

115TH CONGRESS
1ST SESSION

S. 585

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

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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Dr. Chris Kirkpatrick Whistleblower Protection Act of
6 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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.

3 **TITLE I—EMPLOYEES** 4 **GENERALLY**

5 **SEC. 101. DEFINITIONS.**

6 In this title—

7 (1) the term “agency”—

8 (A) except as provided in subparagraph

9 (B), means an entity that is an agency, as de-
 10 fined under section 2302 of title 5, United
 11 States Code, without regard to whether one or
 12 more portions of title 5 of the United States
 13 Code are inapplicable to the entity; and

14 (B) does not include any entity that is an
 15 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 “employee” means an employee
4 (as defined in section 2105 of title 5, United States
5 Code) of an agency; and

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

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

10 (a) REQUEST BY SPECIAL COUNSEL.—Section
11 1214(b)(1) of title 5, United States Code, is amended by
12 adding at the end the following:

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

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

20 “(k) If the Merit Systems Protection Board grants
21 a stay to an employee in probationary status under sub-
22 section (c), the head of the agency employing the employee
23 shall give priority to a request for a transfer submitted
24 by the employee.”.

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

8 **SEC. 103. PROHIBITED PERSONNEL PRACTICES.**

9 Section 2302(b) of title 5, United States Code, is
 10 amended—

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

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

15 (3) by inserting after paragraph (13) the fol-
 16 lowing:

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

21 **SEC. 104. DISCIPLINE OF SUPERVISORS BASED ON RETAL-**
 22 **IATION AGAINST WHISTLEBLOWERS.**

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

1 **“§ 7515. Discipline of supervisors based on retaliation**
2 **against whistleblowers**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘agency’—

5 “(A) except as provided in subparagraph
6 (B), means an entity that is an agency, as de-
7 fined under section 2302, without regard to
8 whether any other provision of this chapter is
9 applicable to the entity; and

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

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

18 “(3) the term ‘supervisor’ means an employee
19 who would be a supervisor, as defined under section
20 7103(a), if the entity employing the employee was
21 an agency.

22 “(b) PROPOSED DISCIPLINARY ACTIONS.—

23 “(1) IN GENERAL.—If the head of the agency
24 employing a supervisor, an administrative law judge,
25 the Merit Systems Protection Board, the Special
26 Counsel, a judge of the United States, or the Inspec-

1 tor General of the agency employing a supervisor de-
 2 termines that the supervisor has committed a pro-
 3 hibited personnel action, the head of the agency em-
 4 ploying the supervisor, in accordance with the proce-
 5 dures required under paragraph (2)—

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

8 “(i) shall propose suspending the su-
 9 pervisor for a period of not less than 3
 10 days; and

11 “(ii) may, in addition to a suspension
 12 described in clause (i), propose any other
 13 action, including a reduction in grade or
 14 pay, that the head of the agency deter-
 15 mines appropriate; and

16 “(B) for the second prohibited personnel
 17 action committed by a supervisor, shall propose
 18 removing the supervisor.

19 “(2) PROCEDURES.—

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

23 “(i) stating the specific reasons for
 24 the proposed action; and

1 “(ii) informing the supervisor of the
2 right of the supervisor to review the mate-
3 rial which is relied on to support the rea-
4 sons for the proposed action.

5 “(B) ANSWER AND EVIDENCE.—

6 “(i) IN GENERAL.—A supervisor who
7 is notified under subparagraph (A) that
8 the supervisor is the subject of a proposed
9 action under paragraph (1) is entitled to
10 14 days following such notification to an-
11 swer and furnish evidence in support of the
12 answer.

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

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

24 “(i) except as provided in clause (ii),
25 shall be subject to the same requirements

1 and procedures (including regarding ap-
2 peals) as an action under section 7503,
3 7513, or 7543; and

4 “(ii) shall not be subject to—

5 “(I) paragraphs (1) and (2) of
6 section 7503(b);

7 “(II) paragraphs (1) and (2) of
8 subsection (b) and subsection (c) of
9 section 7513; or

10 “(III) paragraphs (1) and (2) of
11 subsection (b) and subsection (c) of
12 section 7543.

13 “(3) DELEGATION.—

14 “(A) IN GENERAL.—Except as provided in
15 paragraph (B), the head of an agency may dele-
16 gate any authority or responsibility under this
17 subsection.

18 “(B) NONDELEGABILITY OF DETERMINA-
19 TION REGARDING PROHIBITED PERSONNEL AC-
20 TION.—If the head of an agency is responsible
21 for determining whether a supervisor has com-
22 mitted a prohibited personnel action for pur-
23 poses of paragraph (1), the head of the agency
24 may not delegate that responsibility.”.

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

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

5 **SEC. 105. SUICIDE BY EMPLOYEES.**

6 (a) REFERRAL.—The head of an agency shall refer
 7 to the Special Counsel, along with any information known
 8 to the agency regarding the circumstances described in
 9 paragraphs (2) and (3), any instance in which the head
 10 of the agency has information indicating—

11 (1) an employee of the agency committed sui-
 12 cide;

13 (2) prior to the death of the employee, the em-
 14 ployee made any disclosure of information which rea-
 15 sonably evidences—

16 (A) any violation of any law, rule, or regu-
 17 lation; or

18 (B) gross mismanagement, a gross waste
 19 of funds, an abuse of authority, or a substantial
 20 and specific danger to public health or safety;
 21 and

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

1 (b) OFFICE OF SPECIAL COUNSEL REVIEW.—For
2 any referral to the Special Counsel under subsection (a),
3 the Special Counsel shall—

4 (1) examine whether any personnel action was
5 taken because of any disclosure of information de-
6 scribed in subsection (a)(2); and

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

10 **SEC. 106. TRAINING FOR SUPERVISORS.**

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

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

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

1 **SEC. 107. INFORMATION ON WHISTLEBLOWER PROTEC-**
2 **TIONS.**

3 (a) EXISTING PROVISION.—

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

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

7 (B) by redesignating subsections (d), (e),
8 and (f) as subsections (c), (d), and (e), respec-
9 tively.

10 (2) TECHNICAL AND CONFORMING AMEND-
11 MENTS.—

12 (A) Section 4505a(b)(2) of title 5, United
13 States Code, is amended by striking “section
14 2302(d)” and inserting “section 2302(c)”.

15 (B) Section 5755(b)(2) of title 5, United
16 States Code, is amended by striking “section
17 2302(d)” and inserting “section 2302(c)”.

18 (C) Section 110(b)(2) of the Whistleblower
19 Protection Enhancement Act of 2012 (5 U.S.C.
20 2302 note) is amended by striking “section
21 2303(f)(1) or (2)” and inserting “section
22 2303(e)(1) or (2)”.

23 (D) Section 704 of the Homeland Security
24 Act of 2002 (6 U.S.C. 344) is amended by
25 striking “2302(c)” each place it appears and
26 inserting “2307”.

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

5 (F) Section 1233(b) of the Panama Canal
 6 Act of 1979 (22 U.S.C. 3673(b)) is amended by
 7 striking “section 2302(d)” and inserting “sec-
 8 tion 2302(c)”.

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

12 **“§ 2307. Information on whistleblower protections**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘agency’—

15 “(A) except as provided in subparagraph
 16 (B), has the meaning given that term in section
 17 2302; and

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

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

24 “(A) appointed to a position as an em-
 25 ployee of an agency on or after the date of en-

1 actment of the Dr. Chris Kirkpatrick Whistle-
2 blower Protection Act of 2017; and

3 “(B) who has not previously served as an
4 employee; and

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

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

20 “(1) information regarding whistleblower pro-
21 tections available to new employees during the pro-
22 bationary period;

23 “(2) the role of the Office of Special Counsel
24 and the Merit Systems Protection Board with regard
25 to whistleblower protections; and

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

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

13 “(d) INFORMATION ONLINE.—The head of each
14 agency shall make available information regarding whistle-
15 blower protections applicable to employees of the agency
16 on the public website of the agency, and on any online
17 portal that is made available only to employees of the
18 agency if one exists.

19 “(e) DELEGATES.—Any employee to whom the head
20 of an agency delegates authority for personnel manage-
21 ment, or for any aspect thereof, shall, within the limits
22 of the scope of the delegation, be responsible for the activi-
23 ties described in subsection (b).”.

24 (c) TECHNICAL AND CONFORMING AMENDMENT.—
25 The table of sections for chapter 23 of title 5, United

1 States Code, is amended by adding at the end the fol-
 2 lowing:

“2307. Information on whistleblower protections.”.

3 **TITLE II—DEPARTMENT OF**
 4 **VETERANS AFFAIRS EMPLOYEES**

5 **SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO**
 6 **MEDICAL RECORDS OF EMPLOYEES OF THE**
 7 **DEPARTMENT OF VETERANS AFFAIRS.**

8 (a) DEVELOPMENT OF PLAN.—

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

12 (A) develop a plan to prevent access to the
 13 medical records of employees of the Department
 14 of Veterans Affairs by employees of the Depart-
 15 ment who are not authorized to access such
 16 records;

17 (B) submit to the appropriate committees
 18 of Congress the plan developed under subpara-
 19 graph (A); and

20 (C) upon request, provide a briefing to the
 21 appropriate committees of Congress with re-
 22 spect to the plan developed under subparagraph
 23 (A).

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

1 (A) A detailed assessment of strategic
2 goals of the Department for the prevention of
3 unauthorized access to the medical records of
4 employees of the Department.

5 (B) A list of circumstances in which an
6 employee of the Department who is not a health
7 care provider or an assistant to a health care
8 provider would be authorized to access the med-
9 ical records of another employee of the Depart-
10 ment.

11 (C) Steps that the Secretary will take to
12 acquire new or implement existing technology to
13 prevent an employee of the Department from
14 accessing the medical records of another em-
15 ployee of the Department without a specific
16 need to access such records.

17 (D) Steps the Secretary will take, includ-
18 ing plans to issue new regulations, as necessary,
19 to ensure that an employee of the Department
20 may not access the medical records of another
21 employee of the Department for the purpose of
22 retrieving demographic information if that de-
23 mographic information is available to the em-
24 ployee in another location or through another
25 format.

1 (E) A proposed timetable for the imple-
 2 mentation of such plan.

3 (F) An estimate of the costs associated
 4 with implementing such plan.

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

8 (1) the Committee on Homeland Security and
 9 Governmental Affairs and the Committee on Vet-
 10 erans’ Affairs of the Senate; and

11 (2) the Committee on Oversight and Govern-
 12 ment Reform and the Committee on Veterans’ Af-
 13 fairs of the House of Representatives.

14 **SEC. 202. OUTREACH ON AVAILABILITY OF MENTAL**
 15 **HEALTH SERVICES AVAILABLE TO EMPLOY-**
 16 **EES OF THE DEPARTMENT OF VETERANS AF-**
 17 **FAIRS.**

18 The Secretary of Veterans Affairs shall conduct a
 19 program of outreach to employees of the Department of
 20 Veterans Affairs to inform those employees of any mental
 21 health services, including telemedicine options, that are
 22 available to them.

9 SEC. 204. COMPTROLLER GENERAL OF THE UNITED
10 STATES STUDY ON ACCOUNTABILITY OF
11 CHIEFS OF POLICE OF DEPARTMENT OF VET-
12 ERANS AFFAIRS MEDICAL CENTERS.

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