

112TH CONGRESS
2D SESSION

S. 3462

To provide anti-retaliation protections for antitrust whistleblowers.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2012

Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Criminal Antitrust
5 Anti-Retaliation Act”.

6 **SEC. 2. AMENDMENT TO ACPERA.**

7 The Antitrust Criminal Penalty Enhancement and
8 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1
9 note) is amended by adding after section 215 the fol-
10 lowing:

1 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**
2 **BLOWERS.**

3 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-
4 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

5 “(1) IN GENERAL.—No person, or any officer,
6 employee, contractor, subcontractor or agent of such
7 person, may discharge, demote, suspend, threaten,
8 harass, or in any other manner discriminate against
9 a whistleblower in the terms and conditions of em-
10 ployment because—

11 “(A) the whistleblower provided or caused
12 to be provided to the person or the Federal
13 Government information relating to—

14 “(i) any violation of, or any act or
15 omission the whistleblower reasonably be-
16 lieves to be a violation of the antitrust
17 laws; or

18 “(ii) any violation of, or any act or
19 omission the whistleblower reasonably be-
20 lieves to be a violation of another criminal
21 law committed in conjunction with a poten-
22 tial violation of the antitrust laws or in
23 conjunction with an investigation by the
24 Department of Justice of a potential viola-
25 tion of the antitrust laws; or

1 “(B) the whistleblower filed, caused to be
2 filed, testified, participated in, or otherwise as-
3 sisted an investigation or a proceeding filed or
4 about to be filed (with any knowledge of the
5 employer) relating to—

6 “(i) any violation of, or any act or
7 omission the whistleblower reasonably be-
8 lieves to be a violation of the antitrust
9 laws; or

10 “(ii) any violation of, or any act or
11 omission the whistleblower reasonably be-
12 lieves to be a violation of another criminal
13 law committed in conjunction with a poten-
14 tial violation of the antitrust laws or in
15 conjunction with an investigation by the
16 Department of Justice of a potential viola-
17 tion of the antitrust laws.

18 “(2) LIMITATION ON PROTECTIONS.—Para-
19 graph (1) shall not apply to any whistleblower if—

20 “(A) the whistleblower planned and initi-
21 ated a violation or attempted violation of the
22 antitrust laws;

23 “(B) the whistleblower planned and initi-
24 ated a violation or attempted violation of an-
25 other criminal law in conjunction with a viola-

1 tion or attempted violation of the antitrust
2 laws; or

3 “(C) the whistleblower planned and initi-
4 ated an obstruction or attempted obstruction of
5 an investigation by the Department of Justice
6 of a violation of the antitrust laws.

7 “(3) DEFINITIONS.—In the section:

8 “(A) PERSON.—The term ‘person’ has the
9 same meaning as in subsection (a) of the first
10 section of the Clayton Act (15 U.S.C. 12(a)).

11 “(B) ANTITRUST LAWS.—The term ‘anti-
12 trust laws’ means section 1 or 3 of the Sher-
13 man Act (15 U.S.C. 1, 3) or similar State law.

14 “(C) WHISTLEBLOWER.—The term ‘whis-
15 tleblower’ means an employee, contractor, sub-
16 contractor, or agent protected from discrimina-
17 tion under paragraph (1).

18 “(b) ENFORCEMENT ACTION.—

19 “(1) IN GENERAL.—A whistleblower who alleges
20 discharge or other discrimination by any person in
21 violation of subsection (a) may seek relief under sub-
22 section (c) by—

23 “(A) filing a complaint with the Secretary
24 of Labor; or

1 “(B) if the Secretary has not issued a final
2 decision within 180 days of the filing of the
3 complaint and there is no showing that such
4 delay is due to the bad faith of the claimant,
5 bringing an action at law or equity for de novo
6 review in the appropriate district court of the
7 United States, which shall have jurisdiction
8 over such an action without regard to the
9 amount in controversy.

10 “(2) PROCEDURE.—

11 “(A) IN GENERAL.—A complaint filed with
12 the Secretary of Labor under paragraph (1)(A)
13 shall be governed under the rules and proce-
14 dures set forth in section 42121(b) of title 49,
15 United States Code.

16 “(B) EXCEPTION.—Notification made
17 under section 42121(b)(1) of title 49, United
18 States Code, shall be made to the person named
19 in the complaint and to the employer.

20 “(C) BURDENS OF PROOF.—A complaint
21 filed with the Secretary of Labor under para-
22 graph (1) shall be governed by the legal bur-
23 dens of proof set forth in section 42121(b) of
24 title 49, United States Code.

1 “(D) STATUTE OF LIMITATIONS.—A com-
2 plaint under paragraph (1)(A) shall be filed
3 with the Secretary of Labor not later than 180
4 days after the date on which the violation oc-
5 curs.

6 “(E) CIVIL ACTIONS TO ENFORCE.—If a
7 person fails to comply with an order or prelimi-
8 nary order issued by the Secretary of Labor
9 pursuant to the procedures in section 42121(b),
10 the Secretary of Labor or the person on whose
11 behalf the order was issued may bring a civil
12 action to enforce the order in the district court
13 of the United States for the judicial district in
14 which the violation occurred.

15 “(c) REMEDIES.—

16 “(1) IN GENERAL.—A whistleblower prevailing
17 in any action under subsection (b)(1) shall be enti-
18 tled to all relief necessary to make the whistleblower
19 whole.

20 “(2) COMPENSATORY DAMAGES.—Relief for any
21 action under paragraph (1) shall include—

22 “(A) reinstatement with the same seniority
23 status that the whistleblower would have had,
24 but for the discrimination;

1 “(B) the amount of back pay, with inter-
2 est; and

3 “(C) compensation for any special damages
4 sustained as a result of the discrimination in-
5 cluding litigation costs, expert witness fees, and
6 reasonable attorney’s fees.

7 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
8 Nothing in this section shall be deemed to diminish the
9 rights, privileges, or remedies of any whistleblower under
10 any Federal or State law, or under any collective bar-
11 gaining agreement.”.

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