

110TH CONGRESS  
1ST SESSION

# H. R. 4047

To streamline the administration of whistleblower protections for private sector employees.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2007

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, Mr. KILDEE, Mr. PAYNE, Mr. ANDREWS, Mrs. MCCARTHY of New York, Mr. KUCINICH, Mr. BISHOP of New York, Mr. HARE, Ms. SHEA-PORTER, Mr. GRIJALVA, Mr. MARKEY, Mr. TIERNEY, and Ms. LINDA T. SÁNCHEZ of California) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To streamline the administration of whistleblower protections for private sector employees.

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 “Private Sector Whistle-  
5       blower Protection Streamlining Act of 2007”.

1 **TITLE I—PRIVATE SECTOR EM-**  
2 **PLOYMENT WHISTLEBLOWER**  
3 **PROTECTIONS**

4 **SEC. 101. DEFINITIONS.**

5 As used in this title, the following definitions apply:

6 (1) **APPLICABLE LAW.**—The term “applicable  
7 law” means any Federal law, rule, or regulation, or  
8 a law, rule or regulation of a State or political sub-  
9 division of a State implementing any Federal law,  
10 rule or regulation, relating to—

11 (A) health and health care;

12 (B) environmental protection;

13 (C) food and drug safety;

14 (D) transportation safety;

15 (E) working conditions and benefits;

16 (F) building and construction-related re-  
17 quirements, including safety requirements and  
18 structural and engineering standards;

19 (G) energy, homeland, and community se-  
20 curity, including facility safety;

21 (H) financial transactions or reporting re-  
22 quirements, including banking, insurance, and  
23 securities laws; and

24 (I) consumer protection.

1           (2) CLEAR AND CONVINCING EVIDENCE.—The  
2       term “clear and convincing evidence” means evi-  
3       dence indicating that the matter to be proved is  
4       highly probable or reasonably certain.

5           (3) CONTRIBUTING FACTOR.—The term “con-  
6       tributing factor” means any factor which, alone or  
7       in combination with other factors, affects in any way  
8       the outcome of the decision.

9           (4) EMPLOYEE.—The term “employee” means  
10      any person receiving compensation from or acting on  
11      behalf of an employer, being considered for employ-  
12      ment by the employer, or previously employed by an  
13      employer, including any working as an associate,  
14      person employed on a temporary or part-time basis,  
15      or employed by a contractor or subcontractor of an  
16      employer.

17          (5) EMPLOYER.—The term “employer” means  
18      any person (including one or more individuals, part-  
19      nerships, associations, corporations, legal representa-  
20      tives, mutual companies, joint-stock companies,  
21      trusts, unincorporated organizations, nongovern-  
22      mental organizations, or trustees) engaged in profit  
23      or nonprofit business affecting commerce, including  
24      any subsidiaries, affiliates, or the foreign operations  
25      of any business that are subject to applicable law,

1 any entity of a State government or political subdivi-  
2 sion of a State, or any nongovernmental organiza-  
3 tion, and any contractor or subcontractor of another  
4 employer.

5 (6) MANAGER.—The term “manager” means  
6 any person who has direct, implied, or apparent au-  
7 thority over the work performance of a whistle-  
8 blower, directly or indirectly through subordinates,  
9 or a person who has the direct, implied, or apparent  
10 authority to recommend or to take corrective action  
11 regarding the activities or policies of the employer or  
12 to remedy a violation of an applicable law.

13 (7) MEDIA.—The term “media” includes a  
14 member of the print, radio, television, or internet  
15 media.

16 (8) PROTECTED INFORMATION.—The term  
17 “protected information” means any information that  
18 a whistleblower reasonably believes evidences—

19 (A) a violation or the intent to commit a  
20 violation, by the employer or a subsidiary or  
21 business affiliate of the employer, of an applica-  
22 ble law;

23 (B) a hazard or potential danger to the  
24 health or safety of any employee or to the pub-  
25 lic, including any injury or illness; or

1 (C) fraud on the part of the employer or  
2 a business affiliate or subsidiary of the em-  
3 ployer in connection with the implementation of  
4 or compliance with an applicable law or a  
5 standard of practice established by a profes-  
6 sional standards setting body.

7 (9) PUBLIC BODY.—The term “public body”  
8 means Congress, any State legislature or popularly  
9 elected local government body, any Federal, State or  
10 local regulatory, administrative, or public agency,  
11 authority, or instrumentality or combination thereof,  
12 any Federal, State, or local law enforcement agency,  
13 prosecutorial office, or police or peace officer, any  
14 Federal, State or local court or other adjudicative  
15 body, or any division, board, bureau, office, com-  
16 mittee, or commission of any such public bodies, or  
17 any organization or credentialing body that estab-  
18 lishes or enforces standards of professional conduct.

19 (10) RESPONSIBLE PARTY.—The term “respon-  
20 sible party” means any employer, any professional  
21 membership organization, including a certification,  
22 disciplinary, or other professional body, and any  
23 agency or licensee of the Federal government, and  
24 includes a person acting directly or indirectly in the  
25 interest of another responsible party.

1           (11) REASONABLY BELIEVES.—The term “rea-  
2       sonably believes”, with respect to information that  
3       may be protected information, means that a disin-  
4       terested observer with a similar level of education,  
5       skill and experience and with knowledge of the es-  
6       sential facts known to or readily ascertained by the  
7       whistleblower could conclude that such information  
8       is protected information, and the determination of  
9       reasonable belief in this context is a subjective  
10      standard which is a question of fact.

11          (12) SECRETARY.—The term “Secretary”  
12      means the Secretary of Labor.

13          (13) UNFAVORABLE PERSONNEL ACTION.—The  
14      term “unfavorable personnel action” means any ac-  
15      tion or inaction, whether taken, recommended, or  
16      threatened, directly or indirectly unfavorable to the  
17      whistleblower, or family member of the whistle-  
18      blower, by any responsible party, including current  
19      employer of the whistleblower, including termination,  
20      performance appraisal or action, discipline, reduction  
21      in pay or benefits, transfer, reassignment, demotion,  
22      withholding of training or other advancement oppor-  
23      tunities, removal of resources, the denial, suspen-  
24      sion, or revocation of a security clearance, investiga-  
25      tion, peer review, law enforcement referral, or pros-

1 execution, filing criminal or civil charges, change in se-  
2 niority rights, denial of advancement, denial of con-  
3 tract, revocation of security credentials, blacklisting,  
4 listing on a practitioner databank, violence or other  
5 physical action, any other discrimination or other ac-  
6 tion that negatively affects the terms or conditions,  
7 or privileges of employment of such whistleblower, or  
8 any other conduct that would dissuade a reasonable  
9 person from engaging in activities protected by this  
10 title.

11 (14) WHISTLEBLOWER.—The term “whistle-  
12 blower” includes an employee, independent con-  
13 tractor, or any member or staff of a professional  
14 membership organization or other professional body,  
15 including professionals with institutional privileges  
16 or appointments to an organization, who engages in  
17 the protected activity described in section 102(a).

18 **SEC. 102. PROTECTION AGAINST RETALIATION OR DIS-**  
19 **CRIMINATION AGAINST WHISTLEBLOWERS.**

20 (a) IN GENERAL.—Notwithstanding the require-  
21 ments of any other law, no responsible party shall take  
22 any unfavorable personnel action against a whistleblower  
23 if such action is due, in whole or in part, to any lawful  
24 act done, perceived to have been done, or intended to be  
25 done by the whistleblower to—

1           (1) communicate or disclose, without restriction  
2           as to place, form, motive, context, forum, or prior  
3           disclosure, including disclosure in the ordinary  
4           course of the whistleblower's duties, to a manager,  
5           public body, or the media, or to the public, any pro-  
6           tected information, where disclosure is not prohib-  
7           ited by law or because such information is classified,  
8           in which case the information may be disclosed to an  
9           official eligible by law to receive such information  
10          and designated by the employer, or to a relevant reg-  
11          ulatory authority, law enforcement agency or Inspec-  
12          tor General;

13          (2) take action to initiate, testify, cooperate, or  
14          otherwise assist or participate in an investigation or  
15          proceeding by a public body, or any proceeding au-  
16          thorized by applicable law, or take action indicating  
17          that the whistleblower is about to testify, cooperate,  
18          or otherwise assist such an investigation or pro-  
19          ceeding;

20          (3) object to or refuse to participate in any ac-  
21          tivity, policy, practice, or assigned task which the  
22          whistleblower reasonably believes is in violation of an  
23          applicable law or endangers the safety or health or  
24          the whistleblower or others;

1           (4) inform or discuss with co-workers of the  
2           whistleblower, experts or corroborating witnesses, a  
3           representative of the whistleblower, a safety and  
4           health or similar workplace committee, or a family  
5           member of the whistleblower, any protected informa-  
6           tion, where disclosure is not prohibited by law or be-  
7           cause it is classified; or

8           (5) otherwise avail himself or herself of the  
9           rights set forth in this title or other applicable law,  
10          or assist another whistleblower in asserting the  
11          rights available under this title.

12          (b) BROAD CONSTRUCTION.—It is the sense of Con-  
13          gress that the provisions of this section and section 101  
14          shall be construed broadly to maximize the Act’s remedial  
15          objectives and for the benefit of the public.

16   **SEC. 103. ENFORCEMENT.**

17          (a) COMPLAINT; RIGHT OF ACTION.—

18               (1) IN GENERAL.—A whistleblower who believes  
19               that he or she has been discharged or otherwise dis-  
20               criminated against by any responsible party in viola-  
21               tion of section 102(a) may seek the relief described  
22               in this section, either by—

23                       (A) filing a complaint with the Secretary  
24                       as described in subsection (b); or

1 (B) bringing an action at law or equity in  
2 the appropriate district court of the United  
3 States as described in subsection (c).

4 Except as provided in subsection (b)(11), a whistle-  
5 blower, having filed a complaint under subparagraph  
6 (A), may not bring an action under subparagraph  
7 (B).

8 (2) STATUTE OF LIMITATIONS.—A whistle-  
9 blower may take either action permitted by the pre-  
10 ceding paragraph not later than 1 year after the  
11 later of—

12 (A) the date on which such violation oc-  
13 curs; or

14 (B) the date on which the whistleblower  
15 knows or should reasonably have known that  
16 such violation occurred.

17 For purposes of this paragraph, a violation shall be  
18 considered to have occurred on the last date on  
19 which such violation continues.

20 (b) DEPARTMENT OF LABOR COMPLAINT PROCE-  
21 DURE.—

22 (1) NOTIFICATION OF PUBLIC BODY.—Upon re-  
23 ceipt of a complaint under this section, the Secretary  
24 shall provide prompt notice to the appropriate public  
25 body of any protected information referenced in the

1 complaint of a violation of section 102(a). The pub-  
2 lic body's determination on whether or not a viola-  
3 tion has occurred, nor its action or inaction, shall  
4 not be considered by the Secretary.

5 (2) ELECTION OF PROCEDURE; EXCLUSION.—

6 (A) ELECTION OF PROCEDURE.—Upon re-  
7 ceipt of a complaint under this section, the Sec-  
8 retary shall inform the complainant (or any  
9 legal counsel retained by complainant) of any  
10 program for administering whistleblower com-  
11 plaints described in section 202 that may be ap-  
12 plicable to the complainant's situation, and ob-  
13 tain the complainant's consent as to the pro-  
14 gram under which the complainant wishes to  
15 proceed. No action may proceed unless a com-  
16 plainant with such an election makes it, and  
17 such an election is binding. If the complaint is  
18 to be processed under this title, the Secretary  
19 shall provide written notice to the responsible  
20 party named in the complaint of the filing of  
21 the complaint, the substance of the evidence  
22 supporting the complaint, and of the opportuni-  
23 ties that will be afforded to such responsible  
24 party under this subsection.

1 (B) EXCLUSION.—No complaint by a gov-  
2 ernment employee that is within the scope of  
3 the Whistleblower Protection Act (5 U.S.C.  
4 1201 note) shall be considered under the provi-  
5 sions of this title, provided, however, that this  
6 exclusion does not diminish any rights a whis-  
7 tleblower may have under any program for ad-  
8 ministering whistleblower complaints described  
9 in section 202.

10 (3) DECISION TO INVESTIGATE OR DISMISS  
11 COMPLAINT.—The Secretary shall, based on the cri-  
12 teria set forth in paragraph (d)(1), either—

13 (A) make a decision to investigate the com-  
14 plaint under paragraph (5); or

15 (B) make a final decision to dismiss the  
16 complaint.

17 (4) TEMPORARY RELIEF DURING INVESTIGA-  
18 TION.—If the complaint is not dismissed under para-  
19 graph (3), the Secretary shall, upon request, issue a  
20 preliminary order providing for temporary reinstate-  
21 ment of the complainant while the Secretary is con-  
22 ducting an investigation pursuant to paragraph (5).  
23 If a hearing is not requested as provided for in para-  
24 graph (7), such preliminary order shall be deemed a  
25 final order that is not subject to judicial review.

1           (5) INVESTIGATION.—The Secretary shall inves-  
2       tigate any complaint not dismissed under paragraph  
3       (3). The Secretary shall afford the responsible party  
4       named in the complaint an opportunity to submit to  
5       the Secretary a written response to the complaint  
6       and to meet with a representative of the Secretary  
7       to present statements from witnesses. The complain-  
8       ant shall be provided an opportunity to meet with a  
9       representative of the Secretary and rebut any state-  
10      ments provided to the Secretary by the responsible  
11      party named in the complaint. In conducting such  
12      investigation, the Secretary may issue subpoenas re-  
13      quiring the deposition of or the attendance and testi-  
14      mony of witnesses and the production of any evi-  
15      dence, including any books, papers, or documents,  
16      relating to the matter under investigation. The Sec-  
17      retary shall complete the investigation and issue a  
18      decision in accordance with the criteria set forth in  
19      subsection (d)(2) not later than 30 days after the  
20      date of receipt of a complaint. The Secretary shall  
21      notify, in writing, the complainant and the respon-  
22      sible party named in the complaint of the Sec-  
23      retary's findings.

24           (6) PRELIMINARY ORDER FOLLOWING INVES-  
25      TIGATION.—If the Secretary finds that a violation of

1 section 102(a) has occurred, the Secretary shall  
2 issue a preliminary order providing the relief pre-  
3 scribed by paragraph (10). If a hearing is not timely  
4 requested as provided for in paragraph (7), such  
5 preliminary order shall be deemed a final order of  
6 the Secretary that is not subject to judicial review.

7 (7) HEARING.—

8 (A) REQUEST FOR HEARING.—The com-  
9 plainant or responsible party alleged to have  
10 committed a violation of section 102(a) may re-  
11 quest a hearing on the record before an admin-  
12 istrative law judge—

13 (i) if the complainant or the respon-  
14 sible party alleged to have committed a  
15 violation of section 102(a) objects to a pre-  
16 liminary order of temporary reinstatement  
17 or preliminary order for relief and files  
18 such objections and request for a hearing  
19 not later than 30 days after receiving noti-  
20 fication of such preliminary order; or

21 (ii) if the Secretary has not issued a  
22 decision under paragraph (5) within 30  
23 days of the receipt of the complaint.

24 The filing of objections under clause (i) shall  
25 not operate to stay any reinstatement remedy

1 contained in a preliminary order issued pursu-  
2 ant to either paragraph (4) or paragraph (6).

3 (B) PROCEDURES.—Such hearing request  
4 shall be granted, and shall be conducted expedi-  
5 tiously and in accordance with the Federal  
6 Rules of Civil Procedure. In conducting such  
7 proceeding, the Secretary may issue subpoenas  
8 requiring the deposition of or the attendance  
9 and testimony of witnesses and the production  
10 of any evidence, including any books, papers, or  
11 documents, relating to the matter under consid-  
12 eration. A decision issued in accordance with  
13 the criteria set forth in subsection (d)(2), shall  
14 be issued not later than 90 days after the date  
15 on which a hearing was requested under this  
16 paragraph. The parties and the Secretary shall  
17 promptly be notified of the decision. If the ad-  
18 ministrative law judge find that a violation of  
19 section 102(a) has occurred, the judge shall  
20 issue a preliminary order providing the relief  
21 prescribed by paragraph (10). If review under  
22 paragraph (8) is not timely requested, such pre-  
23 liminary order shall be deemed a final order of  
24 the Secretary that is not subject to judicial re-  
25 view.

1           (8) FURTHER ADMINISTRATIVE REVIEW.—Not  
2 later than 10 days after the date of notification of  
3 a decision by an administrative law judge under  
4 paragraph (7), the complainant or the responsible  
5 party alleged to have committed a violation of sec-  
6 tion 102(a) may file objections to specified portions  
7 thereof and request a further review by the Sec-  
8 retary. The Secretary shall have discretion as to  
9 whether to grant such a review and shall be limited  
10 to determining whether the decision of the adminis-  
11 trative law judge was based upon substantial evi-  
12 dence. If review is granted, the decision of the ad-  
13 ministrative law judge shall be stayed pending the  
14 completion of further review, except for any order of  
15 reinstatement which shall be stayed only upon mo-  
16 tion. The final decision and order of the Secretary  
17 shall be issued not later than 30 days after the ad-  
18 ministrative law judge issues a decision. If judicial  
19 review under paragraph (11) is not timely requested,  
20 such preliminary order shall be deemed a final order  
21 of the Secretary that is not subject to judicial re-  
22 view.

23           (9) SETTLEMENT.—At any time before issuance  
24 of a final order, a proceeding under this subsection  
25 may be terminated on the basis of a settlement

1 agreement entered into by the Secretary, or adminis-  
2 trative law judge conducting a hearing, the com-  
3 plainant, and the responsible party alleged to have  
4 committed the violation. The Secretary or adminis-  
5 trative law judge conducting a hearing may not ac-  
6 cept any settlement that contains conditions that are  
7 contrary to the public policy of this title, including  
8 any restrictions or activity protected by this Act, and  
9 the right to seek future employment without dis-  
10 crimination prohibited by this Act.

11 (10) REMEDY.—If, in response to a complaint  
12 filed under subsection (a)(1), the Secretary of Labor  
13 determines that a violation of section 102(a) has oc-  
14 curred, the Secretary shall order the responsible  
15 party who committed such violation to—

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

18 (B) reinstate the complainant to his or her  
19 former position and with the same seniority sta-  
20 tus together with the compensation (including  
21 back pay and interest) and restore the terms,  
22 rights, conditions, and privileges associated with  
23 his or her employment, and provide preference  
24 to the complainant to transfer to any available  
25 position that provides equivalent or better com-

1           pensation, terms, conditions and privileges of  
2           employment for which the complainant is quali-  
3           fied;

4           (C) provide compensatory damages and  
5           consequential damages to the complainant, in-  
6           cluding relief for emotional distress and harm  
7           to reputation, and may include punitive dam-  
8           ages;

9           (D) expunge all warnings, reprimands or  
10          derogatory references that have been placed in  
11          paper or electronic records or databases of any  
12          type relating to the actions by the complainant  
13          that gave rise to the unfavorable personnel ac-  
14          tion, and, at the complainant's direction, send  
15          a copy of the decision on the complaint to any  
16          person whom the complainant reasonably be-  
17          lieves may have received such unfavorable infor-  
18          mation; and

19          (E) post appropriate public notice of the  
20          violation.

21        If such an order is issued under this paragraph, the  
22        Secretary, at the request of the complainant, shall  
23        assess against the responsible party against whom  
24        the order is issued a sum equal to the aggregate  
25        amount of all costs and expenses (including attor-

neys' and expert witness fees) reasonably incurred,  
as determined by the Secretary, by the complainant  
for, or in connection with, the bringing the com-  
plaint upon which the order was issued.

(11) INACTION BY THE SECRETARY.—Notwith-  
standing subsection (a), if the Secretary has not  
issued a final decision within 180 days of the filing  
of the complaint, the complainant may bring an ac-  
tion at law or equity for de novo review in the ap-  
propriate district court of the United States, as de-  
scribed in subsection (c), which shall have jurisdic-  
tion over such an action without regard to the  
amount in controversy, and which action shall, at  
the request of either party to such action, be tried  
by the court with a jury.

(12) JUDICIAL REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any  
complainant or responsible party adversely af-  
fected or aggrieved by a final order issued  
under this subsection for which review is avail-  
able, may obtain review of the order in the  
United States Court of Appeals for the circuit  
in which the violation, with respect to which the  
order was issued, allegedly occurred or the cir-  
cuit in which the complainant resided on the

1 date of such violation. The petition for review  
2 must be filed not later than 60 days after the  
3 date the final order of the Secretary was re-  
4 ceived. Review shall conform to chapter 7 of  
5 title 5, United States Code. The commencement  
6 of proceedings under this subparagraph shall  
7 not, unless ordered by the court, operate as a  
8 stay of the order.

9 (B) LIMITATION ON COLLATERAL AT-  
10 TACK.—An order of the Secretary with respect  
11 to which review could have been obtained under  
12 subparagraph (A) shall not be subject to judi-  
13 cial review in any criminal or other civil pro-  
14 ceeding.

15 (13) ENFORCEMENT OF ORDER.—Whenever  
16 any responsible party has failed to comply with a  
17 final order issued under this subsection, including a  
18 final order for temporary relief, the Secretary or the  
19 complainant on whose behalf the order was issued  
20 may file a civil action in the United States district  
21 court for the district in which the violation was  
22 found to occur to enforce such order. If both the  
23 Secretary and the person on whose behalf the order  
24 was issued file such an action for enforcement, the  
25 action of the Secretary shall take precedence. In ac-

1 tions brought under this paragraph, the district  
2 courts shall have jurisdiction to grant all appropriate  
3 relief including, injunctive relief, compensatory dam-  
4 ages, and reasonable attorneys and expert witness  
5 fees. In addition to enforcing the order, the court  
6 shall assess a penalty of not greater than \$10,000  
7 a month against any person who fails to comply with  
8 a final order issued under this subsection, which  
9 shall be awarded to the party seeking enforcement.

10 (c) DISTRICT COURT PROCEDURE.—

11 (1) NOTIFICATION.—Upon receipt of a com-  
12 plaint brought under subsection (a)(1)(B) or  
13 (b)(11), the court shall provide prompt notice to the  
14 appropriate public body of any protected information  
15 referenced in the complaint of a violation of section  
16 102(a), but the public body shall have no standing  
17 to participate in any way in the proceeding nor shall  
18 its failure to take action be considered by the court.

19 (2) SUMMARY JUDGMENT.—The Court shall  
20 summarily dismiss a complaint filed under this title  
21 based upon the criteria set forth in paragraph  
22 (d)(1).

23 (3) TEMPORARY RELIEF.—If the complaint is  
24 not dismissed by summary judgment, the court shall,

1       upon request, issue a preliminary order providing for  
2       temporary reinstatement of the complainant.

3           (4) DECISION.—The complainant in a case  
4       brought under subsection (a)(1)(B) or (b)(11) shall  
5       be entitled to a trial by jury. The jury or the court  
6       shall determine whether a violation of section 102(a)  
7       has occurred based upon the criteria set forth in  
8       paragraph (d)(2).

9           (5) RELIEF.—The Court shall have jurisdiction  
10      to grant all appropriate relief to a whistleblower  
11      available by law or equity, including, injunctive re-  
12      lief, compensatory and consequential damages, puni-  
13      tive damages, reasonable attorneys and expert wit-  
14      ness fees, and court costs.

15      (d) CRITERIA FOR DISMISSAL AND FOR DECISION.—

16           (1) DISMISSAL.—The Secretary, administrative  
17      law judge, or the court shall dismiss a complaint  
18      filed under this section unless the complainant  
19      makes a prima facie showing that any behavior de-  
20      scribed in paragraphs (1) through (5) of section  
21      102(a) was a contributing factor in the unfavorable  
22      personnel action alleged in the complaint. The com-  
23      plainant will be considered to have made such a  
24      showing if the complaint, on its face, supplemented  
25      as appropriate through interviews, depositions, or af-

1       fidavit of the complainant, alleges the existence of  
2       facts and either direct or circumstantial evidence to  
3       meet the required showing.

4           (2) DECISION.—The Secretary, administrative  
5       law judge, or a court may determine that a violation  
6       of section 102(a) has occurred only if the complain-  
7       ant demonstrates that any behavior described in  
8       paragraphs (1) through (5) of section 102(a) was a  
9       contributing factor in the unfavorable personnel ac-  
10      tion alleged in the complaint. Relief may not be or-  
11      dered if the responsible party demonstrates by clear  
12      and convincing evidence that the responsible party  
13      would have taken the same unfavorable personnel  
14      action in the absence of the behavior described in  
15      paragraphs (1) through (5) of section 102(a).

16 **SEC. 104. RESTRICTIONS ON WHISTLEBLOWING PROHIB-**  
17 **ITED; CONFIDENTIALITY OF WHISTLE-**  
18 **BLOWER.**

19       (a) RESTRICTIONS ON REPORTING PROHIBITED; IN-  
20      VALID CONTRACT CLAUSES.—No responsible party shall  
21      by contract, policy, or procedure prohibit or restrict any  
22      person from engaging in any action for which a protection  
23      against discrimination or retaliation is provided under sec-  
24      tion 102. Any clause or provision of any contract for em-  
25      ployment or contract with an independent contractor for

1 the provision of services which purports to limit or restrain  
 2 an individual from engaging in any of the actions de-  
 3 scribed in paragraphs (1) through (5) of section 3(a) as  
 4 a condition of employment or a condition of the contract,  
 5 whether in force before, on, or after the date of enactment  
 6 of this title, shall be invalid and void as violative of public  
 7 policy as established by this title.

8 (b) RESTRICTIONS ON RELIEF PROVIDED UNDER  
 9 THIS ACT PROHIBITED; INVALID ARBITRATION  
 10 CLAUSES.—

11 (1) PROTECTION OF PROCEDURAL RIGHTS.—  
 12 Notwithstanding any other provision of law, any  
 13 clause of any agreement between an responsible  
 14 party and a whistleblower that requires arbitration  
 15 of a claim arising under this title, whether in force  
 16 before, on or after the date of enactment of this Act,  
 17 shall not be enforceable.

18 (2) EXCEPTIONS.—

19 (A) WAIVER OR CONSENT AFTER CLAIM  
 20 ARISES.—Paragraph (1) shall not apply with  
 21 respect to any claim if, after such claim arises,  
 22 the parties involved voluntarily consent to sub-  
 23 mit such claim to arbitration.

24 (B) COLLECTIVE BARGAINING AGREE-  
 25 MENTS.—Paragraph (1) shall not preclude the

1 enforcement of any of the rights or terms of a  
2 valid collective bargaining agreement.

3 (c) CONFIDENTIALITY.—The identity or identifying  
4 information of a whistleblower who complains or discloses  
5 information as described in section 102(a) to a public body  
6 shall remain confidential and shall not be disclosed by any  
7 person except—

8 (1) upon the knowing written consent of the  
9 whistleblower;

10 (2) in the case in which there is imminent dan-  
11 ger to health or public safety or an imminent viola-  
12 tion of criminal law; or

13 (3) as otherwise required by law.

14 An employee of a public body shall provide reasonable ad-  
15 vance notice to the affected employee if disclosure of that  
16 person's identity or identifying information is to occur. An  
17 employee of a public body who discloses the identity of  
18 a whistleblower in violation of this subsection shall be con-  
19 sidered to be acting outside such employee's official duties.

20 **SEC. 105. NONPREEMPTION.**

21 (a) EFFECT ON OTHER LAWS.—Nothing in this title  
22 shall be construed to preempt any law, rule, or regulation  
23 of a State or political subdivision of a State and nothing  
24 in this title shall be construed or interpreted to impair  
25 or diminish in any way the authority of any State to enact

1 and enforce any law which provides equivalent or greater  
 2 protections for whistleblowers covered under this title.

3 (b) RIGHTS RETAINED BY WHISTLEBLOWERS.—Ex-  
 4 cept as provided in section 103(b)(2)(A), nothing in this  
 5 title shall be construed to diminish the rights, privileges,  
 6 or remedies of any whistleblower under any Federal or  
 7 State law, or under any collective bargaining agreement.

8 **SEC. 106. EFFECTIVE DATE AND RULES.**

9 This title shall take effect on the date of enactment  
 10 of this Act, and the procedures described in section 103  
 11 shall apply to complaints and actions filed under this title  
 12 after such date of enactment. The Secretary shall establish  
 13 interim final rules to implement this title within 60 days  
 14 of such date of enactment. The time periods for processing  
 15 complaints shall start once such interim rules are in effect.

16 **TITLE II—WHISTLEBLOWER**  
 17 **PROTECTION OFFICE**

18 **SEC. 201. ESTABLISHMENT.**

19 (a) ESTABLISHMENT AND PURPOSE.—There is es-  
 20 tablished within the Employment Standards Administra-  
 21 tion of the Department of Labor the Whistleblower Pro-  
 22 tection Office, in the title referred to as “the Office”, to  
 23 administer the duties of the Secretary under title I and  
 24 any duties assigned to the Secretary under the provisions  
 25 of law referred to by section 202, other than duties involv-

1 ing hearings and subsequent review and legal representa-  
2 tion which may be assigned to other offices and agencies  
3 within the Department of Labor.

4 (b) ADMINISTRATOR.—The Whistleblower Protection  
5 Office shall be under the direction of an Administrator of  
6 Whistleblower Protection, referred to in this title as “the  
7 Administrator”, who shall be appointed by the President  
8 with the advice and consent of the Senate.

9 (c) APPOINTMENT OF PERSONNEL.—

10 (1) APPOINTMENT AND COMPENSATION.—The  
11 Administrator may, subject to the civil service laws,  
12 appoint such employees as the Administrator con-  
13 sidered necessary to carry out the functions and du-  
14 ties of the Office, and shall fix their compensation  
15 in accordance with the provisions of chapter 51 and  
16 subchapter III of chapter 53 of title 5, United  
17 States Code.

18 (d) TRANSFER OF PERSONNEL; BUDGET.—

19 (1) IN GENERAL.—Beginning not later than the  
20 effective date of this title, the functions of the Sec-  
21 retary under any of the provisions of law referred to  
22 in section 202 shall be carried out by the Adminis-  
23 trator.

24 (2) BUDGETS, PERSONNEL, ETC.—All unex-  
25 pended balances of appropriations, personnel, prop-

1       erty, records, obligations, and commitments which  
2       are used primarily with respect to any functions  
3       transferred under the provisions of paragraph (1) to  
4       the Administrator shall be transferred to the Office,  
5       as appropriate. The transfer of personnel pursuant  
6       to this paragraph shall be without reduction in clas-  
7       sification or compensation for 1 year after such  
8       transfer, except that the Administrator shall have  
9       full authority to assign personnel during such 1-year  
10      period in order to efficiently carry out functions  
11      transferred to the Administrator under this title.

12           (3) CONTINUATION.—All orders, decisions, de-  
13      terminations, rules, and regulations, (A) which have  
14      been issued, made, granted, or allowed to become ef-  
15      fective in the exercise of functions which are trans-  
16      ferred under this subsection; and (B) which are in  
17      effect at the time this section takes effect, shall con-  
18      tinue in effect according to their terms until modi-  
19      fied, terminated, superseded, set aside, revoked, or  
20      repealed by the Secretary, the Administrator, or  
21      other authorized officials, by any court of competent  
22      jurisdiction, or by operation of law. The provisions  
23      of this subsection shall not affect any proceedings  
24      pending at the time this title takes effect. The provi-  
25      sions of this section shall not affect suits commenced

1 prior to the date this section takes effect and in all  
2 such suits proceedings shall be had, appeals taken,  
3 and judgments rendered, in the same manner and  
4 effect as if this section had not been enacted.

5 (e) PRINCIPAL OFFICE.—The principal location of  
6 the Office shall be in the District of Columbia, but the  
7 Administrator or a duly authorized representative may ex-  
8 ercise any or all of the Administrator’s powers in any  
9 place.

10 **SEC. 202. OTHER PRIVATE SECTOR WHISTLEBLOWER PRO-**  
11 **TECTIONS.**

12 Notwithstanding any other provision of law, the fol-  
13 lowing provisions of law shall, after the effective date of  
14 this title, be administered in accordance with this title:

15 (1) Sections 20209, 31105, 42121, and 60129  
16 of title 49, United States Code.

17 (2) Section 211 of the Asbestos Hazard Emer-  
18 gency Response Act of 1986 (15 U.S.C. 2651).

19 (3) Section 7 of the International Safe Con-  
20 tainer Act (46 App. U.S.C. 1506).

21 (4) Section 1450 of the Safety Drinking Water  
22 Act of 1974 (42 U.S.C. 300j–9i).

23 (5) Section 507 of the Federal Water Pollution  
24 Control Act, Amendments of 1972 (33 U.S.C.  
25 1367).

1           (6) Section 23(a)(1) through (3) of the Toxic  
2           Substances Control Act (15 U.S.C. 2622).

3           (7) Section 7001 of the Solid Waste Disposal  
4           Act of 1976 (42 U.S.C. 6971).

5           (8) Section 322 of the Clean Air Act, amend-  
6           ments of 1977 (42 U.S.C. 7622).

7           (9) Section 10 of the Comprehensive Environ-  
8           mental Response, Compensation, and Liability Act  
9           of 1980 (42 U.S.C. 9610).

10          (10) Section 211 of the Energy Reorganization  
11          Act of 1978 (42 U.S.C. 5851).

12          (11) Section 806 of the Sarbanes-Oxley Act of  
13          2002 (18 U.S.C. 1514A).

14          (12) Section 1413 of the Implementing Rec-  
15          ommendations of the 9/11 Commission Act of 2007  
16          (P.L. 110–53).

17   **SEC. 203. DUTIES, POWERS AND FUNCTIONS.**

18          (a) SUBPOENAS, EVIDENCE, AND TESTIMONY.—In  
19          carrying out its duties under title I of this Act or under  
20          any of the provisions of law referred to by section 202,  
21          the Administrator may issue subpoenas requiring the dep-  
22          osition of or the attendance and testimony of witnesses  
23          and the production of any evidence, including any books,  
24          papers, or documents, relating to any matter under inves-

1 tigation by the Commission, or required in connection with  
2 a hearing.

3 (b) RULES.—The Secretary is authorized to prescribe  
4 such rules as are necessary for the orderly transaction of  
5 the proceedings of the Office and for the implementation  
6 of the programs of the Office.

7 (c) EFFECTIVE DATE.—The Administrator shall  
8 begin to carry out the duties and exercise the powers set  
9 forth in this title on the date that is 1 year after the date  
10 of enactment of this Act, or such earlier date as the Sec-  
11 retary may determine that the Office is sufficiently estab-  
12 lished, staffed, and funded.

13 (d) ANNUAL REPORTS.—The Administrator shall an-  
14 nually transmit a report to Congress detailing the activi-  
15 ties of the Office during the previous year, including infor-  
16 mation relating to the number and nature of complaints  
17 filed, the number of merit and non-merit cases, the num-  
18 ber of such complaints disposed of without investigation  
19 due to specific procedural issues, investigations conducted,  
20 orders issued, and statistics related to settlements . In ad-  
21 dition, the Administrator shall annually make available the  
22 full text of all settlements approved by the Office, fol-  
23 lowing the elimination of all personal identifying informa-  
24 tion about the claimant, the employer, and any other

1 party, and no settlement approved by the Office may pro-  
 2 hibit disclosure in such a manner.

3 (e) STUDY ON INTIMIDATION OF WHISTLE-  
 4 BLOWERS.—Not later than 6 months after the effective  
 5 date of this title, the Administrator shall request the Na-  
 6 tional Academies to conduct a study of intimidation faced  
 7 by those in the private sector who blow the whistle on vio-  
 8 lations of law or accepted standards of practice established  
 9 by public bodies. The study shall consider the role played  
 10 by a belief that whistleblowing will not make any dif-  
 11 ference, fear of retaliation, cultural factors, distrust of the  
 12 government, lack of information or misinformation about  
 13 employee rights, deficiencies in such rights or in the prac-  
 14 tical ability to seek relief for violation thereof, and such  
 15 other factors as may be relevant. The study shall include  
 16 recommendations for addressing such issues. The Admin-  
 17 istrator shall transmit the study, including any further  
 18 recommendations of the Administrator, to Congress not  
 19 later than 90 days after the receipt of the study.

## 20 **TITLE III—CONFORMING** 21 **AMENDMENTS**

### 22 **SEC. 301. OCCUPATIONAL SAFETY AND HEALTH ACT.**

23 Section 11(c) of the Occupational Safety and Health  
 24 Act (29 U.S.C. 660(c)) is amended—

1           (1) by striking the period at the end of para-  
2       graph (1) and inserting the following: “, including  
3       reporting any injury, illness, or unsafe condition to  
4       the employer, agent of the employer, safety and  
5       health committee involved, or employee safety and  
6       health representative involved. No person shall dis-  
7       charge or in any manner discriminate against an  
8       employee for refusing to perform the employee’s du-  
9       ties if the employee has a reasonable apprehension  
10      that performing such duties would result in serious  
11      injury to, or serious impairment of the health of, the  
12      employee or other employees. The circumstances  
13      causing the employee’s apprehension of serious in-  
14      jury or serious impairment of health shall be of such  
15      a nature that a reasonable person, under the cir-  
16      cumstances confronting the employee, would con-  
17      clude that there is a bona fide danger of a serious  
18      injury, or serious impairment of health, resulting  
19      from the circumstances. In order to qualify for pro-  
20      tection under this paragraph, the employee, when  
21      practicable, shall have sought from the employee’s  
22      employer, and have been unable to obtain, a correc-  
23      tion of the circumstances causing the refusal to per-  
24      form the employee’s duties.”; and

1           (2) by striking paragraphs (2) and (3), and in-  
2       serting the following:

3           “(2) Any employee who believes that he or she  
4       has been discharged or otherwise discriminated  
5       against by any person in violation of this subsection  
6       may file a complaint with the Secretary of Labor, or  
7       bring a civil action at law or equity in Federal court.  
8       The Secretary shall receive, process, investigate, and  
9       attempt to resolve and remedy complaints of viola-  
10      tions of paragraph (1) in the same manner that the  
11      Secretary receives, processes, investigates, and at-  
12      tempts to resolve and remedy complaints of viola-  
13      tions of section 102(a) of the Whistleblower Protec-  
14      tion Streamlining Act of 2007. A civil action  
15      brought under this subsection shall be governed  
16      under the rules and procedures set forth in section  
17      103 of such Act.”.

18   **SEC. 302. FEDERAL MINE SAFETY AND HEALTH ACT.**

19       Section 105(c) of the Federal Mine Safety and  
20   Health Act of 1977 ( 30 U.S.C. 815(c)) is amended—

21           (1) in paragraph (1)—

22                   (A) by inserting “or an injury or illness in  
23                   a coal or other mine or that may be associated  
24                   with mine employment,” after “of an alleged

1 danger or safety or health violation in a coal or  
2 other mine,”; and

3 (B) by adding at the end the following:

4 “No miner shall be required to work under con-  
5 ditions he has reasonable grounds to believe to  
6 be abnormally and immediately dangerous to  
7 himself beyond the normal hazards inherent in  
8 the operation which could reasonably be ex-  
9 pected to cause death of serious physical harm  
10 before such condition or practice can be  
11 abated.”;

12 (2) in paragraph (2), by inserting after the fifth  
13 sentence the following: “No investigation or hearing  
14 authorized by this paragraph may be stayed to await  
15 resolution of a related grievance proceeding.”; and

16 (3) by adding at the end the following:

17 “(4) In lieu of initiating an action pursuant to para-  
18 graph (2), or if a complaint under paragraph (2) is not  
19 decided within 180 days, any miner or applicant for em-  
20 ployment or representative of miners who believes that he  
21 has been discharged, interfered with, or otherwise dis-  
22 criminated against by any person in violation of this sub-  
23 section may bring an action at law or equity in the appro-  
24 priate district court of the United States. Such civil action  
25 shall be governed under the rules and procedures set forth

1 in section 103 of the Whistleblower Protection Stream-  
2 lining Act of 2007.”.

○