

Calendar No. 57

115TH CONGRESS
1ST SESSION

S. 585

[Report No. 115–44]

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2017

Mr. JOHNSON (for himself and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MAY 4, 2017

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Dr. Chris Kirkpatrick Whistleblower Protection Act of
4 2017”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYEES GENERALLY

Sec. 101. Definitions.
Sec. 102. Stays; probationary employees.
Sec. 103. Prohibited personnel practices.
Sec. 104. Discipline of supervisors based on retaliation against whistleblowers.
Sec. 105. Suicide by employees.
Sec. 106. Training for supervisors.
Sec. 107. Information on whistleblower protections.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

Sec. 201. Prevention of unauthorized access to medical records of employees of the Department of Veterans Affairs.
Sec. 202. Outreach on availability of mental health services available to employees of the Department of Veterans Affairs.
Sec. 203. Protocols to address threats against employees of the Department of Veterans Affairs.
Sec. 204. Comptroller General of the United States study on accountability of chiefs of police of Department of Veterans Affairs medical centers.

7 **TITLE I—EMPLOYEES**
8 **GENERALLY**

9 **SEC. 101. DEFINITIONS.**

10 In this title—

11 (1) the term “agency”—

12 (A) except as provided in subparagraph

13 (B), means an entity that is an agency, as de-

14 fined under section 2302 of title 5, United

15 States Code, without regard to whether one or

1 more portions of title 5 of the United States
 2 Code are inapplicable to the entity; and

3 (B) does not include any entity that is an
 4 element of the intelligence community, as de-
 5 fined in section 3(4) of the National Security
 6 Act of 1947 (50 U.S.C. 3003(4));

7 (2) the term “employee” means an employee
 8 (as defined in section 2105 of title 5, United States
 9 Code) of an agency; and

10 (3) the term “personnel action” has the mean-
 11 ing given that term under section 2302 of title 5,
 12 United States Code.

13 **SEC. 102. STAYS; PROBATIONARY EMPLOYEES.**

14 (a) REQUEST BY SPECIAL COUNSEL.—Section
 15 1214(b)(1) of title 5, United States Code, is amended by
 16 adding at the end the following:

17 “(E) If the Merit Systems Protection Board grants
 18 a stay under this subsection, the head of the agency em-
 19 ploying the employee shall give priority to a request for
 20 a transfer submitted by the employee.”.

21 (b) PROBATIONARY EMPLOYEES.—Section 1221 of
 22 title 5, United States Code, is amended by adding at the
 23 end the following:

24 “(k) If the Merit Systems Protection Board grants
 25 a stay to an employee in probationary status under sub-

1 section (c), the head of the agency employing the employee
 2 shall give priority to a request for a transfer submitted
 3 by the employee.”.

4 (c) STUDY REGARDING RETALIATION AGAINST PRO-
 5 BATIONARY EMPLOYEES.—The Comptroller General of
 6 the United States shall submit to the Committee on
 7 Homeland Security and Governmental Affairs of the Sen-
 8 ate and the Committee on Oversight and Government Re-
 9 form of the House of Representatives a report discussing
 10 retaliation against employees in probationary status.

11 **SEC. 103. PROHIBITED PERSONNEL PRACTICES.**

12 Section 2302(b) of title 5, United States Code, is
 13 amended—

14 (1) in paragraph (12), by striking “or” at the
 15 end;

16 (2) in paragraph (13), by striking the period at
 17 the end and inserting “; or”; and

18 (3) by inserting after paragraph (13) the fol-
 19 lowing:

20 “(14) access the medical record of another em-
 21 ployee or an applicant for employment as a part of,
 22 or otherwise in furtherance of, any conduct de-
 23 scribed in paragraphs (1) through (13).”.

1 **SEC. 104. DISCIPLINE OF SUPERVISORS BASED ON RETAL-**
 2 **IATION AGAINST WHISTLEBLOWERS.**

3 (a) IN GENERAL.—Subchapter II of chapter 75 of
 4 title 5, United States Code, is amended by adding at the
 5 end the following:

6 **“§ 7515. Discipline of supervisors based on retaliation**
 7 **against whistleblowers**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘agency’—

10 “(A) except as provided in subparagraph
 11 (B), means an entity that is an agency, as de-
 12 fined under section 2302, without regard to
 13 whether any other provision of this chapter is
 14 applicable to the entity; and

15 “(B) does not include any entity that is an
 16 element of the intelligence community, as de-
 17 fined in section 3(4) of the National Security
 18 Act of 1947 (50 U.S.C. 3003(4));

19 “(2) the term ‘prohibited personnel action’
 20 means taking or failing to take an action in violation
 21 of paragraph (8), (9), or (14) of section 2302(b)
 22 against an employee of an agency; and

23 “(3) the term ‘supervisor’ means an employee
 24 who would be a supervisor, as defined under section
 25 7103(a), if the entity employing the employee was
 26 an agency.

1 “(b) PROPOSED DISCIPLINARY ACTIONS.—

2 “(1) IN GENERAL.—If the head of the agency
3 employing a supervisor, an administrative law judge,
4 the Merit Systems Protection Board, the Special
5 Counsel, a judge of the United States, or the Inspec-
6 tor General of the agency employing a supervisor de-
7 termines that the supervisor has committed a pro-
8 hibited personnel action, the head of the agency em-
9 ploying the supervisor, in accordance with the proce-
10 dures required under paragraph (2)—

11 “(A) for the first prohibited personnel ac-
12 tion committed by a supervisor—

13 “(i) shall propose suspending the su-
14 pervisor for a period of not less than 3
15 days; and

16 “(ii) may, in addition to a suspension
17 described in clause (i), propose any other
18 action, including a reduction in grade or
19 pay, that the head of the agency deter-
20 mines appropriate; and

21 “(B) for the second prohibited personnel
22 action committed by a supervisor, shall propose
23 removing the supervisor.

24 “(2) PROCEDURES.—

1 “(A) NOTICE.—A supervisor against whom
2 an action is proposed to be taken under para-
3 graph (1) is entitled to written notice—

4 “(i) stating the specific reasons for
5 the proposed action; and

6 “(ii) informing the supervisor of the
7 right of the supervisor to review the mate-
8 rial which is relied on to support the rea-
9 sons for the proposed action.

10 “(B) ANSWER AND EVIDENCE.—

11 “(i) IN GENERAL.—A supervisor who
12 is notified under subparagraph (A) that
13 the supervisor is the subject of a proposed
14 action under paragraph (1) is entitled to
15 14 days following such notification to an-
16 swer and furnish evidence in support of the
17 answer.

18 “(ii) NO EVIDENCE FURNISHED; IN-
19 SUFFICIENT EVIDENCE.—After the end of
20 the 14-day period described in clause (i), if
21 a supervisor does not furnish evidence as
22 described in clause (i) or if the head of the
23 agency determines that such evidence is
24 not sufficient to reverse the proposed ac-

1 tion, the head of the agency shall carry out
2 the action.

3 “(C) SCOPE OF PROCEDURES.—An action
4 carried out under this section—

5 “(i) except as provided in clause (ii),
6 shall be subject to the same requirements
7 and procedures (including regarding ap-
8 peals) as an action under section 7503,
9 7513, or 7543; and

10 “(ii) shall not be subject to—

11 “(I) paragraphs (1) and (2) of
12 section 7503(b);

13 “(II) paragraphs (1) and (2) of
14 subsection (b) and subsection (c) of
15 section 7513; or

16 “(III) paragraphs (1) and (2) of
17 subsection (b) and subsection (c) of
18 section 7543.

19 “(3) DELEGATION.—

20 “(A) IN GENERAL.—Except as provided in
21 paragraph (B), the head of an agency may dele-
22 gate any authority or responsibility under this
23 subsection.

24 “(B) NONDELEGABILITY OF DETERMINA-
25 TION REGARDING PROHIBITED PERSONNEL AC-

1 TION.—If the head of an agency is responsible
 2 for determining whether a supervisor has com-
 3 mitted a prohibited personnel action for pur-
 4 poses of paragraph (1), the head of the agency
 5 may not delegate that responsibility.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 7 The table of sections for subchapter II of chapter 75 of
 8 title 5, United States Code, is amended by adding at the
 9 end the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”.

10 **SEC. 105. SUICIDE BY EMPLOYEES.**

11 (a) REFERRAL.—The head of an agency shall refer
 12 to the Special Counsel, along with any information known
 13 to the agency regarding the circumstances described in
 14 paragraphs (2) and (3), any instance in which the head
 15 of the agency has information indicating—

16 (1) an employee of the agency committed sui-
 17 cide;

18 (2) prior to the death of the employee, the em-
 19 ployee made any disclosure of information which rea-
 20 sonably evidences—

21 (A) any violation of any law, rule, or regu-
 22 lation; or

23 (B) gross mismanagement, a gross waste
 24 of funds, an abuse of authority, or a substantial

1 and specific danger to public health or safety;
2 and

3 (3) after a disclosure described in paragraph
4 (2), a personnel action was taken against the em-
5 ployee.

6 (b) OFFICE OF SPECIAL COUNSEL REVIEW.—For
7 any referral to the Special Counsel under subsection (a),
8 the Special Counsel shall—

9 (1) examine whether any personnel action was
10 taken because of any disclosure of information de-
11 scribed in subsection (a)(2); and

12 (2) take any action the Special Counsel deter-
13 mines appropriate under subchapter II of chapter 12
14 of title 5, United States Code.

15 **SEC. 106. TRAINING FOR SUPERVISORS.**

16 In consultation with the Special Counsel and the In-
17 specter General of the agency (or senior ethics official of
18 the agency for an agency without an Inspector General),
19 the head of each agency shall provide training regarding
20 how to respond to complaints alleging a violation of whis-
21 tleblower protections (as defined in section 2307 of title
22 5, United States Code, as added by section 107) available
23 to employees of the agency—

1 (1) to employees appointed to supervisory posi-
 2 tions in the agency who have not previously served
 3 as a supervisor; and

4 (2) on an annual basis, to all employees of the
 5 agency serving in a supervisory position.

6 **SEC. 107. INFORMATION ON WHISTLEBLOWER PROTEC-**
 7 **TIONS.**

8 (a) EXISTING PROVISION.—

9 (1) IN GENERAL.—Section 2302 of title 5,
 10 United States Code, is amended—

11 (A) by striking subsection (c); and

12 (B) by redesignating subsections (d), (e),
 13 and (f) as subsections (c), (d), and (e), respec-
 14 tively.

15 (2) TECHNICAL AND CONFORMING AMEND-
 16 MENTS.—

17 (A) Section 4505a(b)(2) of title 5, United
 18 States Code, is amended by striking “section
 19 2302(d)” and inserting “section 2302(c)”.

20 (B) Section 5755(b)(2) of title 5, United
 21 States Code, is amended by striking “section
 22 2302(d)” and inserting “section 2302(c)”.

23 (C) Section 110(b)(2) of the Whistleblower
 24 Protection Enhancement Act of 2012 (5 U.S.C.
 25 2302 note) is amended by striking “section

1 ~~2302(f)(1)~~ 2302(f)(1) or (2)” and inserting
 2 “section ~~2303(e)(1)~~ 2302(e)(1) or (2)”.

3 ~~(D)~~ Section 704 of the Homeland Security
 4 Act of 2002 (~~6 U.S.C. 344~~) is amended by
 5 striking “2302(e)” each place it appears and
 6 inserting “2307”.

7 ~~(E)~~ Section 1217(d)(3) of the Panama
 8 Canal Act of 1979 (22 U.S.C. 3657(d)(3)) is
 9 amended by striking “section 2302(d)” and in-
 10 serting “section 2302(c)”.

11 ~~(F)~~ Section 1233(b) of the Panama
 12 Canal Act of 1979 (22 U.S.C. 3673(b)) is
 13 amended by striking “section 2302(d)” and in-
 14 serting “section 2302(c)”.

15 (b) PROVISION OF INFORMATION.—Chapter 23 of
 16 title 5, United States Code, is amended by adding at the
 17 end the following:

18 **“§ 2307. Information on whistleblower protections**

19 “(a) DEFINITIONS.—In this section—

20 “(1) the term ‘agency’—

21 “(A) except as provided in subparagraph
 22 (B), has the meaning given that term in section
 23 2302; and

24 “(B) does not include any entity that is an
 25 element of the intelligence community, as de-

1 fined in section 3(4) of the National Security
2 Act of 1947 (50 U.S.C. 3003(4));

3 “(2) the term ‘new employee’ means an indi-
4 vidual—

5 “(A) appointed to a position as an em-
6 ployee of an agency on or after the date of en-
7 actment of the Dr. Chris Kirkpatrick Whistle-
8 blower Protection Act of 2017; and

9 “(B) who has not previously served as an
10 employee; and

11 “(3) the term ‘whistleblower protections’ means
12 the protections against and remedies for a prohibited
13 personnel practice described in paragraph (8), sub-
14 paragraph (A)(i), (B), (C), or (D) of paragraph (9),
15 or paragraph (14) of section 2302(b).

16 “(b) RESPONSIBILITIES OF HEAD OF AGENCY.—The
17 head of each agency shall be responsible for the prevention
18 of prohibited personnel practices, for the compliance with
19 and enforcement of applicable civil service laws, rules, and
20 regulations, and other aspects of personnel management,
21 and for ensuring (in consultation with the Special Counsel
22 and the Inspector General of the agency) that employees
23 of the agency are informed of the rights and remedies
24 available to them under this chapter and chapter 12, in-
25 cluding—

1 “(1) information regarding whistleblower pro-
2 tections available to new employees during the pro-
3 bationary period;

4 “(2) the role of the Office of Special Counsel
5 and the Merit Systems Protection Board with regard
6 to whistleblower protections; and

7 “(3) how to make a lawful disclosure of infor-
8 mation that is specifically required by law or Execu-
9 tive order to be kept classified in the interest of na-
10 tional defense or the conduct of foreign affairs to the
11 Special Counsel, the Inspector General of an agency,
12 Congress, or other agency employee designated to
13 receive such disclosures.

14 “(c) TIMING.—The head of each agency shall ensure
15 that the information required to be provided under sub-
16 section (b) is provided to each new employee of the agency
17 not later than 6 months after the date the new employee
18 begins performing service as an employee.

19 “(d) INFORMATION ONLINE.—The head of each
20 agency shall make available information regarding whistle-
21 blower protections applicable to employees of the agency
22 on the public website of the agency, and on any online
23 portal that is made available only to employees of the
24 agency if one exists.

1 “(e) DELEGES.—Any employee to whom the head
 2 of an agency delegates authority for personnel manage-
 3 ment, or for any aspect thereof, shall, within the limits
 4 of the scope of the delegation, be responsible for the activi-
 5 ties described in subsection (b).”.

6 (c) TECHNICAL AND CONFORMING AMENDMENT.—
 7 The table of sections for chapter 23 of title 5, United
 8 States Code, is amended by adding at the end the fol-
 9 lowing:

“2307. Information on whistleblower protections.”.

10 **TITLE II—DEPARTMENT OF** 11 **VETERANS AFFAIRS EMPLOYEES**

12 **SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO** 13 **MEDICAL RECORDS OF EMPLOYEES OF THE** 14 **DEPARTMENT OF VETERANS AFFAIRS.**

15 (a) DEVELOPMENT OF PLAN.—

16 (1) IN GENERAL.—Not later than 180 days
 17 after the date of the enactment of this Act, the Sec-
 18 retary of Veterans Affairs shall—

19 (A) develop a plan to prevent access to the
 20 medical records of employees of the Department
 21 of Veterans Affairs by employees of the Depart-
 22 ment who are not authorized to access such
 23 records;

1 (B) submit to the appropriate committees
2 of Congress the plan developed under subpara-
3 graph (A); and

4 (C) upon request, provide a briefing to the
5 appropriate committees of Congress with re-
6 spect to the plan developed under subparagraph
7 (A).

8 (2) ELEMENTS.—The plan required under
9 paragraph (1) shall include the following:

10 (A) A detailed assessment of strategic
11 goals of the Department for the prevention of
12 unauthorized access to the medical records of
13 employees of the Department.

14 (B) A list of circumstances in which an
15 employee of the Department who is not a health
16 care provider or an assistant to a health care
17 provider would be authorized to access the med-
18 ical records of another employee of the Depart-
19 ment.

20 (C) Steps that the Secretary will take to
21 acquire new or implement existing technology to
22 prevent an employee of the Department from
23 accessing the medical records of another em-
24 ployee of the Department without a specific
25 need to access such records.

1 (D) Steps the Secretary will take, includ-
2 ing plans to issue new regulations, as necessary,
3 to ensure that an employee of the Department
4 may not access the medical records of another
5 employee of the Department for the purpose of
6 retrieving demographic information if that de-
7 mographic information is available to the em-
8 ployee in another location or through another
9 format.

10 (E) A proposed timetable for the imple-
11 mentation of such plan.

12 (F) An estimate of the costs associated
13 with implementing such plan.

14 (b) APPROPRIATE COMMITTEES OF CONGRESS DE-
15 FINED.—In this section, the term “appropriate commit-
16 tees of Congress” means—

17 (1) the Committee on Homeland Security and
18 Governmental Affairs and the Committee on Vet-
19 erans’ Affairs of the Senate; and

20 (2) the Committee on Oversight and Govern-
21 ment Reform and the Committee on Veterans’ Af-
22 fairs of the House of Representatives.

1 **SEC. 202. OUTREACH ON AVAILABILITY OF MENTAL**
2 **HEALTH SERVICES AVAILABLE TO EMPLOY-**
3 **EES OF THE DEPARTMENT OF VETERANS AF-**
4 **FAIRS.**

5 The Secretary of Veterans Affairs shall conduct a
6 program of outreach to employees of the Department of
7 Veterans Affairs to inform those employees of any mental
8 health services, including telemedicine options, that are
9 available to them.

10 **SEC. 203. PROTOCOLS TO ADDRESS THREATS AGAINST EM-**
11 **PLOYEES OF THE DEPARTMENT OF VET-**
12 **ERANS AFFAIRS.**

13 The Secretary of Veterans Affairs shall ensure proto-
14 cols are in effect to address threats from individuals re-
15 ceiving health care from the Department of Veterans Af-
16 fairs directed towards employees of the Department who
17 are providing such health care.

18 **SEC. 204. COMPTROLLER GENERAL OF THE UNITED**
19 **STATES STUDY ON ACCOUNTABILITY OF**
20 **CHIEFS OF POLICE OF DEPARTMENT OF VET-**
21 **ERANS AFFAIRS MEDICAL CENTERS.**

22 The Comptroller General of the United States shall
23 conduct a study to assess the reporting, staffing, account-
24 ability, and chain of command structure of the Depart-
25 ment of Veterans Affairs police officers at medical centers
26 of the Department.

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