

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 and Mr. LEAHY) 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 of 2017”.

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 inserting 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 employer may dis-
6 charge, demote, suspend, threaten, harass, or in any
7 other manner discriminate against a covered indi-
8 vidual in the terms and conditions of employment of
9 the covered individual because of any lawful act done
10 by the covered individual—

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

18 “(i) any violation of, or any act or
19 omission the covered individual reasonably
20 believes to be a violation of, the antitrust
21 laws; or

22 “(ii) any violation of, or any act or
23 omission the covered individual reasonably
24 believes to be a violation of, another crimi-
25 nal law committed in conjunction with a
26 potential violation of the antitrust laws or

1 in conjunction with an investigation by the
2 Department of Justice of a potential viola-
3 tion of the antitrust laws; or

4 “(B) to cause to be filed, testify in, partici-
5 pate in, or otherwise assist a Federal Govern-
6 ment investigation or a Federal Government
7 proceeding filed or about to be filed (with any
8 knowledge of the employer) relating to—

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

13 “(ii) any violation of, or any act or
14 omission the covered individual reasonably
15 believes to be a violation of, another crimi-
16 nal law committed in conjunction with a
17 potential violation of the antitrust laws or
18 in conjunction with an investigation by the
19 Department of Justice of a potential viola-
20 tion of the antitrust laws.

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

1 “(A) the covered individual planned and
2 initiated a violation or attempted violation of
3 the antitrust laws;

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

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

13 “(3) DEFINITIONS.—In this section:

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

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

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

23 “(D) FEDERAL GOVERNMENT.—The term
24 ‘Federal Government’ means—

1 “(i) a Federal regulatory or law en-
2 forcement agency; or

3 “(ii) any Member of Congress or com-
4 mittee of Congress.

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

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

12 “(b) ENFORCEMENT ACTION.—

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

17 “(A) filing a complaint with the Secretary
18 of Labor; or

19 “(B) if the Secretary of Labor has not
20 issued a final decision within 180 days of the
21 filing of the complaint and there is no showing
22 that such delay is due to the bad faith of the
23 claimant, bringing an action at law or equity
24 for de novo review in the appropriate district
25 court of the United States, which shall have ju-

1 jurisdiction over such an action without regard to
2 the amount in controversy.

3 “(2) PROCEDURE.—

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

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

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

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

23 “(E) CIVIL ACTIONS TO ENFORCE.—If a
24 person fails to comply with an order or prelimi-
25 nary order issued by the Secretary of Labor

pursuant to the procedures set forth in section 42121(b) of title 49, United States Code, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

“(c) REMEDIES.—

“(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

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

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

“(B) the amount of back pay, with interest; and

“(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—

Nothing in this section shall be deemed to diminish the

1 rights, privileges, or remedies of any covered individual
2 under any Federal or State law, or under any collective
3 bargaining agreement.”.

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