

106TH CONGRESS  
1ST SESSION

# H. R. 953

To amend title 49, United States Code, to provide for the protection of employees providing air safety information.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1999

Mr. BOEHLERT (for himself, Mr. CLYBURN, Mr. HOLDEN, Mr. WEYGAND, Mr. DELAHUNT, Mr. MASCARA, Mr. WISE, Mr. MEEKS of New York, Mr. FILNER, Mr. COSTELLO, Ms. CARSON, Mr. SHERMAN, Mr. SMITH of Washington, Ms. DANNER, Mr. STUPAK, Mr. FROST, Mr. PAYNE, Ms. WATERS, Mr. HINCHEY, Mr. McNULTY, Mr. QUINN, Mr. METCALF, Mr. KUCINICH, Mr. FARR of California, Mr. MARTINEZ, Mr. BONIOR, Mr. INSLEE, Ms. DELAURO, Mr. HORN, Mr. STARK, Mr. GEJDENSON, Mr. POMBO, Mrs. MCCARTHY of New York, Mr. FRANK of Massachusetts, Mr. EVANS, Mr. LOBIONDO, Mrs. LOWEY, Mr. MCGOVERN, Mrs. CLAYTON, Mr. MICA, Mr. TOWNS, Mr. OLVER, Mr. NADLER, Mr. DOYLE, Ms. LEE, Mr. BLAGOJEVICH, Mr. KLINK, Mr. TRAFICANT, Mr. SANDERS, Mr. RUSH, Mr. SNYDER, Mr. BARCIA, Ms. KILPATRICK, Mr. TIERNEY, Mr. RANGEL, Mrs. TAUSCHER, Mrs. THURMAN, Ms. BROWN of Florida, Mr. GUTIERREZ, Mr. FORBES, Mr. DEFazio, Mr. PASCRELL, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 49, United States Code, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Aviation Safety Protec-  
3 tion Act”.

4 **SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFE-**  
5 **TY INFORMATION.**

6 (a) IN GENERAL.—Chapter 421 of title 49, United  
7 States Code, is amended by adding at the end the follow-  
8 ing:

9 “SUBCHAPTER III—WHISTLEBLOWER  
10 PROTECTION PROGRAM  
11 “§ 42121. Protection of employees providing air safe-  
12 ty information

13 “(a) DISCRIMINATION AGAINST AIRLINE EMPLOY-  
14 EES.—No air carrier or contractor or subcontractor of an  
15 air carrier may discharge an employee of the air carrier  
16 or the contractor or subcontractor of an air carrier or oth-  
17 erwise discriminate against any such employee with re-  
18 spect to compensation, terms, conditions, or privileges of  
19 employment because the employee (or any person acting  
20 pursuant to a request of the employee)—

21 “(1) provided, caused to be provided, or is  
22 about to provide or cause to be provided to the Fed-  
23 eral Government information relating to any viola-  
24 tion or alleged violation of any order, regulation, or  
25 standard of the Federal Aviation Administration or  
26 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 “(2) has filed, caused to be filed, or is about to  
4 file or cause to be filed a proceeding relating to any  
5 violation or alleged violation of any order, regulation,  
6 or standard of the Federal Aviation Administration  
7 or any other provision of Federal law relating to air  
8 carrier safety under this subtitle or any other law of  
9 the United States;

10 “(3) testified or will testify in such a proceed-  
11 ing; or

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

14 “(b) DEPARTMENT OF LABOR COMPLAINT PROCE-  
15 DURE.—

16 “(1) FILING AND NOTIFICATION.—

17 “(A) IN GENERAL.—In accordance with  
18 this paragraph, a person may file (or have a  
19 person file on behalf of that person) a com-  
20 plaint with the Secretary of Labor if that per-  
21 son believes that an air carrier or contractor or  
22 subcontractor of an air carrier discharged or  
23 otherwise discriminated against that person in  
24 violation of subsection (a).

1           “(B) REQUIREMENTS FOR FILING COM-  
2           PLAINTS.—A complaint referred to in subpara-  
3           graph (A) may be filed not later than 90 days  
4           after an alleged violation occurs. The complaint  
5           shall state the alleged violation.

6           “(C) NOTIFICATION.—Upon receipt of a  
7           complaint submitted under subparagraph (A),  
8           the Secretary of Labor shall notify the air car-  
9           rier, contractor, or subcontractor named in the  
10          complaint and the Administrator of the Federal  
11          Aviation Administration of the—

12                   “(i) filing of the complaint;

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

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

17                   “(iv) opportunities that are afforded  
18                   to the air carrier, contractor, or sub-  
19                   contractor under paragraph (2).

20          “(2) INVESTIGATION; PRELIMINARY ORDER.—

21                   “(A) IN GENERAL.—

22                   “(i) INVESTIGATION.—Not later than  
23                   60 days after receipt of a complaint filed  
24                   under paragraph (1) and after affording  
25                   the person named in the complaint an op-

1           portunity to submit to the Secretary of  
2           Labor a written response to the complaint  
3           and an opportunity to meet with a rep-  
4           resentative of the Secretary to present  
5           statements from witnesses, the Secretary  
6           of Labor shall conduct an investigation  
7           and determine whether there is reasonable  
8           cause to believe that the complaint has  
9           merit and notify in writing the complain-  
10          ant and the person alleged to have commit-  
11          ted a violation of subsection (a) of the Sec-  
12          retary's findings.

13                 “(ii) ORDER.—Except as provided in  
14                 subparagraph (B), if the Secretary of  
15                 Labor concludes that there is reasonable  
16                 cause to believe that a violation of sub-  
17                 section (a) has occurred, the Secretary  
18                 shall accompany the findings referred to in  
19                 clause (i) with a preliminary order provid-  
20                 ing the relief prescribed under paragraph  
21                 (3)(B).

22                 “(iii) OBJECTIONS.—Not later than  
23                 30 days after the date of notification of  
24                 findings under this paragraph, the person  
25                 alleged to have committed the violation or

1 the complainant may file objections to the  
2 findings or preliminary order and request a  
3 hearing on the record.

4 “(iv) EFFECT OF FILING.—The filing  
5 of objections under clause (iii) shall not op-  
6 erate to stay any reinstatement remedy  
7 contained in the preliminary order.

8 “(v) HEARINGS.—Hearings conducted  
9 pursuant to a request made under clause  
10 (iii) shall be conducted expeditiously and  
11 governed by the Federal Rules of Civil  
12 Procedure. If a hearing is not requested  
13 during the 30-day period prescribed in  
14 clause (iii), the preliminary order shall be  
15 deemed a final order that is not subject to  
16 judicial review.

17 “(B) REQUIREMENTS.—

18 “(i) REQUIRED SHOWING BY COM-  
19 PLAINANT.—The Secretary of Labor shall  
20 dismiss a complaint filed under this sub-  
21 section and shall not conduct an investiga-  
22 tion otherwise required under subpara-  
23 graph (A) unless the complainant makes a  
24 prima facie showing that any behavior de-  
25 scribed in paragraphs (1) through (4) of

1 subsection (a) was a contributing factor in  
2 the unfavorable personnel action alleged in  
3 the complaint.

4 “(ii) SHOWING BY EMPLOYER.—Not-  
5 withstanding a finding by the Secretary  
6 that the complainant has made the show-  
7 ing required under clause (i), no investiga-  
8 tion otherwise required under subpara-  
9 graph (A) shall be conducted if the em-  
10 ployer demonstrates, by clear and convinc-  
11 ing evidence, that the employer would have  
12 taken the same unfavorable personnel ac-  
13 tion in the absence of that behavior.

14 “(iii) CRITERIA FOR DETERMINATION  
15 BY SECRETARY.—The Secretary may de-  
16 termine that a violation of subsection (a)  
17 has occurred only if the complainant dem-  
18 onstrates that any behavior described in  
19 paragraphs (1) through (4) of subsection  
20 (a) was a contributing factor in the unfa-  
21 vorable personnel action alleged in the  
22 complaint.

23 “(iv) PROHIBITION.—Relief may not  
24 be ordered under subparagraph (A) if the  
25 employer demonstrates by clear and con-

1           vincing evidence that the employer would  
2           have taken the same unfavorable personnel  
3           action in the absence of that behavior.

4           “(3) FINAL ORDER.—

5                   “(A) DEADLINE FOR ISSUANCE; SETTLE-  
6           MENT AGREEMENTS.—

7                           “(i) IN GENERAL.—Not later than  
8                           120 days after conclusion of a hearing  
9                           under paragraph (2), the Secretary of  
10                          Labor shall issue a final order that—

11                                   “(I) provides relief in accordance  
12                                   with this paragraph; or

13                                   “(II) denies the complaint.

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

23                           “(B) REMEDY.—If, in response to a com-  
24                           plaint filed under paragraph (1), the Secretary  
25                           of Labor determines that a violation of sub-

1 section (a) has occurred, the Secretary of Labor  
2 shall order the air carrier, contractor, or sub-  
3 contractor that the Secretary of Labor deter-  
4 mines to have committed the violation to—

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

6 “(ii) reinstate the complainant to the  
7 former position of the complainant and en-  
8 sure the payment of compensation (includ-  
9 ing back pay) and the restoration of terms,  
10 conditions, and privileges associated with  
11 the employment; and

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

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

1 with, the bringing of the complaint that re-  
2 sulted in the issuance of the order.

3 “(4) FRIVOLOUS COMPLAINTS.—A complaint  
4 brought under paragraph (1) that is found to be  
5 frivolous or to have been brought in bad faith shall  
6 be governed by rule 11 of the Federal Rules of Civil  
7 Procedure.

8 “(5) REVIEW.—

9 “(A) APPEAL TO COURT OF APPEALS.—

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

19 “(ii) REQUIREMENTS FOR JUDICIAL  
20 REVIEW.—A review conducted under this  
21 paragraph shall be conducted in accord-  
22 ance with chapter 7 of title 5. The com-  
23 mencement of proceedings under this sub-  
24 paragraph shall not, unless ordered by the

1 court, operate as a stay of the order that  
2 is the subject of the review.

3 “(B) LIMITATION ON COLLATERAL AT-  
4 TACK.—An order referred to in subparagraph  
5 (A) shall not be subject to judicial review in any  
6 criminal or other civil proceeding.

7 “(6) ENFORCEMENT OF ORDER BY SECRETARY  
8 OF LABOR.—

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

16 “(B) RELIEF.—In any action brought  
17 under this paragraph, the district court shall  
18 have jurisdiction to grant any appropriate form  
19 of relief, including injunctive relief and compen-  
20 satory damages.

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

22 “(A) COMMENCEMENT OF ACTION.—A per-  
23 son on whose behalf an order is issued under  
24 paragraph (3) may commence a civil action  
25 against the air carrier, contractor, or sub-

1 contractor named in the order to require com-  
2 pliance with the order. The appropriate United  
3 States district court shall have jurisdiction,  
4 without regard to the amount in controversy or  
5 the citizenship of the parties, to enforce the  
6 order.

7 “(B) ATTORNEY FEES.—In issuing any  
8 final order under this paragraph, the court may  
9 award costs of litigation (including reasonable  
10 attorney and expert witness fees) to any party  
11 if the court determines that the awarding of  
12 those costs is appropriate.

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

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

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

4       (b) CONFORMING AMENDMENT.—The analysis for  
5 chapter 421 of such title is amended by adding at the end  
6 the following:

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

7       (c) CIVIL PENALTY.—Section 46301(a)(1)(A) of such  
8 title is amended by striking “subchapter II of chapter  
9 421,” and inserting “subchapter II or III of chapter  
10 421,”.

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