



(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To reform the labor laws of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ALLEN introduced the following bill; which was referred to the Committee
on _____

A BILL

To reform the labor laws of the United States, 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 "Employee Rights Act".

5 **SEC. 2. ENHANCED EMPLOYEE RIGHTS FOR LAWFUL WORK-**
6 **ERS.**

7 Section 9(a) of the National Labor Relations Act (29
8 U.S.C. 159(a)) is amended by striking "designated or se-
9 lected for the purposes of collective bargaining" and in-

1 serting “, for the purposes of collective bargaining selected
2 by secret ballot of employees in an election conducted by
3 the Board.”.

4 **SEC. 3. UNION VOTING FOR EMPLOYEES WHO DO NOT**
5 **HAVE LAWFUL STATUS.**

6 (a) NATIONAL LABOR RELATIONS ACT.—Section 9
7 of the National Labor Relations Act (29 U.S.C. 159) is
8 amended by adding at the end the following:

9 “(f) Any employee who does not have lawful status
10 under the immigration laws (as such term is defined in
11 section 101 of the Immigration and Nationality Act (8
12 U.S.C. 1101)) shall not—

13 “(1) be eligible to vote in any election (includ-
14 ing an election by a secret ballot) conducted by the
15 Board under this section, and any vote cast by such
16 an employee in any such election shall not be valid;
17 or

18 “(A) be considered an employee for the pur-
19 poses of any petition described in subsection (c) or
20 (e).”.

21 (b) LABOR MANAGEMENT RELATIONS ACT.—Section
22 209(b) of the Labor Management Relations Act, 1947 (29
23 U.S.C. 179(b)) is amended by adding at the end the fol-
24 lowing: “Any such employee who does not have lawful sta-
25 tus under the immigration laws (as such term is defined

1 in section 101 of the Immigration and Nationality Act (8
2 U.S.C. 1101)) shall not be entitled to vote in any such
3 secret ballot.”.

4 (c) LABOR-MANAGEMENT REPORTING AND DISCLO-
5 SURE ACT.—Section 401 of the Labor-Management Re-
6 porting and Disclosure Act of 1959 (29 U.S.C. 481) is
7 amended by adding at the end the following:

8 “(j) Any employee who does not have lawful status
9 under the immigration laws (as such term is defined in
10 section 101 of the Immigration and Nationality Act (8
11 U.S.C. 1101)) and who is a member of a labor organiza-
12 tion shall not be entitled to vote in any election conducted
13 by a labor organization under this section.”.

14 **SEC. 4. EMPLOYEE PRIVACY.**

15 (a) NOTICE OF RIGHTS AND PROTECTIONS; VOTER
16 REGISTRATION LISTS.—Section 8 of the National Labor
17 Relations Act (29 U.S.C. 158) is amended by adding at
18 the end the following:

19 “(h)(1) Whenever the Board directs an election under
20 section 9(c) or approves an election agreement, the em-
21 ployer of employees in the bargaining unit shall, after the
22 Board directs such election or approves such election
23 agreement, provide a voter list to a labor organization that
24 has petitioned to represent such employees. Such voter list
25 shall include the names of all employees in the bargaining

1 unit and not more than one additional form of personal
2 contact information for the employee (such as a telephone
3 number, an email address, or a mailing address) chosen
4 by the employee in writing. The voter list shall be provided
5 in a searchable electronic format generally approved by the
6 Board unless the employer certifies that the employer does
7 not possess the capacity to produce the list in the required
8 form. Not later than nine months after the date of enact-
9 ment of the Employee Rights Act, the Board shall promul-
10 gate regulations implementing the requirements of this
11 paragraph.

12 “(2) It shall be an unfair labor practice for an em-
13 ployer to violate any requirement under this subsection.”.

14 (b) LABOR ORGANIZATION USE OF PERSONAL IN-
15 FORMATION.—Section 8(b) of the National Labor Rela-
16 tions Act (29 U.S.C. 158(b)) is amended—

17 (1) in paragraph (6), by striking “and” at the
18 end;

19 (2) in paragraph (7)(C), by striking “services.”
20 and inserting “services;”

21 (3) in the matter following paragraph (7)—

22 (A) by adjusting the margin two ems to
23 the left; and

1 (B) by striking “Nothing in this para-
2 graph” and inserting “Nothing in paragraph”;
3 and

4 (4) by inserting after subparagraph (C) of
5 paragraph (7), as so amended, the following:

6 “(8) to fail to protect the personal information
7 of an employee received for an organizing drive, to
8 use such information for any reason other than a
9 representation proceeding, or to use such informa-
10 tion after the conclusion of a representation pro-
11 ceeding;”.

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

17 **“SEC. 106. RIGHT NOT TO SUBSIDIZE LABOR ORGANIZA-
18 TION NONREPRESENTATIONAL ACTIVITIES.**

19 “No employee’s labor organization dues, fees, assess-
20 ments, or other contributions shall be used or contributed
21 to any person, organization, or entity for any purpose not
22 directly related to the labor organization’s collective bar-
23 gaining or contract administration functions on behalf of
24 the represented unit employee unless the employee mem-
25 ber, or nonmember required to make such payments as

1 a condition of employment, authorizes such expenditure in
2 writing, after a notice period of not less than 35 days.
3 An initial authorization provided by an employee under
4 the preceding sentence shall expire not later than 1 year
5 after the date on which such authorization is signed by
6 the employee. There shall be no automatic renewal of an
7 authorization under this section.”.

8 **SEC. 5. EMPLOYMENT RELATIONSHIPS.**

9 (a) CRITERIA FOR DETERMINING EMPLOYEE STATUS
10 UNDER THE FAIR LABOR STANDARDS ACT.—Section 3(e)
11 of the Fair Labor Standards Act of 1938 (29 U.S.C.
12 203(e)) is amended—

13 (1) by redesignating paragraphs (2), (3), and
14 (4) as paragraphs (3), (4), and (5), respectively;

15 (2) in paragraph (1), by striking “paragraphs
16 (2), (3), and (4)” and inserting “paragraphs (3),
17 (4), and (5)”; and

18 (3) by inserting after paragraph (1) the fol-
19 lowing:

20 “(2)(A) An individual shall be determined to be an
21 independent contractor rather than an employee of an-
22 other person if—

23 “(i) such other person does not exercise signifi-
24 cant control over the details of the way the work is
25 performed by the individual, without regard to any

1 control the other person may exercise over the final
2 result of the work performed; and

3 “(ii) while performing such work, the individual
4 has the opportunities and risks inherent with entre-
5 preneurship, such as the discretion to exercise mana-
6 gerial skill, business acumen, or professional judg-
7 ment.

8 “(B) The following factors may not be used in deter-
9 mining that an individual is an employee of another per-
10 son:

11 “(i) Whether such other person requires the in-
12 dividual to comply with legal, statutory, or regu-
13 latory requirements.

14 “(ii) Whether such other person requires the in-
15 dividual to comply with health and safety standards
16 that are more stringent than otherwise applicable
17 health and safety standards.

18 “(iii) Whether such other person requires the
19 individual to carry insurance of any kind.

20 “(iv) Whether such other person requires the
21 individual to meet contractually agreed-upon per-
22 formance standards, such as deadlines.”.

23 (b) Section 2(3) of the National Labor Relations Act
24 (29 U.S.C. 152(3)) is amended—

1 (1) by striking “(3) The term ‘employee’ shall”
2 and inserting the following:

3 “(3)(A) The term ‘employee’ shall”; and

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

5 “(B) Section 3(e)(2) of the Fair Labor
6 Standards Act of 1938 (29 U.S.C. 203(e)(2))
7 shall be used in determining whether an indi-
8 vidual is an independent contractor or an em-
9 ployee of another person.”.

10 (c)(1) NATIONAL LABOR RELATIONS ACT.—Section
11 2(2) of the National Labor Relations Act (29 U.S.C.
12 152(2)) is amended—

13 (A) by striking “The term ‘employer’” and
14 inserting “(A) The term ‘employer’”; and

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

16 “(B) An employer may be considered a
17 joint employer of the employees of another em-
18 ployer only if each employer directly, actually,
19 and immediately, and not in a limited and rou-
20 tine manner, exercises significant control over
21 the essential terms and conditions of employ-
22 ment of the employees of the other employer,
23 such as hiring such employees, discharging such
24 employees, determining the rate of pay and ben-
25 efits of such employees, supervising such em-

1 ployees on a day-to-day basis, assigning such
2 employees a work schedule, position, or task, or
3 disciplining such employees.”.

4 (2) FAIR LABOR STANDARDS ACT OF 1938.—
5 Section 3(d) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 203(d)) is amended—

7 (A) by striking “‘Employer’ includes” and
8 inserting “(1) ‘Employer’ includes”; and

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

10 “(2) An employer may be considered a joint
11 employer of the employees of another employer for
12 purposes of this Act only if each employer meets the
13 criteria set forth in section 2(2)(B) of the National
14 Labor Relations Act (29 U.S.C. 152(2)(B)) except
15 that, for purposes of determining joint-employer sta-
16 tus under this Act, the terms ‘employee’ and ‘em-
17 ployer’ referenced in such section shall have the
18 meanings given such terms in this section.”.

19 (d) PROVISION OF TECHNICAL ASSISTANCE.—Not-
20 withstanding any other provision of law, under the Fair
21 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.),
22 the National Labor Relations Act (29 U.S.C. 151 et seq.),
23 or any other Federal law, none of the following may be
24 construed, alone or in combination with any other factor,
25 as establishing an employer and employee relationship be-

1 tween a franchisor (or any employee of the franchisor) and
2 a franchisee (or any employee of the franchisee):

3 (1) The franchisor (or any employee of the
4 franchisor) provides the franchisee (or any employee
5 of the franchisee) with, or requires such franchisee
6 (or any employee of the franchisee) to use, a hand-
7 book, or other training, on sexual harassment,
8 human trafficking, workplace violence, discrimina-
9 tion, or opportunities for apprenticeships or scholar-
10 ships.

11 (2) The franchisor (or any employee of the
12 franchisor) requires the franchisee (or any employee
13 of the franchisee) to adopt a policy on sexual harass-
14 ment, human trafficking, workplace violence, dis-
15 crimination, opportunities for apprenticeships or
16 scholarships, child care, or paid leave, including a
17 requirement for such franchisee (or any employee of
18 the franchisee) to report to the franchisor (or any
19 employee of the franchisor) any violations or sus-
20 pected violations of such policy.

21 **SEC. 6. TRIBAL SOVEREIGNTY.**

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

24 (1) in paragraph (2), by inserting “or any In-
25 dian Tribe, or any enterprise or institution owned

1 and operated by an Indian Tribe and located on its
2 Indian lands,” after “subdivision thereof,”; and

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

4 “(15) The term ‘Indian Tribe’ means any In-
5 dian Tribe, band, nation, pueblo, or other organized
6 group or community which is recognized as eligible
7 for the special programs and services provided by
8 the United States to Indians because of their status
9 as Indians.

10 “(16) The term ‘Indian’ means any individual
11 who is a member of an Indian Tribe.

12 “(17) The term ‘Indian lands’ means—

13 “(A) all lands within the limits of any In-
14 dian reservation;

15 “(B) any lands title to which is either held
16 in trust by the United States for the benefit of
17 any Indian Tribe or Indian or held by any In-
18 dian Tribe or Indian subject to restriction by
19 the United States against alienation; and

20 “(C) any lands in the State of Oklahoma
21 that are within the boundaries of a former res-
22 ervation (as defined by the Secretary of the In-
23 terior) of a Federally recognized Indian Tribe.”.

1 **SEC. 7. INDEPENDENT NEGOTIATING.**

2 (a) UNFAIR LABOR PRACTICES.—Section 8 of the
3 National Labor Relations Act (29 U.S.C. 158) is further
4 amended—

5 (1) in subsection (a)(3)—

6 (A) by striking the “or” before “(B)”; and

7 (B) by striking “membership;” and insert-
8 ing “membership, or (C) if, in a covered State,
9 the employee has ceased to be a member of a
10 labor organization or pay an exclusive rep-
11 resentative”; and

12 (2) in subsection (b) by inserting after para-
13 graph (8), as added by section 2(b)(2) of this Act,
14 the following

15 “(9) in a covered State, to represent or bargain
16 on behalf of employees who have ceased to be a
17 member of a labor organization or pay an exclusive
18 representative;

19 “(10) in a covered State, to interfere with em-
20 ployees who have ceased to be a member of a labor
21 organization or pay an exclusive representative en-
22 gaged in independent negotiating;

23 “(11) in a covered State, to restrain or coerce
24 employees who have ceased to be a member of a
25 labor organization or pay an exclusive representative
26 from engaging in independent negotiating; and”.

1 (b) EXCLUSION OF WORKERS ENGAGED IN INDE-
2 PENDENT NEGOTIATING FROM REPRESENTATION.—Sec-
3 tion 9(a) of such Act (29 U.S.C. 159(a)) is amended—

4 (1) by inserting “(other than any employee who
5 has elected to engage in independent negotiating)”
6 after “all the employees”;

7 (2) by inserting “, in a State or Territory that
8 is not a covered State,” before “any individual”; and

9 (3) by inserting “and, in a covered State, an in-
10 dividual employee shall engage in independent nego-
11 tiating with their employer if such employee has
12 ceased to be a member of a labor organization or
13 pay an exclusive representative” after “in effect”.

14 (c) INDEPENDENT NEGOTIATING AND COVERED
15 STATE DEFINED.—Section 2 of such Act (29 U.S.C. 152)
16 is further amended by adding at the end the following:

17 “(18) The term ‘independent negotiating’
18 means, in a unit located in a covered State with an
19 exclusive representative for the purposes of collective
20 bargaining, negotiating between an employer and an
21 individual employee as though such employee were
22 not in such a unit and without regard to the exist-
23 ence of a collective-bargaining contract or agree-
24 ment.

1 “(19) The term ‘covered State’ means a State
2 or Territory which prohibits the execution or appli-
3 cation of agreements requiring membership in, or
4 payment to, a labor organization as a condition of
5 employment.”.

6 **SEC. 8. DIVERSITY, EQUITY, OR INCLUSION.**

7 Section 8(b) of the National Labor Relations Act (29
8 U.S.C. 158(b)) is further amended by inserting after para-
9 graph (12), as added by section 7(a)(2) of this Act, the
10 following:

11 “(12) to include any provision in a collective
12 bargaining agreement that mandates or promotes di-
13 versity, equity, or inclusion initiatives, including
14 preferences, mandates, policies, programs, activities,
15 or guidance related to personal characteristics of an
16 individual and is not related to the qualifications or
17 performance required for a job, unless such initia-
18 tives are required by Federal, State, or local law.”.

19 **SEC. 9. FREEDOM FROM UNION VIOLENCE ACT.**

20 Section 1951 of title 18, United States Code, is
21 amended to read as follows:

22 **“§ 1951. Interference with commerce by threats or vi-**
23 **olence**

24 “(a) PROHIBITION.—Except as provided in sub-
25 section (c), whoever in any way or degree obstructs,

1 delays, or affects commerce or the movement of any article
2 or commodity in commerce, by robbery or extortion, or at-
3 tempts or conspires so to do, or commits or threatens
4 physical violence to any person or property in furtherance
5 of a plan or purpose to do anything in violation of this
6 section, shall be fined not more than \$100,000, imprisoned
7 for a term of not more than 20 years, or both.

8 “(b) DEFINITIONS.—For purposes of this section—

9 “(1) the term ‘commerce’ means any—

10 “(A) commerce within the District of Co-
11 lumbia, or any territory or possession of the
12 United States;

13 “(B) commerce between any point in a
14 State, territory, possession, or the District of
15 Columbia and any point outside thereof;

16 “(C) commerce between points within the
17 same State through any place outside that
18 State; and

19 “(D) other commerce over which the
20 United States has jurisdiction;

21 “(2) the term ‘extortion’ means the obtaining of
22 property from any person, with the consent of that
23 person, if that consent is induced—

24 “(A) by actual or threatened use of force
25 or violence, or fear thereof;

1 “(B) by wrongful use of fear not involving
2 force or violence; or

3 “(C) under color of official right;

4 “(3) the term ‘labor dispute’ has the same
5 meaning as in section 2(9) of the National Labor
6 Relations Act (29 U.S.C. 152(9)); and

7 “(4) the term ‘robbery’ means the unlawful tak-
8 ing or obtaining of personal property from the per-
9 son or in the presence of another, against his or her
10 will, by means of actual or threatened force or vio-
11 lence, or fear of injury, immediate or future—

12 “(A) to his or her person or property, or
13 property in his or her custody or possession; or

14 “(B) to the person or property of a relative
15 or member of his or her family, or of anyone in
16 his or her company at the time of the taking or
17 obtaining.

18 “(e) EXEMPTED CONDUCT.—

19 “(1) IN GENERAL.—Subsection (a) does not
20 apply to any conduct that—

21 “(A) is incidental to otherwise peaceful
22 picketing during the course of a labor dispute;

23 “(B) consists solely of minor bodily injury,
24 or minor damage to property, or threat or fear
25 of such minor injury or damage; and

1 “(C) is not part of a pattern of violent con-
2 duct or of coordinated violent activity.

3 “(2) STATE AND LOCAL JURISDICTION.—Any
4 violation of this section that involves any conduct de-
5 scribed in paragraph (1) shall be subject to prosecu-
6 tion only by the appropriate State and local authori-
7 ties.

8 “(d) EFFECT ON OTHER LAW.—Nothing in this sec-
9 tion shall be construed—

10 “(1) to repeal, amend, or otherwise affect—

11 “(A) section 6 of the Clayton Act (15
12 U.S.C. 17);

13 “(B) section 20 of the Clayton Act (29
14 U.S.C. 52);

15 “(C) any provision of the Norris-
16 LaGuardia Act (29 U.S.C. 101 et seq.);

17 “(D) any provision of the National Labor
18 Relations Act (29 U.S.C. 151 et seq.); or

19 “(E) any provision of the Railway Labor
20 Act (45 U.S.C. 151 et seq.); or

21 “(2) to preclude Federal jurisdiction over any
22 violation of this section, on the basis that the con-
23 duct at issue—

24 “(A) is also a violation of State or local
25 law; or

1 “(B) occurred during the course of a labor
2 dispute or in pursuit of a legitimate business or
3 labor objective.”.

4 **SEC. 10. UNLAWFUL HARASSMENT.**

5 Section 8(a)(3) of the National Labor Relations Act
6 (29 U.S.C. 158(a)(3)) is amended by adding after “Pro-
7 vided,” the following: “that nothing in this section shall
8 be construed to prevent an employer from taking action
9 to protect employees from discriminatory, harassing, or
10 demeaning language or conduct, including during orga-
11 nizing campaigns or strikes: Provided further,”.