

116TH CONGRESS
1ST SESSION

S. 2258

AN ACT

To provide anti-retaliation protections for antitrust
whistleblowers.

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 “Criminal Antitrust
3 Anti-Retaliation Act of 2019”.

4 **SEC. 2. AMENDMENT TO ACPERA.**

5 The Antitrust Criminal Penalty Enhancement and
6 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1
7 note) is amended by inserting after section 215 the fol-
8 lowing:

9 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**
10 **BLOWERS.**

11 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-
12 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

13 “(1) IN GENERAL.—No employer may dis-
14 charge, demote, suspend, threaten, harass, or in any
15 other manner discriminate against a covered indi-
16 vidual in the terms and conditions of employment of
17 the covered individual because of any lawful act done
18 by the covered individual—

19 “(A) to provide or cause to be provided to
20 the Federal Government or a person with su-
21 pervisory authority over the covered individual
22 (or such other person working for the employer
23 who has the authority to investigate, discover,
24 or terminate misconduct) information relating
25 to—

1 “(i) any violation of, or any act or
2 omission the covered individual reasonably
3 believes to be a violation of, the antitrust
4 laws; or

5 “(ii) any violation of, or any act or
6 omission the covered individual reasonably
7 believes to be a violation of, another crimi-
8 nal law committed in conjunction with a
9 potential violation of the antitrust laws or
10 in conjunction with an investigation by the
11 Department of Justice of a potential viola-
12 tion of the antitrust laws; or

13 “(B) to cause to be filed, testify in, partici-
14 pate in, or otherwise assist a Federal Govern-
15 ment investigation or a Federal Government
16 proceeding filed or about to be filed (with any
17 knowledge of the employer) relating to—

18 “(i) any violation of, or any act or
19 omission the covered individual reasonably
20 believes to be a violation of, the antitrust
21 laws; or

22 “(ii) any violation of, or any act or
23 omission the covered individual reasonably
24 believes to be a violation of, another crimi-
25 nal law committed in conjunction with a

1 potential violation of the antitrust laws or
2 in conjunction with an investigation by the
3 Department of Justice of a potential viola-
4 tion of the antitrust laws.

5 “(2) LIMITATION ON PROTECTIONS.—Para-
6 graph (1) shall not apply to any covered individual
7 if—

8 “(A) the covered individual planned and
9 initiated a violation or attempted violation of
10 the antitrust laws;

11 “(B) the covered individual planned and
12 initiated a violation or attempted violation of
13 another criminal law in conjunction with a vio-
14 lation or attempted violation of the antitrust
15 laws; or

16 “(C) the covered individual planned and
17 initiated an obstruction or attempted obstruc-
18 tion of an investigation by the Department of
19 Justice of a violation of the antitrust laws.

20 “(3) DEFINITIONS.—In this section:

21 “(A) ANTITRUST LAWS.—The term ‘anti-
22 trust laws’ means section 1 or 3 of the Sher-
23 man Act (15 U.S.C. 1 and 3).

1 “(B) COVERED INDIVIDUAL.—The term
2 ‘covered individual’ means an employee, con-
3 tractor, subcontractor, or agent of an employer.

4 “(C) EMPLOYER.—The term ‘employer’
5 means a person, or any officer, employee, con-
6 tractor, subcontractor, or agent of such person.

7 “(D) FEDERAL GOVERNMENT.—The term
8 ‘Federal Government’ means—

9 “(i) a Federal regulatory or law en-
10 forcement agency; or

11 “(ii) any Member of Congress or com-
12 mittee of Congress.

13 “(E) PERSON.—The term ‘person’ has the
14 same meaning as in subsection (a) of the first
15 section of the Clayton Act (15 U.S.C. 12(a)).

16 “(4) RULE OF CONSTRUCTION.—The term ‘vio-
17 lation’, with respect to the antitrust laws, shall not
18 be construed to include a civil violation of any law
19 that is not also a criminal violation.

20 “(b) ENFORCEMENT ACTION.—

21 “(1) IN GENERAL.—A covered individual who
22 alleges discharge or other discrimination by any em-
23 ployer in violation of subsection (a) may seek relief
24 under subsection (c) by—

1 “(A) filing a complaint with the Secretary
2 of Labor; or

3 “(B) if the Secretary of Labor has not
4 issued a final decision within 180 days of the
5 filing of the complaint and there is no showing
6 that such delay is due to the bad faith of the
7 claimant, bringing an action at law or equity
8 for de novo review in the appropriate district
9 court of the United States, which shall have ju-
10 risdiction over such an action without regard to
11 the amount in controversy.

12 “(2) PROCEDURE.—

13 “(A) IN GENERAL.—A complaint filed with
14 the Secretary of Labor under paragraph (1)(A)
15 shall be governed under the rules and proce-
16 dures set forth in section 42121(b) of title 49,
17 United States Code.

18 “(B) EXCEPTION.—Notification made
19 under section 42121(b)(1) of title 49, United
20 States Code, shall be made to any individual
21 named in the complaint and to the employer.

22 “(C) BURDENS OF PROOF.—An action
23 brought under paragraph (1)(B) shall be gov-
24 erned by the legal burdens of proof set forth in

1 section 42121(b) of title 49, United States
2 Code.

3 “(D) STATUTE OF LIMITATIONS.—A com-
4 plaint under paragraph (1)(A) shall be filed
5 with the Secretary of Labor not later than 180
6 days after the date on which the violation oc-
7 curs.

8 “(E) CIVIL ACTIONS TO ENFORCE.—If a
9 person fails to comply with an order or prelimi-
10 nary order issued by the Secretary of Labor
11 pursuant to the procedures set forth in section
12 42121(b) of title 49, United States Code, the
13 Secretary of Labor or the person on whose be-
14 half the order was issued may bring a civil ac-
15 tion to enforce the order in the district court of
16 the United States for the judicial district in
17 which the violation occurred.

18 “(c) REMEDIES.—

19 “(1) IN GENERAL.—A covered individual pre-
20 vailing in any action under subsection (b)(1) shall be
21 entitled to all relief necessary to make the covered
22 individual whole.

23 “(2) COMPENSATORY DAMAGES.—Relief for any
24 action under paragraph (1) shall include—

1 “(A) reinstatement with the same seniority
 2 status that the covered individual would have
 3 had, but for the discrimination;

4 “(B) the amount of back pay, with inter-
 5 est; and

6 “(C) compensation for any special damages
 7 sustained as a result of the discrimination in-
 8 cluding litigation costs, expert witness fees, and
 9 reasonable attorney’s fees.

10 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
 11 Nothing in this section shall be deemed to diminish the
 12 rights, privileges, or remedies of any covered individual
 13 under any Federal or State law, or under any collective
 14 bargaining agreement.”.

Passed the Senate October 17, 2019.

Attest:

Secretary.

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