

**AMENDMENT TO H.R. 5658, AS REPORTED
OFFERED BY MS. SCHAKOWSKY OF ILLINOIS**

At the end of title VIII, add the following new section:

1 **SEC. 849. ADDITIONAL REQUIREMENTS RELATING TO WHIS-**
2 **TLEBLOWER PROTECTIONS FOR CON-**
3 **TRACTOR EMPLOYEES.**

4 Section 2409 of title 10, United States Code, is
5 amended to read as follows:

6 **“§ 2409. Contractor employees: protection from re-**
7 **prisal for disclosure of certain informa-**
8 **tion**

9 **“(a) PROHIBITION OF REPRISALS.—**An employee of
10 a contractor may not be discharged, demoted, or otherwise
11 discriminated against as a reprisal for disclosing, includ-
12 ing in the course of an employee’s routine job duties, to
13 an employee’s supervisor or other official within the chain
14 of command, a Member of Congress, a representative of
15 a committee of Congress, an Inspector General, the Gov-
16 ernment Accountability Office, a Department of Defense
17 employee responsible for contract oversight or manage-
18 ment or an authorized official of an agency or the Depart-
19 ment of Justice information that the employee reasonably

1 believes is evidence of gross mismanagement of a Depart-
2 ment of Defense contract or grant, a gross waste of De-
3 partment of Defense funds, a substantial and specific dan-
4 ger to public health or safety, or a violation of law related
5 to a Department of Defense contract (including the com-
6 petition for or negotiation of a contract) or grant.

7 “(b) INVESTIGATION OF COMPLAINTS.—

8 “(1) A person who believes that the person has been
9 subjected to a reprisal prohibited by subsection (a) may
10 submit a complaint to the Inspector General of an agency
11 the Department of Defense, or the Inspector General of
12 the National Aeronautics and Space Administration in the
13 case of a complaint regarding the National Aeronautics
14 and Space Administration. Unless the Inspector General
15 determines that the complaint is frivolous, the Inspector
16 General shall investigate the complaint and, upon comple-
17 tion of such investigation, submit a report of the findings
18 of the investigation to the person, the contractor con-
19 cerned, and the head of the agency. The investigative file
20 and records shall be subject to the disclosure requirements
21 in section 552a of title 5.

22 “(2)(A) Except as provided under subparagraph (B),
23 the Inspector General shall make a determination that a
24 complaint is frivolous or submit a report under paragraph
25 (1) within 180 days after receiving the complaint.

1 “(B) If the Inspector General is unable to complete
2 an investigation in time to submit a report within the 180-
3 day period specified in subparagraph (A) and the person
4 submitting the complaint agrees to an extension of time,
5 the Inspector General shall submit a report under para-
6 graph (1) within such additional period of time as shall
7 be agreed upon between the Inspector General and the
8 person submitting the complaint.

9 “(3) Subject to the provisions of paragraph (4), in
10 any case involving an alleged reprisal under this section,
11 the Inspector General shall recommend that corrective ac-
12 tion be taken if the employee has demonstrated that a dis-
13 closure described under subsection (a) was a contributing
14 factor in the discriminatory action which was taken or is
15 to be taken against such employee. The employee may
16 demonstrate that the disclosure was a contributing factor
17 in the discriminatory action through circumstantial evi-
18 dence, such as evidence that—

19 “(A) the official taking the action knew of the
20 disclosure; and

21 “(B) the action occurred within a period of time
22 such that a reasonable person could conclude that
23 the disclosure was a contributing factor in the ac-
24 tion.

1 “(4) Corrective action may not be recommended if
2 the employer demonstrates by clear and convincing evi-
3 dence that it would have taken the same employment ac-
4 tion in the absence of such disclosure.

5 “(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
6 Not later than 30 days after receiving an Inspector Gen-
7 eral report pursuant to subsection (b), the head of the
8 agency concerned shall determine whether there is suffi-
9 cient basis to conclude that the contractor concerned has
10 subjected the complainant to a reprisal prohibited by sub-
11 section (a) and shall either issue an order denying relief
12 or shall take one or more of the following actions:

13 “(A) Order the contractor to take affirmative
14 action to abate the reprisal.

15 “(B) Order the contractor to reinstate the per-
16 son to the position that the person held before the
17 reprisal, together with the compensation (including
18 back pay), employment benefits, and other terms
19 and conditions of employment that would apply to
20 the person in that position if the reprisal had not
21 been taken.

22 “(C) Order the contractor to pay the complain-
23 ant an amount equal to the aggregate amount of all
24 costs and expenses (including attorneys’ fees and ex-
25 pert witnesses’ fees) that were reasonably incurred

1 by the complainant for, or in connection with, bring-
2 ing the complaint regarding the reprisal, as deter-
3 mined by the head of the agency.

4 “(2) If the head of an executive agency issues an
5 order denying relief under paragraph (1) or has not issued
6 an order within 210 days after the submission of a com-
7 plaint under subsection (b), or in the case of an extension
8 of time under paragraph (b)(2)(B), not later than 30 days
9 after the expiration of the extension of time, and there
10 is no showing that such delay is due to the bad faith of
11 the complainant, the complainant shall be deemed to have
12 exhausted all administrative remedies with respect to the
13 complaint, and the complainant may bring a de novo ac-
14 tion at law or equity against the contractor to seek com-
15 pensatory damages and other relief available under this
16 section in the appropriate district court of the United
17 States, which shall have jurisdiction over such an action
18 without regard to the amount in controversy. Such an ac-
19 tion shall, at the request of either party to the action, be
20 tried by the court with a jury. Any action brought under
21 this paragraph shall be governed by the burdens of proof
22 described in (b)(3) and (4).

23 “(3) An Inspector General determination and an
24 agency head order denying relief under paragraph (2)

1 shall be admissible in evidence in any de novo action at
2 law or equity brought pursuant to this subsection.

3 “(4) Whenever a person fails to comply with an order
4 issued under paragraph (1), the head of the agency shall
5 file an action for enforcement of such order in the United
6 States district court for a district in which the reprisal
7 was found to have occurred. In any action brought under
8 this paragraph, the court may grant appropriate relief, in-
9 cluding injunctive relief and compensatory and exemplary
10 damages.

11 “(5) Unless a complainant brings an action under
12 paragraph (2), any person adversely affected or aggrieved
13 by an order issued under paragraph (1) may obtain review
14 of the order’s conformance with this subsection, and any
15 regulations issued to carry out this section, in the United
16 States court of appeals for a circuit in which the reprisal
17 is alleged in the order to have occurred. No petition seek-
18 ing such review may be filed more than 60 days after
19 issuance of the order by the head of the agency. Review
20 shall conform to chapter 7 of title 5.

21 “(d) CONSTRUCTION.—Nothing in this section may
22 be construed to authorize the discharge of, demotion of,
23 or discrimination against an employee for a disclosure
24 other than a disclosure protected by subsection (a) or to

1 modify or derogate from a right or remedy otherwise avail-
2 able to the employee.

3 “(e) INVALID ARBITRATION CLAUSES.—

4 “(1) PROTECTION OF PROCEDURAL RIGHTS.—

5 Notwithstanding any other provision of law, any
6 clause of any agreement between a responsible party
7 and a whistleblower that requires arbitration of a
8 claim arising under this title, whether in force be-
9 fore, on or after the date of enactment of this Act,
10 shall not be enforceable.

11 “(2) EXCEPTIONS.—

12 “(A) WAIVER OR CONSENT AFTER CLAIM
13 ARISES.—Paragraph (1) shall not apply with
14 respect to any claim if, after such claim arises,
15 the parties involved voluntarily consent to sub-
16 mit such claim to arbitration.

17 “(B) COLLECTIVE BARGAINING AGREE-
18 MENTS.—Paragraph (1) shall not preclude the
19 enforcement of any of the rights or terms of a
20 valid collective bargaining agreement.

21 “(f) DEFINITIONS.—In this section:

22 “(1) The term ‘agency’ means an agency named
23 in section 2303 of this title.

24 “(2) The term ‘head of an agency’ has the
25 meaning provided by section 2302(1) of this title.

1 “(3) The term ‘contract’ means a contract
2 awarded by the head of an agency.

3 “(4) The term ‘contractor’ means a person
4 awarded a contract or a grant with an agency.

5 “(5) The term ‘Inspector General’ means an In-
6 spector General appointed under the Inspector Gen-
7 eral Act of 1978 and any Inspector General that re-
8 ceives funding from, or has oversight over contracts
9 awarded for or on behalf of, the Secretary of De-
10 fense.”.

