

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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Mr. SCOTT of South Carolina (for himself, Mr. TUBERVILLE, Mr. CRAMER, Mr. BARRASSO, Mrs. HYDE-SMITH, Mr. CRAPO, Mr. RISCH, and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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-  
10      serting “, for the purposes of collective bargaining selected

1 by secret ballot of employees in an election conducted by  
2 the Board.”.

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

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

8 “(f) 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)) shall not—

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

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

20 (b) LABOR MANAGEMENT RELATIONS ACT.—Section  
21 209(b) of the Labor Management Relations Act, 1947 (29  
22 U.S.C. 179(b)) is amended by adding at the end the fol-  
23 lowing: “Any such employee who does not have lawful sta-  
24 tus under the immigration laws (as such term is defined  
25 in section 101 of the Immigration and Nationality Act (8

1 U.S.C. 1101)) shall not be entitled to vote in any such  
2 secret ballot.”.

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

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

13 **SEC. 4. EMPLOYEE PRIVACY.**

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

18 “(h)(1) Whenever the Board directs an election under  
19 section 9(c) or approves an election agreement, the em-  
20 ployer of employees in the bargaining unit shall, after the  
21 Board directs such election or approves such election  
22 agreement, provide a voter list to a labor organization that  
23 has petitioned to represent such employees. Such voter list  
24 shall include the names of all employees in the bargaining  
25 unit and not more than one additional form of personal

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

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

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

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

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

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

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

23 (B) by striking “Nothing in this para-  
24 graph” and inserting “Nothing in paragraph”;  
25 and

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

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

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

14         **“SEC. 106. RIGHT NOT TO SUBSIDIZE LABOR ORGANIZA-**  
15                 **TION NONREPRESENTATIONAL ACTIVITIES.**

16           “‘No employee’s labor organization dues, fees, assess-  
17          ments, or other contributions shall be used or contributed  
18          to any person, organization, or entity for any purpose not  
19          directly related to the labor organization’s collective bar-  
20          gaining or contract administration functions on behalf of  
21          the represented unit employee unless the employee mem-  
22          ber, or nonmember required to make such payments as  
23          a condition of employment, authorizes such expenditure in  
24          writing, after a notice period of not less than 35 days.  
25          An initial authorization provided by an employee under

1 the preceding sentence shall expire not later than 1 year  
2 after the date on which such authorization is signed by  
3 the employee. There shall be no automatic renewal of an  
4 authorization under this section.”.

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

6 (a) CRITERIA FOR DETERMINING EMPLOYEE STA-  
7 TUS.—

8 (1) FAIR LABOR STANDARDS ACT OF 1938.—

9 Section 3(e) of the Fair Labor Standards Act of  
10 1938 (29 U.S.C. 203(e)) is amended—

11 (A) by redesignating paragraphs (2), (3),  
12 (4), and (5) as paragraphs (3), (4), (5), and  
13 (6), respectively;

14 (B) in paragraph (1), by striking “para-  
15 graphs (2), (3), and (4)” and inserting “para-  
16 graphs (3), (4), (5), and (6)”; and

17 (C) by inserting after paragraph (1) the  
18 following:

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

22 “(i) such other person does not exercise signifi-  
23 cant control over the details of the way the work is  
24 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 whether an individual is an employee of another  
10 person:

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 (2) NATIONAL LABOR RELATIONS ACT.—Sec-  
24 tion 2(3) of the National Labor Relations Act (29  
25 U.S.C. 152(3)) is amended—

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

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

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

5 “(B) The standard applied in section 3(e)(2) of the  
6 Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)(2))  
7 shall be used in determining whether an individual is an  
8 independent contractor or an employee of another person  
9 under this Act, except that, in applying such standard to  
10 this Act, any reference to the term ‘employee’ in such sec-  
11 tion 3(e)(2) shall have the meaning given such term under  
12 this paragraph.”.

13 (b) CRITERIA FOR DETERMINING JOINT EMPLOYER  
14 STATUS.—

15 (1) NATIONAL LABOR RELATIONS ACT.—Sec-  
16 tion 2(2) of the National Labor Relations Act (29  
17 U.S.C. 152(2)) is amended—

18 (A) by striking “The term ‘employer’ ” and  
19 inserting “(A) The term ‘employer’ ”; and

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

21 “(B) An employer may be considered a joint employer  
22 of the employees of another employer only if each employer  
23 directly, actually, and immediately, and not in a limited  
24 and routine manner, exercises significant control over the  
25 essential terms and conditions of employment of the em-



1 ployees of the other employer, such as hiring such employ-  
2 ees, discharging such employees, determining the rate of  
3 pay and benefits of such employees, supervising such em-  
4 ployees on a day-to-day basis, assigning such employees  
5 a work schedule, position, or task, or disciplining such em-  
6 ployees.”.

7 (2) FAIR LABOR STANDARDS ACT OF 1938.—  
8 Section 3(d) of the Fair Labor Standards Act of  
9 1938 (29 U.S.C. 203(d)) is amended—

10 (A) by striking “‘Employer’ includes” and  
11 inserting “(1) ‘Employer’ includes”; and

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

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

21 (c) PROVISION OF TECHNICAL ASSISTANCE.—Not-  
22 withstanding any other provision of law, under the Fair  
23 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.),  
24 the National Labor Relations Act (29 U.S.C. 151 et seq.),  
25 or any other Federal law, none of the following may be

1 construed, alone or in combination with any other factor,  
2 as establishing an employer and employee relationship be-  
3 tween a franchisor (or any employee of the franchisor) and  
4 a franchisee (or any employee of the franchisee):

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

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

1   **SEC. 6. TRIBAL SOVEREIGNTY.**

2           Section 2 of the National Labor Relations Act (29  
3   U.S.C. 152), as amended by section 5, is further amend-  
4   ed—

5           (1) in paragraph (2), by inserting “or any In-  
6   dian Tribe, or any enterprise or institution owned  
7   and operated by an Indian Tribe and located on its  
8   Indian lands,” after “subdivision thereof,”; and

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

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

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

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

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

21               “(B) any lands title to which is either held  
22   in trust by the United States for the benefit of  
23   any Indian Tribe or Indian or held by any In-  
24   dian Tribe or Indian subject to restriction by  
25   the United States against alienation; and

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

5 **SEC. 7. INDEPENDENT NEGOTIATING.**

6           (a) UNFAIR LABOR PRACTICES.—Section 8 of the  
7 National Labor Relations Act (29 U.S.C. 158), as amend-  
8 ed by section 4, is further amended—

9           (1) in subsection (a)(3)—

10                   (A) by striking “or (B)” and inserting  
11                   “(B)”; and

12                   (B) by striking “membership;” and insert-  
13                   ing “membership, or (C) if, in a covered State,  
14                   the employee has ceased to be a member of a  
15                   labor organization or pay an exclusive rep-  
16                   resentative”; and

17           (2) in subsection (b), by inserting after para-  
18 graph (8) the following:

19                   “(9) in a covered State, to represent or bargain  
20                   on behalf of employees who have ceased to be a  
21                   member of a labor organization or pay an exclusive  
22                   representative;

23                   “(10) in a covered State, to interfere with em-  
24                   ployees who have ceased to be a member of a labor

1 organization or pay an exclusive representative en-  
2 gaged in independent negotiating;

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

7 (b) EXCLUSION OF WORKERS ENGAGED IN INDE-  
8 PENDENT NEGOTIATING FROM REPRESENTATION.—Sec-  
9 tion 9(a) of the National Labor Relations Act (29 U.S.C.  
10 159(a)), as amended by section 2, is further amended—

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

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

16 (3) by striking “such adjustment.” and insert-  
17 ing “such adjustment: *Provided further*, That, in a  
18 covered State, an individual employee shall engage in  
19 independent negotiating with their employer if such  
20 employee has ceased to be a member of a labor orga-  
21 nization or pay an exclusive representative.”.

22 (c) INDEPENDENT NEGOTIATING AND COVERED  
23 STATE DEFINED.—Section 2 of the National Labor Rela-  
24 tions Act (29 U.S.C. 152), as amended by section 6, is  
25 further amended by adding at the end the following:

1           “(18) The term ‘independent negotiating’  
2           means, in a unit that is located in a covered State  
3           and is represented by a labor organization or other  
4           exclusive representative for the purposes of collective  
5           bargaining, negotiating between an employer and an  
6           individual employee as though such employee were  
7           not in such a unit and without regard to the exist-  
8           ence of a collective-bargaining contract or agree-  
9           ment.

10           “(19) The term ‘covered State’ means a State  
11           or Territory which prohibits the execution or appli-  
12           cation of agreements requiring membership in, or  
13           payment to, a labor organization as a condition of  
14           employment.”.

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

16           Section 8(b) of the National Labor Relations Act (29  
17 U.S.C. 158(b)), as amended by section 7(a), is further  
18 amended by inserting after paragraph (11) the following:

19           “(12) to include any provision in a collective  
20           bargaining agreement that mandates or promotes di-  
21           versity, equity, or inclusion initiatives, including  
22           preferences, mandates, policies, programs, activities,  
23           or guidance related to personal characteristics of an  
24           individual that are not related to the qualifications

1 or performance required for a job, unless such initia-  
2 tives are required by Federal, State, or local law.”.

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

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

6 **“§ 1951. Interference with commerce by threats or vi-**  
7 **olence**

8 “(a) 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 meaning  
5                   given that term in section 2(9) of the National  
6                   Labor 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                  “(b) PROHIBITION.—Except as provided in sub-  
19                  section (c), whoever in any way or degree obstructs,  
20                  delays, or affects commerce or the movement of any article  
21                  or commodity in commerce, by robbery or extortion, or at-  
22                  tempts or conspires so to do, or commits or threatens  
23                  physical violence to any person or property in furtherance  
24                  of a plan or purpose to do anything in violation of this



1 section, shall be fined not more than \$100,000, imprisoned  
2 for a term of not more than 20 years, or both.

3 “(c) EXEMPTED CONDUCT.—

4 “(1) IN GENERAL.—Subsection (b) does not  
5 apply to any conduct that—

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

8 “(B) consists solely of minor bodily injury,  
9 or minor damage to property, or threat or fear  
10 of such minor injury or damage; and

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

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

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

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

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

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

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

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

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

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

10                   “(A) is also a violation of State or local  
11                   law; or

12                   “(B) occurred during the course of a labor  
13                   dispute or in pursuit of a legitimate business or  
14                   labor objective.”.

15   **SEC. 10. UNLAWFUL HARASSMENT.**

16                   Section 8(a)(3) of the National Labor Relations Act  
17                   (29 U.S.C. 158(a)(3)) is amended by adding after “*Pro-*  
18                   *vided,*” the following: “That nothing in this section shall  
19                   be construed to prevent an employer from taking action  
20                   to protect employees from discriminatory, harassing, or  
21                   demeaning language or conduct, including during orga-  
22                   nizing campaigns or strikes: *Provided further,*”.