

104TH CONGRESS  
2D SESSION

# H. R. 3187

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1996

Mr. CLYBURN 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 protection for airline employees who provide certain 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,*

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:

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 or otherwise dis-  
8 criminate against an employee with respect to compensa-  
9 tion, terms, conditions, or privileges of employment be-  
10 cause the employee (or any person acting pursuant to a  
11 request of the employee)—

12                   “(1) provided, caused to be provided, or is  
13           about to provide or cause to be provided to the Fed-  
14           eral Government information relating to air safety  
15           under this subtitle or any other law of the United  
16           States;

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

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

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

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

3           “(1) FILING AND NOTIFICATION.—A person  
4 who believes that he has been discharged or other-  
5 wise discriminated against by a person in violation  
6 of subsection (a) may, within 180 days after such  
7 violation occurs, file (or have any person file on his  
8 behalf) a complaint with the Secretary of Labor al-  
9 leging such discharge or discrimination. Upon re-  
10 ceipt of such a complaint, the Secretary of Labor  
11 shall notify the person named in the complaint and  
12 the Administrator of the Federal Aviation Adminis-  
13 tration of the filing of the complaint, of the allega-  
14 tions contained in the complaint, of the substance of  
15 evidence supporting the complaint, and of the oppor-  
16 tunities which will be afforded to such person under  
17 paragraph (2).

18           “(2) INVESTIGATION; PRELIMINARY ORDER.—  
19 Within 60 days of receipt of a complaint filed under  
20 paragraph (1) and after affording the person named  
21 in the complaint of an opportunity to submit to the  
22 Secretary of Labor a written response to the com-  
23 plaint and an opportunity to meet with a representa-  
24 tive of the Secretary to present statements from wit-  
25 nesses, the Secretary of Labor shall conduct an in-

1 investigation and determine whether there is reason-  
2 able cause to believe that the complaint has merit  
3 and notify the complainant and the person alleged to  
4 have committed a violation of subsection (a) of the  
5 Secretary's findings. If the Secretary of Labor con-  
6 cludes that there is a reasonable cause to believe  
7 that a violation of subsection (a) has occurred, the  
8 Secretary shall accompany the Secretary's findings  
9 with a preliminary order providing the relief pre-  
10 scribed by paragraph (3)(B). Within 30 days after  
11 notification of findings under this paragraph, either  
12 the person alleged to have committed the violation or  
13 the complainant may file objections to the findings  
14 or preliminary order, or both, and request a hearing  
15 on the record. The filing of such objections shall not  
16 operate to stay any reinstatement remedy contained  
17 in the preliminary order. Such hearings shall be con-  
18 ducted expeditiously. If a hearing is not requested  
19 within such 30-day period, the preliminary order  
20 shall be deemed a final order which is not subject to  
21 judicial review.

22 “(3) FINAL ORDER.—

23 “(A) DEADLINE FOR ISSUANCE; SETTLE-  
24 MENT AGREEMENTS.—Within 120 days after  
25 conclusion of a hearing under paragraph (2),

1 the Secretary of Labor shall issue a final order  
2 providing the relief prescribed by this para-  
3 graph or denying the complaint. At any time  
4 before issuance of a final order, a proceeding  
5 under this subsection may be terminated on the  
6 basis of a settlement agreement entered into by  
7 the Secretary of Labor, the complainant, and  
8 the person alleged to have committed the viola-  
9 tion.

10 “(B) REMEDY.—If, in response to a com-  
11 plaint filed under paragraph (1), the Secretary  
12 of Labor determines that a violation of sub-  
13 section (a) has occurred, the Secretary of Labor  
14 shall order the person who committed such vio-  
15 lation to—

16 “(i) take affirmative action to abate  
17 the violation;

18 “(ii) reinstate the complainant to his  
19 former position together with the com-  
20 pensation (including back pay), terms, con-  
21 ditions, and privileges associated with his  
22 employment; and

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

1           If such an order is issued under this paragraph,  
2           the Secretary of Labor, at the request of the  
3           complainant, shall assess against the person  
4           against whom the order is issued a sum equal  
5           to the aggregate amount of all costs and ex-  
6           penses (including attorneys' and expert witness  
7           fees) reasonably incurred, as determined by the  
8           Secretary of Labor, by the complainant for, or  
9           in connection with, the bringing of the com-  
10          plaint upon which the order was issued.

11           “(C) FRIVOLOUS COMPLAINTS.—If the  
12          Secretary of Labor finds that a complaint  
13          under paragraph (1) is frivolous or has been  
14          brought in bad faith, the Secretary of Labor  
15          may award to the prevailing employer a reason-  
16          able attorney's fee not exceeding \$5,000.

17          “(4) REVIEW.—

18           “(A) APPEAL TO COURT OF APPEALS.—  
19          Any person adversely affected or aggrieved by  
20          an order issued under paragraph (3) may ob-  
21          tain review of the order in the United States  
22          Court of Appeals for the circuit in which the  
23          violation, with respect to which the order was  
24          issued, allegedly occurred or the circuit in which  
25          the complainant resided on the date of such vio-

1           lation. The petition for review must be filed  
2           within 60 days from the issuance of the order  
3           of the Secretary of Labor. Review shall conform  
4           to chapter 7 of title 5, United States Code. The  
5           commencement of proceedings under this sub-  
6           paragraph shall not, unless ordered by the  
7           court, operate as a stay of the order.

8           “(B) LIMITATION ON COLLATERAL AT-  
9           TACK.—An order of the Secretary of Labor  
10          with respect to which review could have been  
11          obtained under subparagraph (A) shall not be  
12          subject to judicial review in any criminal or  
13          other civil proceeding.

14          “(5) ENFORCEMENT OF ORDER BY SECRETARY  
15          OF LABOR.—Whenever a person has failed to comply  
16          with an order issued under paragraph (3), the Sec-  
17          retary of Labor may file a civil action in the United  
18          States district court for the district in which the vio-  
19          lation was found to occur to enforce such order. In  
20          actions brought under this paragraph, the district  
21          courts shall have jurisdiction to grant all appropriate  
22          relief including, but not limited to, injunctive relief  
23          and compensatory damages.

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

1           “(A) COMMENCEMENT OF ACTION.—A per-  
2           son on whose behalf an order was issued under  
3           paragraph (3) may commence a civil action  
4           against the person to whom such order was is-  
5           sued to require compliance with such order. The  
6           appropriate United States district court shall  
7           have jurisdiction, without regard to the amount  
8           in controversy or the citizenship of the parties,  
9           to enforce such order.

10           “(B) ATTORNEY FEES.—The court, in is-  
11           suing any final order under this paragraph,  
12           may award costs of litigation (including reason-  
13           able attorney and expert witness fees) to any  
14           party whenever the court determines such  
15           award is appropriate.

16           “(c) MANDAMUS.—Any nondiscretionary duty im-  
17           posed by this section shall be enforceable in a mandamus  
18           proceeding brought under section 1361 of title 28, United  
19           States Code.

20           “(d) NONAPPLICABILITY TO DELIBERATE VIOLA-  
21           TIONS.—Subsection (a) of this section shall not apply with  
22           respect to an employee of an air carrier who, acting with-  
23           out direction from such air carrier (or such air carrier’s  
24           agent), deliberately causes a violation of any requirement



1 relating to air carrier safety under this subtitle or any  
2 other law of the United States.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions at the beginning of such chapter is amended by add-  
5 ing at the end the following:

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

6 **SEC. 3. CIVIL PENALTY.**

7 Section 46301(a)(1)(A) of title 49, United States  
8 Code, is amended by striking “subchapter II of chapter  
9 421” and inserting “subchapter II or III of chapter 421”.

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