

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.*





116<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

---

**S. 2258**

**AN ACT**

To provide anti-retaliation protections for antitrust  
whistleblowers.