

115TH CONGRESS
2D SESSION

H. R. 6922

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2018

Mr. FRANCIS ROONEY of Florida (for himself, Mr. GOSAR, Mr. KING of Iowa,
and Mr. OLSON) 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. SHORT TITLE.**

4 This Act may be cited as the “Union Integrity Act”.

5 **SEC. 2. WHISTLEBLOWER PROTECTION FOR UNION EM-**
6 **PLOYEES.**

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

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

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

5 “WHISTLEBLOWER PROTECTION FOR UNION EMPLOYEES

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

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

1 “(2) testified or will testify in any proceeding
2 resulting from the administration or enforcement of
3 any provision of this Act or any other provision of
4 law that is subject to the jurisdiction of the Depart-
5 ment of Labor or National Labor Relations Board,
6 or any rule, order, standard, or prohibition pre-
7 scribed by the Department of Labor or the National
8 Labor Relations Board;

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

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

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

23 “(c) PROCEDURES AND TIMETABLES.—

24 “(1) COMPLAINT.—

1 “(A) IN GENERAL.—A person who believes
2 that he or she has been discharged or otherwise
3 discriminated against by any person in violation
4 of subsection (a) may file (or have any person
5 file on his or her behalf) a complaint with the
6 Secretary of Labor alleging such discharge or
7 discrimination and identifying the person re-
8 sponsible for such act. Such a complaint must
9 be filed not later than either—

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

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

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

22 “(i) the filing of the complaint;

23 “(ii) the allegations contained in the
24 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-

tion of subsection (a), in writing, of such determination.

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

“(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

1 “(3) GROUNDS FOR DETERMINATION OF COM-
2 PLAINTS.—

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

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

22 “(C) EVIDENTIARY STANDARDS.—The
23 Secretary of Labor may determine that a viola-
24 tion of subsection (a) has occurred only if the
25 complainant demonstrates that any behavior de-

scribed in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the labor organization demonstrates by clear and convincing evidence that the labor organization would have taken the same unfavorable personnel action in the absence of that behavior.

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

“(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

“(B) PENALTIES.—

“(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint

1 filed under paragraph (1), the Secretary of
2 Labor determines that a violation of sub-
3 section (a) has occurred, the Secretary of
4 Labor shall order the person who com-
5 mitted such violation—

6 “(I) to take affirmative action to
7 abate the violation;

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

14 “(III) to provide compensatory
15 damages to the complainant.

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

1 the complaint upon which the order was
2 issued.

3 “(C) PENALTY FOR FRIVOLOUS CLAIMS.—

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

10 “(D) DE NOVO REVIEW.—

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

1 “(ii) PROCEDURES.—A proceeding
2 under clause (i) shall be governed by the
3 same legal burdens of proof specified in
4 paragraph (3). The court shall have juris-
5 diction to grant all relief necessary to
6 make the employee whole, including injunc-
7 tive relief and compensatory damages, in-
8 cluding—

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

13 “(II) the amount of back pay,
14 with interest; and

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

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

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

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

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

1 courts shall have jurisdiction to grant all appro-
2 priate relief including injunctive relief and com-
3 pensatory damages.

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

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

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

24 “(d) LIMITATION OF PREEMPTION.—Nothing in this
25 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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