

110TH CONGRESS  
1ST SESSION

# H. R. 4650

To strengthen the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007

Mr. WYNN introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To strengthen the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Congressional Disclosures Protections Act of 2007”.

### **SEC. 2. ALTERNATIVE REMEDY FOR RETALIATION AGAINST WHISTLEBLOWERS MAKING DISCLOSURES TO CONGRESS.**

(a) **IN GENERAL.**—Subchapter II of [chapter 72](#) of title 5, United States Code, is amended by adding at the end the following:

#### **“§ 7212. Alternative remedy**

“(a) **DEFINITIONS.**—For purposes of this section—

“(1) the term ‘compensatory damages’ means damages awarded to a complaining party for each ‘action’, which shall be synonymous

with ‘cause of action’ or ‘claim’, as prescribed by title VII of the Civil Rights Act of 1991;

“(2) the term ‘covered disclosure’ means a disclosure of information—

“(A) made by an employee to either House of Congress or to a committee or Member or staff thereof; and

“(B) which the employee reasonably believes evidences—

“(i) a violation of any law (including title VII of the Civil Rights Act of 1964), rule, or regulation; or

“(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

“(3) the term ‘employee’ means an individual as defined by section 2105 and any other individual, including permanent, temporary, full or part time employees or applicants, independent contractors, medical or other staff, professionals with institutional privileges, individuals paid by temporary services, or individuals performing services for an organization that in whole or in part is a contractor, grantee or other recipient if the United States government provides any portions of the money or property which is requested or demanded; and

“(4) the term ‘interfered with or denied’ includes any personnel action in section 2302(a)(2)(A); implementation or enforcement of any nondisclosure policy, form or agreement in violation of this section; and investigation or prosecution of any alleged violation of title 18 provisions other than those prohibiting crimes of violence, moral turpitude or espionage.

“(b) **ALTERNATIVE REMEDY.**—An employee aggrieved by a violation of section 7211 with respect to a covered disclosure may within a year of the alleged violation bring an action at law and equity in the appropriate district court of the United States—

“(1) which shall have jurisdiction over such an action without regard to the amount in controversy and which action shall, at the request of any party to such action, be tried by the court with a jury; and

“(2) in any proceeding under this subsection, a court—

“(A) shall apply the standards set forth in section 1221(e);  
and

“(B) shall award triple lost wages, benefits, reinstatement, costs including reasonable expert witness fees, triple attorney fees, triple compensatory damages including emotional distress and lost reputation, and equitable, injunctive, and any other relief that the court considers appropriate.

“(c) **CHOICE OF REMEDIES.**—Except in the circumstance described in subsection (b)(1)(B), the commencement of an action under this subsection bars the employee from pursuing (or further pursuing) any remedy otherwise available under section 1221 or 7701 with respect to the personnel action involved.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for [chapter 72](#) of title 5, United States Code, is amended by inserting after the item relating to [section 7211](#) the following:

“7212. Alternative remedy.”.

(c) **EFFECTIVE DATE.**—The amendments made by this Act shall take effect on the date of enactment of this Act and shall apply with respect to any personnel action (as defined by [section 2302\(a\)\(2\)\(A\)](#) of title 5, United States Code) occurring on or after such date of enactment.

“7212. Alternative remedy.”.

### **SEC. 3. RIGHT OF REPRESENTATION.**

[Section 1212\(a\)](#) of title 5, United States Code, is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; and”; and

(3) by adding at the end the following:

“(6) upon request, furnish such legal representation as an employee may require in a proceeding in which such employee seeks relief under [section 7212](#) of title 5.”.

### **SEC. 4. AMENDMENT TO NO FEAR ACT.**

Paragraph (3) of section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ([5 U.S.C. 2301](#) note) is amended to read as follows:

“(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, including for salaries or pay, travel costs, and any other expenses, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorney’s fees, if any, and separately identifying the total dollar amount by fiscal year of any reimbursement for which an agency remains liable under section 201;”.

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