

AMENDMENT TO H.R. 842
OFFERED BY MRS. HINSON OF IOWA

Page 34, after line 2, insert the following:

1 **SEC. 203. WHISTLEBLOWER PROTECTIONS.**

2 The Labor-Management Reporting and Disclosure
3 Act of 1959 (29 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. (a) IN GENERAL.—No employer or labor
10 organization shall terminate or in any other way discrimi-
11 nate against, or cause to be terminated or discriminated
12 against, any applicant, covered employee, or former cov-
13 ered employee, of the employer or the labor organization
14 by reason of the fact that such applicant, covered em-
15 ployee, or former covered employee does, or the employer
16 or labor organization perceives the employee to do, any
17 of the following:

18 “(1) Provide, cause to be provided, or is about
19 to provide or cause to be provided, information to
20 the labor organization, the Department of Labor, or

1 any other State, local, or Federal Government au-
2 thority or law enforcement agency relating to any
3 violation of, or any act or omission that such em-
4 ployee reasonably believes to be a violation of, any
5 provision of this Act.

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

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

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

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

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

23 “(c) PROCEDURES AND TIMETABLES.—

24 “(1) COMPLAINT.—

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

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

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

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

21 “(i) the filing of the complaint;

22 “(ii) the allegations contained in the
23 complaint;

24 “(iii) the substance of evidence sup-
25 porting the complaint; and

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

4 “(2) INVESTIGATION BY SECRETARY OF
5 LABOR.—

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

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

21 “(ii) notify the complainant and the
22 person alleged to have committed the viola-
23 tion of subsection (a), in writing, of such
24 determination.

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

11 “(3) BURDENS OF PROOF.—

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

22 “(B) PROHIBITION.—Notwithstanding sub-
23 paragraph (A), a decision or order that is favor-
24 able to the complainant shall not be issued in
25 any administrative or judicial action pursuant

1 to this subsection if the respondent dem-
2 onstrates by clear and convincing evidence that
3 the respondent would have taken the same ad-
4 verse action in the absence of such conduct.

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

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

1 be deemed a final order that is not subject to
2 judicial review.

3 “(E) PROCEDURES.—

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

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

21 “(4) ISSUANCE OF FINAL ORDERS; REVIEW
22 PROCEDURES.—

23 “(A) TIMING.—Not later than 120 days
24 after the date of conclusion of any hearing
25 under paragraph (2), the Secretary of Labor

1 shall issue a final order providing the relief pre-
2 scribed by this paragraph or denying the com-
3 plaint. At any time before issuance of a final
4 order, a proceeding under this subsection may
5 be terminated on the basis of a settlement
6 agreement entered into by the Secretary of
7 Labor, the complainant, and the person alleged
8 to have committed the violation.

9 “(B) AVAILABLE RELIEF.—

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

17 “(I) to take affirmative action to
18 abate the violation;

19 “(II) to reinstate the complain-
20 ant to his or her former position, to-
21 gether with compensation (including
22 back pay with interest) and restore
23 the terms, conditions, and privileges
24 associated with his or her employ-
25 ment;

1 “(III) to provide compensatory
2 damages to the complainant; and

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

16 “(ii) COSTS AND EXPENSES.—If an
17 order is issued under clause (i), the Sec-
18 retary of Labor, at the request of the com-
19 plainant, shall assess against the person
20 against whom the order is issued, a sum
21 equal to the aggregate amount of all costs
22 and expenses (including attorney fees and
23 expert witness fees) reasonably incurred,
24 as determined by the Secretary of Labor,
25 by the complainant for, or in connection

1 with, the bringing of the complaint upon
2 which the order was issued.

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

10 “(D) DE NOVO REVIEW.—

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

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

9 “(I) reinstatement with the same
10 seniority status that the employee
11 would have had, but for the discharge
12 or discrimination;

13 “(II) the amount of back pay,
14 with interest;

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

21 “(IV) expungement of all warn-
22 ings, reprimands, or derogatory ref-
23 erences that have been placed in
24 paper or electronic records or data-
25 bases of any type relating to the ac-

1 tions by the complainant that gave
2 rise to the unfavorable personnel ac-
3 tion, and, at the complainant's direc-
4 tion, transmission of a copy of the de-
5 cision on the complaint to any person
6 whom the complainant reasonably be-
7 lieves may have received such unfavor-
8 able information.

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

1 Labor with respect to which review could have
2 been obtained under this subparagraph shall
3 not be subject to judicial review in any criminal
4 or other civil proceeding.

5 “(5) FAILURE TO COMPLY WITH ORDER.—

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

18 “(B) CIVIL ACTIONS TO COMPEL COMPLI-
19 ANCE.—A person on whose behalf an order was
20 issued under paragraph (4) may commence a
21 civil action against the person to whom such
22 order was issued to require compliance with
23 such order. The appropriate United States dis-
24 trict court shall have jurisdiction, without re-

1 gard to the amount in controversy or the citi-
2 zenship of the parties, to enforce such order.

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

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

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

20 “(e) SAVINGS.—Nothing in this subsection shall be
21 construed to diminish the rights, privileges, or remedies
22 of any employee who exercises rights under any Federal
23 or State law or common law, or under any collective bar-
24 gaining agreement.”.

