

110TH CONGRESS
2D SESSION

S. 2878

To amend the Labor-Management Reporting and Disclosure Act of 1959 to provide for specified civil penalties for violations of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2008

Mr. CORNYN (for himself, Mr. ALEXANDER, Mr. BUNNING, Mr. DEMINT, Mrs. DOLE, Mr. GRAHAM, Mr. HATCH, Mr. MARTINEZ, Mr. ROBERTS, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Labor-Management Reporting and Disclosure Act of 1959 to provide for specified civil penalties for violations of that Act, and for other purposes.

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 “Labor Management
5 Reporting and Disclosure Enforcement Act of 2008”.

1 **SEC. 2. CIVIL MONEY PENALTIES FOR FAILURE TO PRO-**
2 **VIDE INFORMATION TO MEMBERS.**

3 Section 201 of the Labor-Management Reporting and
4 Disclosure Act of 1959 (29 U.S.C. 431), is amended—

5 (1) by redesignating subsection (c) as sub-
6 section (c)(1); and

7 (2) by inserting thereafter the following:

8 “(2) Any labor organization that fails to meet the re-
9 quirements of paragraph (1) with respect to a member,
10 by refusing to make available the information required to
11 be contained in a report required to be submitted under
12 this subchapter, and any books, records, and accounts nec-
13 essary to verify such report (unless such failure or refusal
14 results from matters reasonably beyond the control of the
15 labor organization) may in the court’s discretion, and in
16 addition to any other relief provided by law, be liable to
17 such member in the amount of up to \$250 a day from
18 the date of such failure or refusal, and the court may in
19 its discretion order such other relief as it deems proper.
20 For purposes of this paragraph, each violation with re-
21 spect to any single member shall be treated as a separate
22 violation.”.

1 **SEC. 3. CIVIL MONEY PENALTIES FOR FAILURE TO FILE A**
2 **TIMELY REPORT.**

3 Section 210 of the Labor-Management Reporting and
4 Disclosure Act of 1959 (29 U.S.C. 440) is amended to
5 read as follows:

6 **“SEC. 210. CIVIL ENFORCEMENT.**

7 “(a) IN GENERAL.—Whenever it shall appear that
8 any person has violated or is about to violate any of the
9 provisions of this title, or section 301(a), the Secretary
10 may bring a civil action for such relief, including an in-
11 junction and enforcement of administrative penalties im-
12 posed pursuant to section 211, as may be appropriate.
13 Any such action may be brought in the district court of
14 the United States where the violation occurred or in the
15 United States District Court for the District of Columbia.

16 “(b) SCOPE OF REVIEW.—Upon a complaint filed by
17 the Secretary seeking relief under this section, the district
18 court shall impose the civil money penalty that has been
19 determined to be appropriate by the Secretary provided
20 the person, labor organization, or employer against whom
21 the relief is sought has been given written notice and af-
22 forded an opportunity to be heard before the Secretary
23 or a designee under procedures established by the Sec-
24 retary pursuant to section 211. Such penalty shall not be
25 imposed by the court if the Secretary’s determination is
26 shown to be arbitrary and capricious. The court shall not

1 consider any objection or argument that was not raised
 2 in the proceedings before the Secretary.

3 “(c) APPROPRIATENESS OF INJUNCTIVE RELIEF.—
 4 Upon a complaint filed by the Secretary seeking relief
 5 under this section demonstrating that a person, labor or-
 6 ganization, or employer has failed to file timely and com-
 7 plete reports required by the statute, or has filed reports
 8 that are substantially incomplete or inaccurate, or that in-
 9 formation required to be reported may be lost or destroyed
 10 absent such relief, the district court shall issue an order
 11 enjoining continued violation of this title. Injunctive relief
 12 may be awarded in addition to any other additional civil
 13 or criminal remedy and whether or not the Secretary seeks
 14 enforcement of an administratively imposed civil money
 15 penalty.”.

16 **SEC. 4. ADMINISTRATIVE AUTHORITY TO IMPOSE CIVIL**
 17 **MONEY PENALTIES.**

18 Title II of the Labor-Management Reporting and
 19 Disclosure Act of 1959 (29 U.S.C. 431 et seq.) is amend-
 20 ed—

21 (1) by redesignating section 211 as section 212;

22 and

23 (2) by inserting after section 210 the following:

1 **“SEC. 211. CIVIL MONEY PENALTIES.**

2 “(a) IN GENERAL.—The Secretary, upon finding a
3 violation of section 201(a), 201(b), 202, 203, 207, 212,
4 or 301(a), may assess against the person, labor organiza-
5 tion or employer responsible for such violation a civil
6 money penalty of up to \$250 a day from the date of the
7 violation. The amount of this penalty shall be adjusted in
8 accordance with the inflation adjustment procedures pre-
9 scribed in the Federal Civil Penalties Inflation Adjustment
10 Act of 1990, as amended.

11 “(b) LIMITATION.—No person, labor organization or
12 employer shall be required to pay a penalty under this
13 paragraph for any violation a material cause of which was
14 reasonably beyond the control of that person, labor organi-
15 zation or employer.

16 “(c) INCOMPLETE REPORTS.—A report rejected by
17 the Secretary as incomplete shall be considered not filed
18 for purposes of determining whether there has been a vio-
19 lation of section 201(a), 201(b), 202, 203, 207, 212, or
20 301(a) and a penalty may be assessed for such a violation.

21 “(d) MAXIMUM PENALTY.—A penalty imposed for a
22 violation under this section, as determined by the Sec-
23 retary, may not exceed \$250 a day or \$10,000 in aggre-
24 gate, as adjusted in accordance with the inflation adjust-
25 ment procedures prescribed in the Federal Civil Penalties
26 Inflation Adjustment Act of 1990, as amended.

1 “(e) EFFECT ON CRIMINAL PENALTIES.—The im-
 2 sition of civil money penalties under this section shall not
 3 affect the availability of criminal sanctions against any
 4 person who knowingly or willfully violates a provision of
 5 this Act.

6 “(f) ADMINISTRATIVE PROCEDURES.—The Secretary
 7 shall establish standards and procedures governing the im-
 8 position of civil money penalties under subsection (a).
 9 Such standards and procedures shall—

10 “(1) provide for written notice to the person or
 11 entity alleged to have violated section 201(a),
 12 201(b), 202, 203, 207, 212, or 301(a) and an oppor-
 13 tunity to be heard before the Secretary or a des-
 14 ignee; and

15 “(2) be established by the Secretary pursuant
 16 to sections 208 and 606.

17 “(g) FACTORS IN DETERMINING AMOUNT OF PEN-
 18 ALTY.—In determining the amount of a penalty under
 19 subsection (a), consideration may be given to such factors
 20 as the gravity of the offense, any history of prior offenses
 21 (including offenses occurring before enactment of this sec-
 22 tion), ability to pay the penalty without material impair-
 23 ment of the ability to carry out representational functions
 24 or to honor other financial obligations, injury to unin-
 25 volved members of the labor organization, injury to the

1 public, benefits received from the violation, deterrence of
2 future violations, and such other factors as the Secretary
3 may determine to be appropriate.

4 “(h) JUDICIAL REVIEW.—

5 “(1) IN GENERAL.—After exhausting all admin-
6 istrative remedies established by the Secretary under
7 subsection (f), a person, labor organization, or em-
8 ployer against whom the Secretary has imposed a
9 civil money penalty under subsection (a) may obtain
10 a review of the penalty in the United States District
11 Court where the violation occurred or in the United
12 States District Court for the District of Columbia,
13 by filing in such court, within 30 days of the entry
14 of a final order imposing such a penalty, a written
15 petition that the Secretary’s order or determination
16 be modified or be set aside in whole or in part.

17 “(2) STANDARD.—Upon petition for review of a
18 penalty by a party against whom such a penalty has
19 been ordered, the district court shall impose the civil
20 money penalty determined to be appropriate by the
21 Secretary, provided the person, labor organization,
22 or employer against whom the relief is sought has
23 been given written notice and afforded an oppor-
24 tunity to be heard before the Secretary or a designee
25 under procedures established by the Secretary pur-

1 suant to section 211, unless the Secretary’s deter-
 2 mination is shown to be arbitrary and capricious.
 3 The court shall not consider any objection or argu-
 4 ment that was not raised before the Secretary.

5 “(i) SETTLEMENT BY SECRETARY.—The Secretary
 6 may compromise, modify, or remit any civil money penalty
 7 that may be, or has been, imposed under this section.”.

8 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.**

9 The Labor-Management Reporting and Disclosure
 10 Act of 1959 is further amended—

11 (1) in section 205 (29 U.S.C. 435), by striking
 12 “211” each place it appears and inserting “212”;

13 (2) in section 207(b) (29 U.S.C. 437(b)), by
 14 striking “211” each place it appears and inserting
 15 “212”; and

16 (3) in section 301(b) (29 U.S.C. 461(b)), by
 17 striking “and 210” and inserting “210 and 211”.

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