

104TH CONGRESS  
2D SESSION

# S. 2168

To amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1996

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes.

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 of 1996”.

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

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

1           “SUBCHAPTER III—WHISTLEBLOWER  
2                           PROTECTION PROGRAM  
3   **“§ 42121. Protection of employees providing air safety**  
4                           **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 air safety  
16                   under this subtitle or any other law of the United  
17                   States;

18                   “(2) has filed, caused to be filed, or is about to  
19                   file or cause to be filed a proceeding relating to air  
20                   carrier safety under this subtitle or any other law of  
21                   the United States;

22                   “(3) testified or is about to testify in such a  
23                   proceeding; or

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

1       “(b) DEPARTMENT OF LABOR COMPLAINT PROCE-  
2 DURE.—

3               “(1) FILING AND NOTIFICATION.—

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

12                       “(B) REQUIREMENTS FOR FILING COM-  
13 PLAINTS.—A complaint referred to in subpara-  
14 graph (A) may be filed not later than 180 days  
15 after an alleged violation occurs. The complaint  
16 shall state the alleged violation.

17                       “(C) NOTIFICATION.—Upon receipt of a  
18 complaint submitted under subparagraph (A),  
19 the Secretary of Labor shall notify the air car-  
20 rier, contractor, or subcontractor named in the  
21 complaint and the Administrator of the Federal  
22 Aviation Administration of the—

23                               “(i) filing of the complaint;

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

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

3                   “(iv) opportunities that are afforded  
4                   to the air carrier, contractor, or sub-  
5                   contractor under paragraph (2).

6                   “(2) INVESTIGATION; PRELIMINARY ORDER.—

7                   “(A) IN GENERAL.—Not later than 60  
8                   days after receiving a complaint under para-  
9                   graph (1), and after affording the air carrier,  
10                  contractor, or subcontractor named in the com-  
11                  plaint the opportunities specified in subpara-  
12                  graph (B), the Secretary of Labor shall conduct  
13                  an investigation to determine whether there is  
14                  reasonable cause to believe that a complaint  
15                  submitted under this subsection has merit.

16                  “(B) OPPORTUNITY FOR RESPONSE.—Be-  
17                  fore the date specified in subparagraph (A), the  
18                  Secretary of Labor shall afford the air carrier,  
19                  contractor, or subcontractor named in the com-  
20                  plaint an opportunity to—

21                         “(i) submit to the Secretary of Labor  
22                         a written response to the complaint; and

23                         “(ii) meet with a representative of the  
24                         Secretary of Labor to present statements  
25                         from witnesses.

1           “(C) NOTIFICATION.—Upon completion of  
2 an investigation under subparagraph (A), the  
3 Secretary of Labor shall notify the complainant  
4 and the air carrier, contractor, or subcontractor  
5 alleged to have committed a violation of sub-  
6 section (a) of the findings of the investigation.

7           “(D) ORDERS.—If, on the basis of the in-  
8 vestigation conducted under this paragraph, the  
9 Secretary of Labor concludes that there is a  
10 reasonable cause to believe that a violation of  
11 subsection (a) has occurred, the Secretary  
12 shall—

13                 “(i) issue a preliminary order provid-  
14 ing the relief prescribed by paragraph  
15 (3)(B); and

16                 “(ii) provide a copy of the order to the  
17 parties specified in subparagraph (C).

18           “(E) OBJECTIONS.—Not later than 30  
19 days after receiving a notification under sub-  
20 paragraph (C), the air carrier, contractor, or  
21 subcontractor alleged to have committed a vio-  
22 lation in a complaint filed under this subsection  
23 or the complainant may file an objection to the  
24 findings of an investigation conducted under  
25 this paragraph or a preliminary order issued

1 under this paragraph and request a hearing on  
2 the record. The filing of an objection under this  
3 subparagraph shall not operate to stay any re-  
4 instatement remedy contained in a preliminary  
5 order issued under this paragraph.

6 “(F) HEARINGS.—A hearing requested  
7 under this paragraph shall be conducted expedi-  
8 tiously.

9 “(G) FINAL ORDER.—If no hearing is re-  
10 quested by the date specified in subparagraph  
11 (E), a preliminary order shall be considered to  
12 be a final order that is not subject to judicial  
13 review.

14 “(3) FINAL ORDER.—

15 “(A) DEADLINE FOR ISSUANCE; SETTLE-  
16 MENT AGREEMENTS.—

17 “(i) IN GENERAL.—Not later than  
18 120 days after conclusion of a hearing  
19 under paragraph (2), the Secretary of  
20 Labor shall issue a final order that—

21 “(I) provides relief in accordance  
22 with this paragraph; or

23 “(II) denies the complaint.

24 “(ii) SETTLEMENT AGREEMENT.—At  
25 any time before issuance of a final order

1 under this paragraph, a proceeding under  
2 this subsection may be terminated on the  
3 basis of a settlement agreement entered  
4 into by the Secretary of Labor, the com-  
5 plainant, and the air carrier, contractor, or  
6 subcontractor alleged to have committed  
7 the violation.

8 “(B) REMEDY.—If, in response to a com-  
9 plaint filed under paragraph (1), the Secretary  
10 of Labor determines that a violation of sub-  
11 section (a) has occurred, the Secretary of Labor  
12 shall order the air carrier, contractor, or sub-  
13 contractor that the Secretary of Labor deter-  
14 mines to have committed the violation to—

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

16 “(ii) reinstate the complainant to the  
17 former position of the complainant and en-  
18 sure the payment of compensation (includ-  
19 ing back pay) and the restoration of terms,  
20 conditions, and privileges associated with  
21 the employment; and

22 “(iii) provide compensatory damages  
23 to the complainant.

24 “(C) COSTS OF COMPLAINT.—If the Sec-  
25 retary of Labor issues a final order that pro-

1           vides for relief in accordance with this para-  
2           graph, the Secretary of Labor, at the request of  
3           the complainant, shall assess against the air  
4           carrier, contractor, or subcontractor named in  
5           the order an amount equal to the aggregate  
6           amount of all costs and expenses (including at-  
7           torney and expert witness fees) reasonably in-  
8           curred by the complainant (as determined by  
9           the Secretary of Labor) for, or in connection  
10          with, the bringing of the complaint that re-  
11          sulted in the issuance of the order.

12           “(D) FRIVOLOUS COMPLAINTS.—If the  
13          Secretary of Labor finds that a complaint  
14          brought under paragraph (1) is frivolous or was  
15          brought in bad faith, the Secretary of Labor  
16          may award to the prevailing employer a reason-  
17          able attorney fee in an amount not to exceed  
18          \$5,000.

19          “(4) REVIEW.—

20           “(A) APPEAL TO COURT OF APPEALS.—

21           “(i) IN GENERAL.—Not later than 60  
22          days after a final order is issued under  
23          paragraph (3), a person adversely affected  
24          or aggrieved by that order may obtain re-  
25          view of the order in the United States

1 court of appeals for the circuit in which  
2 the violation allegedly occurred or the cir-  
3 cuit in which the complainant resided on  
4 the date of that violation.

5 “(ii) REQUIREMENTS FOR JUDICIAL  
6 REVIEW.—A review conducted under this  
7 paragraph shall be conducted in accord-  
8 ance with chapter 7 of title 5. The com-  
9 mencement of proceedings under this sub-  
10 paragraph shall not, unless ordered by the  
11 court, operate as a stay of the order that  
12 is the subject of the review.

13 “(B) LIMITATION ON COLLATERAL AT-  
14 TACK.—An order referred to in subparagraph  
15 (A) shall not be subject to judicial review in any  
16 criminal or other civil proceeding.

17 “(5) ENFORCEMENT OF ORDER BY SECRETARY  
18 OF LABOR.—

19 “(A) IN GENERAL.—If an air carrier, con-  
20 tractor, or subcontractor named in an order is-  
21 sued under paragraph (3) fails to comply with  
22 the order, the Secretary of Labor may file a  
23 civil action in the United States district court  
24 for the district in which the violation occurred  
25 to enforce that order.

1           “(B) RELIEF.—In any action brought  
2 under this paragraph, the district court shall  
3 have jurisdiction to grant any appropriate form  
4 of relief, including injunctive relief and compen-  
5 satory damages.

6           “(6) ENFORCEMENT OF ORDER BY PARTIES.—

7           “(A) COMMENCEMENT OF ACTION.—A per-  
8 son on whose behalf an order is issued under  
9 paragraph (3) may commence a civil action  
10 against the air carrier, contractor, or sub-  
11 contractor named in the order to require com-  
12 pliance with the order. The appropriate United  
13 States district court shall have jurisdiction,  
14 without regard to the amount in controversy or  
15 the citizenship of the parties, to enforce the  
16 order.

17           “(B) ATTORNEY FEES.—In issuing any  
18 final order under this paragraph, the court may  
19 award costs of litigation (including reasonable  
20 attorney and expert witness fees) to any party  
21 if the court determines that the awarding of  
22 those costs is appropriate.

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

1       “(d) **NONAPPLICABILITY TO DELIBERATE VIOLA-**  
 2 **TIONS.**—Subsection (a) shall not apply with respect to an  
 3 employee of an air carrier, or contractor or subcontractor  
 4 of an air carrier who, acting without direction from the  
 5 air carrier (or an agent, contractor, or subcontractor of  
 6 the air carrier), deliberately causes a violation of any re-  
 7 quirement relating to air carrier safety under this subtitle  
 8 or any other law of the United States.”.

9       (b) **CONFORMING AMENDMENT.**—The chapter analy-  
 10 sis for chapter 421 of title 49, United States Code, is  
 11 amended by adding at the end the following:

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

12 **SEC. 3. CIVIL PENALTY.**

13       Section 46301(a)(1)(A) of title 49, United States  
 14 Code, is amended by striking “subchapter II of chapter  
 15 421” and inserting “subchapter II or III of chapter 421”.

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