

Calendar No. 258

115TH CONGRESS
1ST SESSION

S. 807

To provide anti-retaliation protections for antitrust whistleblowers.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2017

Mr. GRASSLEY (for himself, Mr. LEAHY, Mrs. FEINSTEIN, Ms. KLOBUCHAR, Mr. COONS, Mr. BLUMENTHAL, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 2, 2017

Reported by Mr. GRASSLEY, without amendment

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 of 2017”.

1 **SEC. 2. AMENDMENT TO ACPERA.**

2 The Antitrust Criminal Penalty Enhancement and
3 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1
4 note) is amended by inserting after section 215 the fol-
5 lowing:

6 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**
7 **BLOWERS.**

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

10 “(1) IN GENERAL.—No employer may dis-
11 charge, demote, suspend, threaten, harass, or in any
12 other manner discriminate against a covered indi-
13 vidual in the terms and conditions of employment of
14 the covered individual because of any lawful act done
15 by the covered individual—

16 “(A) to provide or cause to be provided to
17 the Federal Government or a person with su-
18 pervisory authority over the covered individual
19 (or such other person working for the employer
20 who has the authority to investigate, discover,
21 or terminate misconduct) information relating
22 to—

23 “(i) any violation of, or any act or
24 omission the covered individual reasonably
25 believes to be a violation of, the antitrust
26 laws; or

1 “(ii) any violation of, or any act or
2 omission the covered individual reasonably
3 believes to be a violation of, another criminal law committed in conjunction with a
4 potential violation of the antitrust laws or
5 in conjunction with an investigation by the
6 Department of Justice of a potential violation of the antitrust laws; or

7 “(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

8 “(i) any violation of, or any act or
9 omission the covered individual reasonably
10 believes to be a violation of, the antitrust
11 laws; or

12 “(ii) any violation of, or any act or
13 omission the covered individual reasonably
14 believes to be a violation of, another criminal law committed in conjunction with a
15 potential violation of the antitrust laws or
16 in conjunction with an investigation by the
17 Department of Justice of a potential violation of the antitrust laws.

1 “(2) LIMITATION ON PROTECTIONS.—Para-
 2 graph (1) shall not apply to any covered individual
 3 if—

4 “(A) the covered individual planned and
 5 initiated a violation or attempted violation of
 6 the antitrust laws;

7 “(B) the covered individual planned and
 8 initiated a violation or attempted violation of
 9 another criminal law in conjunction with a vio-
 10 lation or attempted violation of the antitrust
 11 laws; or

12 “(C) the covered individual planned and
 13 initiated an obstruction or attempted obstruc-
 14 tion of an investigation by the Department of
 15 Justice of a violation of the antitrust laws.

16 “(3) DEFINITIONS.—In this section:

17 “(A) ANTITRUST LAWS.—The term ‘anti-
 18 trust laws’ means section 1 or 3 of the Sher-
 19 man Act (15 U.S.C. 1 and 3).

20 “(B) COVERED INDIVIDUAL.—The term
 21 ‘covered individual’ means an employee, con-
 22 tractor, subcontractor, or agent of an employer.

23 “(C) EMPLOYER.—The term ‘employer’
 24 means a person, or any officer, employee, con-
 25 tractor, subcontractor, or agent of such person.

1 “(D) FEDERAL GOVERNMENT.—The term
2 ‘Federal Government’ means—

3 “(i) a Federal regulatory or law en-
4 forcement agency; or

5 “(ii) any Member of Congress or com-
6 mittee of Congress.

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

10 “(4) RULE OF CONSTRUCTION.—The term ‘vio-
11 lation’, with respect to the antitrust laws, shall not
12 be construed to include a civil violation of any law
13 that is not also a criminal violation.

14 “(b) ENFORCEMENT ACTION.—

15 “(1) IN GENERAL.—A covered individual who
16 alleges discharge or other discrimination by any em-
17 ployer in violation of subsection (a) may seek relief
18 under subsection (c) by—

19 “(A) filing a complaint with the Secretary
20 of Labor; or

21 “(B) if the Secretary of Labor has not
22 issued a final decision within 180 days of the
23 filing of the complaint and there is no showing
24 that such delay is due to the bad faith of the
25 claimant, bringing an action at law or equity

1 for de novo review in the appropriate district
2 court of the United States, which shall have ju-
3 risdiction over such an action without regard to
4 the amount in controversy.

5 “(2) PROCEDURE.—

6 “(A) IN GENERAL.—A complaint filed with
7 the Secretary of Labor under paragraph (1)(A)
8 shall be governed under the rules and proce-
9 dures set forth in section 42121(b) of title 49,
10 United States Code.

11 “(B) EXCEPTION.—Notification made
12 under section 42121(b)(1) of title 49, United
13 States Code, shall be made to any individual
14 named in the complaint and to the employer.

15 “(C) BURDENS OF PROOF.—An action
16 brought under paragraph (1)(B) shall be gov-
17 erned by the legal burdens of proof set forth in
18 section 42121(b) of title 49, United States
19 Code.

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

1 “(E) CIVIL ACTIONS TO ENFORCE.—If a
 2 person fails to comply with an order or prelimi-
 3 nary order issued by the Secretary of Labor
 4 pursuant to the procedures set forth in section
 5 42121(b) of title 49, United States Code, the
 6 Secretary of Labor or the person on whose be-
 7 half the order was issued may bring a civil ac-
 8 tion to enforce the order in the district court of
 9 the United States for the judicial district in
 10 which the violation occurred.

11 “(c) REMEDIES.—

12 “(1) IN GENERAL.—A covered individual pre-
 13 vailing in any action under subsection (b)(1) shall be
 14 entitled to all relief necessary to make the covered
 15 individual whole.

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

18 “(A) reinstatement with the same seniority
 19 status that the covered individual would have
 20 had, but for the discrimination;

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

23 “(C) compensation for any special damages
 24 sustained as a result of the discrimination in-

1 cluding litigation costs, expert witness fees, and
2 reasonable attorney’s fees.

3 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—

4 Nothing in this section shall be deemed to diminish the
5 rights, privileges, or remedies of any covered individual
6 under any Federal or State law, or under any collective
7 bargaining agreement.”.

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