

109TH CONGRESS  
2D SESSION

# S. 2285

To improve the protection of witnesses, victims, and informants.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2006

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To improve the protection of witnesses, victims, and  
informants.

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 “Whistleblower Em-  
5       powerment, Security, and Taxpayer Protection Act of  
6       2006”.

7       **SEC. 2. TAMPERING WITH OR RETALIATING AGAINST A**  
8               **WITNESS, VICTIM, OR AN INFORMANT.**

9       (a) TAMPERING WITH A WITNESS, VICTIM, OR AN  
10      INFORMANT.—

1           (1) IN GENERAL.—Section 1512 of title 18,  
2       United States Code, is amended—

3           (A) by striking “or judge of the United  
4       States” each place that term appears and in-  
5       serting the following: “, judge of the United  
6       States, Member of Congress, authorized official  
7       of a Federal agency, or Inspector General”;

8           (B) in subsection (a)—

9           (i) in paragraph (1)(C), by inserting  
10       “or any other violation of Federal law”  
11       after “commission of a Federal offense”;  
12       and

13          (ii) in paragraph (2)(C), by inserting  
14       “or any other violation of Federal law”  
15       after “commission of a Federal offense”;

16          (C) in subsection (b)(3), by inserting “or  
17       any other violation of Federal law” after “com-  
18       mission of a Federal offense”;

19          (D) in subsection (c), by inserting “, in-  
20       cluding an administrative investigation” after  
21       “official proceeding” each place that term ap-  
22       pears;

23          (E) in subsection (d)—

(i) in paragraph (1), by inserting “or supporting an administrative investigation” after “official proceeding”; and

(ii) in paragraph (2), by inserting “or any other violation of Federal law” after “commission of a Federal offense”; and

(F) in subsection (g)(2), by inserting after “law enforcement officer” the following: “, Member of Congress, authorized official of a Federal agency, or Inspector General”.

(2) TECHNICAL AMENDMENTS.—Section 1512 of title 18, United States Code, is amended—

(A) in subsection (b)(3)—

(i) by inserting a comma after “of probation”; and

(ii) by striking the second comma after “supervised release”; and

(B) in subsection (d)(2)—

(i) by inserting a comma after “of probation”; and

(ii) by striking the second comma after “supervised release”.

(b) RETALIATING AGAINST A WITNESS, VICTIM, OR AN INFORMANT.—

1 (1) IN GENERAL.—Section 1513 of title 18,  
2 United States Code, is amended—

3 (A) by inserting “, Member of Congress,  
4 authorized official of a Federal agency, or In-  
5 spector General” after “law enforcement offi-  
6 cer” each place that term appears;

7 (B) by inserting “or any other violation of  
8 Federal law” after “commission of a Federal  
9 offense” each place that term appears; and

10 (C) in the first subsection designated as  
11 subsection (e), by striking “the commission or  
12 possible commission of any Federal offense”  
13 and inserting the following: “the commission or  
14 possible commission of any Federal offense or  
15 any other violation of Federal law”.

16 (2) TECHNICAL AMENDMENTS.—Section 1513  
17 of title 18, United States Code, is amended—

18 (A) in subsection (a)(1)(B)—

19 (i) by inserting a comma after “of  
20 probation”; and

21 (ii) by striking the second comma  
22 after “supervised release”;

23 (B) in subsection (b)(2)—

24 (i) by inserting a comma after “of  
25 probation”; and

1 (ii) by striking the second comma  
2 after “supervised release”; and

3 (C) by redesignating the second subsection  
4 designated as subsection (e) as subsection (f).

5 (c) WHISTLEBLOWER PROTECTION.—Section 2302  
6 of title 5, United States Code, is amended by adding at  
7 the end the following:

8 “(f)(1) An individual who is a victim of a prohibited  
9 personnel practice may bring a civil action against a cov-  
10 ered entity in an appropriate district court of the United  
11 States and may recover damages.

12 “(2)(A) An individual prevailing in any action under  
13 this subsection shall be entitled to equitable relief, rein-  
14 statement, compensation for special damages, litigation  
15 costs, expert witness fees, and reasonable attorney fees.

16 “(B) In the event that reinstatement of an individual  
17 prevailing in an action under this subsection is not prac-  
18 ticable, the individual may be awarded damages for a de-  
19 nial of opportunity to continue accruing Federal pension  
20 benefits.

21 “(3) A civil action under this subsection shall be com-  
22 menced not later than 2 years after the date on which  
23 the violation occurs.

1       “(4) Any prospective waiver of the right of any indi-  
2       vidual to file a civil action under this subsection shall be  
3       void and unenforceable.

4       “(5) An action filed under this subsection shall be  
5       governed by the legal burdens of proof set forth in section  
6       42121(b) of title 49, United States Code.

7       “(6) An individual may elect to have a claim under  
8       this subsection adjudicated utilizing the procedures under  
9       section 1514A(b) of title 18, United States Code.

10       “(7)(A) If the Government asserts that information  
11       sought by an individual in an action under this subsection  
12       is privileged because such information is a state secret or  
13       could lead to the revelation of state secrets, such indi-  
14       vidual may demand that the Government provide to the  
15       court, in classified form if necessary, a description of the  
16       information purported to be privileged.

17       “(B) The court may make arrangements for evidence  
18       pertaining to classified information or state secrets to be  
19       heard in closed session, with opposing counsel present.

20       “(C) A claim of state secrets privilege under subpara-  
21       graph (A) shall be upheld only if the court determines that  
22       disclosure of the information to the court in closed session  
23       or to the public would result in substantial likelihood of  
24       the unauthorized disclosure of a bona fide state secret.

1       “(D)(i) The Government shall not deny access to an  
 2 individual bringing action under this subsection to any in-  
 3 formation that the individual previously actually lawfully  
 4 accessed.

5       “(ii) The Government shall provide an individual de-  
 6 scribed in clause (i) with reasonable time to review such  
 7 information at a secure facility geographically proximate  
 8 to the court.

9       “(E) The Government shall not make a frivolous as-  
 10 ssertion that information is covered by the state secrets  
 11 privilege under subparagraph (A).

12       “(8) In this subsection, the term ‘covered entity’  
 13 means the employer of the person who engages in a pro-  
 14 hibited personnel practice, if the act is performed within  
 15 the scope of employment of such person.”.

16 **SEC. 3. ENHANCING INDEPENDENCE OF INSPECTORS GEN-**  
 17 **ERAL.**

18       (a) REMOVAL FOR CAUSE.—The Inspector General  
 19 Act of 1978 (5 U.S.C. App.) is amended—

20               (1) in section 3(b) by—

21                       (A) inserting “(1)” after “(b)”; and

22                       (B) adding at the end the following:

23       “(2) An Inspector General may be removed from of-  
 24 fice prior to the expiration of the term of that Inspector  
 25 General only on 1 of the following grounds:

1 “(A) Permanent incapacity.

2 “(B) Inefficiency.

3 “(C) Neglect of duty.

4 “(D) Malfeasance.

5 “(E) Conviction of a felony or conduct involving  
6 moral turpitude.”; and

7 (2) in section 8G(e) by—

8 (A) inserting “(1)” after “(e)”; and

9 (B) adding at the end the following:

10 “(2) An Inspector General may be removed from of-  
11 fice prior to the expiration of the term of that Inspector  
12 General only on 1 of the following grounds:

13 “(A) Permanent incapacity.

14 “(B) Inefficiency.

15 “(C) Neglect of duty.

16 “(D) Malfeasance.

17 “(E) Conviction of a felony or conduct involving  
18 moral turpitude.”.

19 (b) ESTABLISHMENT OF TERMS OF OFFICE.—The  
20 Inspector General Act of 1978 (5 U.S.C. App.) is amend-  
21 ed—

22 (1) in section 3, by adding at the end the fol-  
23 lowing:

24 “(e)(1) The term of office of each Inspector General  
25 shall be 7 years. An individual may serve for more than



1 1 term in such office. Any individual appointed and con-  
 2 firmed to fill a vacancy in such position, occurring before  
 3 the expiration of the term for which the predecessor of  
 4 that individual was appointed, shall be appointed and con-  
 5 firmed for a full 7-year term.

6 “(2) An individual may continue to serve as an In-  
 7 spector General beyond the expiration of the term for  
 8 which the individual is appointed until a successor is ap-  
 9 pointed and confirmed, except that such individual may  
 10 not continue to serve for more than 1 year after the date  
 11 on which the term would otherwise expire under para-  
 12 graph (1).”; and

13 (2) in section 8G(c) by—

14 (A) inserting “(1)” after “(c)”; and

15 (B) by adding at the end the following:

16 “(2) The term of office of each Inspector General  
 17 shall be 7 years. An individual may serve for more than  
 18 1 term in such office. Any individual appointed to fill a  
 19 vacancy in such position, occurring before the expiration  
 20 of the term for which the predecessor of that individual  
 21 was appointed, shall be appointed for a full 7-year term.”.

22 (c) APPLICATION.—The amendments made by this  
 23 section shall apply to any Inspector General appointed be-  
 24 fore, on, or after the date of the enactment of this Act.  
 25 The term of office of an Inspector General serving on such

1 date of enactment is deemed to begin on such date of en-  
2 actment.

3 **SEC. 4. DIRECT SUBMISSION OF BUDGET REQUESTS TO**  
4 **CONGRESS.**

5 Section 6 of the Inspector General Act of 1978 (5  
6 U.S.C. App.) is amended by adding at the end the fol-  
7 lowing:

8 “(e)(1) For each fiscal year, an Inspector General  
9 may transmit an appropriation estimate and request to  
10 the Director of the Office of Management and Budget and  
11 to the appropriate committees or subcommittees of Con-  
12 gress, in addition to any appropriation estimate and re-  
13 quest submitted to the head of the establishment con-  
14 cerned.

15 “(2) The President shall include in each budget of  
16 the United States Government submitted to the Con-  
17 gress—

18 “(A) a separate statement of the amount of ap-  
19 propriations requested by each Inspector General  
20 who has submitted an appropriation estimate under  
21 paragraph (1); and

22 “(B) a statement comparing each such appro-  
23 priation estimate and request submitted by an In-  
24 spector General and the funds requested by the head  
25 of the establishment concerned.”.

1 **SEC. 5. PROHIBITION OF REPROGRAMMING.**

2 (a) IN GENERAL.—Notwithstanding any other provi-  
3 sion of law, no funds appropriated for activities under the  
4 supervision of an Inspector General shall be repro-  
5 grammed, transferred, or otherwise expended for any  
6 other purpose without the written consent of that Inspec-  
7 tor General, transmitted in advance to the Committee on  
8 Appropriations of the Senate and the Committee on Ap-  
9 propriations of the House of Representatives.

10 (b) CONDITIONS PRESERVED.—Nothing in this sec-  
11 tion shall be construed as to waive any condition on re-  
12 programming of appropriated sums.

13 (c) SPECIFIC REPEAL.—The provisions of this sec-  
14 tion shall not be superseded, except by a provision of law  
15 enacted after the date of the enactment of this Act which  
16 specifically repeals, modifies, or supersedes the provisions  
17 of this section.

18 **SEC. 6. CREATING REPORTING CHANNELS FOR WHISTLE-**  
19 **BLOWERS.**

20 Section 4(a) of the Inspector General Act of 1978  
21 (5 U.S.C. App.) is amended—

22 (1) in paragraph (4), by striking “and” after  
23 the semicolon at the end;

24 (2) in paragraph (5), by striking the period and  
25 inserting a semicolon; and

26 (3) by adding at the end the following:

1           “(6) to create and maintain a means of employ-  
2           ees confidentially reporting alleged violations of rule,  
3           law, or regulation within the establishment that the  
4           Inspector General oversees in the form of a hotline  
5           which shall compile all allegations and refer them to  
6           appropriate offices for investigation; and

7           “(7) to compile for annual report to Congress,  
8           a statistical summary of all allegations, the viola-  
9           tions they allege, their deviation from past trends,  
10          and the outcome of the preliminary inquiry or inves-  
11          tigation into each allegation.”.

12 **SEC. 7. SPECIAL RULE FOR REVOCATION OF SECURITY**  
13 **CLEARANCE.**

14          (a) CAUSE OF ACTION.—If any action is taken or  
15          failed to be taken regarding the security clearance of an  
16          individual in retaliation for any action protected under  
17          paragraph (8) or (9) of section 2302(b) of title 5, United  
18          States Code, the individual may bring an action against  
19          the United States in any district court of the United  
20          States for damages.

21          (b) CLASSIFIED FORM.—Any court hearings under  
22          this section may be conducted in classified form, if nec-  
23          essary.

24          (c) INTENT.—This section shall not be construed to  
25          diminish or enhance the authority of any court or other

1 administrative body to order any action with respect to  
 2 the security clearance of an individual bringing an action  
 3 under this section.

4 **SEC. 8. CREATION OF WHISTLEBLOWER AFFAIRS DIREC-**  
 5 **TORATES WITHIN OFFICES OF THE INSPEC-**  
 6 **TORS GENERAL.**

7 Section 7 of the Inspector General Act of 1978 is  
 8 amended by adding at the end the following:

9 “(d)(1)(A) An Inspector General may create a whis-  
 10 tleblower affairs directorate to act upon complaints filed  
 11 under subsection (a).

12 “(B) Except as provided in paragraph (2), a direc-  
 13 torate established under this subsection shall—

14 “(i) adopt paragraphs (8) and (9) of section  
 15 2302(b) of title 5, United States Code, as the source  
 16 of investigative standards for reviewing complaints  
 17 described in subparagraph (A); or

18 “(ii) adopt a set of investigative standards.

19 “(2) An Inspector General whose jurisdiction includes  
 20 national security personnel shall not be precluded from  
 21 creating a whistleblower affairs directorate under this sub-  
 22 section to receive complaints filed pursuant to subsection  
 23 (a), if the Inspector General adopts regulations by which  
 24 security clearances and personnel actions may be inves-  
 25 tigated as pretexts to reprisal without disturbing personnel

1 decisions based on those security clearances or personnel  
2 actions.

3 “(3) The head of an agency in which a directorate  
4 has been established under paragraphs (1) and (2), shall  
5 establish regulations administered by the personnel and  
6 readiness office of the agency, which provide for remedies  
7 recommended in substantiated findings of complaints filed  
8 under this section.”.

9 **SEC. 9. PROHIBITED PERSONNEL PRACTICES.**

10 Section 2302 of title 5, United States Code, is  
11 amended—

12 (1) in subsection (a)(2)—

13 (A) in subparagraph (A)—

14 (i) by redesignating clauses (x) and  
15 (xi) as clauses (xi) and (xii), respectively;

16 (ii) by inserting after clause (ix) the  
17 following:

18 “(x) an investigation of an em-  
19 ployee;”; and

20 (iii) in the flush matter at the end, by  
21 striking “ subsection (b)(8)” and inserting  
22 “paragraph (8) or (9) of subsection (b)”;

23 (B) in subparagraph (B)(ii) by striking “;  
24 and” and inserting the following: “, in which

1 case the President shall submit a report to Con-  
 2 gress, that may be classified if necessary—

3 “(I) detailing any position the  
 4 President has excluded from the cov-  
 5 erage of this section; and

6 “(II) including the reasons why  
 7 the President determined that exclud-  
 8 ing a position from the coverage of  
 9 this section is necessary and war-  
 10 ranted by the conditions of good ad-  
 11 ministration;”;

12 (C) in subparagraph (C)—

13 (i) in clause (i), by striking “ sub-  
 14 section (b)(8)” and inserting “paragraph  
 15 (8) or (9) of subsection (b)”;

16 (ii) in clause (ii), by striking “the  
 17 Federal Bureau of Investigation,”; and

18 (iii) in clause (iii), by striking the pe-  
 19 riod and inserting “; and”; and

20 (D) by adding at the end the following:

21 “(D) ‘intelligence agency’ means any agen-  
 22 cy described in subparagraph (C)(ii).”;

23 (2) in subsection (b), by striking paragraphs  
 24 (8) and (9) and inserting the following:

1           “(8) take or fail to take, or threaten to take or  
2           fail to take, a personnel action with respect to any  
3           employee or applicant for employment because of—

4                   “(A) any disclosure or planned disclosure  
5                   of information by an employee or applicant—

6                           “(i) that the employee or applicant  
7                           reasonably believes evidences—

8                                   “(I) a violation of any law, rule,  
9                                   or regulation;

10                                   “(II) gross mismanagement, a  
11                                   gross waste of funds, an abuse of au-  
12                                   thority, or a substantial and specific  
13                                   danger to public health or safety; or

14                                   “(III) a substantial and specific  
15                                   threat to national security or home-  
16                                   land security; and

17                           “(ii) for which—

18                                   “(I) the disclosure is not specifi-  
19                                   cally prohibited by law; and

20                                   “(II) the information is not spe-  
21                                   cifically required by Executive order  
22                                   to be kept secret in the interest of na-  
23                                   tional defense or the conduct of for-  
24                                   eign affairs;



1           “(B) any disclosure or planned disclosure  
2           to the Special Counsel, the Inspector General of  
3           an agency, or another employee designated by  
4           the head of the agency to receive such disclo-  
5           sures, of information which the employee or ap-  
6           plicant reasonably believes evidences—

7                   “(i) a violation of any law, rule, or  
8                   regulation;

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

13                  “(iii) a substantial and specific threat  
14                  to national security or homeland security;  
15                  or

16           “(C) any failure to report a disclosure  
17           made under this paragraph;

18           “(9) take or fail to take, or threaten to take or  
19           fail to take, any personnel action against any em-  
20           ployee or applicant for employment because of—

21                   “(A) the exercise or planned exercise of  
22                   any appeal, complaint, or grievance right grant-  
23                   ed by any law, rule, or regulation;

24                   “(B) testifying for or otherwise lawfully as-  
25                   sisting, or planning to testify, or lawfully assist,

1 any individual in the exercise of any right re-  
2 ferred to in subparagraph (A);

3 “(C) cooperating with or disclosing infor-  
4 mation to, or planning to cooperate with or dis-  
5 close information to, the Inspector General of  
6 an agency, or the Special Counsel, in accord-  
7 ance with applicable provisions of law;

8 “(D) a refusal to obey, or planning to  
9 refuse to obey, an order that would require the  
10 individual to violate a law; or

11 “(E) a failure to report an action under  
12 this paragraph;”; and

13 (3) by adding at the end the following:

14 “(g)(1)(A) For the purposes of paragraphs (8) and  
15 (9) of subsection (b), positions at Federal contractors that  
16 are funded in whole or in part by appropriated funds shall  
17 be considered to be covered positions under subsection  
18 (a)(2)(B).

19 “(B) For purposes of this paragraph—

20 “(i) the term ‘Federal contractor’ means any  
21 person that has entered into a contract with the  
22 Federal Government, or any person who has entered  
23 into a contract with such a person pursuant to the  
24 contract with the Federal Government; and

1           “(ii) a position at a Federal contractor is fund-  
2           ed in whole or in part by appropriated funds if the  
3           responsibilities of the position include engaging in  
4           any activity with respect to such contract, including  
5           providing services or manufacturing goods procured  
6           under the contract, or providing incidental or sup-  
7           port services related to such a contract, including ac-  
8           counting, human resources, secretarial services, and  
9           any other incidental or support services.

10          “(2) For the purposes of paragraph (8)(A) and para-  
11          graph (9) of subsection (b), positions at agencies described  
12          in subsection (a)(2)(C)(ii) shall be considered to be cov-  
13          ered positions under subsection (a)(2)(B).

14          “(h) Any person that violates this section shall be  
15          subject to a civil penalty of not to exceed \$50,000.”.

16       **SEC. 10. PETITION FOR SPECIAL PROSECUTORS.**

17          (a) IN GENERAL.—An individual may petition the At-  
18          torney General for the appointment of a special prosecutor  
19          to handle a case in which the individual alleges being a  
20          victim of a prohibited personnel practice, as that term is  
21          defined in section 2302 of title 5, United States Code.

22          (b) APPOINTMENT.—Not later than 30 days after the  
23          date of the submission of a petition described in subsection  
24          (a), the Attorney General shall appoint a special pros-  
25          ecutor, who shall have independent jurisdiction, in any

1 case where there is a conflict of interest or where there  
 2 is a substantial likelihood of political interference.

3 (c) REPORTING.—In any case in which the Attorney  
 4 General receives a petition described in subsection (a), but  
 5 does not appoint a special prosecutor, the Attorney Gen-  
 6 eral shall submit a report to Congress detailing the rea-  
 7 sons for refusing to appoint a special prosecutor, including  
 8 a specific response to any argument in the petition.

9 **SEC. 11. STUDY OF LISTS OF WHISTLEBLOWER RETALIA-**  
 10 **TION AND SUPPRESSIONS.**

11 (a) IN GENERAL.—The Comptroller General shall de-  
 12 velop rubrics, methods, and instruments to determine the  
 13 costs of retaliation against or suppression of whistle-  
 14 blowers, including the costs associated with—

- 15 (1) revocation and suspension of security clear-  
 16 ances;
- 17 (2) litigation;
- 18 (3) judgments against the United States and  
 19 indemnification of contractor liability;
- 20 (4) diversions of resources to nonproductive  
 21 tasks to perpetrate retaliation and suppress disclo-  
 22 sure of fraud, waste, or abuse;
- 23 (5) administrative leave; and

1           (6) any other factors the Comptroller General  
2       determines are the result of retaliation against or  
3       suppression of whistleblowers.

4       (b) REPORT TO CONGRESS.—The Comptroller Gen-  
5       eral shall submit to Congress a report, not less than once  
6       every 3 years, beginning with the fiscal year in which this  
7       Act is enacted, estimating the costs of retaliation against  
8       and suppression of whistleblowers.

○