

HR 4047 IH

110th CONGRESS

1st Session

**H. R. 4047**

To streamline the administration of whistleblower protections for private sector employees.

**IN THE HOUSE OF REPRESENTATIVES**

**November 1, 2007**

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, Mr. KILDEE, Mr. PAYNE, Mr. ANDREWS, Mrs. MCCARTHY of New York, Mr. KUCINICH, Mr. BISHOP of New York, Mr. HARE, Ms. SHEA-PORTER, Mr. GRIJALVA, Mr. MARKEY, Mr. TIERNEY, and Ms. LINDA T. SANCHEZ of California) introduced the following bill; which was referred to the Committee on Education and Labor

**A BILL**

To streamline the administration of whistleblower protections for private sector employees.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Private Sector Whistleblower Protection Streamlining Act of 2007'.

**TITLE I--PRIVATE SECTOR EMPLOYMENT WHISTLEBLOWER PROTECTIONS**

**SEC. 101. DEFINITIONS.**

As used in this title, the following definitions apply:

- (1) APPLICABLE LAW- The term 'applicable law' means any Federal law, rule, or regulation, or a law, rule or regulation of a State or political subdivision of a State implementing any Federal law, rule or regulation, relating to--

- (A) health and health care;
- (B) environmental protection;
- (C) food and drug safety;
- (D) transportation safety;
- (E) working conditions and benefits;
- (F) building and construction-related requirements, including safety requirements and structural and engineering standards;
- (G) energy, homeland, and community security, including facility safety;
- (H) financial transactions or reporting requirements, including banking, insurance, and securities laws; and
- (I) consumer protection.

(2) CLEAR AND CONVINCING EVIDENCE- The term `clear and convincing evidence' means evidence indicating that the matter to be proved is highly probable or reasonably certain.

(3) CONTRIBUTING FACTOR- The term `contributing factor' means any factor which, alone or in combination with other factors, affects in any way the outcome of the decision.

(4) EMPLOYEE- The term `employee' means any person receiving compensation from or acting on behalf of an employer, being considered for employment by the employer, or previously employed by an employer, including any working as an associate, person employed on a temporary or part-time basis, or employed by a contractor or subcontractor of an employer.

(5) EMPLOYER- The term `employer' means any person (including one or more individuals, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, nongovernmental organizations, or trustees) engaged in profit or nonprofit business affecting commerce, including any subsidiaries, affiliates, or the foreign operations of any business that are subject to applicable law, any entity of a State government or political subdivision of a State, or any nongovernmental organization, and any contractor or subcontractor of another employer.

(6) MANAGER- The term `manager' means any person who has direct,

implied, or apparent authority over the work performance of a whistleblower, directly or indirectly through subordinates, or a person who has the direct, implied, or apparent authority to recommend or to take corrective action regarding the activities or policies of the employer or to remedy a violation of an applicable law.

(7) MEDIA- The term `media' includes a member of the print, radio, television, or internet media.

(8) PROTECTED INFORMATION- The term `protected information' means any information that a whistleblower reasonably believes evidences--

(A) a violation or the intent to commit a violation, by the employer or a subsidiary or business affiliate of the employer, of an applicable law;

(B) a hazard or potential danger to the health or safety of any employee or to the public, including any injury or illness; or

(C) fraud on the part of the employer or a business affiliate or subsidiary of the employer in connection with the implementation of or compliance with an applicable law or a standard of practice established by a professional standards setting body.

(9) PUBLIC BODY- The term `public body' means Congress, any State legislature or popularly elected local government body, any Federal, State or local regulatory, administrative, or public agency, authority, or instrumentality or combination thereof, any Federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer, any Federal, State or local court or other adjudicative body, or any division, board, bureau, office, committee, or commission of any such public bodies, or any organization or credentialing body that establishes or enforces standards of professional conduct.

(10) RESPONSIBLE PARTY- The term `responsible party' means any employer, any professional membership organization, including a certification, disciplinary, or other professional body, and any agency or licensee of the Federal government, and includes a person acting directly or indirectly in the interest of another responsible party.

(11) REASONABLY BELIEVES- The term `reasonably believes', with respect to information that may be protected information, means that a disinterested observer with a similar level of education, skill and experience and with knowledge of the essential facts known to or readily ascertained by the whistleblower could conclude that such information is protected information, and the determination of reasonable belief in this context is a subjective standard which is a question of fact.

(12) SECRETARY- The term `Secretary' means the Secretary of Labor.

(13) UNFAVORABLE PERSONNEL ACTION- The term `unfavorable personnel action' means any action or inaction, whether taken, recommended, or threatened, directly or indirectly unfavorable to the whistleblower, or family member of the whistleblower, by any responsible party, including current employer of the whistleblower, including termination, performance appraisal or action, discipline, reduction in pay or benefits, transfer, reassignment, demotion, withholding of training or other advancement opportunities, removal of resources, the denial, suspension, or revocation of a security clearance, investigation, peer review, law enforcement referral, or prosecution, filing criminal or civil charges, change in seniority rights, denial of advancement, denial of contract, revocation of security credentials, blacklisting, listing on a practitioner databank, violence or other physical action, any other discrimination or other action that negatively affects the terms or conditions, or privileges of employment of such whistleblower, or any other conduct that would dissuade a reasonable person from engaging in activities protected by this title.

(14) WHISTLEBLOWER- The term `whistleblower' includes an employee, independent contractor, or any member or staff of a professional membership organization or other professional body, including professionals with institutional privileges or appointments to an organization, who engages in the protected activity described in section 102(a).

## **SEC. 102. PROTECTION AGAINST RETALIATION OR DISCRIMINATION AGAINST WHISTLEBLOWERS.**

(a) In General- Notwithstanding the requirements of any other law, no responsible party shall take any unfavorable personnel action against a whistleblower if such action is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the whistleblower to--

(1) communicate or disclose, without restriction as to place, form, motive, context, forum, or prior disclosure, including disclosure in the ordinary course of the whistleblower's duties, to a manager, public body, or the media, or to the public, any protected information, where disclosure is not prohibited by law or because such information is classified, in which case the information may be disclosed to an official eligible by law to receive such information and designated by the employer, or to a relevant regulatory authority, law enforcement agency or Inspector General;

(2) take action to initiate, testify, cooperate, or otherwise assist or participate in an investigation or proceeding by a public body, or any

proceeding authorized by applicable law, or take action indicating that the whistleblower is about to testify, cooperate, or otherwise assist such an investigation or proceeding;

(3) object to or refuse to participate in any activity, policy, practice, or assigned task which the whistleblower reasonably believes is in violation of an applicable law or endangers the safety or health or the whistleblower or others;

(4) inform or discuss with co-workers of the whistleblower, experts or corroborating witnesses, a representative of the whistleblower, a safety and health or similar workplace committee, or a family member of the whistleblower, any protected information, where disclosure is not prohibited by law or because it is classified; or

(5) otherwise avail himself or herself of the rights set forth in this title or other applicable law, or assist another whistleblower in asserting the rights available under this title.

(b) Broad Construction- It is the sense of Congress that the provisions of this section and section 101 shall be construed broadly to maximize the Act's remedial objectives and for the benefit of the public.

## **SEC. 103. ENFORCEMENT.**

(a) Complaint; Right of Action-

(1) IN GENERAL- A whistleblower who believes that he or she has been discharged or otherwise discriminated against by any responsible party in violation of section 102(a) may seek the relief described in this section, either by--

(A) filing a complaint with the Secretary as described in subsection (b); or

(B) bringing an action at law or equity in the appropriate district court of the United States as described in subsection (c).

Except as provided in subsection (b)(11), a whistleblower, having filed a complaint under subparagraph (A), may not bring an action under subparagraph (B).

(2) STATUTE OF LIMITATIONS- A whistleblower may take either action permitted by the preceding paragraph not later than 1 year after the later of--

(A) the date on which such violation occurs; or

(B) the date on which the whistleblower knows or should reasonably have known that such violation occurred.

For purposes of this paragraph, a violation shall be considered to have occurred on the last date on which such violation continues.

(b) Department of Labor Complaint Procedure-

(1) NOTIFICATION OF PUBLIC BODY- Upon receipt of a complaint under this section, the Secretary shall provide prompt notice to the appropriate public body of any protected information referenced in the complaint of a violation of section 102(a). The public body's determination on whether or not a violation has occurred, nor its action or inaction, shall not be considered by the Secretary.

(2) ELECTION OF PROCEDURE; EXCLUSION-

(A) ELECTION OF PROCEDURE- Upon receipt of a complaint under this section, the Secretary shall inform the complainant (or any legal counsel retained by complainant) of any program for administering whistleblower complaints described in section 202 that may be applicable to the complainant's situation, and obtain the complainant's consent as to the program under which the complainant wishes to proceed. No action may proceed unless a complainant with such an election makes it, and such an election is binding. If the complaint is to be processed under this title, the Secretary shall provide written notice to the responsible party named in the complaint of the filing of the complaint, the substance of the evidence supporting the complaint, and of the opportunities that will be afforded to such responsible party under this subsection.

(B) EXCLUSION- No complaint by a government employee that is within the scope of the Whistleblower Protection Act (5 U.S.C. 1201 note) shall be considered under the provisions of this title, provided, however, that this exclusion does not diminish any rights a whistleblower may have under any program for administering whistleblower complaints described in section 202.

(3) DECISION TO INVESTIGATE OR DISMISS COMPLAINT- The Secretary shall, based on the criteria set forth in paragraph (d)(1), either--

(A) make a decision to investigate the complaint under paragraph (5); or

(B) make a final decision to dismiss the complaint.

(4) TEMPORARY RELIEF DURING INVESTIGATION- If the complaint is not

dismissed under paragraph (3), the Secretary shall, upon request, issue a preliminary order providing for temporary reinstatement of the complainant while the Secretary is conducting an investigation pursuant to paragraph (5). If a hearing is not requested as provided for in paragraph (7), such preliminary order shall be deemed a final order that is not subject to judicial review.

(5) INVESTIGATION- The Secretary shall investigate any complaint not dismissed under paragraph (3). The Secretary shall afford the responsible party named in the complaint an opportunity to submit to the Secretary a written response to the complaint and to meet with a representative of the Secretary to present statements from witnesses. The complainant shall be provided an opportunity to meet with a representative of the Secretary and rebut any statements provided to the Secretary by the responsible party named in the complaint. In conducting such investigation, the Secretary may issue subpoenas requiring the deposition of or the attendance and testimony of witnesses and the production of any evidence, including any books, papers, or documents, relating to the matter under investigation. The Secretary shall complete the investigation and issue a decision in accordance with the criteria set forth in subsection (d)(2) not later than 30 days after the date of receipt of a complaint. The Secretary shall notify, in writing, the complainant and the responsible party named in the complaint of the Secretary's findings.

(6) PRELIMINARY ORDER FOLLOWING INVESTIGATION- If the Secretary finds that a violation of section 102(a) has occurred, the Secretary shall issue a preliminary order providing the relief prescribed by paragraph (10). If a hearing is not timely requested as provided for in paragraph (7), such preliminary order shall be deemed a final order of the Secretary that is not subject to judicial review.

(7) HEARING-

(A) REQUEST FOR HEARING- The complainant or responsible party alleged to have committed a violation of section 102(a) may request a hearing on the record before an administrative law judge--

(i) if the complainant or the responsible party alleged to have committed a violation of section 102(a) objects to a preliminary order of temporary reinstatement or preliminary order for relief and files such objections and request for a hearing not later than 30 days after receiving notification of such preliminary order; or

(ii) if the Secretary has not issued a decision under paragraph (5) within 30 days of the receipt of the complaint.

The filing of objections under clause (i) shall not operate to stay any reinstatement remedy contained in a preliminary order issued pursuant to either paragraph (4) or paragraph (6).

(B) PROCEDURES- Such hearing request shall be granted, and shall be conducted expeditiously and in accordance with the Federal Rules of Civil Procedure. In conducting such proceeding, the Secretary may issue subpoenas requiring the deposition of or the attendance and testimony of witnesses and the production of any evidence, including any books, papers, or documents, relating to the matter under consideration. A decision issued in accordance with the criteria set forth in subsection (d)(2), shall be issued not later than 90 days after the date on which a hearing was requested under this paragraph. The parties and the Secretary shall promptly be notified of the decision. If the administrative law judge find that a violation of section 102(a) has occurred, the judge shall issue a preliminary order providing the relief prescribed by paragraph (10). If review under paragraph (8) is not timely requested, such preliminary order shall be deemed a final order of the Secretary that is not subject to judicial review.

(8) FURTHER ADMINISTRATIVE REVIEW- Not later than 10 days after the date of notification of a decision by an administrative law judge under paragraph (7), the complainant or the responsible party alleged to have committed a violation of section 102(a) may file objections to specified portions thereof and request a further review by the Secretary. The Secretary shall have discretion as to whether to grant such a review and shall be limited to determining whether the decision of the administrative law judge was based upon substantial evidence. If review is granted, the decision of the administrative law judge shall be stayed pending the completion of further review, except for any order of reinstatement which shall be stayed only upon motion. The final decision and order of the Secretary shall be issued not later than 30 days after the administrative law judge issues a decision. If judicial review under paragraph (11) is not timely requested, such preliminary order shall be deemed a final order of the Secretary that is not subject to judicial review.

(9) SETTLEMENT- 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, or administrative law judge conducting a hearing, the complainant, and the responsible party alleged to have committed the violation. The Secretary or administrative law judge conducting a hearing may not accept any settlement that contains conditions that are contrary to the public policy of this title, including any restrictions or activity protected by this Act, and the right to seek future employment without discrimination prohibited by this Act.

(10) REMEDY- If, in response to a complaint filed under subsection (a) (1), the Secretary of Labor determines that a violation of section 102(a) has occurred, the Secretary shall order the responsible party who committed such violation to--

(A) take affirmative action to abate the violation;

(B) reinstate the complainant to his or her former position and with the same seniority status together with the compensation (including back pay and interest) and restore the terms, rights, conditions, and privileges associated with his or her employment, and provide preference to the complainant to transfer to any available position that provides equivalent or better compensation, terms, conditions and privileges of employment for which the complainant is qualified;

(C) provide compensatory damages and consequential damages to the complainant, including relief for emotional distress and harm to reputation, and may include punitive damages;

(D) expunge all warnings, reprimands or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant's direction, send a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information; and

(E) post appropriate public notice of the violation.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the responsible party against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(11) INACTION BY THE SECRETARY- Notwithstanding subsection (a), if the Secretary has not issued a final decision within 180 days of the filing of the complaint, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, as described in subsection (c), which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(12) JUDICIAL REVIEW-

(A) APPEAL TO COURT OF APPEALS- Any complainant or responsible party adversely affected or aggrieved by a final order issued under this subsection for which review is available, may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date the final order of the Secretary was received. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK- An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(13) ENFORCEMENT OF ORDER- Whenever any responsible party has failed to comply with a final order issued under this subsection, including a final order for temporary relief, the Secretary or the complainant on whose behalf the order was issued may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. If both the Secretary and the person on whose behalf the order was issued file such an action for enforcement, the action of the Secretary shall take precedence. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, injunctive relief, compensatory damages, and reasonable attorneys and expert witness fees. In addition to enforcing the order, the court shall assess a penalty of not greater than \$10,000 a month against any person who fails to comply with a final order issued under this subsection, which shall be awarded to the party seeking enforcement.

(c) District Court Procedure-

(1) NOTIFICATION- Upon receipt of a complaint brought under subsection (a)(1)(B) or (b)(11), the court shall provide prompt notice to the appropriate public body of any protected information referenced in the complaint of a violation of section 102(a), but the public body shall have no standing to participate in any way in the proceeding nor shall its failure to take action be considered by the court.

(2) SUMMARY JUDGMENT- The Court shall summarily dismiss a complaint filed under this title based upon the criteria set forth in paragraph (d)(1).

(3) TEMPORARY RELIEF- If the complaint is not dismissed by summary

judgment, the court shall, upon request, issue a preliminary order providing for temporary reinstatement of the complainant.

(4) DECISION- The complainant in a case brought under subsection (a) (1)(B) or (b)(11) shall be entitled to a trial by jury. The jury or the court shall determine whether a violation of section 102(a) has occurred based upon the criteria set forth in paragraph (d)(2).

(5) RELIEF- The Court shall have jurisdiction to grant all appropriate relief to a whistleblower available by law or equity, including, injunctive relief, compensatory and consequential damages, punitive damages, reasonable attorneys and expert witness fees, and court costs.

(d) Criteria for Dismissal and for Decision-

(1) DISMISSAL- The Secretary, administrative law judge, or the court shall dismiss a complaint filed under this section unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (5) of section 102(a) was a contributing factor in the unfavorable personnel action alleged in the complaint. The complainant will be considered to have made such a showing if the complaint, on its face, supplemented as appropriate through interviews, depositions, or affidavit of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing.

(2) DECISION- The Secretary, administrative law judge, or a court may determine that a violation of section 102(a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (5) of section 102(a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the responsible party demonstrates by clear and convincing evidence that the responsible party would have taken the same unfavorable personnel action in the absence of the behavior described in paragraphs (1) through (5) of section 102(a).

## **SEC. 104. RESTRICTIONS ON WHISTLEBLOWING PROHIBITED; CONFIDENTIALITY OF WHISTLEBLOWER.**

(a) Restrictions on Reporting Prohibited; Invalid Contract Clauses- No responsible party shall by contract, policy, or procedure prohibit or restrict any person from engaging in any action for which a protection against discrimination or retaliation is provided under section 102. Any clause or provision of any contract for employment or contract with an independent contractor for the provision of services which purports to limit or restrain an individual from engaging in any of the actions described in paragraphs (1) through (5) of section 3(a) as a condition of employment or a condition of the contract, whether in force before, on, or after the date of enactment of this

title, shall be invalid and void as violative of public policy as established by this title.

(b) Restrictions on Relief Provided Under This Act Prohibited; Invalid Arbitration Clauses-

(1) PROTECTION OF PROCEDURAL RIGHTS- Notwithstanding any other provision of law, any clause of any agreement between an responsible party and a whistleblower that requires arbitration of a claim arising under this title, whether in force before, on or after the date of enactment of this Act, shall not be enforceable.

(2) EXCEPTIONS-

(A) WAIVER OR CONSENT AFTER CLAIM ARISES- Paragraph (1) shall not apply with respect to any claim if, after such claim arises, the parties involved voluntarily consent to submit such claim to arbitration.

(B) COLLECTIVE BARGAINING AGREEMENTS- Paragraph (1) shall not preclude the enforcement of any of the rights or terms of a valid collective bargaining agreement.

(c) Confidentiality- The identity or identifying information of a whistleblower who complains or discloses information as described in section 102(a) to a public body shall remain confidential and shall not be disclosed by any person except--

(1) upon the knowing written consent of the whistleblower;

(2) in the case in which there is imminent danger to health or public safety or an imminent violation of criminal law; or

(3) as otherwise required by law.

An employee of a public body shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur. An employee of a public body who discloses the identity of a whistleblower in violation of this subsection shall be considered to be acting outside such employee's official duties.

## **SEC. 105. NONPREEMPTION.**

(a) Effect on Other Laws- Nothing in this title shall be construed to preempt any law, rule, or regulation of a State or political subdivision of a State and nothing in this title shall be construed or interpreted to impair or diminish in any way the authority of any State to enact and enforce any law which

provides equivalent or greater protections for whistleblowers covered under this title.

(b) Rights Retained by Whistleblowers- Except as provided in section 103(b)(2)(A), nothing in this title shall be construed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

## **SEC. 106. EFFECTIVE DATE AND RULES.**

This title shall take effect on the date of enactment of this Act, and the procedures described in section 103 shall apply to complaints and actions filed under this title after such date of enactment. The Secretary shall establish interim final rules to implement this title within 60 days of such date of enactment. The time periods for processing complaints shall start once such interim rules are in effect.

## **TITLE II--WHISTLEBLOWER PROTECTION OFFICE**

### **SEC. 201. ESTABLISHMENT.**

(a) Establishment and Purpose- There is established within the Employment Standards Administration of the Department of Labor the Whistleblower Protection Office, in the title referred to as `the Office', to administer the duties of the Secretary under title I and any duties assigned to the Secretary under the provisions of law referred to by section 202, other than duties involving hearings and subsequent review and legal representation which may be assigned to other offices and agencies within the Department of Labor.

(b) Administrator- The Whistleblower Protection Office shall be under the direction of an Administrator of Whistleblower Protection, referred to in this title as `the Administrator', who shall be appointed by the President with the advice and consent of the Senate.

(c) Appointment of Personnel-

(1) APPOINTMENT AND COMPENSATION- The Administrator may, subject to the civil service laws, appoint such employees as the Administrator considers necessary to carry out the functions and duties of the Office, and shall fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(d) Transfer of Personnel; Budget-

(1) IN GENERAL- Beginning not later than the effective date of this title, the functions of the Secretary under any of the provisions of law referred

to in section 202 shall be carried out by the Administrator.

(2) BUDGETS, PERSONNEL, ETC- All unexpended balances of appropriations, personnel, property, records, obligations, and commitments which are used primarily with respect to any functions transferred under the provisions of paragraph (1) to the Administrator shall be transferred to the Office, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for 1 year after such transfer, except that the Administrator shall have full authority to assign personnel during such 1-year period in order to efficiently carry out functions transferred to the Administrator under this title.

(3) CONTINUATION- All orders, decisions, determinations, rules, and regulations, (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this subsection; and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary, the Administrator, or other authorized officials, by any court of competent jurisdiction, or by operation of law. The provisions of this subsection shall not affect any proceedings pending at the time this title takes effect. The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted.

(e) Principal Office- The principal location of the Office shall be in the District of Columbia, but the Administrator or a duly authorized representative may exercise any or all of the Administrator's powers in any place.

## **SEC. 202. OTHER PRIVATE SECTOR WHISTLEBLOWER PROTECTIONS.**

Notwithstanding any other provision of law, the following provisions of law shall, after the effective date of this title, be administered in accordance with this title:

(1) Sections 20209, 31105, 42121, and 60129 of title 49, United States Code.

(2) Section 211 of the Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. 2651).

(3) Section 7 of the International Safe Container Act (46 App. U.S.C. 1506).

(4) Section 1450 of the Safety Drinking Water Act of 1974 (42 U.S.C. 300j-9i).

(5) Section 507 of the Federal Water Pollution Control Act, Amendments of 1972 (33 U.S.C. 1367).

(6) Section 23(a)(1) through (3) of the Toxic Substances Control Act (15 U.S.C. 2622).

(7) Section 7001 of the Solid Waste Disposal Act of 1976 (42 U.S.C. 6971).

(8) Section 322 of the Clean Air Act, amendments of 1977 (42 U.S.C. 7622).

(9) Section 10 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9610).

(10) Section 211 of the Energy Reorganization Act of 1978 (42 U.S.C. 5851).

(11) Section 806 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1514A).

(12) Section 1413 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).

## **SEC. 203. DUTIES, POWERS AND FUNCTIONS.**

(a) Subpoenas, Evidence, and Testimony- In carrying out its duties under title I of this Act or under any of the provisions of law referred to by section 202, the Administrator may issue subpoenas requiring the deposition of or the attendance and testimony of witnesses and the production of any evidence, including any books, papers, or documents, relating to any matter under investigation by the Commission, or required in connection with a hearing.

(b) Rules- The Secretary is authorized to prescribe such rules as are necessary for the orderly transaction of the proceedings of the Office and for the implementation of the programs of the Office.

(c) Effective Date- The Administrator shall begin to carry out the duties and exercise the powers set forth in this title on the date that is 1 year after the date of enactment of this Act, or such earlier date as the Secretary may determine that the Office is sufficiently established, staffed, and funded.

(d) Annual Reports- The Administrator shall annually transmit a report to Congress detailing the activities of the Office during the previous year, including information relating to the number and nature of complaints filed,

the number of merit and non-merit cases, the number of such complaints disposed of without investigation due to specific procedural issues, investigations conducted, orders issued, and statistics related to settlements . In addition, the Administrator shall annually make available the full text of all settlements approved by the Office, following the elimination of all personal identifying information about the claimant, the employer, and any other party, and no settlement approved by the Office may prohibit disclosure in such a manner.

(e) Study on Intimidation of Whistleblowers- Not later than 6 months after the effective date of this title, the Administrator shall request the National Academies to conduct a study of intimidation faced by those in the private sector who blow the whistle on violations of law or accepted standards of practice established by public bodies. The study shall consider the role played by a belief that whistleblowing will not make any difference, fear of retaliation, cultural factors, distrust of the government, lack of information or misinformation about employee rights, deficiencies in such rights or in the practical ability to seek relief for violation thereof, and such other factors as may be relevant. The study shall include recommendations for addressing such issues. The Administrator shall transmit the study, including any further recommendations of the Administrator, to Congress not later than 90 days after the receipt of the study.

### **TITLE III--CONFORMING AMENDMENTS**

#### **SEC. 301. OCCUPATIONAL SAFETY AND HEALTH ACT.**

Section 11(c) of the Occupational Safety and Health Act (29 U.S.C. 660(c)) is amended--

(1) by striking the period at the end of paragraph (1) and inserting the following: ` , including reporting any injury, illness, or unsafe condition to the employer, agent of the employer, safety and health committee involved, or employee safety and health representative involved. No person shall discharge or in any manner discriminate against an employee for refusing to perform the employee's duties if the employee has a reasonable apprehension that performing such duties would result in serious injury to, or serious impairment of the health of, the employee or other employees. The circumstances causing the employee's apprehension of serious injury or serious impairment of health shall be of such a nature that a reasonable person, under the circumstances confronting the employee, would conclude that there is a bona fide danger of a serious injury, or serious impairment of health, resulting from the circumstances. In order to qualify for protection under this paragraph, the employee, when practicable, shall have sought from the employee's employer, and have been unable to obtain, a correction of the circumstances causing the refusal to perform the employee's duties.'; and

(2) by striking paragraphs (2) and (3), and inserting the following:

` (2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this subsection may file a complaint with the Secretary of Labor, or bring a civil action at law or equity in Federal court. The Secretary shall receive, process, investigate, and attempt to resolve and remedy complaints of violations of paragraph (1) in the same manner that the Secretary receives, processes, investigates, and attempts to resolve and remedy complaints of violations of section 102(a) of the Whistleblower Protection Streamlining Act of 2007. A civil action brought under this subsection shall be governed under the rules and procedures set forth in section 103 of such Act.'

## **SEC. 302. FEDERAL MINE SAFETY AND HEALTH ACT.**

Section 105(c) of the Federal Mine Safety and Health Act of 1977 ( 30 U.S.C. 815(c)) is amended--

(1) in paragraph (1)--

(A) by inserting `or an injury or illness in a coal or other mine or that may be associated with mine employment,' after `of an alleged danger or safety or health violation in a coal or other mine,'; and

(B) by adding at the end the following: `No miner shall be required to work under conditions he has reasonable grounds to believe to be abnormally and immediately dangerous to himself beyond the normal hazards inherent in the operation which could reasonably be expected to cause death of serious physical harm before such condition or practice can be abated.';

(2) in paragraph (2), by inserting after the fifth sentence the following: `No investigation or hearing authorized by this paragraph may be stayed to await resolution of a related grievance proceeding.'; and

(3) by adding at the end the following:

` (4) In lieu of initiating an action pursuant to paragraph (2), or if a complaint under paragraph (2) is not decided within 180 days, any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may bring an action at law or equity in the appropriate district court of the United States. Such civil action shall be governed under the rules and procedures set forth in section 103 of the Whistleblower Protection Streamlining Act of 2007.'

*END*

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