

**AMENDMENT TO H.R. 2474, AS REPORTED
OFFERED BY MR. ROONEY OF FLORIDA**

In section 4, strike “Section 203(c)” and insert the following:

1 (a) REPORT OF EMPLOYERS.—Section 203(c)

In section 4, add at the end the following:

2 (b) WHISTLEBLOWER PROTECTION FOR UNION EM-
3 PLOYEES.—The Labor-Management Reporting and Dis-
4 closure Act of 1959 (29 U.S.C. 401 et seq.) is amended—

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

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

9 “WHISTLEBLOWER PROTECTION FOR UNION EMPLOYEES
10 “SEC. 611. (a) IN GENERAL.—No labor organization
11 shall terminate or in any other way discriminate against,
12 or cause to be terminated or discriminated against, any
13 covered employee of the labor organization by reason of
14 the fact that such employee, whether at the initiative of
15 the employee or in the ordinary course of the duties of
16 the employee (or any person acting pursuant to a request
17 of the employee), has—

1 “(1) provided, caused to be provided, or is
2 about to provide or cause to be provided, informa-
3 tion to the labor organization, the Department of
4 Labor, or any other State, local, or Federal Govern-
5 ment authority or law enforcement agency relating
6 to any violation of, or any act or omission that the
7 employee reasonably believes to be a violation of, any
8 provision of this Act or any other provision of law
9 that is subject to the jurisdiction of the Department
10 of Labor, the National Labor Relations Board, or
11 any rule, order, standard, or prohibition prescribed
12 by the Department of Labor or the National Labor
13 Relations Board;

14 “(2) testified or will testify in any proceeding
15 resulting from the administration or enforcement of
16 any provision of this Act or any other provision of
17 law that is subject to the jurisdiction of the Depart-
18 ment of Labor or National Labor Relations Board,
19 or any rule, order, standard, or prohibition pre-
20 scribed by the Department of Labor or the National
21 Labor Relations Board;

22 “(3) filed, instituted, or caused to be filed or in-
23 stituted any proceeding under this Act; or

24 “(4) objected to, or refused to participate in,
25 any activity, policy, practice, or assigned task that

1 the employee (or other such person) reasonably be-
2 lieved to be in violation of any law, rule, order,
3 standard, or prohibition, subject to the jurisdiction
4 of, or enforceable by, the Department of Labor or
5 the National Labor Relations Board.

6 “(b) DEFINITION OF COVERED EMPLOYEE.—For the
7 purposes of this section, the term ‘covered employee’
8 means any employee of a labor organization who receives
9 financial compensation for his or her services to the labor
10 organization, including officers of the labor organization.

11 “(c) PROCEDURES AND TIMETABLES.—

12 “(1) COMPLAINT.—

13 “(A) IN GENERAL.—A person who believes
14 that he or she has been discharged or otherwise
15 discriminated against by any person in violation
16 of subsection (a) may file (or have any person
17 file on his or her behalf) a complaint with the
18 Secretary of Labor alleging such discharge or
19 discrimination and identifying the person re-
20 sponsible for such act. Such a complaint must
21 be filed not later than either—

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

24 “(ii) 180 days after the conclusion of
25 any internal appeals, review, or other judi-

1 cial or investigative process conducted by
2 the labor organization employing such per-
3 son.

4 “(B) ACTIONS OF SECRETARY OF
5 LABOR.—Upon receipt of such a complaint, the
6 Secretary of Labor shall notify, in writing, the
7 person named in the complaint who is alleged
8 to have committed the violation, of—

9 “(i) the filing of the complaint;

10 “(ii) the allegations contained in the
11 complaint;

12 “(iii) the substance of evidence sup-
13 porting the complaint; and

14 “(iv) opportunities that will be af-
15 forded to such person under paragraph
16 (2).

17 “(2) INVESTIGATION BY SECRETARY OF
18 LABOR.—

19 “(A) IN GENERAL.—Not later than 60
20 days after the date of receipt of a complaint
21 filed under paragraph (1), and after affording
22 the complainant and the person named in the
23 complaint who is alleged to have committed the
24 violation that is the basis for the complaint an
25 opportunity to submit to the Secretary of Labor

1 a written response to the complaint and an op-
2 portunity to meet with a representative of the
3 Secretary of Labor to present statements from
4 witnesses, the Secretary of Labor shall—

5 “(i) initiate an investigation and de-
6 termine whether there is reasonable cause
7 to believe that the complaint has merit;
8 and

9 “(ii) notify the complainant and the
10 person alleged to have committed the viola-
11 tion of subsection (a), in writing, of such
12 determination.

13 “(B) NOTICE OF RELIEF AVAILABLE.—If
14 the Secretary of Labor concludes that there is
15 reasonable cause to believe that a violation of
16 subsection (a) has occurred, the Secretary of
17 Labor shall, together with the notice under sub-
18 paragraph (A)(ii), issue a preliminary order
19 providing the relief prescribed by paragraph
20 (4)(B).

21 “(C) REQUEST FOR HEARING.—Not later
22 than 30 days after the date of receipt of notifi-
23 cation of a determination of the Secretary of
24 Labor under this paragraph, either the person
25 alleged to have committed the violation or the

1 complainant may file objections to the findings
2 or preliminary order, or both, and request a
3 hearing on the record. The filing of such objec-
4 tions shall not operate to stay any reinstate-
5 ment remedy contained in the preliminary
6 order. Any such hearing shall be conducted ex-
7 peditiously, and if a hearing is not requested in
8 such 30-day period, the preliminary order shall
9 be deemed a final order that is not subject to
10 judicial review.

11 “(3) GROUNDS FOR DETERMINATION OF COM-
12 PLAINTS.—

13 “(A) IN GENERAL.—The Secretary of
14 Labor shall dismiss a complaint filed under this
15 subsection, and shall not conduct an investiga-
16 tion otherwise required under paragraph (2),
17 unless the complainant makes a prima facie
18 showing that any behavior described in para-
19 graphs (1) through (4) of subsection (a) was a
20 contributing factor in the unfavorable personnel
21 action alleged in the complaint.

22 “(B) REBUTTAL EVIDENCE.—Notwith-
23 standing a finding by the Secretary of Labor
24 that the complainant has made the showing re-
25 quired under subparagraph (A), no investiga-

1 tion otherwise required under paragraph (2)
2 shall be conducted, if the labor organization
3 demonstrates, by clear and convincing evidence,
4 that the labor organization would have taken
5 the same unfavorable personnel action in the
6 absence of that behavior.

7 “(C) EVIDENTIARY STANDARDS.—The
8 Secretary of Labor may determine that a viola-
9 tion of subsection (a) has occurred only if the
10 complainant demonstrates that any behavior de-
11 scribed in paragraphs (1) through (4) of sub-
12 section (a) was a contributing factor in the un-
13 favorable personnel action alleged in the com-
14 plaint. Relief may not be ordered under sub-
15 paragraph (A) if the labor organization dem-
16 onstrates by clear and convincing evidence that
17 the labor organization would have taken the
18 same unfavorable personnel action in the ab-
19 sence of that behavior.

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

22 “(A) TIMING.—Not later than 120 days
23 after the date of conclusion of any hearing
24 under paragraph (2), the Secretary of Labor
25 shall issue a final order providing the relief pre-

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

8 “(B) PENALTIES.—

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

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

18 “(II) to reinstate the complain-
19 ant to his or her former position, to-
20 gether with compensation (including
21 back pay) and restore the terms, con-
22 ditions, and privileges associated with
23 his or her employment; and

24 “(III) to provide compensatory
25 damages to the complainant.

1 “(ii) PENALTY.—If an order is issued
2 under clause (i), the Secretary of Labor, at
3 the request of the complainant, shall assess
4 against the person against whom the order
5 is issued, a sum equal to the aggregate
6 amount of all costs and expenses (includ-
7 ing attorney fees and expert witness fees)
8 reasonably incurred, as determined by the
9 Secretary of Labor, by the complainant
10 for, or in connection with, the bringing of
11 the complaint upon which the order was
12 issued.

13 “(C) PENALTY FOR FRIVOLOUS CLAIMS.—
14 If the Secretary of Labor finds that a complaint
15 under paragraph (1) is frivolous or has been
16 brought in bad faith, the Secretary of Labor
17 may award to the prevailing labor organization
18 a reasonable attorney fee, not exceeding \$1,000,
19 to be paid by the complainant.

20 “(D) DE NOVO REVIEW.—

21 “(i) FAILURE OF THE SECRETARY TO
22 ACT.—If the Secretary of Labor has not
23 issued a final order within 210 days after
24 the date of filing of a complaint under this
25 subsection, or within 90 days after the

1 date of receipt of a written determination,
2 the complainant may bring an action at
3 law or equity for de novo review in the ap-
4 propriate district court of the United
5 States having jurisdiction, which shall have
6 jurisdiction over such an action without re-
7 gard to the amount in controversy, and
8 which action shall, at the request of either
9 party to such action, be tried by the court
10 with a jury.

11 “(ii) PROCEDURES.—A proceeding
12 under clause (i) shall be governed by the
13 same legal burdens of proof specified in
14 paragraph (3). The court shall have juris-
15 diction to grant all relief necessary to
16 make the employee whole, including injunc-
17 tive relief and compensatory damages, in-
18 cluding—

19 “(I) reinstatement with the same
20 seniority status that the employee
21 would have had, but for the discharge
22 or discrimination;

23 “(II) the amount of back pay,
24 with interest; and

1 “(III) compensation for any spe-
2 cial damages sustained as a result of
3 the discharge or discrimination, in-
4 cluding litigation costs, expert witness
5 fees, and reasonable attorney fees.

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

1 not be subject to judicial review in any criminal
2 or other civil proceeding.

3 “(5) FAILURE TO COMPLY WITH ORDER.—

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

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

1 “(C) AWARD OF COSTS AUTHORIZED.—

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

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

12 “(d) LIMITATION OF PREEMPTION.—Nothing in this
13 Act shall be construed—

14 “(1) to limit the ability of members of a labor
15 organization to remove their elected or appointed of-
16 ficials through a democratic election conducted
17 among such members; or

18 “(2) to preempt a State or local government
19 from providing additional protections to employees
20 of labor organizations who allege violations of sub-
21 section (a), provided that such protections do not
22 limit the ability of members of a labor organization
23 to remove their elected or appointed officials through
24 a democratic ballot.

1 “(e) UNENFORCEABILITY OF CERTAIN AGREE-
2 MENTS.—

3 “(1) NO WAIVER OF RIGHTS AND REMEDIES.—

4 Notwithstanding any other provision of law, the
5 rights and remedies provided for in this section may
6 not be waived by any agreement, policy, form, or
7 condition of employment, including by any
8 predispute arbitration agreement.

9 “(2) NO PREDISPUTE ARBITRATION AGREE-
10 MENTS.—Notwithstanding any other provision of
11 law, no predispute arbitration agreement shall be
12 valid or enforceable to the extent that it requires ar-
13 bitration of a dispute arising under this section.”.

