

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5578
OFFERED BY MR. COMER OF KENTUCKY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Expanding Whistle-
3 blower Protections for Contractors Act”.

**4 SEC. 2. DEFENSE CONTRACTOR EMPLOYEES: PROTECTION
5 FROM REPRISAL FOR DISCLOSURE OF CER-
6 TAIN INFORMATION.**

7 Section 4701 of title 10, United States Code, is
8 amended—

9 (1) in subsection (a)—

10 (A) in paragraph (1)—

11 (i) in the matter preceding subpara-
12 graph (A)—

13 (I) by striking “An employee”
14 and all that follows through “services
15 contractor” and inserting “A pro-
16 tected individual”; and

1 (II) by striking “disclosing” and
2 all that follows through “evidence of”;
3 and

4 (ii) by striking subparagraphs (A),
5 (B), and (C) and inserting the following
6 subparagraphs:

7 “(A) Refusing to obey an order that would re-
8 quire the protected individual to violate a law, rule,
9 or regulation related to any contract, subcontract,
10 grant, or subgrant.

11 “(B) Disclosing to a person or body described
12 in paragraph (2) information that the protected indi-
13 vidual reasonably believes is evidence of the fol-
14 lowing:

15 “(i) Gross mismanagement of any Depart-
16 ment of Defense contract or grant, any gross
17 waste of Department funds, any abuse of au-
18 thority relating to any Department contract,
19 subcontract, grant, or subgrant, or any viola-
20 tion of law, rule, or regulation related to any
21 Department contract or subcontract (including
22 the competition for or negotiation of a contract
23 or subcontract) or grant or subgrant.

24 “(ii) Gross mismanagement of any Na-
25 tional Aeronautics and Space Administration

1 contract or grant, any gross waste of Adminis-
2 tration funds, any abuse of authority relating to
3 an Administration contract, subcontract, grant,
4 or subgrant, or any violation of law, rule, or
5 regulation related to any Administration con-
6 tract or subcontract (including the competition
7 for or negotiation of a contract or subcontract)
8 or grant or subgrant.

9 “(iii) A substantial and specific danger to
10 public health or safety.”; and

11 (B) in paragraph (3)—

12 (i) in subparagraph (A), by striking
13 “an employee” and inserting “a protected
14 individual”; and

15 (ii) by striking subparagraph (B) and
16 inserting the following subparagraph:

17 “(B) it shall not be within the authority of an
18 executive branch official to request that a con-
19 tractor, subcontractor, grantee, or subgrantee en-
20 gage in a reprisal prohibited by paragraph (1).”;

21 (2) in subsection (c)—

22 (A) in paragraph (1), by adding at the end
23 the following subparagraph:

24 “(E) Propose appropriate disciplinary action
25 against any executive branch official for any request

1 made of a contractor, subcontractor, grantee, or sub-
2 grantee that subjected the complainant to a reprisal
3 prohibited by subsection (a).”; and

4 (B) by striking paragraph (7) and insert-
5 ing the following paragraph:

6 “(7) CLARIFICATION FOR SCOPE OF WAIVER RE-
7 STRICTIONS.—The rights, forum, and remedies provided
8 for in this section may not be waived by any public or
9 private agreement, policy, form, or condition of employ-
10 ment, including by any predispute arbitration agree-
11 ment.”;

12 (3) by striking subsection (e) and redesignating
13 subsections (f) and (g) as subsections (e) and (f), re-
14 spectively;

15 (4) in subsection (e), as so redesignated—

16 (A) by striking “an employee” and insert-
17 ing “a protected individual”; and

18 (B) by striking “the employee” and insert-
19 ing “the protected individual”; and

20 (5) in subsection (f), as so redesignated, by
21 adding at the end the following new paragraph:

22 “(8) The term ‘protected individual’ means—

23 “(A) a contractor, subcontractor, grantee,
24 or subgrantee of the Department of Defense or

1 the National Aeronautics and Space Adminis-
2 tration, including—

3 “(i) the government of each of the
4 several States, the District of Columbia, an
5 Indian tribe or authorized tribal organiza-
6 tion, the Commonwealth of Puerto Rico,
7 Guam, American Samoa, the Virgin Is-
8 lands, the Commonwealth of the Northern
9 Mariana Islands, or any other territory or
10 possession of the United States;

11 “(ii) the government of any political
12 subdivision of, agency of, or instrumen-
13 tality of, a government listed in clause (i);
14 and

15 “(iii) an element of the intelligence
16 community (as defined in section 3 of the
17 National Security Act of 1947 (50 U.S.C.
18 3003)) within the Department of Defense;

19 “(B) an employee of a contractor, subcon-
20 tractor, grantee, or subgrantee of the Depart-
21 ment of Defense or the National Aeronautics
22 and Space Administration, or a former em-
23 ployee of such contractor, subcontractor, grant-
24 ee, or subgrantee whose protected disclosure or
25 engagement in any activity protected against

1 reprisal under this section occurred prior to ter-
2 mination, including an employee of—

3 “(i) the government of each of the
4 several States, the District of Columbia, an
5 Indian tribe or authorized tribal organiza-
6 tion, the Commonwealth of Puerto Rico,
7 Guam, American Samoa, the Virgin Is-
8 lands, the Commonwealth of the Northern
9 Mariana Islands, or any other territory or
10 possession of the United States;

11 “(ii) the government of any political
12 subdivision of, agency of, or instrumen-
13 tality of, a government listed in clause (i);
14 and

15 “(iii) an element of the intelligence
16 community (as defined in section 3 of the
17 National Security Act of 1947 (50 U.S.C.
18 3003)) within the Department of Defense;
19 or

20 “(C) a person performing personal services
21 for the Department of Defense or the National
22 Aeronautics and Space Administration pursuant
23 to a contractual agreement for the performance
24 of personal services, including a personal serv-
25 ices contract or personal services agreement,

1 and who engages in an activity for which any
2 reprisal is prohibited under subsection (a), in-
3 cluding a person performing personal services
4 pursuant such a contractual agreement for—

5 “(i) the government of each of the
6 several States, the District of Columbia, an
7 Indian tribe or authorized tribal organiza-
8 tion, the Commonwealth of Puerto Rico,
9 Guam, American Samoa, the Virgin Is-
10 lands, the Commonwealth of the Northern
11 Mariana Islands, or any other territory or
12 possession of the United States;

13 “(ii) the government of any political
14 subdivision of, agency of, or instrumen-
15 tality of, a government listed in clause (i);
16 and

17 “(iii) an element of the intelligence
18 community (as defined in section 3 of the
19 National Security Act of 1947 (50 U.S.C.
20 3003)) within the Department of De-
21 fense.”.

1 **SEC. 3. ENHANCEMENT OF NON-DEFENSE CONTRACTOR**
2 **PROTECTION FROM REPRISAL FOR DISCLO-**
3 **SURE OF CERTAIN INFORMATION.**

4 Section 4712 of title 41, United States Code, is
5 amended—

6 (1) in subsection (a)—

7 (A) by striking paragraph (1) and insert-
8 ing the following paragraph:

9 “(1) IN GENERAL.—A protected individual may
10 not be discharged, demoted, or otherwise discrimi-
11 nated against as a reprisal for the following:

12 “(A) Refusing to obey an order that would
13 require the protected individual to violate a law,
14 rule, or regulation related to any contract, sub-
15 contract, grant, or subgrant.

16 “(B) Disclosing to a person or body de-
17 scribed in paragraph (2) information that the
18 protected individual reasonably believes is evi-
19 dence of the following:

20 “(i) Gross mismanagement of any
21 Federal contract or grant, any gross waste
22 of Federal funds, any abuse of authority
23 relating to any Federal contract, sub-
24 contract, grant, or subgrant, or any viola-
25 tion of law, rule, or regulation related to
26 any Federal contract or subcontract (in-

1 cluding the competition for or negotiation
2 of a contract or subcontract) or grant or
3 subgrant.

4 “(ii) A substantial and specific danger
5 to public health or safety.”; and

6 (B) in paragraph (3)—

7 (i) in subparagraph (A), by striking
8 “an employee” and inserting “a protected
9 individual”; and

10 (ii) by striking subparagraph (B) and
11 inserting the following subparagraph:

12 “(B) it shall not be within the authority of
13 an executive branch official to request that a
14 contractor, subcontractor, grantee, or sub-
15 grantee engage in a reprisal prohibited by para-
16 graph (1).”;

17 (2) in subsection (c)—

18 (A) in paragraph (1), by adding at the end
19 the following new subparagraph:

20 “(E) Propose appropriate disciplinary ac-
21 tion against any executive branch official for
22 any request made of a contractor, subcon-
23 tractor, grantee, or subgrantee that subjected
24 the complainant to a reprisal prohibited by sub-
25 section (a).”; and

1 (B) by striking paragraph (7) and insert-
2 ing the following paragraph:

3 “(7) RIGHTS, FORUM, AND REMEDIES NOT
4 WAIVABLE.—The rights, forum, and remedies pro-
5 vided for in this section may not be waived by any
6 public or private agreement, policy, form, or condi-
7 tion of employment, including by any predispute ar-
8 bitration agreement.”;

9 (3) in subsection (e)—

10 (A) by striking “an employee” and insert-
11 ing “a protected individual”; and

12 (B) by striking “the employee” and insert-
13 ing “the protected individual”;

14 (4) by striking subsection (f) and redesignating
15 subsections (g) and (h) as subsections (f) and (g),
16 respectively; and

17 (5) in subsection (f), as so redesignated, by in-
18 serting after paragraph (2) the following new para-
19 graph:

20 “(3) The term ‘protected individual’ means—

21 “(A) a contractor, subcontractor, grantee,
22 or subgrantee of the Federal Government, in-
23 cluding—

24 “(i) the government of each of the
25 several States, the District of Columbia, an

1 Indian tribe or authorized tribal organiza-
2 tion, the Commonwealth of Puerto Rico,
3 Guam, American Samoa, the Virgin Is-
4 lands, the Commonwealth of the Northern
5 Mariana Islands, or any other territory or
6 possession of the United States;

7 “(ii) the government of any political
8 subdivision of, agency of, or instrumen-
9 tality of, a government listed in clause (i);
10 and

11 “(iii) an element of the intelligence
12 community (as defined in section 3 of the
13 National Security Act of 1947 (50 U.S.C.
14 3003));

15 “(B) an employee of a contractor, subcon-
16 tractor, grantee, or subgrantee of the Federal
17 Government or a former employee of such con-
18 tractor, subcontractor, grantee, or subgrantee
19 whose protected disclosure or engagement in
20 any activity protected against reprisal under
21 this section occurred prior to termination, in-
22 cluding an employee of—

23 “(i) the government of each of the
24 several States, the District of Columbia, an
25 Indian tribe or authorized tribal organiza-

1 tion, the Commonwealth of Puerto Rico,
2 Guam, American Samoa, the Virgin Is-
3 lands, the Commonwealth of the Northern
4 Mariana Islands, or any other territory or
5 possession of the United States;

6 “(ii) the government of any political
7 subdivision of, agency of, or instrumen-
8 tality of, a government listed in clause (i);
9 and

10 “(iii) an element of the intelligence
11 community (as defined in section 3 of the
12 National Security Act of 1947 (50 U.S.C.
13 3003)); or

14 “(C) a person performing personal services
15 for the Federal Government pursuant to a con-
16 tractual agreement for the performance of per-
17 sonal services, including a personal services con-
18 tract or personal services agreement, including
19 a person performing personal services pursuant
20 to such a contractual agreement for—

21 “(i) the government of each of the
22 several States, the District of Columbia, an
23 Indian tribe or authorized tribal organiza-
24 tion, the Commonwealth of Puerto Rico,
25 Guam, American Samoa, the Virgin Is-

1 lands, the Commonwealth of the Northern
2 Mariana Islands, or any other territory or
3 possession of the United States;

4 “(ii) the government of any political
5 subdivision of, agency of, or instrumen-
6 tality of, a government listed in clause (i);
7 and

8 “(iii) an element of the intelligence
9 community (as defined in section 3 of the
10 National Security Act of 1947 (50 U.S.C.
11 3003)).”.

