

106TH CONGRESS  
1ST SESSION

# H. R. 881

To provide that under certain conditions no sanction shall be imposed on a person by an agency for a violation of a rule and no civil or criminal sanction may be imposed by a court for a violation of a rule.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1999

Mr. GEKAS (for himself, Mrs. BONO, Mr. BRYANT, Mr. BUYER, Mr. COMBEST, Mr. ENGLISH, Mr. GOODLATTE, Mr. GRAHAM, Mr. MCINTOSH, Mr. GARY MILLER of California, Mr. PICKETT, Mr. SESSIONS, Mr. SISISKY, and Mr. TALENT) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide that under certain conditions no sanction shall be imposed on a person by an agency for a violation of a rule and no civil or criminal sanction may be imposed by a court for a violation of a rule.

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 “Regulatory Fair Warn-  
5       ing Act of 1999”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Federal regulations advance many impor-  
2           tant goals, including protecting the environment and  
3           the health and safety of all Americans.

4           (2) For regulations to effectively protect the  
5           public and promote the public interest, the fact of  
6           their existence and what they mean must be avail-  
7           able to the persons and entities willing to investigate  
8           what the law and regulations require.

9           (3) Fairness also requires that a person should  
10          be able to learn of regulations and of their meanings  
11          before they can be sanctioned for violating them.

12          (4) Fairness also should prevent a person from  
13          being sanctioned for violating a regulation if an offi-  
14          cial has misled the person as to what the regulation  
15          prohibits or requires and the person has reasonably  
16          relied upon such misleading information.

17          (5) The Due Process Clause of the Fifth  
18          Amendment gives Americans a right to have access  
19          to regulations and the opportunity to learn their  
20          meanings before such regulations can be the basis  
21          for depriving them of liberty or property.

22          (6) Effective procedures for protecting this  
23          right can improve the effectiveness of regulation,  
24          foster the sense that regulations are fairly enforced,

1 and ensure that the right to due process actually  
 2 benefits Americans.

3 (7) Ensuring that agencies give Americans ac-  
 4 cess to regulations, the opportunity to learn their  
 5 meanings, and access to accurate information about  
 6 them before any sanction can be imposed will en-  
 7 courage agencies to make regulatory requirements  
 8 clearly known, will encourage people and entities to  
 9 learn what regulations require of them, and will fos-  
 10 ter legality, fairness, and justice in the enforcement  
 11 of Federal regulations.

12 **SEC. 3. BAN ON IMPOSITION OF SANCTIONS BY AGENCIES**  
 13 **IN CERTAIN CIRCUMSTANCES.**

14 Section 558 of title 5, United States Code, is amend-  
 15 ed by adding at the end the following new subsection:

16 “(d)(1) No sanction shall be imposed on a person by  
 17 an agency for a violation of a rule if the agency finds any  
 18 one of the following:

19 “(A) The rule was not—

20 “(i) printed in the Code of Federal Regula-  
 21 tions;

22 “(ii) printed in the Federal Register;

23 “(iii) known to the person; or

24 “(iv) knowable to a person who has en-  
 25 gaged in a reasonable, good faith investigation

1 of the rules applicable to the conduct that alleg-  
2 edly violated the rule.

3 “(B) The rule failed to give the person fair  
4 warning of the conduct that the rule prohibits or re-  
5 quires.

6 “(C) With respect only to a retrospective sanc-  
7 tion, the person acted in reasonable reliance upon  
8 written representations about what the rule prohibits  
9 or requires which were issued by the agency or an  
10 official with actual or apparent authority to inter-  
11 pret, administer, or enforce the rule.

12 “(2) For purposes of this subsection, an agency shall  
13 find that a rule gives fair warning of the conduct that the  
14 rule prohibits or requires if a reasonable person, acting  
15 in good faith, would be able to identify, with reasonable  
16 certainty, the standards with which the rule requires the  
17 person’s conduct to conform.”.

18 **SEC. 4. BAN ON IMPOSITION OF SANCTIONS BY COURTS IN**  
19 **CERTAIN CIRCUMSTANCES.**

20 (a) IN GENERAL.—Chapter 111 of title 28, United  
21 States Code, is amended by adding at the end the follow-  
22 ing new section:

1 **“§ 1660. Ban on sanctions for violations of agency**  
2 **rules in certain circumstances**

3 “(a) No civil or criminal sanction may be imposed  
4 by a court for a violation of a rule if the court finds any  
5 one of the following:

6 “(1) The rule was not—

7 “(A) printed in the Code of Federal Regu-  
8 lations;

9 “(B) printed in the Federal Register;

10 “(C) known to the person; or

11 “(D) knowable to a person who has en-  
12 gaged in a reasonable, good faith investigation  
13 of the rules applicable to the conduct that alleg-  
14 edly violated the rule.

15 “(2) The rule failed to give the person fair  
16 warning of the conduct that the rule prohibits or re-  
17 quires.

18 “(3) With respect only to a retrospective sanc-  
19 tion, the person acted in reasonable reliance upon  
20 written representations about what the rule prohibits  
21 or requires which were issued by the agency or an  
22 official with actual or apparent authority to inter-  
23 pret, administer, or enforce the rule.

24 “(b) For purposes of this section, a court shall find  
25 that a rule gives fair warning of the conduct that the rule  
26 prohibits or requires if a reasonable person, acting in good

1 faith, would be able to identify, with reasonable certainty,  
2 the standards with which the rule requires the person's  
3 conduct to conform.

4 “(c) For purposes of this section, the term ‘rule’ shall  
5 have the meaning given that term by section 551 of title  
6 5.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
8 at the beginning of chapter 111 of title 28, United States  
9 Code, is amended by adding after the item relating to sec-  
10 tion 1659 the following new item:

“1660. Ban on sanctions for violations of agency rules in certain cir-  
cumstances.”.

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