

113TH CONGRESS  
1ST SESSION

# H. R. 3637

To amend the Labor-Management Reporting and Disclosure Act of 1959  
to provide whistleblower protection for union employees.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2013

Mr. SALMON (for himself, Mr. DESJARLAIS, Mr. BISHOP of Utah, Mr. HUELSKAMP, Mr. JORDAN, Mr. BENTIVOLIO, Mr. BROOKS of Alabama, Mr. FLEMING, Mr. CRAMER, Mr. SCHWEIKERT, Mr. KING of Iowa, Mr. PERRY, Mrs. BACHMANN, Mr. GOHMERT, Mr. LAMALFA, Mr. PRICE of Georgia, and Mr. GOSAR) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Labor-Management Reporting and Disclosure Act of 1959 to provide whistleblower protection for union employees.

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. WHISTLEBLOWER PROTECTION FOR UNION**  
4 **EMPLOYEES.**

5 The Labor-Management Reporting and Disclosure  
6 Act of 1959 (29 U.S.C. 401 et seq.) is amended—

7 (1) by redesignating section 611 (29 U.S.C.  
8 531) as section 612; and

1           (2) by inserting after section 610 (29 U.S.C.  
2           530), the following new section:

3           “WHISTLEBLOWER PROTECTION FOR UNION EMPLOYEES

4           “SEC. 611. (a) IN GENERAL.—No labor organization  
5 shall terminate or in any other way discriminate against,  
6 or cause to be terminated or discriminated against, any  
7 covered employee of the labor organization by reason of  
8 the fact that such employee, whether at the initiative of  
9 the employee or in the ordinary course of the duties of  
10 the employee (or any person acting pursuant to a request  
11 of the employee), has—

12           “(1) provided, caused to be provided, or is  
13           about to provide or cause to be provided, informa-  
14           tion to the labor organization, the Department of  
15           Labor, or any other State, local, or Federal govern-  
16           ment authority or law enforcement agency relating  
17           to any violation of, or any act or omission that the  
18           employee reasonably believes to be a violation of, any  
19           provision of this Act or any other provision of law  
20           that is subject to the jurisdiction of the Department  
21           of Labor, the National Labor Relations Board, or  
22           any rule, order, standard, or prohibition prescribed  
23           by the Department of Labor or the National Labor  
24           Relations Board;

25           “(2) testified or will testify in any proceeding  
26           resulting from the administration or enforcement of

1 any provision of this Act or any other provision of  
2 law that is subject to the jurisdiction of the Depart-  
3 ment of Labor or National Labor Relations Board,  
4 or any rule, order, standard, or prohibition pre-  
5 scribed by the Department of Labor or the National  
6 Labor Relations Board;

7 “(3) filed, instituted, or caused to be filed or in-  
8 stituted any proceeding under this Act; or

9 “(4) objected to, or refused to participate in,  
10 any activity, policy, practice, or assigned task that  
11 the employee (or other such person) reasonably be-  
12 lieved to be in violation of any law, rule, order,  
13 standard, or prohibition, subject to the jurisdiction  
14 of, or enforceable by, the Department of Labor or  
15 the National Labor Relations Board.

16 “(b) DEFINITION OF COVERED EMPLOYEE.—For the  
17 purposes of this section, the term ‘covered employee’  
18 means any employee of a labor organization who receives  
19 financial compensation for his or her services to the labor  
20 organization, including officers of the labor organization.

21 “(c) PROCEDURES AND TIMETABLES.—

22 “(1) COMPLAINT.—

23 “(A) IN GENERAL.—A person who believes  
24 that he or she has been discharged or otherwise  
25 discriminated against by any person in violation

1 of subsection (a) may file (or have any person  
2 file on his or her behalf) a complaint with the  
3 Secretary of Labor alleging such discharge or  
4 discrimination and identifying the person re-  
5 sponsible for such act. Such a complaint must  
6 be filed not later than either—

7 “(i) 180 days after the date on which  
8 such alleged violation occurs; or

9 “(ii) 180 days after the conclusion of  
10 any internal appeals, review, or other judi-  
11 cial or investigative process conducted by  
12 the labor organization employing such per-  
13 son.

14 “(B) ACTIONS OF SECRETARY OF  
15 LABOR.—Upon receipt of such a complaint, the  
16 Secretary of Labor shall notify, in writing, the  
17 person named in the complaint who is alleged  
18 to have committed the violation, of—

19 “(i) the filing of the complaint;

20 “(ii) the allegations contained in the  
21 complaint;

22 “(iii) the substance of evidence sup-  
23 porting the complaint; and

1                   “(iv) opportunities that will be af-  
2                   forded to such person under paragraph  
3                   (2).

4                   “(2) INVESTIGATION BY SECRETARY OF  
5 LABOR.—

6                   “(A) IN GENERAL.—Not later than 60  
7                   days after the date of receipt of a complaint  
8                   filed under paragraph (1), and after affording  
9                   the complainant and the person named in the  
10                  complaint who is alleged to have committed the  
11                  violation that is the basis for the complaint an  
12                  opportunity to submit to the Secretary of Labor  
13                  a written response to the complaint and an op-  
14                  portunity to meet with a representative of the  
15                  Secretary of Labor to present statements from  
16                  witnesses, the Secretary of Labor shall—

17                  “(i) initiate an investigation and de-  
18                  termine whether there is reasonable cause  
19                  to believe that the complaint has merit;  
20                  and

21                  “(ii) notify the complainant and the  
22                  person alleged to have committed the viola-  
23                  tion of subsection (a), in writing, of such  
24                  determination.

1           “(B) NOTICE OF RELIEF AVAILABLE.—If  
2           the Secretary of Labor concludes that there is  
3           reasonable cause to believe that a violation of  
4           subsection (a) has occurred, the Secretary of  
5           Labor shall, together with the notice under sub-  
6           paragraph (A)(ii), issue a preliminary order  
7           providing the relief prescribed by paragraph  
8           (4)(B).

9           “(C) REQUEST FOR HEARING.—Not later  
10          than 30 days after the date of receipt of notifi-  
11          cation of a determination of the Secretary of  
12          Labor under this paragraph, either the person  
13          alleged to have committed the violation or the  
14          complainant may file objections to the findings  
15          or preliminary order, or both, and request a  
16          hearing on the record. The filing of such objec-  
17          tions shall not operate to stay any reinstatement  
18          remedy contained in the preliminary  
19          order. Any such hearing shall be conducted ex-  
20          pediently, and if a hearing is not requested in  
21          such 30-day period, the preliminary order shall  
22          be deemed a final order that is not subject to  
23          judicial review.

24          “(3) GROUNDS FOR DETERMINATION OF COM-  
25          PLAINTS.—

1           “(A) IN GENERAL.—The Secretary of  
2 Labor shall dismiss a complaint filed under this  
3 subsection, and shall not conduct an investiga-  
4 tion otherwise required under paragraph (2),  
5 unless the complainant makes a prima facie  
6 showing that any behavior described in para-  
7 graphs (1) through (4) of subsection (a) was a  
8 contributing factor in the unfavorable personnel  
9 action alleged in the complaint.

10           “(B) REBUTTAL EVIDENCE.—Notwith-  
11 standing a finding by the Secretary of Labor  
12 that the complainant has made the showing re-  
13 quired under subparagraph (A), no investiga-  
14 tion otherwise required under paragraph (2)  
15 shall be conducted, if the labor organization  
16 demonstrates, by clear and convincing evidence,  
17 that the labor organization would have taken  
18 the same unfavorable personnel action in the  
19 absence of that behavior.

20           “(C) EVIDENTIARY STANDARDS.—The  
21 Secretary of Labor may determine that a viola-  
22 tion of subsection (a) has occurred only if the  
23 complainant demonstrates that any behavior de-  
24 scribed in paragraphs (1) through (4) of sub-  
25 section (a) was a contributing factor in the un-

1 favorable personnel action alleged in the com-  
2 plaint. Relief may not be ordered under sub-  
3 paragraph (A) if the labor organization dem-  
4 onstrates by clear and convincing evidence that  
5 the labor organization would have taken the  
6 same unfavorable personnel action in the ab-  
7 sence of that behavior.

8 “(4) ISSUANCE OF FINAL ORDERS; REVIEW  
9 PROCEDURES.—

10 “(A) TIMING.—Not later than 120 days  
11 after the date of conclusion of any hearing  
12 under paragraph (2), the Secretary of Labor  
13 shall issue a final order providing the relief pre-  
14 scribed by this paragraph or denying the com-  
15 plaint. At any time before issuance of a final  
16 order, a proceeding under this subsection may  
17 be terminated on the basis of a settlement  
18 agreement entered into by the Secretary of  
19 Labor, the complainant, and the person alleged  
20 to have committed the violation.

21 “(B) PENALTIES.—

22 “(i) ORDER OF SECRETARY OF  
23 LABOR.—If, in response to a complaint  
24 filed under paragraph (1), the Secretary of  
25 Labor determines that a violation of sub-



1 section (a) has occurred, the Secretary of  
2 Labor shall order the person who com-  
3 mitted such violation—

4 “(I) to take affirmative action to  
5 abate the violation;

6 “(II) to reinstate the complain-  
7 ant to his or her former position, to-  
8 gether with compensation (including  
9 back pay) and restore the terms, con-  
10 ditions, and privileges associated with  
11 his or her employment; and

12 “(III) to provide compensatory  
13 damages to the complainant.

14 “(ii) PENALTY.—If an order is issued  
15 under clause (i), the Secretary of Labor, at  
16 the request of the complainant, shall assess  
17 against the person against whom the order  
18 is issued, a sum equal to the aggregate  
19 amount of all costs and expenses (includ-  
20 ing attorney fees and expert witness fees)  
21 reasonably incurred, as determined by the  
22 Secretary of Labor, by the complainant  
23 for, or in connection with, the bringing of  
24 the complaint upon which the order was  
25 issued.

1           “(C) PENALTY FOR FRIVOLOUS CLAIMS.—

2           If the Secretary of Labor finds that a complaint  
3           under paragraph (1) is frivolous or has been  
4           brought in bad faith, the Secretary of Labor  
5           may award to the prevailing labor organization  
6           a reasonable attorney fee, not exceeding \$1,000,  
7           to be paid by the complainant.

8           “(D) DE NOVO REVIEW.—

9           “(i) FAILURE OF THE SECRETARY TO  
10           ACT.—If the Secretary of Labor has not  
11           issued a final order within 210 days after  
12           the date of filing of a complaint under this  
13           subsection, or within 90 days after the  
14           date of receipt of a written determination,  
15           the complainant may bring an action at  
16           law or equity for de novo review in the ap-  
17           propriate district court of the United  
18           States having jurisdiction, which shall have  
19           jurisdiction over such an action without re-  
20           gard to the amount in controversy, and  
21           which action shall, at the request of either  
22           party to such action, be tried by the court  
23           with a jury.

24           “(ii) PROCEDURES.—A proceeding  
25           under clause (i) shall be governed by the

1 same legal burdens of proof specified in  
2 paragraph (3). The court shall have juris-  
3 diction to grant all relief necessary to  
4 make the employee whole, including injunc-  
5 tive relief and compensatory damages, in-  
6 cluding—

7 “(I) reinstatement with the same  
8 seniority status that the employee  
9 would have had, but for the discharge  
10 or discrimination;

11 “(II) the amount of back pay,  
12 with interest; and

13 “(III) compensation for any spe-  
14 cial damages sustained as a result of  
15 the discharge or discrimination, in-  
16 cluding litigation costs, expert witness  
17 fees, and reasonable attorney fees.

18 “(E) OTHER APPEALS.—Unless the com-  
19 plainant brings an action under subparagraph  
20 (D), any person adversely affected or aggrieved  
21 by a final order issued under subparagraph (A)  
22 may file a petition for review of the order in the  
23 United States Court of Appeals for the circuit  
24 in which the violation with respect to which the  
25 order was issued, allegedly occurred or the cir-

1           cuit in which the complainant resided on the  
2           date of such violation, not later than 60 days  
3           after the date of the issuance of the final order  
4           of the Secretary of Labor under subparagraph  
5           (A). Review shall conform to chapter 7 of title  
6           5, United States Code. The commencement of  
7           proceedings under this subparagraph shall not,  
8           unless ordered by the court, operate as a stay  
9           of the order. An order of the Secretary of  
10          Labor with respect to which review could have  
11          been obtained under this subparagraph shall  
12          not be subject to judicial review in any criminal  
13          or other civil proceeding.

14          “(5) FAILURE TO COMPLY WITH ORDER.—

15                 “(A) ACTIONS BY THE SECRETARY.—If  
16                 any person has failed to comply with a final  
17                 order issued under paragraph (4), the Secretary  
18                 of Labor may file a civil action in the United  
19                 States district court for the district in which  
20                 the violation was found to have occurred, or in  
21                 the United States district court for the District  
22                 of Columbia, to enforce such order. In actions  
23                 brought under this paragraph, the district  
24                 courts shall have jurisdiction to grant all appro-

1           appropriate relief including injunctive relief and com-  
2           pensatory damages.

3           “(B) CIVIL ACTIONS TO COMPEL COMPLI-  
4           ANCE.—A person on whose behalf an order was  
5           issued under paragraph (4) may commence a  
6           civil action against the person to whom such  
7           order was issued to require compliance with  
8           such order. The appropriate United States dis-  
9           trict court shall have jurisdiction, without re-  
10          gard to the amount in controversy or the citi-  
11          zenship of the parties, to enforce such order.

12          “(C) AWARD OF COSTS AUTHORIZED.—  
13          The court, in issuing any final order under this  
14          paragraph, may award costs of litigation (in-  
15          cluding reasonable attorney and expert witness  
16          fees) to any party, whenever the court deter-  
17          mines such award is appropriate.

18          “(D) MANDAMUS PROCEEDINGS.—Any  
19          nondiscretionary duty imposed by this section  
20          shall be enforceable in a mandamus proceeding  
21          brought under section 1361 of title 28, United  
22          States Code.

23          “(d) LIMITATION OF PREEMPTION.—Nothing in this  
24          Act shall be construed—

1           “(1) to limit the ability of members of a labor  
2 organization to remove their elected or appointed of-  
3 ficials through a democratic election conducted  
4 among such members; or

5           “(2) to preempt a State or local government  
6 from providing additional protections to employees  
7 of labor organizations who allege violations of sub-  
8 section (a), provided that such protections do not  
9 limit the ability of members of a labor organization  
10 to remove their elected or appointed officials through  
11 a democratic ballot.

12           “(e) UNENFORCEABILITY OF CERTAIN AGREE-  
13 MENTS.—

14           “(1) NO WAIVER OF RIGHTS AND REMEDIES.—  
15 Notwithstanding any other provision of law, the  
16 rights and remedies provided for in this section may  
17 not be waived by any agreement, policy, form, or  
18 condition of employment, including by any  
19 predispute arbitration agreement.

20           “(2) NO PREDISPUTE ARBITRATION AGREE-  
21 MENTS.—Notwithstanding any other provision of  
22 law, no predispute arbitration agreement shall be  
23 valid or enforceable to the extent that it requires ar-  
24 bitration of a dispute arising under this section.”.

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