S.102, the Vermont Protect the Right to Organize or "PRO" Act
Key messaging and FAQs

Top Lines

Agricultural and domestic workers do not have the right to organize. Their exclusion from the National Labor Relations Act (NLRA) has racist roots, and it is time to right that wrong.

Workers can be discharged, disciplined, penalized, or otherwise discriminated against, or threatened with discharge, discipline, or penalties when exercising their constitutional right to decline coercive speech. Employers can currently coercively dissuade employees from exercising their right to form a union, using what are commonly called "captive audience" meetings.

The current union election process is imbalanced with employers having far greater access to their employees and elections often taking place at the worksite. Employees must wait several weeks or more for a board election after filing. Unfortunately, some employers abuse their power and this delay. To win the election, only a majority of workers *who vote* are needed. In contrast, with card check or majority sign-up, a majority of *all eligible workers* are required to sign up for union representation.

What is S.102, also known as the Vermont Protect the Right to Organize "PRO" Act?

The Vermont Protect the Right to Organize "PRO" Act, S.102, makes it easier for workers to exercise their right to form a union by enacting the following:

1. Granting the right to unionize to agricultural and domestic workers.
2. Protecting employees from coercion regarding an employer's political or religious opinions.
3. Allowing card check elections or majority sign-up in the public sector.

Why do we need S.102?

Employers have immense coercive power, including the ability to fire employees and thereby jeopardize employees' ability to meet their basic needs. Our labor laws have not been updated in decades – some for almost a hundred years. Yet, employers and the anti-union law firms they hire have developed new, effective tactics to suppress workers' ability to form unions, namely "captive audience meetings." S.102 would update our outdated labor laws and level the playing field.

FAQs

Have other states enacted the provisions included in S.102?

Yes. Fourteen other states (AZ, CA, CO, HI, KS, KY, LA, MA, NE, NJ, NY, OR, WA, and WI) give agricultural workers the right to form a union.

Six states (CT, ME, MN, NJ, NY, and OR) have laws protecting workers from retaliation if they decline to attend forced meetings about matters of personal conscience (captive audience meetings).

Nine states (CA, NY, MA, NJ, ME, IL, OR, WA, and NM) currently have majority sign-up or card check elections.

Will employers be prevented from sharing their political and religious views with employees?

No. Employers will still be free to share their political and religious views with employees. However, they cannot force employees to listen by using retaliation, discrimination, or threats.

Would employers be prevented from conducting Diversity, Equity, and Inclusion (DEI) meetings, workshops, and trainings?

No. Diversity, Equity, and Inclusion (DEI) would not fall under the definitions of political or religious speech included in S.102.

Is regulating captive audience meetings consistent with the First Amendment?

Yes. S.102 does not prevent employers from sharing political or religious views. Only retaliation or discrimination against employees who do not wish to listen to such speech would be prohibited.

The First Amendment does not protect coercion. As the United States Supreme Court has stated, “It is . . . important . . . to recognize the significant difference between state restrictions on a speaker’s right to address a willing audience and those that protect listeners from unwanted communication.” **Hill v. Colorado, 530 U.S. 530 U.S. 703, 715-16 (2000).**

The US Supreme Court has made it clear that States can regulate “captive audiences.” See **Frisby v. Schultz, 487 U.S. 474, 487 (1988), Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 684 (1986)**; and **Lehman v. Shaker Heights, 418 U.S. 298, 305-08 (1974)**. S.102 is consistent with **Frisby** in that it is “narrowly tailored to protect only unwilling recipients of the communications.”

Last, the First Amendment permits the regulation of conduct that is separable from speech – specifically, "expression may be limited when it merges into conduct." Firing an employee for declining to attend a meeting primarily concerning politics or religion is conduct, not speech.

Is regulating captive audience meetings preempted by federal law, specifically the NLRA?

No. S.102 falls under several exceptions to federal labor law preemption.

First, "the NLRA contains no express pre-emption provision." **Building & Construction Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218, 224 (1993).**

Second, States have the authority to establish minimum working conditions. Federal law only supplants State law when it prevents accomplishing the purposes of the federal labor law. For example, a State can pass a law to prevent employers from forcing employees to work under unsafe working conditions. Similarly, a State can pass laws to protect employees' psychological safety.

Third, States are authorized to regulate activity touching upon deeply rooted local concerns. State regulations that protect personal dignity and private property have been upheld. Employees treated as a "collectivized object of speech, powerless to escape and powerless to answer" is an affront to personal dignity.

Will there still be the option of holding a secret ballot election administered by the Vermont State Labor Board with S.102?

Yes. Employees may still request a secret ballot election or the Vermont State Labor Board may hold a secret ballot election if it determines the petition has less than majority support of eligible employees for an appropriate bargaining unit.

The current, multi-step certification process does not require a secret ballot election if the employer elects voluntary recognition of the newly-formed bargaining unit. However, under the current system, the decision to forgo an election rests entirely with the employer.