



Protecting the Right to Organize Act (H.R. 842) FACT SHEET

This fact sheet is intended to provide ABC members with information on how proposed federal legislation would dramatically overhaul national labor laws and impact the merit shop.

During the campaign, then candidate Joe Biden said that he would be the “strongest labor president” if elected. He pledged to form a cabinet level working group made up of union representatives that would deliver a plan to “dramatically increase union density and address economic inequality.”¹

A key component of President Biden’s pro-union plan is passing legislation called the Protecting the Right to Organize (PRO) Act. President Biden co-sponsored previous versions of the PRO Act as a U.S. Senator and is supportive of the newest version of the bill. In the last session of Congress, the PRO Act (then H.R. 2474) passed the U.S. House by a vote of 224-194, largely along party-lines. The bill did not advance in the U.S. Senate in the previous session.

Union Membership

The PRO Act and other pro-union bills are being introduced at the national and state levels because union affiliation has been on the decline. Union and political leaders argue unions are needed to protect worker rights, provided workers with a “living wage,” and ensure workers have a safe workplace. Despite these arguments, just 10.8% of the total national workforce is affiliated with a union. For construction, union affiliation is 12.7%, which means the merit shop represents over **87%** of the construction workforce.²

H.R. 842, the Protecting the Right to Organize Act

a. LEGISLATIVE STATUS

- Introduced on February 4, 2021, by Rep. Robert “Bobby” Scott (D-VA-3).
- There are currently 200 co-sponsors; 198 are Democrats and 2 are Republicans.
 - All Pennsylvania congressional Democrats are co-sponsors, except for Rep. Chrissy Houlahan (D-PA-6) from Chester County.
 - Rep. Brian Fitzpatrick (R-PA-1) from Bucks County is the only Republican co-sponsor from Pennsylvania.
- The bill has been referred to the House Education and Labor Committee for consideration.
- The bill is expected to advance through the U.S. House in the first half of the year.
- In the U.S. Senate, the bill would need to reach a 60-vote threshold to avoid a filibuster.

¹ <https://joebiden.com/empowerworkers/>

² <https://www.bls.gov/news.release/pdf/union2.pdf>

b. LEGISLATIVE SUMMARY

H.R. 842 proposes to make massive changes to labor law. It would have major implications for all ABC members. If passed, the legislation would cover all employers, public and private, and subject them to the provisions of the bill. ***Simply put, the PRO Act would make it easier for unions to organize merit shop contractors.***

i. MAJOR CHANGES TO UNION ORGANIZING RULES

- Restricts an employers' ability to communicate with employees during the organizing process.
- Interferes with attorney-client confidentiality by restricting an employers' right to seek legal advice during the organizing process.
- Changes the process by which a union can challenge the result of an organizing election.
 - If an election fails, unions would be permitted to petition the National Labor Relations Board (NLRB) claiming employer interference. If the NLRB agrees, the union could overturn the failed election by obtaining signed "authorization cards" from employees. These authorization cards are not signed in secret, allowing organizers to know which employees signed cards and which did not.
- Requires employers to provide employee contact information to union organizers, without approval from the employee.
- Forces employers into mandatory arbitration if a collective bargaining agreement is not reached within 120 days of negotiation.

ii. MAJOR CHANGES TO LABOR LAW

- Imposes civil penalties up to \$50,000 for an alleged violation to labor law. Fines could reach \$100,000 in cases of discrimination, retaliation, or cases of "other serious economic harm."
- Eliminates the ban on "secondary boycotting activity," thereby allowing unions to boycott and picket neutral contractors.
- Makes contractors liable for the unlawful actions or behavior of other workers by expanding the "joint employer" standard.
- Expands the definition of an employee, effectively reclassifying independent contractors as employees, who would then qualify for union representation.
- Narrows the definition of a supervisor by eliminating "assign" and "responsibility to direct" from the NLRB definition, allowing more workers to be covered in the collective bargaining process.
- Prohibits an employer's right to settle employee lawsuits through a binding arbitration process.
- Allows employees to file a lawsuit in federal court claiming an unfair labor practice, even if the NLRB dismissed charges.
- Prohibits employers from permanently replacing striking workers.
- Overturns state right-to-work laws. (*Pennsylvania is not a right-to-work state, but this provision would impact ABC members who do work in right-to-work states.*)

ABC Position

ABC, along with many pro-business associations, oppose the PRO Act. We believe the legislation would erode over 70 years of established labor laws and eliminate employer rights and protections. Further, it would infringe on employee rights by forcing workers to pay union dues regardless of their wishes.

It should be noted that as an association, ABC does NOT oppose unions and believes that employees should be free to voluntarily join a union if they so choose.

ABC Issue Advocacy

Defeating the PRO Act is a top priority for ABC. Through the Free Enterprise Alliance (FEA), ABC has invested heavily in issue advocacy around this issue. The FEA has an entire webpage of educational resources, including videos, fact sheets, scorecards, social media kits, petitions, economic studies, letters to Congress, and op-eds. ABC members can opt receive regular email updates and donate to FEA through the website.

ABC also partners with the Coalition for a Democratic Workplace (CDW), which consists of hundreds of associations, in opposition to the bill. CDW was founded in 2005 to oppose the first iteration of the PRO Act, known then as the Employee Free Choice Act (EFCA).

Additional Resources

- [H.R. 842 Legislative Text](#)
- [Coalition for a Democratic Workplace \(CDW\)](#)
- [Free Enterprise Alliance \(FEA\)](#)
- [How the PRO Act would change the construction industry](#)

DISCLAIMER: *The information contained in this document is intended for informational purposes only. It was prepared by referencing reputable sources both governmental and non-governmental. Staff has made every reasonable effort to ensure the accuracy of the information contained herein.*