

113TH CONGRESS
1ST SESSION

H. R. 3637

To amend the Labor-Management Reporting and Disclosure Act of 1959
to provide whistleblower protection for union employees.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2013

Mr. SALMON (for himself, Mr. DESJARLAIS, Mr. BISHOP of Utah, Mr. HUELSKAMP, Mr. JORDAN, Mr. BENTIVOLIO, Mr. BROOKS of Alabama, Mr. FLEMING, Mr. CRAMER, Mr. SCHWEIKERT, Mr. KING of Iowa, Mr. PERRY, Mrs. BACHMANN, Mr. GOHMERT, Mr. LAMALFA, Mr. PRICE of Georgia, and Mr. GOSAR) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Labor-Management Reporting and Disclosure
Act of 1959 to provide whistleblower protection for union
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. WHISTLEBLOWER PROTECTION FOR UNION**
4 **EMPLOYEES.**

5 The Labor-Management Reporting and Disclosure
6 Act of 1959 (29 U.S.C. 401 et seq.) is amended—

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

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

3 “WHISTLEBLOWER PROTECTION FOR UNION EMPLOYEES

4 “SEC. 611. (a) IN GENERAL.—No labor organization
5 shall terminate or in any other way discriminate against,
6 or cause to be terminated or discriminated against, any
7 covered employee of the labor organization by reason of
8 the fact that such employee, whether at the initiative of
9 the employee or in the ordinary course of the duties of
10 the employee (or any person acting pursuant to a request
11 of the employee), has—

12 “(1) provided, caused to be provided, or is
13 about to provide or cause to be provided, informa-
14 tion to the labor organization, the Department of
15 Labor, or any other State, local, or Federal govern-
16 ment authority or law enforcement agency relating
17 to any violation of, or any act or omission that the
18 employee reasonably believes to be a violation of, any
19 provision of this Act or any other provision of law
20 that is subject to the jurisdiction of the Department
21 of Labor, the National Labor Relations Board, or
22 any rule, order, standard, or prohibition prescribed
23 by the Department of Labor or the National Labor
24 Relations Board;

25 “(2) testified or will testify in any proceeding
26 resulting from the administration or enforcement of

1 any provision of this Act or any other provision of
2 law that is subject to the jurisdiction of the Depart-
3 ment of Labor or National Labor Relations Board,
4 or any rule, order, standard, or prohibition pre-
5 scribed by the Department of Labor or the National
6 Labor Relations Board;

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

9 “(4) objected to, or refused to participate in,
10 any activity, policy, practice, or assigned task that
11 the employee (or other such person) reasonably be-
12 lieved to be in violation of any law, rule, order,
13 standard, or prohibition, subject to the jurisdiction
14 of, or enforceable by, the Department of Labor or
15 the National Labor Relations Board.

16 “(b) DEFINITION OF COVERED EMPLOYEE.—For the
17 purposes of this section, the term ‘covered employee’
18 means any employee of a labor organization who receives
19 financial compensation for his or her services to the labor
20 organization, including officers of the labor organization.

21 “(c) PROCEDURES AND TIMETABLES.—

22 “(1) COMPLAINT.—

23 “(A) IN GENERAL.—A person who believes
24 that he or she has been discharged or otherwise
25 discriminated against by any person in violation

1 of subsection (a) may file (or have any person
2 file on his or her behalf) a complaint with the
3 Secretary of Labor alleging such discharge or
4 discrimination and identifying the person re-
5 sponsible for such act. Such a complaint must
6 be filed not later than either—

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

9 “(ii) 180 days after the conclusion of
10 any internal appeals, review, or other judi-
11 cial or investigative process conducted by
12 the labor organization employing such per-
13 son.

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

19 “(i) the filing of the complaint;

20 “(ii) the allegations contained in the
21 complaint;

22 “(iii) the substance of evidence sup-
23 porting the complaint; and

1 “(iv) opportunities that will be af-
2 farded 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) NOTICE OF RELIEF AVAILABLE.—If
2 the Secretary of Labor concludes that there is
3 reasonable cause to believe that a violation of
4 subsection (a) has occurred, the Secretary of
5 Labor shall, together with the notice under sub-
6 paragraph (A)(ii), issue a preliminary order
7 providing the relief prescribed by paragraph
8 (4)(B).

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

24 “(3) GROUNDS FOR DETERMINATION OF COM-
25 PLAINTS.—

1 “(A) IN GENERAL.—The Secretary of
2 Labor shall dismiss a complaint filed under this
3 subsection, and shall not conduct an investiga-
4 tion otherwise required under paragraph (2),
5 unless the complainant makes a prima facie
6 showing that any behavior described in para-
7 graphs (1) through (4) of subsection (a) was a
8 contributing factor in the unfavorable personnel
9 action alleged in the complaint.

10 “(B) REBUTTAL EVIDENCE.—Notwith-
11 standing a finding by the Secretary of Labor
12 that the complainant has made the showing re-
13 quired under subparagraph (A), no investiga-
14 tion otherwise required under paragraph (2)
15 shall be conducted, if the labor organization
16 demonstrates, by clear and convincing evidence,
17 that the labor organization would have taken
18 the same unfavorable personnel action in the
19 absence of that behavior.

20 “(C) EVIDENTIARY STANDARDS.—The
21 Secretary of Labor may determine that a viola-
22 tion of subsection (a) has occurred only if the
23 complainant demonstrates that any behavior de-
24 scribed in paragraphs (1) through (4) of sub-
25 section (a) was a contributing factor in the un-

1 favorable personnel action alleged in the com-
2 plaint. Relief may not be ordered under sub-
3 paragraph (A) if the labor organization dem-
4 onstrates by clear and convincing evidence that
5 the labor organization would have taken the
6 same unfavorable personnel action in the ab-
7 sence of that behavior.

8 “(4) ISSUANCE OF FINAL ORDERS; REVIEW
9 PROCEDURES.—

10 “(A) TIMING.—Not later than 120 days
11 after the date of conclusion of any hearing
12 under paragraph (2), the Secretary of Labor
13 shall issue a final order providing the relief pre-
14 scribed by this paragraph or denying the com-
15 plaint. At any time before issuance of a final
16 order, a proceeding under this subsection may
17 be terminated on the basis of a settlement
18 agreement entered into by the Secretary of
19 Labor, the complainant, and the person alleged
20 to have committed the violation.

21 “(B) PENALTIES.—

22 “(i) ORDER OF SECRETARY OF
23 LABOR.—If, in response to a complaint
24 filed under paragraph (1), the Secretary of
25 Labor determines that a violation of sub-

1 section (a) has occurred, the Secretary of
2 Labor shall order the person who com-
3 mitted such violation—

4 “(I) to take affirmative action to
5 abate the violation;

6 “(II) to reinstate the complain-
7 ant to his or her former position, to-
8 gether with compensation (including
9 back pay) and restore the terms, con-
10 ditions, and privileges associated with
11 his or her employment; and

12 “(III) to provide compensatory
13 damages to the complainant.

14 “(ii) PENALTY.—If an order is issued
15 under clause (i), the Secretary of Labor, at
16 the request of the complainant, shall assess
17 against the person against whom the order
18 is issued, a sum equal to the aggregate
19 amount of all costs and expenses (includ-
20 ing attorney fees and expert witness fees)
21 reasonably incurred, as determined by the
22 Secretary of Labor, by the complainant
23 for, or in connection with, the bringing of
24 the complaint upon which the order was
25 issued.

1 “(C) PENALTY FOR FRIVOLOUS CLAIMS.—

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

8 “(D) DE NOVO REVIEW.—

9 “(i) FAILURE OF THE SECRETARY TO
10 ACT.—If the Secretary of Labor has not
11 issued a final order within 210 days after
12 the date of filing of a complaint under this
13 subsection, or within 90 days after the
14 date of receipt of a written determination,
15 the complainant may bring an action at
16 law or equity for de novo review in the ap-
17 propriate district court of the United
18 States having jurisdiction, which shall have
19 jurisdiction over such an action without re-
20 gard to the amount in controversy, and
21 which action shall, at the request of either
22 party to such action, be tried by the court
23 with a jury.

24 “(ii) PROCEDURES.—A proceeding
25 under clause (i) shall be governed by the

1 same legal burdens of proof specified in
2 paragraph (3). The court shall have juris-
3 diction to grant all relief necessary to
4 make the employee whole, including injunc-
5 tive relief and compensatory damages, in-
6 cluding—

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

11 “(II) the amount of back pay,
12 with interest; and

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

18 “(E) OTHER APPEALS.—Unless the com-
19 plainant brings an action under subparagraph
20 (D), any person adversely affected or aggrieved
21 by a final order issued under subparagraph (A)
22 may file a petition for review of the order in the
23 United States Court of Appeals for the circuit
24 in which the violation with respect to which the
25 order was issued, allegedly occurred or the cir-

1 cuit in which the complainant resided on the
2 date of such violation, not later than 60 days
3 after the date of the issuance of the final order
4 of the Secretary of Labor under subparagraph
5 (A). Review shall conform to chapter 7 of title
6 5, United States Code. The commencement of
7 proceedings under this subparagraph shall not,
8 unless ordered by the court, operate as a stay
9 of the order. An order of the Secretary of
10 Labor with respect to which review could have
11 been obtained under this subparagraph shall
12 not be subject to judicial review in any criminal
13 or other civil proceeding.

14 “(5) FAILURE TO COMPLY WITH ORDER.—

15 “(A) ACTIONS BY THE SECRETARY.—If
16 any person has failed to comply with a final
17 order issued under paragraph (4), the Secretary
18 of Labor may file a civil action in the United
19 States district court for the district in which
20 the violation was found to have occurred, or in
21 the United States district court for the District
22 of Columbia, to enforce such order. In actions
23 brought under this paragraph, the district
24 courts shall have jurisdiction to grant all appro-

1 appropriate relief including injunctive relief and com-
2 pensatory damages.

3 “(B) CIVIL ACTIONS TO COMPEL COMPLI-
4 ANCE.—A person on whose behalf an order was
5 issued under paragraph (4) may commence a
6 civil action against the person to whom such
7 order was issued to require compliance with
8 such order. The appropriate United States dis-
9 trict court shall have jurisdiction, without re-
10 gard to the amount in controversy or the citi-
11 zenship of the parties, to enforce such order.

12 “(C) AWARD OF COSTS AUTHORIZED.—
13 The court, in issuing any final order under this
14 paragraph, may award costs of litigation (in-
15 cluding reasonable attorney and expert witness
16 fees) to any party, whenever the court deter-
17 mines such award is appropriate.

18 “(D) MANDAMUS PROCEEDINGS.—Any
19 nondiscretionary duty imposed by this section
20 shall be enforceable in a mandamus proceeding
21 brought under section 1361 of title 28, United
22 States Code.

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

1 “(1) to limit the ability of members of a labor
2 organization to remove their elected or appointed of-
3 ficials through a democratic election conducted
4 among such members; or

5 “(2) to preempt a State or local government
6 from providing additional protections to employees
7 of labor organizations who allege violations of sub-
8 section (a), provided that such protections do not
9 limit the ability of members of a labor organization
10 to remove their elected or appointed officials through
11 a democratic ballot.

12 “(e) UNENFORCEABILITY OF CERTAIN AGREE-
13 MENTS.—

14 “(1) NO WAIVER OF RIGHTS AND REMEDIES.—
15 Notwithstanding any other provision of law, the
16 rights and remedies provided for in this section may
17 not be waived by any agreement, policy, form, or
18 condition of employment, including by any
19 predispute arbitration agreement.

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

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