shall be bind-
14 ing upon the parties for a period of 2 years, unless
15 amended during such period by written consent of
16 the parties.”.

17 (c) STREAMLINING CERTIFICATION FOR LABOR OR-
18 GANIZATIONS.—The National Labor Relations Act (29
19 U.S.C. 151 et seq.) is amended—

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

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

23 (B) by striking “and certify the results
24 thereof,” and inserting “, and to issue certifi-
25 cations as provided for in that section,”; and

1 (2) in section 9(c) (29 U.S.C. 159(c)), by add-
2 ing at the end the following:

3 “(6) Notwithstanding any other provision of this sec-
4 tion, whenever a petition shall have been filed by an em-
5 ployee or group of employees or any individual or labor
6 organization acting in their behalf alleging that a majority
7 of employees in a unit appropriate for the purposes of col-
8 lective bargaining wish to be represented by an individual
9 or labor organization for such purposes, the Board shall
10 investigate the petition. If the Board finds that a majority
11 of the employees in a unit appropriate for purposes of col-
12 lective bargaining has signed valid authorizations desig-
13 nating the individual or labor organization specified in the
14 petition as their bargaining representative and that no
15 other individual or labor organization is currently certified
16 or recognized as the exclusive representative of any of the
17 employees in the unit, the Board shall not direct an elec-
18 tion but shall certify the individual or labor organization
19 as the representative described in subsection (a).

20 “(7) The Board shall develop guidelines and proce-
21 dures for the designation by employees of a bargaining
22 representative in the manner described in paragraph (6).
23 Such guidelines and procedures shall include—

1 “(A) model collective bargaining authorization
 2 language that may be used for purposes of making
 3 the designations described in paragraph (6); and

4 “(B) procedures to be used by the Board to es-
 5 tablish the validity of signed authorizations desig-
 6 nating bargaining representatives.”.

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

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

13 **“SEC. 20. JOINT AND SEVERAL LIABILITY.**

14 “(a) **IN GENERAL.**—A joint employer shall be jointly
 15 and severally liable under this Act for any violations of
 16 this Act involving one or more employees supplied by an-
 17 other employer to perform labor within the joint employ-
 18 er’s usual course of business.

19 “(b) **JOINT EMPLOYER.**—An employer shall be con-
 20 sidered a joint employer of employees of another employer
 21 for purposes of this Act, if such employer possesses, re-
 22 serves, or exercises enough direct or indirect control over
 23 such employees’ essential terms and conditions of employ-
 24 ment to permit meaningful collective bargaining between
 25 the employer and such employees.”.

1 **SEC. 3. AMENDMENT TO THE LABOR MANAGEMENT RELA-**
 2 **TIONS ACT, 1947, WITH RESPECT TO SEC-**
 3 **ONDARY BOYCOTTS.**

4 Section 303 of the Labor Management Relations Act,
 5 1947 (29 U.S.C. 187) is repealed.

6 **SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
 7 **PORTING AND DISCLOSURE ACT OF 1959.**

8 (a) **PERSUADER REPORTING AND DISCLOSURE PAR-**
 9 **ITY REQUIREMENTS.**—Section 203 of the Labor-Manage-
 10 ment Reporting and Disclosure Act of 1959 (29 U.S.C.
 11 433) is amended—

12 (1) in subsection (c), by striking the period at
 13 the end and inserting the following: “: *Provided,*
 14 That this subsection shall not exempt from the re-
 15 quirements of this section any arrangement or part
 16 of an arrangement in which a party agrees to draft
 17 speeches, presentations, or other written, recorded,
 18 or electronic communications to be delivered or dis-
 19 seminated to employees for an object described in
 20 subsection (b)(1).”; and

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

22 “(h) **ANTI-LABOR ORGANIZATION CAMPAIGNS.**—

23 “(1) **PAYMENT REPORT.**—

24 “(A) **IN GENERAL.**—An employer who
 25 makes any payment (including reimbursed ex-
 26 penses) to a labor relations consultant or other

1 independent contractor or organization pursu-
2 ant to an agreement or arrangement described
3 in subsection (a)(4) involving activities to dis-
4 favor a labor organization or weaken the rights
5 of employees to organize and bargain collec-
6 tively shall, except as provided in subparagraph
7 (C), provide a report described in subparagraph
8 (B) to the Secretary every 7 days if such a pay-
9 ment was made during such 7-day period.

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

12 “(i) the contents of the report de-
13 scribed in subsection (a) with respect to
14 any payment described in subparagraph
15 (A) made during the applicable period of
16 the report; and

17 “(ii) the total amount of all such pay-
18 ments made pursuant to the agreement or
19 arrangement described in such subpara-
20 graph.

21 “(C) REPRESENTATION ELECTIONS.—For
22 the 7-day period immediately prior to the date
23 of a representation election, an employer re-
24 quired to provide a report under subparagraph
25 (A) shall provide such report to the Secretary

1 every 24 hours if such a payment was made
2 during such 24-hour period.

3 “(D) THIRD-PARTY ENTITY REPORTING.—

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

13 “(2) NEGATIVE INFORMATION.—Not later than

14 7 days after an employer disseminates to employees
15 information that disfavors a labor organization or
16 the rights of employees to organize and bargain col-
17 lectively, the employer shall disclose such informa-
18 tion, including the names and contact information
19 for employees receiving the information, to the af-
20 fected labor organization and to the Secretary.

21 “(3) REGISTRATION AND CERTIFICATION OF

22 PERSUADERS.—

23 “(A) IN GENERAL.—A labor relations con-

24 sultant or other independent contractor or orga-
25 nization that provides services pursuant to an

1 agreement or arrangement described in para-
2 graph (1)(A) shall prior to, and as a condition
3 for, providing such services register with and be
4 certified by the Office of Labor Management
5 Standards.

6 “(B) PROCESS FOR REGISTRATION AND
7 CERTIFICATION.—The Secretary shall prescribe
8 a process for the registration and certification
9 required under subparagraph (A). Such process
10 shall include requiring the labor relations con-
11 sultant, other independent contractor, or orga-
12 nization described in such subparagraph to—

13 “(i) provide its name, address, busi-
14 ness telephone number, and principal place
15 of business;

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

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

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

24 “(C) PROHIBITION AGAINST REGISTERING
25 AND CERTIFYING CERTAIN PERSONS.—The Of-

1 fice of Labor Management Standards shall not
2 register and certify under this paragraph any
3 labor relations consultant, independent con-
4 tractor, or organization that has been convicted
5 of any offense described in section 504(a).”.

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

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

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

12 “(b)(1) Except as provided in paragraph (2), the Sec-
13 retary shall impose on any employer that violates para-
14 graph (1) or (2) of section 203(h) a civil penalty in an
15 amount not to exceed \$10,000 for each violation.

16 “(2) An employer shall not be subject to a civil pen-
17 alty under paragraph (1) if the employer can show a good
18 faith attempt to comply with paragraph (1) or (2) of sec-
19 tion 203(h).

20 “(3) The Secretary shall impose on any labor rela-
21 tions consultant or other independent contractor or orga-
22 nization that violates section 203(h)(3) a civil penalty in
23 the amount of \$250 per day for each day the consultant,

- 1 independent contractor, or organization is not in compli-
- 2 ance with such section.”.

