

**AMENDMENT TO H.R. 842**  
**OFFERED BY MS. JACKSON LEE**

On page 33, line 13, strike “Section 203(c)” and insert “(a) IN GENERAL.—Section 203(c)”.

On page 34, after line 2, insert the following:

1 (b) WHISTLEBLOWER PROTECTIONS.—The Labor-  
2 Management Reporting and Disclosure Act of 1959 (29  
3 U.S.C. 401 et seq.) is further amended—

4 (1) by redesignating section 611 (29 U.S.C.  
5 531) as section 612; and

6 (2) by inserting after section 610 (29 U.S.C.  
7 530), the following new section:

8 “WHISTLEBLOWER PROTECTIONS  
9 “SEC. 611.

10 “(a) IN GENERAL.—No employer or labor organiza-  
11 tion shall terminate or in any other way discriminate  
12 against, or cause to be terminated or discriminated  
13 against, any applicant, covered employee, or former cov-  
14 ered employee, of the employer or the labor organization  
15 by reason of the fact that such applicant, covered em-  
16 ployee, or former covered employee does, or the employer  
17 or labor organization perceives the employee to do, any  
18 of the following:

1           “(1) Provide, cause to be provided, or is about  
2           to provide or cause to be provided, information to  
3           the labor organization, the employer, the Depart-  
4           ment of Labor, or any other State, local, or Federal  
5           Government authority or law enforcement agency re-  
6           lating to any violation of, or any act or omission  
7           that such employee reasonably believes to be a viola-  
8           tion of, any provision of this Act.

9           “(2) Testify or plan to testify or otherwise par-  
10          ticipate in any proceeding resulting from the admin-  
11          istration or enforcement of any provision of this Act.

12          “(3) File, institute, or cause to be filed or insti-  
13          tuted, any proceeding under this Act.

14          “(4) Assist in any activity described in para-  
15          graphs (1) through (3).

16          “(5) Object to, or refuse to participate in, any  
17          activity, policy, practice, or assigned task that such  
18          covered employee reasonably believes to be in viola-  
19          tion of any provision of this Act.

20          “(b) DEFINITION OF COVERED EMPLOYEE.—For the  
21          purposes of this section, the term ‘covered employee’  
22          means any employee or agent of an employer or labor or-  
23          ganization, including any person with management re-  
24          sponsibilities on behalf of the employer or labor organiza-  
25          tion.

1 “(c) PROCEDURES AND TIMETABLES.—

2 “(1) COMPLAINT.—

3 “(A) IN GENERAL.—An applicant, covered  
4 employee, or former covered employee who be-  
5 lieves that he or she has been terminated or in  
6 any other way discriminated against by any  
7 person in violation of subsection (a) may file (or  
8 have any person file on his or her behalf) a  
9 complaint with the Secretary of Labor alleging  
10 such violation. Such a complaint must be filed  
11 not later than either—

12 “(i) 180 days after the date on which  
13 such alleged violation occurs; or

14 “(ii) 180 days after the date upon  
15 which the employee knows or should rea-  
16 sonably have known that such alleged vio-  
17 lation in subsection (a) occurred.

18 “(B) ACTIONS OF SECRETARY OF  
19 LABOR.—Upon receipt of such a complaint, the  
20 Secretary of Labor shall notify, in writing, the  
21 person named in the complaint who is alleged  
22 to have committed the violation, of—

23 “(i) the filing of the complaint;

24 “(ii) the allegations contained in the  
25 complaint;

1                   “(iii) the substance of evidence sup-  
2                   porting the complaint; and

3                   “(iv) opportunities that will be af-  
4                   forded to such person under paragraph  
5                   (2).

6                   “(2) INVESTIGATION BY SECRETARY OF  
7                   LABOR.—

8                   “(A) IN GENERAL.—Not later than 60  
9                   days after the date of receipt of a complaint  
10                  filed under paragraph (1), and after affording  
11                  the complainant and the person named in the  
12                  complaint who is alleged to have committed the  
13                  violation that is the basis for the complaint an  
14                  opportunity to submit to the Secretary of Labor  
15                  a written response to the complaint and an op-  
16                  portunity to meet with a representative of the  
17                  Secretary of Labor to present statements from  
18                  witnesses, the Secretary of Labor shall—

19                  “(i) initiate an investigation and de-  
20                  termine whether there is reasonable cause  
21                  to believe that the complaint has merit;  
22                  and

23                  “(ii) notify the complainant and the  
24                  person alleged to have committed the viola-

1                   tion of subsection (a), in writing, of such  
2                   determination.

3                   “(B) GROUNDS FOR DETERMINATION OF  
4                   COMPLAINTS.—The Secretary of Labor shall  
5                   dismiss a complaint filed under this subsection,  
6                   and shall not conduct an investigation otherwise  
7                   required under paragraph (2), unless the com-  
8                   plainant makes a prima facie showing that any  
9                   behavior described in paragraphs (1) through  
10                  (5) of subsection (a) was a contributing factor  
11                  in the unfavorable personnel action alleged in  
12                  the complaint.

13                  “(3) BURDENS OF PROOF.—

14                  “(A) CRITERIA FOR DETERMINATION.—In  
15                  making a determination or adjudicating a com-  
16                  plaint pursuant to this subsection, the Sec-  
17                  retary, an administrative law judge or a court  
18                  may determine that a violation of subsection (a)  
19                  has occurred only if the complainant dem-  
20                  onstrates that any conduct described in sub-  
21                  section (a) with respect to the complainant was  
22                  a contributing factor in the adverse action al-  
23                  leged in the complaint.

24                  “(B) PROHIBITION.—Notwithstanding sub-  
25                  paragraph (A), a decision or order that is favor-

1           able to the complainant shall not be issued in  
2           any administrative or judicial action pursuant  
3           to this subsection if the respondent dem-  
4           onstrates by clear and convincing evidence that  
5           the respondent would have taken the same ad-  
6           verse action in the absence of such conduct.

7           “(C) NOTICE OF RELIEF AVAILABLE.—If  
8           the Secretary of Labor concludes that there is  
9           reasonable cause to believe that a violation of  
10          subsection (a) has occurred, the Secretary of  
11          Labor shall, together with the notice under  
12          paragraph (2)(A)(ii), issue a preliminary order  
13          providing the relief prescribed by paragraph  
14          (4)(B).

15          “(D) REQUEST FOR HEARING.—Not later  
16          than 30 days after the date of receipt of notifi-  
17          cation of a determination of the Secretary of  
18          Labor under this paragraph, either the person  
19          alleged to have committed the violation or the  
20          complainant may file objections to the findings  
21          or preliminary order, or both, and request a  
22          hearing on the record. The filing of such objec-  
23          tions shall not operate to stay any reinstatement  
24          remedy contained in the preliminary  
25          order. Any such hearing shall be conducted ex-

1           peditiously, and if a hearing is not requested in  
2           such 30-day period, the preliminary order shall  
3           be deemed a final order that is not subject to  
4           judicial review.

5           “(E) PROCEDURES.—

6                   “(i) IN GENERAL.—A hearing re-  
7                   quested under this paragraph shall be con-  
8                   ducted expeditiously and in accordance  
9                   with rules established by the Secretary for  
10                  hearings conducted by administrative law  
11                  judges.

12                   “(ii) SUBPOENAS; PRODUCTION OF  
13                   EVIDENCE.— In conducting any such hear-  
14                   ing, the administrative law judge may issue  
15                   subpoenas. The respondent or complainant  
16                   may request the issuance of subpoenas  
17                   that require the deposition of, or the at-  
18                   tendance and testimony of, witnesses and  
19                   the production of any evidence (including  
20                   any books, papers, documents, or record-  
21                   ings) relating to the matter under consid-  
22                   eration.

23                   “(4) ISSUANCE OF FINAL ORDERS; REVIEW  
24                   PROCEDURES.—

1           “(A) TIMING.—Not later than 120 days  
2 after the date of conclusion of any hearing  
3 under paragraph (2), the Secretary of Labor  
4 shall issue a final order providing the relief pre-  
5 scribed by this paragraph or denying the com-  
6 plaint. At any time before issuance of a final  
7 order, a proceeding under this subsection may  
8 be terminated on the basis of a settlement  
9 agreement entered into by the Secretary of  
10 Labor, the complainant, and the person alleged  
11 to have committed the violation.

12           “(B) AVAILABLE RELIEF.—

13           “(i) ORDER OF SECRETARY OF  
14 LABOR.—If, in response to a complaint  
15 filed under paragraph (1), the Secretary of  
16 Labor determines that a violation of sub-  
17 section (a) has occurred, the Secretary of  
18 Labor shall order the person who com-  
19 mitted such violation—

20           “(I) to take affirmative action to  
21 abate the violation;

22           “(II) to reinstate the complain-  
23 ant to his or her former position, to-  
24 gether with compensation (including  
25 back pay with interest) and restore



1 the terms, conditions, and privileges  
2 associated with his or her employ-  
3 ment;

4 “(III) to provide compensatory  
5 damages to the complainant; and

6 “(IV) expungement of all warn-  
7 ings, reprimands, or derogatory ref-  
8 erences that have been placed in  
9 paper or electronic records or data-  
10 bases of any type relating to the ac-  
11 tions by the complainant that gave  
12 rise to the unfavorable personnel ac-  
13 tion, and, at the complainant’s direc-  
14 tion, transmission of a copy of the de-  
15 cision on the complaint to any person  
16 whom the complainant reasonably be-  
17 lieves may have received such unfavor-  
18 able information.

19 “(ii) COSTS AND EXPENSES.—If an  
20 order is issued under clause (i), the Sec-  
21 retary of Labor, at the request of the com-  
22 plainant, shall assess against the person  
23 against whom the order is issued, a sum  
24 equal to the aggregate amount of all costs  
25 and expenses (including attorney fees and

1 expert witness fees) reasonably incurred,  
2 as determined by the Secretary of Labor,  
3 by the complainant for, or in connection  
4 with, the bringing of the complaint upon  
5 which the order was issued.

6 “(C) FRIVOLOUS CLAIMS.—If the Sec-  
7 retary of Labor finds that a complaint under  
8 paragraph (1) is frivolous or has been brought  
9 in bad faith, the Secretary of Labor may award  
10 to the prevailing employer or labor organization  
11 a reasonable attorney fee, not exceeding \$1,000,  
12 to be paid by the complainant.

13 “(D) DE NOVO REVIEW.—

14 “(i) FAILURE OF THE SECRETARY TO  
15 ACT.—If the Secretary of Labor has not  
16 issued a final order within 270 days after  
17 the date of filing of a complaint under this  
18 subsection, or within 90 days after the  
19 date of receipt of a written determination,  
20 the complainant may bring an action at  
21 law or equity for de novo review in the ap-  
22 propriate district court of the United  
23 States having jurisdiction, which shall have  
24 jurisdiction over such an action without re-  
25 gard to the amount in controversy, and

1           which action shall, at the request of either  
2           party to such action, be tried by the court  
3           with a jury.

4           “(ii) PROCEDURES.—A proceeding  
5           under clause (i) shall be governed by the  
6           same legal burdens of proof specified in  
7           paragraph (3). The court shall have juris-  
8           diction to grant all relief necessary to  
9           make the employee whole, including injunc-  
10          tive relief and compensatory damages, in-  
11          cluding—

12                   “(I) reinstatement with the same  
13                   seniority status that the employee  
14                   would have had, but for the discharge  
15                   or discrimination;

16                   “(II) the amount of back pay,  
17                   with interest;

18                   “(III) compensation for any spe-  
19                   cial damages sustained as a result of  
20                   the discharge or discrimination, in-  
21                   cluding litigation costs, expert witness  
22                   fees, and reasonable attorney fees;  
23                   and

24                   “(IV) expungement of all warn-  
25                   ings, reprimands, or derogatory ref-

1                   erences that have been placed in  
2                   paper or electronic records or data-  
3                   bases of any type relating to the ac-  
4                   tions by the complainant that gave  
5                   rise to the unfavorable personnel ac-  
6                   tion, and, at the complainant's direc-  
7                   tion, transmission of a copy of the de-  
8                   cision on the complaint to any person  
9                   whom the complainant reasonably be-  
10                  lieves may have received such unfavor-  
11                  able information.

12                  “(E) OTHER APPEALS.—Unless the com-  
13                  plainant brings an action under subparagraph  
14                  (D), any person adversely affected or aggrieved  
15                  by a final order issued under subparagraph (A)  
16                  may file a petition for review of the order in the  
17                  United States Court of Appeals for the circuit  
18                  in which the violation with respect to which the  
19                  order was issued, allegedly occurred or the cir-  
20                  cuit in which the complainant resided on the  
21                  date of such violation, not later than 60 days  
22                  after the date of the issuance of the final order  
23                  of the Secretary of Labor under subparagraph  
24                  (A). Review shall conform to chapter 7 of title  
25                  5, United States Code. The commencement of

1 proceedings under this subparagraph shall not,  
2 unless ordered by the court, operate as a stay  
3 of the order. An order of the Secretary of  
4 Labor with respect to which review could have  
5 been obtained under this subparagraph shall  
6 not be subject to judicial review in any criminal  
7 or other civil proceeding.

8 “(5) FAILURE TO COMPLY WITH ORDER.—

9 “(A) ACTIONS BY THE SECRETARY.—If  
10 any person has failed to comply with a final  
11 order issued under paragraph (4), the Secretary  
12 of Labor may file a civil action in the United  
13 States district court for the district in which  
14 the violation was found to have occurred, or in  
15 the United States district court for the District  
16 of Columbia, to enforce such order. In actions  
17 brought under this paragraph, the district  
18 courts shall have jurisdiction to grant all appro-  
19 priate relief including injunctive relief, compen-  
20 satory and punitive damages.

21 “(B) CIVIL ACTIONS TO COMPEL COMPLI-  
22 ANCE.—A person on whose behalf an order was  
23 issued under paragraph (4) may commence a  
24 civil action against the person to whom such  
25 order was issued to require compliance with

1           such order. The appropriate United States dis-  
2           trict court shall have jurisdiction, without re-  
3           gard to the amount in controversy or the citi-  
4           zenship of the parties, to enforce such order.

5           “(C) AWARD OF COSTS AUTHORIZED.—  
6           The court, in issuing any final order under this  
7           paragraph, may award costs of litigation (in-  
8           cluding reasonable attorney and expert witness  
9           fees) to any party, whenever the court deter-  
10          mines such award is appropriate.

11          “(D) MANDAMUS PROCEEDINGS.—Any  
12          nondiscretionary duty imposed by this section  
13          shall be enforceable in a mandamus proceeding  
14          brought under section 1361 of title 28, United  
15          States Code.

16          “(d) UNENFORCEABILITY OF CERTAIN AGREE-  
17          MENTS.—Notwithstanding any other provision of law, the  
18          rights and remedies provided for in this section may not  
19          be waived by any agreement, policy, form, or condition of  
20          employment, including by any predispute arbitration  
21          agreement.

22          “(e) SAVINGS.—Nothing in this subsection shall be  
23          construed to diminish the rights, privileges, or remedies  
24          of any employee who exercises rights under any Federal

1 or State law or common law, or under any collective bar-  
2 gaining agreement.”.

