

117TH CONGRESS
1ST SESSION

H. R. 1265

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 2021

Mr. SWALWELL (for himself, Mr. COHEN, Mrs. DEMINGS, and Ms. NORTON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, 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 “Enhancing Protections
5 for Whistleblower Anonymity Act”.

1 **SEC. 2. CRIMINAL PENALTY FOR THE DISCLOSURE OF THE**
2 **IDENTITY OF A WHISTLEBLOWER.**

3 (a) IN GENERAL.—Chapter 88 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

6 **“§ 1802. Disclosure of whistleblower identity**

7 “(a) IN GENERAL.—Except under the circumstances
8 described in subsection (b), whoever, being an employee
9 of the Federal Government or contractor of the Federal
10 Government, knowingly makes a prohibited disclosure
11 shall be fined under this title, imprisoned not more than
12 1 year, or both.

13 “(b) EXCEPTIONS.—The circumstances described in
14 this subsection are the following:

15 “(1) The prohibited disclosure—

16 “(A) is made to—

17 “(i) an employee of the Federal Gov-
18 ernment;

19 “(ii) an employee of a State govern-
20 ment; or

21 “(iii) an employee of a local govern-
22 ment; and

23 “(B) is expressly permitted by any other
24 law.

25 “(2) The whistleblower provides written consent
26 before the prohibited disclosure is made.

1 “(c) APPLICABILITY.—Subsection (a) shall only apply
 2 to a prohibited disclosure that is made after the date of
 3 enactment of this section.

4 “(d) DEFINITIONS.—In this section:

5 “(1) EMPLOYEE OF THE FEDERAL GOVERN-
 6 MENT.—The term ‘employee of the Federal Govern-
 7 ment’ means an officer or employee of the United
 8 States Government, including—

9 “(A) a member of the uniformed service;

10 “(B) a Member of Congress; and

11 “(C) the President of the United States.

12 “(2) MEMBER OF CONGRESS.—The term ‘Mem-
 13 ber of Congress’ has the meaning given such term
 14 in section 2106 of title 5.

15 “(3) PROHIBITED DISCLOSURE.—The term
 16 ‘prohibited disclosure’ means a formal or informal
 17 communication or transmission of—

18 “(A) the identity of a whistleblower; or

19 “(B) identifying information relating to a
 20 whistleblower.

21 “(4) WHISTLEBLOWER.—The term ‘whistle-
 22 blower’ means each of the following:

23 “(A) An employee, former employee, or ap-
 24 plicant for employment (as such terms are used
 25 in section 1213(a) of title 5) who makes a dis-

1 closure that is described in paragraph (1) or (2)
2 of such section.

3 “(B) An employee of an agency or appli-
4 cant for employment at an agency (as such
5 terms are used in section 2302(b)(8)(C) of title
6 5) who makes a disclosure as described in such
7 section.

8 “(C) A former employee of the Federal
9 Government who makes a disclosure to Con-
10 gress of information described in section
11 2302(b)(8)(C) of title 5.

12 “(D) An employee that makes a complaint
13 or otherwise provides information to the Inspec-
14 tor General (as the terms ‘employee’ and ‘In-
15 spector General’ are used in the Inspector Gen-
16 eral Act of 1978 (5 U.S.C. App.)) pursuant to
17 the requirements of section 7 of such Act.

18 “(E) A member of the Armed Forces
19 that—

20 “(i) complains of or discloses informa-
21 tion; and

22 “(ii) is protected against retaliation
23 for such actions under section 1034 of title
24 10.

1 “(F) An employee (as the term ‘employee’
2 is used in section 103H of the National Secu-
3 rity Act of 1947 (50 U.S.C. 3033)) who the In-
4 spector General of the Intelligence Community
5 may not disclose the identity of pursuant to the
6 requirements of section 103H(g)(3)(A) of such
7 Act (50 U.S.C. 3033(g)(3)(A)).

8 “(G) An employee (as the term ‘employee’
9 is used in section 4712(a)(3)(A) of title 41)
10 who is deemed to have made a disclosure under
11 such section.

12 “(H) A individual not otherwise covered by
13 subparagraphs (A) through (G) who—

14 “(i) is protected by law to make a dis-
15 closure of—

16 “(I) a violation of law or regula-
17 tion; or

18 “(II) gross mismanagement,
19 gross waste of funds, abuse of author-
20 ity, or a substantial and specific dan-
21 ger to public health or the safety of a
22 Federal entity;

23 “(ii) makes such a disclosure;

24 “(iii) is not prohibited by law to make
25 such a disclosure; and

1 “(iv) is not disclosing information
 2 that is determined pursuant to Executive
 3 Order No. 13526 (75 Fed. Reg. 707; relat-
 4 ing to classified national security informa-
 5 tion), or a successor order, or the Atomic
 6 Energy Act of 1954 (42 U.S.C. 2011 et
 7 seq.) to require protection against unau-
 8 thorized disclosure.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 for chapter 88 of title 18, United States Code, is amended
 11 by adding at the end the following new item:

“1802. Disclosure of whistleblower identity.”.

12 **SEC. 3. CIVIL RIGHT OF ACTION AGAINST DISCLOSURE OF**
 13 **WHISTLEBLOWER IDENTITY.**

14 (a) PROHIBITED DISCLOSURE.—A whistleblower may
 15 bring a civil action before the appropriate district court—

16 (1) for appropriate relief, including injunctive
 17 relief, compensatory damages, and punitive damages,
 18 against any employee of the Federal Government or
 19 contractor of the Federal Government who makes a
 20 prohibited disclosure, with respect to such whistle-
 21 blower; or

22 (2) for injunctive relief against any employee of
 23 the Federal Government or contractor of the Federal
 24 Government who threatens to make a prohibited dis-
 25 closure, with respect to such whistleblower.

1 (b) JURY TRIAL.—A party to an action brought
2 under subsection (a) shall be entitled to trial by jury.

3 (c) DEFINITIONS.—In this section, the terms “em-
4 ployee of the Federal Government”, “prohibited disclo-
5 sure”, and “whistleblower” have the meanings given such
6 terms in section 1802(d) of title 18, United States Code,
7 as added by this Act.

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