

## House Passes Landmark, Pro-Union, Labor Reform: the PRO Act

Alert

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By Dominic Cecere, Matthew Tews and Connor Shaull

On March 9, 2021, the House of Representatives passed [S. 420/H.R. 842](#), the pro-union “[Protecting the Right to Organize Act of 2021](#)” (PRO Act), by a [vote of 225-206](#), largely along party lines. On March 11, 2021, the bill was sent to the Senate and referred to the Committee on Health, Education, Labor, and Pensions. While it remains to be seen if a version of this legislation will make it to President Biden’s desk, if it does, the president has vowed to sign it.

The bill in its current form is a game changer. It is important for employers to understand the bill and consider taking proactive steps to prepare for the significant challenges that the PRO Act, if passed, will create for their labor relations strategies. In short, the PRO Act could fundamentally change nearly 90 years of labor law. The PRO Act is designed to and would:

- **Help Union Organizers:** Making it much easier for unions to expand their ranks by organizing currently unrepresented employees;
- **Increase Employer Damages/Costs:** Exposing companies and company executives to new types of damages and significant financial penalties; and
- **Limit Employer Options in Labor Disputes:** Significantly reducing employers’ ability to weather disruptive work stoppages.

### Restructuring of Union Representation Elections

The bill would significantly reconstruct the procedures for conducting union representation elections by:

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- Banning mandatory employer meetings that present the employer's views on union-organizing efforts;
- Instituting "stealth" card checks that would require employers to bargain with unions who lose representation elections if a majority of employees in the voting unit have signed authorization cards and the employer is found to have allegedly interfered with the employees' election choice; and
- Codifying the NLRB's "[Ambush Election Rules](#)", thereby drastically reducing the amount of time between the filing of a petition and the actual election.

## Introduction of Steep New Penalties for Companies and Executives

The PRO Act would introduce new penalties and significantly expand available remedies under the National Labor Relations Act (NLRA), including adding penalties for contempt and a new civil penalty for labor law violations of up to \$50,000, which could be doubled for a repeat violation. The bill would also expand back pay awards by eliminating the duty to mitigate, introduce front pay (when appropriate) as a remedy, authorize consequential damages, and permit the NLRB to award an additional amount as liquidated damages equal to two times the amount of damages awarded. Further, the bill would require the NLRB to seek temporary injunctions in certain circumstances where there was reasonable cause to believe the NLRA had been violated, and would remove current limits on a court's ability to provide temporary injunctive relief upon the filing of an NLRB petition. The PRO Act would also create a private right of action for employees to bring claims against employers for violating the NLRA.

## Limiting Union Unfair Labor Practices and Prohibiting Currently Lawful Employer Economic Weapons

Finally, the bill proposes to permit conduct that currently is unprotected by the NLRA, namely intermittent strikes and secondary boycotts. Additionally, the PRO Act bans employers from permanently replacing strikers and prohibits companies from offensively locking out employees in the absence of a threatened strike.

Supporters, including the [American Federation of Labor and Congress of Industrial Organizations \(AFL-CIO\)](#) and most international unions, claim that the bill will strengthen employees' rights. Specifically, proponents note that the "PRO Act will empower workers to exercise [their] freedom to organize and negotiate for better wages and working conditions." In contrast, the [U.S. Chamber of Commerce](#) says the PRO Act would "undermine worker rights, ensnare employers in unrelated labor disputes, disrupt the economy, and force individual Americans to pay union dues regardless of their wishes." The [National Retail Federation](#) has called it "the worst bill in Congress."

## What Can You Do?

Regardless of whether some version of the PRO Act eventually gets signed into law, the best defense, when it comes to union avoidance, is a strong offense. Employers who proactively identify and acknowledge workplace challenges, and ensure their employees are well-informed, involved and recognized for their

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efforts, stand the best chance of maintaining a direct working relationship with their employees without third-party interference from a union. Accomplishing these lofty goals is not easy, but it can be done. Stinson advises companies on these issues, and our services range from comprehensive positive employee relations audit, to supervisor/manager training, to behind-the-scenes consultation.

### CONTACTS

Dominic J. Cecere

Matthew C. Tews

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