



INSTITUTE

for the American Worker

BACKGROUND: Protecting the Right to Organize Act

Updated on 2/8/21

Bill name: Protecting the Right to Organize (PRO) Act

Bill sponsor: Rep. Robert C. "Bobby" Scott (D-VA) and Sen. Patty Murray (D-WA)

Summary: The PRO Act would weaken worker freedom and protections, increase regulation of businesses, and strengthen collective bargaining to increase the union share of the workforce.

What's new in the 2021 PRO Act:

First introduced in 2019, the PRO Act was made even worse via amendments adopted by House Democrats in the 116th Congress. Those amendments now appear in the recently introduced 2021 version and include the following:

1. Requiring workers' personal home and work contact information to be shared with a union— now in an "electronically searchable format" with no required privacy protections, further risking exposure of their confidential information
2. Banning employers from withholding employment ("locking out" workers) to influence collective bargaining prior to a strike
3. Exposing workers to new opportunities for intimidation and coercion by allowing electronic and mail in voting
4. Thwarting union democracy by prohibiting workers' rights to vote to decertify a union during collective bargaining, or the three years thereafter, or after a business changes hands to new ownership
5. Requiring the NLRB issue a new report to Congress on Board member conflict of interest to further efforts to discredit certain members

Background: This is a comprehensive rewrite of labor rules for the workplace. Provisions impact employees and employers alike, while greatly expanding the union privileges.

The PRO Act, would:

1. **Ban right-to-work:** Workers in all 27 right-to-work states would no longer enjoy those rights and could be forced to pay union dues against their wills.
2. **Expose workers to intimidation and coercion:** All workers' personal contact information would be required to be shared with a union during an organizing campaign, to include home and cell phone numbers, work and personal email addresses, and home address in an electronically searchable format. The bill includes no privacy protections for that information once it has been provided to the organizing union.
3. **Destroy independent contracting and the gig economy:** The burgeoning "gig economy" and the flexibility those workers enjoy would be blocked by new restrictions on the employment of

independent contractors with the use of the California style ABC test. Those work opportunities would be reduced by the PRO Act's expanded coverage of who is deemed an employee under the National Labor Relations Act (NLRA) – a move designed to increase opportunities for unionization. (To learn more about the harm to independent contractors due to the ABC test, visit I4AW's [Independent Worker Stories](#) page).

4. **Effectively take away the secret ballot in union organizing elections:** If an employer could not prove to the NLRB it did not interfere in an election after a union made the claim it did, the union could use cards they collected to say they organized the employer. Employers, under the bill, would essentially be unionized via “card check,” a process that exposes workers to intimidation tactics rather than using a secret ballot election.
5. **Force involuntary arbitration:** Employers and employees could also be forced into a union contract via binding arbitration at the hands of third-party arbitrators, even if one of the parties never agreed to arbitration.
6. **Ban voluntary arbitration:** Prevents employers and employees from entering voluntary agreements to resolve employment issues outside of court.
7. **Allow union gerrymandering to win union organizing elections:** The Obama-era “micro union” rule would be codified, allowing for small, gerrymandered parts of a workplace to be unionized rather than the workforce unit as a whole.
8. **Attack Franchising:** Obama-era “joint employer” standard would also be codified to expand the definition of joint employer to include companies that may have only indirect control over the terms and conditions of employment rather than “direct and immediate” control. This could cripple small businesses like franchises as well as contractors, temporary staffing firms, and vendors.
9. **Permit Boycotts of Businesses Not Party to a Union’s Negotiations:** The PRO Act would benefit labor organizations by expanding their right to strike to include secondary boycotts which affect third parties not involved in a collective bargaining dispute and disruptive “intermittent” strikes that can happen routinely for short periods of time. The bill simultaneously prohibits employers from hiring temporary workers during a strike or locking out striking workers.
10. **Pile New Financial Burdens on Employers:** Unions would have expanded remedies to pursue against employers, to include, per Chairman Scott, “swift temporary reinstatement [of union workers], liquidated damages, and the ability to bring cases directly to federal court.”
11. **Facilitate Partisan Attacks on NLRB Board Members:** The NLRB members themselves would also be subject to new reporting requirements, being required to submit to Congress reports on each case or rulemaking in which a board member may have had a perceived conflict. This language comes on the heels of Congressional Democrats' years-long effort during the Trump administration to call into question board decisions even tangentially related to a member's previous employer or employment, though that effort was silent in regard to previous employment with or for labor organizations.

Bill Status: The PRO Act was reintroduced in the Senate and House on February 4, 2021, nearly one year after it was approved by the House in a near-party-line [vote](#). The Senate did not take up the PRO Act in the 116th Congress, either in committee or on the floor.
