

112TH CONGRESS
1ST SESSION

H. R. 226

To strengthen the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2011

Ms. JACKSON LEE of Texas introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, 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 “Congressional Disclo-
5 sures Protections Act of 2011”.

1 **SEC. 2. ALTERNATIVE REMEDY FOR RETALIATION AGAINST**
2 **WHISTLEBLOWERS MAKING DISCLOSURES TO**
3 **CONGRESS.**

4 (a) IN GENERAL.—Subchapter II of chapter 72 of
5 title 5, United States Code, is amended by adding at the
6 end the following:

7 **“§ 7212. Alternative remedy**

8 “(a) DEFINITIONS.—For purposes of this section—

9 “(1) the term ‘compensatory damages’ means
10 damages awarded to a complaining party for each
11 ‘action’, which shall be synonymous with ‘cause of
12 action’ or ‘claim’, as prescribed by title VII of the
13 Civil Rights Act of 1991;

14 “(2) the term ‘covered disclosure’ means a dis-
15 closure of information—

16 “(A) made by an employee to either House
17 of Congress or to a committee or Member or
18 staff thereof; and

19 “(B) which the employee reasonably be-
20 lieves evidences—

21 “(i) a violation of any law (including
22 title VII of the Civil Rights Act of 1964),
23 rule, or regulation; or

24 “(ii) gross mismanagement, a gross
25 waste of funds, an abuse of authority, or

1 a substantial and specific danger to public
2 health or safety;

3 “(3) the term ‘employee’ means an individual as
4 defined by section 2105 and any other individual, in-
5 cluding permanent, temporary, full- or part-time em-
6 ployees or applicants, independent contractors, med-
7 ical or other staff, professionals with institutional
8 privileges, individuals paid by temporary services, or
9 individuals performing services for an organization
10 that in whole or in part is a contractor, grantee or
11 other recipient if the United States Government pro-
12 vides any portions of the money or property which
13 is requested or demanded; and

14 “(4) the term ‘interfered with or denied’ in-
15 cludes any personnel action in section
16 2302(a)(2)(A); implementation or enforcement of
17 any nondisclosure policy, form or agreement in viola-
18 tion of this section; and investigation or prosecution
19 of any alleged violation of title 18 provisions other
20 than those prohibiting crimes of violence, moral tur-
21 pitude or espionage.

22 “(b) ALTERNATIVE REMEDY.—An employee ag-
23 grieved by a violation of section 7211 with respect to a
24 covered disclosure may within a year of the alleged viola-

1 tion bring an action at law and equity in the appropriate
2 district court of the United States—

3 “(1) which shall have jurisdiction over such an
4 action without regard to the amount in controversy
5 and which action shall, at the request of any party
6 to such action, be tried by the court with a jury; and

7 “(2) in any proceeding under this subsection, a
8 court—

9 “(A) shall apply the standards set forth in
10 section 1221(e); and

11 “(B) shall award triple lost wages, bene-
12 fits, reinstatement, costs including reasonable
13 expert witness fees, triple attorney fees, triple
14 compensatory damages including emotional dis-
15 tress and lost reputation, and equitable, injunc-
16 tive, and any other relief that the court con-
17 siders appropriate.

18 “(c) CHOICE OF REMEDIES.—Except in the cir-
19 cumstance described in subsection (b)(1)(B), the com-
20 mencement of an action under this subsection bars the em-
21 ployee from pursuing (or further pursuing) any remedy
22 otherwise available under section 1221 or 7701 with re-
23 spect to the personnel action involved.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 72 of title 5, United States Code, is amended

1 by inserting after the item relating to section 7211 the
2 following:

“7212. Alternative remedy.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by
4 this Act shall take effect on the date of enactment of this
5 Act and shall apply with respect to any personnel action
6 (as defined by section 2302(a)(2)(A) of title 5, United
7 States Code) occurring on or after such date of enactment.

8 **SEC. 3. RIGHT OF REPRESENTATION.**

9 Section 1212(a) of title 5, United States Code, is
10 amended—

11 (1) by striking “and” at the end of paragraph
12 (5);

13 (2) by striking the period at the end of para-
14 graph (6) and inserting “; and”; and

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

16 “(7) upon request, furnish such legal represen-
17 tation as an employee may require in a proceeding
18 in which such employee seeks relief under section
19 7212 of title 5.”.

20 **SEC. 4. AMENDMENT TO NO FEAR ACT.**

21 Paragraph (3) of section 203(a) of the Notification
22 and Federal Employee Antidiscrimination and Retaliation
23 Act of 2002 (5 U.S.C. 2301 note) is amended to read as
24 follows:

1 “(3) the amount of money required to be reim-
2 bursed by such agency under section 201 in connec-
3 tion with each of such cases, including for salaries
4 or pay, travel costs, and any other expenses, sepa-
5 rately identifying the aggregate amount of such re-
6 imbursements attributable to the payment of attor-
7 ney’s fees, if any, and separately identifying the
8 total dollar amount by fiscal year of any reimburse-
9 ment for which an agency remains liable under sec-
10 tion 201;”.

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