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112TH CONGRESS
2D SESSION

S. 3462

To provide anti-retaliation protections for antitrust whistleblowers.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2012

Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide anti-retaliation protections for antitrust whistleblowers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Criminal Antitrust Anti-Retaliation Act''.

SEC. 2. AMENDMENT TO ACPERA.

The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended by adding after section 215 the following:

"SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLEBLOWERS.

"(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

"(1) IN GENERAL.—No person, or any officer, employee, contractor, subcontractor or agent of such person, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a whistleblower in the terms and conditions of employment because—

"(A) the whistleblower provided or caused to be provided to the person or the Federal Government information relating to—

"(i) any violation of, or any act or omission the whistleblower reasonably believes to be a violation of the antitrust laws; or

"(ii) any violation of, or any act or omission the whistleblower reasonably believes to be a violation of another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

"(B) the whistleblower filed, caused to be filed, testified, participated in, or otherwise assisted an investigation or a proceeding filed or about to be filed (with any knowledge of the employer) relating to—

"(i) any violation of, or any act or omission the whistleblower reasonably believes to be a violation of the antitrust laws; or

"(ii) any violation of, or any act or omission the whistleblower reasonably believes to be a violation of another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

"(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any whistleblower if—

"(A) the whistleblower planned and initiated a violation or attempted violation of the antitrust laws;

"(B) the whistleblower planned and initiated a violation or attempted violation of another criminal law in conjunction with a viola-

tion or attempted violation of the antitrust laws; or

"(C) the whistleblower planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

"(3) DEFINITIONS.—In the section:

"(A) PERSON.—The term 'person' has the same meaning as in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

"(B) ANTITRUST LAWS.—The term 'antitrust laws' means section 1 or 3 of the Sherman Act (15 U.S.C. 1, 3) or similar State law.

"(C) WHISTLEBLOWER.—The term 'whistleblower' means an employee, contractor, subcontractor, or agent protected from discrimination under paragraph (1).

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A whistleblower who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—A complaint filed with the Secretary of Labor under paragraph (1) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) STATUTE OF LIMITATIONS.—A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation occurs.

"(E) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), 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 whistleblower prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the whistleblower whole.

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

"(A) reinstatement with the same seniority status that the whistleblower 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 rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.".

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