

AMENDMENT TO H.R. 2474, AS REPORTED
OFFERED BY MS. JACKSON LEE

On page 31, line 18, strike “Section 203(c)” and insert “(a) IN GENERAL.—Section 203(c)”.

On page 32, after line 7, 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 Department of Labor, or
4 any other State, local, or Federal Government au-
5 thority or law enforcement agency relating to any
6 violation of, or any act or omission that such em-
7 ployee reasonably believes to be a violation of, any
8 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 farded 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 sub-
12 paragraph (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.”.

