

106TH CONGRESS
1ST SESSION

S. 648

To provide for the protection of employees providing air safety information.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 1999

Mr. KERRY (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Health, Edu-
cation, Labor, and Pensions

A BILL

To provide for the protection of employees providing air
safety information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Aviation Safety Protec-
5 tion Act”.

6 **SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFE-**
7 **TY INFORMATION.**

8 (a) IN GENERAL.—Chapter 421 of title 49, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 “SUBCHAPTER III—WHISTLEBLOWER
2 PROTECTION PROGRAM

3 “§ 42121. **Protection of employees providing air safe-**
4 **ty information**

5 “(a) DISCRIMINATION AGAINST AIRLINE EMPLOY-
6 EES.—No air carrier or contractor or subcontractor of an
7 air carrier may discharge an employee of the air carrier
8 or the contractor or subcontractor of an air carrier or oth-
9 erwise discriminate against any such employee with re-
10 spect to compensation, terms, conditions, or privileges of
11 employment because the employee (or any person acting
12 pursuant to a request of the employee)—

13 “(1) provided, caused to be provided, or is
14 about to provide or cause to be provided, to the Fed-
15 eral Government information relating to any viola-
16 tion or alleged violation of any order, regulation, or
17 standard of the Federal Aviation Administration or
18 any other provision of Federal law relating to air
19 carrier safety under this subtitle or any other law of
20 the United States;

21 “(2) has filed, caused to be filed, or is about to
22 file or cause to be filed, a proceeding relating to any
23 violation or alleged violation of any order, regulation,
24 or standard of the Federal Aviation Administration
25 or any other provision of Federal law relating to air

1 carrier safety under this subtitle or any other law of
2 the United States;

3 “(3) testified or will testify in such a pro-
4 ceeding; or

5 “(4) assisted or participated or is about to as-
6 sist or participate in such a proceeding.

7 “(b) DEPARTMENT OF LABOR COMPLAINT PROCE-
8 DURE.—

9 “(1) FILING AND NOTIFICATION.—

10 “(A) IN GENERAL.—In accordance with
11 this paragraph, a person may file (or have a
12 person file on behalf of that person) a com-
13 plaint with the Secretary of Labor if that per-
14 son believes that an air carrier or contractor or
15 subcontractor of an air carrier discharged or
16 otherwise discriminated against that person in
17 violation of subsection (a).

18 “(B) REQUIREMENTS FOR FILING COM-
19 PLAINTS.—A complaint referred to in subpara-
20 graph (A) may be filed not later than 90 days
21 after an alleged violation occurs. The complaint
22 shall state the alleged violation.

23 “(C) NOTIFICATION.—Upon receipt of a
24 complaint submitted under subparagraph (A),
25 the Secretary of Labor shall notify the air car-

rier, contractor, or subcontractor named in the
complaint and the Administrator of the Federal
Aviation Administration of the—

“(i) filing of the complaint;

“(ii) allegations contained in the com-
plaint;

“(iii) substance of evidence supporting
the complaint; and

“(iv) opportunities that are afforded
to the air carrier, contractor, or subcon-
tractor under paragraph (2).

“(2) INVESTIGATION; PRELIMINARY ORDER.—

“(A) IN GENERAL.—

“(i) INVESTIGATION.—Not later than
60 days after receipt of a complaint filed
under paragraph (1) and after affording
the person named in the complaint an op-
portunity to submit to the Secretary of
Labor a written response to the complaint
and an opportunity to meet with a rep-
resentative of the Secretary to present
statements from witnesses, the Secretary
of Labor shall conduct an investigation
and determine whether there is reasonable
cause to believe that the complaint has

1 merit and notify in writing the complain-
2 ant and the person alleged to have com-
3 mitted a violation of subsection (a) of the
4 Secretary's findings.

5 “(ii) ORDER.—Except as provided in
6 subparagraph (B), if the Secretary of
7 Labor concludes that there is reasonable
8 cause to believe that a violation of sub-
9 section (a) has occurred, the Secretary
10 shall accompany the findings referred to in
11 clause (i) with a preliminary order pro-
12 viding the relief prescribed under para-
13 graph (3)(B).

14 “(iii) OBJECTIONS.—Not later than
15 30 days after the date of notification of
16 findings under this paragraph, the person
17 alleged to have committed the violation or
18 the complainant may file objections to the
19 findings or preliminary order and request a
20 hearing on the record.

21 “(iv) EFFECT OF FILING.—The filing
22 of objections under clause (iii) shall not op-
23 erate to stay any reinstatement remedy
24 contained in the preliminary order.

1 “(v) HEARINGS.—Hearings conducted
2 pursuant to a request made under clause
3 (iii) shall be conducted expeditiously and
4 governed by the Federal Rules of Civil
5 Procedure. If a hearing is not requested
6 during the 30-day period prescribed in
7 clause (iii), the preliminary order shall be
8 deemed a final order that is not subject to
9 judicial review.

10 “(B) REQUIREMENTS.—

11 “(i) REQUIRED SHOWING BY COM-
12 PLAINANT.—The Secretary of Labor shall
13 dismiss a complaint filed under this sub-
14 section and shall not conduct an investiga-
15 tion otherwise required under subpara-
16 graph (A) unless the complainant makes a
17 prima facie showing that any behavior de-
18 scribed in paragraphs (1) through (4) of
19 subsection (a) was a contributing factor in
20 the unfavorable personnel action alleged in
21 the complaint.

22 “(ii) SHOWING BY EMPLOYER.—Not-
23 withstanding a finding by the Secretary
24 that the complainant has made the show-
25 ing required under clause (i), no investiga-

tion otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(3) FINAL ORDER.—

“(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—

1 “(i) IN GENERAL.—Not later than
2 120 days after conclusion of a hearing
3 under paragraph (2), the Secretary of
4 Labor shall issue a final order that—

5 “(I) provides relief in accordance
6 with this paragraph; or

7 “(II) denies the complaint.

8 “(ii) SETTLEMENT AGREEMENT.—At
9 any time before issuance of a final order
10 under this paragraph, a proceeding under
11 this subsection may be terminated on the
12 basis of a settlement agreement entered
13 into by the Secretary of Labor, the com-
14 plainant, and the air carrier, contractor, or
15 subcontractor alleged to have committed
16 the violation.

17 “(B) REMEDY.—If, in response to a com-
18 plaint filed under paragraph (1), the Secretary
19 of Labor determines that a violation of sub-
20 section (a) has occurred, the Secretary of Labor
21 shall order the air carrier, contractor, or sub-
22 contractor that the Secretary of Labor deter-
23 mines to have committed the violation to—

24 “(i) take action to abate the violation;

1 “(ii) reinstate the complainant to the
 2 former position of the complainant and en-
 3 sure the payment of compensation (includ-
 4 ing back pay) and the restoration of terms,
 5 conditions, and privileges associated with
 6 the employment; and

7 “(iii) provide compensatory damages
 8 to the complainant.

9 “(C) COSTS OF COMPLAINT.—If the Sec-
 10 retary of Labor issues a final order that pro-
 11 vides for relief in accordance with this para-
 12 graph, the Secretary of Labor, at the request of
 13 the complainant, shall assess against the air
 14 carrier, contractor, or subcontractor named in
 15 the order an amount equal to the aggregate
 16 amount of all costs and expenses (including at-
 17 torney and expert witness fees) reasonably in-
 18 curred by the complainant (as determined by
 19 the Secretary of Labor) for, or in connection
 20 with, the bringing of the complaint that re-
 21 sulted in the issuance of the order.

22 “(4) FRIVOLOUS COMPLAINTS.—A complaint
 23 brought under this section that is found to be frivo-
 24 lous or to have been brought in bad faith shall be

1 governed by Rule 11 of the Federal Rules of Civil
2 Procedure.

3 “(5) REVIEW.—

4 “(A) APPEAL TO COURT OF APPEALS.—

5 “(i) IN GENERAL.—Not later than 60
6 days after a final order is issued under
7 paragraph (3), a person adversely affected
8 or aggrieved by that order may obtain re-
9 view of the order in the United States
10 court of appeals for the circuit in which
11 the violation allegedly occurred or the cir-
12 cuit in which the complainant resided on
13 the date of that violation.

14 “(ii) REQUIREMENTS FOR JUDICIAL
15 REVIEW.—A review conducted under this
16 paragraph shall be conducted in accord-
17 ance with chapter 7 of title 5. The com-
18 mencement of proceedings under this sub-
19 paragraph shall not, unless ordered by the
20 court, operate as a stay of the order that
21 is the subject of the review.

22 “(B) LIMITATION ON COLLATERAL AT-
23 TACK.—An order referred to in subparagraph
24 (A) shall not be subject to judicial review in any
25 criminal or other civil proceeding.

1 “(6) ENFORCEMENT OF ORDER BY SECRETARY
2 OF LABOR.—

3 “(A) IN GENERAL.—If an air carrier, con-
4 tractor, or subcontractor named in an order
5 issued under paragraph (3) fails to comply with
6 the order, the Secretary of Labor may file a
7 civil action in the United States district court
8 for the district in which the violation occurred
9 to enforce that order.

10 “(B) RELIEF.—In any action brought
11 under this paragraph, the district court shall
12 have jurisdiction to grant any appropriate form
13 of relief, including injunctive relief and compen-
14 satory damages.

15 “(7) ENFORCEMENT OF ORDER BY PARTIES.—

16 “(A) COMMENCEMENT OF ACTION.—A per-
17 son on whose behalf an order is issued under
18 paragraph (3) may commence a civil action
19 against the air carrier, contractor, or subcon-
20 tractor named in the order to require compli-
21 ance with the order. The appropriate United
22 States district court shall have jurisdiction,
23 without regard to the amount in controversy or
24 the citizenship of the parties, to enforce the
25 order.

1 “(B) ATTORNEY FEES.—In issuing any
 2 final order under this paragraph, the court may
 3 award costs of litigation (including reasonable
 4 attorney and expert witness fees) to any party
 5 if the court determines that the awarding of
 6 those costs is appropriate.

7 “(c) MANDAMUS.—Any nondiscretionary duty im-
 8 posed by this section shall be enforceable in a mandamus
 9 proceeding brought under section 1361 of title 28.

10 “(d) NONAPPLICABILITY TO DELIBERATE VIOLA-
 11 TIONS.—Subsection (a) shall not apply with respect to an
 12 employee of an air carrier, or contractor or subcontractor
 13 of an air carrier who, acting without direction from the
 14 air carrier (or an agent, contractor, or subcontractor of
 15 the air carrier), deliberately causes a violation of any re-
 16 quirement relating to air carrier safety under this subtitle
 17 or any other law of the United States.

18 “(e) CONTRACTOR DEFINED.—In this section, the
 19 term ‘contractor’ means a company that performs safety-
 20 sensitive functions by contract for an air carrier.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
 22 chapter 421 of title 49, United States Code, is amended
 23 by adding at the end the following:

 “SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM
 “42121. Protection of employees providing air safety information.

1 (c) CIVIL PENALTY.—Section 46301(a)(1)(A) of title
2 49, United States Code, is amended by striking “sub-
3 chapter II of chapter 421,” and inserting “subchapter II
4 or III of chapter 421,”.

○