

103^D CONGRESS
1ST SESSION

S. 166

The Private Sector Whistleblowers' Protection Act of 1993.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. WALLOP introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

The Private Sector Whistleblowers' Protection Act of 1993.

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. PURPOSE.**

4 The Federal regulatory system should be imple-
5 mented consistent with the principle that any person sub-
6 ject to Government regulation should be protected against
7 reprisal for disclosing information that the person believes
8 is indicative of—

- 9 (1) violation or inconsistent application of any
10 law, rule, regulation, policy, or internal standard;
11 (2) arbitrary action or other abuse of authority;
12 (3) mismanagement;

- 1 (4) waste or misallocation of resources;
- 2 (5) inconsistent, discriminatory or disproportion-
3 ative enforcement proceedings;
- 4 (6) endangerment of public health or safety;
- 5 (7) personal favoritism; and
- 6 (8) coercion for partisan political purposes;
- 7 by any agency or its employees.

8 **SEC. 2. COVERAGE.**

9 This Act shall apply to:

10 (1) Any agency of the Federal Government as
11 defined in section 551 of title 5, United States Code.

12 (2) Any agency of a State government that ex-
13 ercises authority under Federal law, or that exer-
14 cises authority under State law establishing a pro-
15 gram approved by a Federal agency as a substitute
16 for or supplement to a program established by Fed-
17 eral law.

18 **SEC. 3. PROHIBITED REGULATORY PRACTICES.**

19 (a) For purposes of this title, “prohibited regulatory
20 practice” means any action described in subsection (b) of
21 this section.

22 (b)(1) No employee of an Agency who has author-
23 ity—
24 to take or direct other employees to take,
25 to recommend, or

1 to approve
2 any regulatory action shall
3 take or fail to take, or threaten to take or fail
4 to take,
5 recommend or direct that others take or fail to
6 take, or threaten to so recommend or direct,
7 approve the taking or failing to take, or threat-
8 en to so approve,
9 such regulatory action because of any disclosure by
10 a person subject to the action, or by any other person,
11 of information that the person believed indicative of:
12 (A) violation or inconsistent application of any
13 law, rule, regulation, policy, or internal standard;
14 (B) arbitrary action or other abuse of au-
15 thority;
16 (C) mismanagement;
17 (D) Waste or misallocation of resources;
18 (E) Inconsistent, discriminatory or dis-
19 proportionate enforcement;
20 (F) endangerment of public health or safety;
21 (G) personal favoritism; or
22 (H) coercion for partisan political pur-
23 poses;
24 by any agency or its employees.

1 (2) An action shall be deemed to have been taken,
2 not taken, approved, or recommended because of the dis-
3 closure of information within the meaning of subsection
4 (b)(1) if the disclosure of information was a contributing
5 factor to the decision to take, not to take, to approve, or
6 to recommend.

7 **SEC. 4. PROHIBITED REGULATORY PRACTICE AS A DE-**
8 **FENSE TO AGENCY ACTION.**

9 (a) In any administrative or judicial action or pro-
10 ceeding, formal or informal, by an agency to create, apply
11 or enforce any obligation, duty or liability under any law,
12 rule or regulation against any person, the person may as-
13 sert as a defense that the agency or one or more employees
14 of the agency have engaged in a prohibited regulatory
15 practice with respect to the person or to a related entity
16 in connection with the action or proceeding.

17 (b) If the existence of a prohibited regulatory practice
18 is established, the person may be required to comply with
19 the obligation, duty or liability to the extent compliance
20 is required of and enforced against other persons similarly
21 situated, but no penalty, fine, damages, costs or other obli-
22 gation except compliance shall be imposed on the person.

23 **SEC. 5. ENFORCEMENT.**

24 (a) Any agency, and any employee of an agency, en-
25 gaging in a prohibited regulatory practice may be assessed

1 a civil penalty of not more than \$25,000 for each such
2 practice. In the case of a continuing prohibited regulatory
3 practice, each day that the practice continues shall be
4 deemed a separate practice.

5 (b) The President shall, by regulation, establish pro-
6 cedures providing for the administrative enforcement of
7 the requirements of subsection (a) of this section.

8 **SEC. 6. CITIZEN SUITS.**

9 (a) Any person injured or threatened by a prohibited
10 regulatory practice may commence a civil action on his
11 own behalf against any person or agency alleged to have
12 engaged in or threatened to engage in such practice.

13 (b) Any action under subsection (a) of this section
14 shall be brought in the district court for any district in
15 which the alleged prohibited regulatory practice occurred
16 or in which the alleged injury occurred. The district court
17 shall have jurisdiction, without regard to the amount in
18 controversy or the citizenship of the parties, to:

19 (1) restrain any agency or person who has en-
20 gaged or is engaging in any prohibited regulatory
21 practice;

22 (2) order the cancellation or remission of any
23 penalty, fine, damages, or other monetary assess-
24 ment that resulted from a prohibited regulatory
25 practice;

1 (3) order the rescission of any settlement that
2 resulted from a prohibited regulatory practice;

3 (4) order the issuance of any permit or license
4 that has been denied or delayed as a result of a pro-
5 hibited regulatory practice;

6 (5) order the agency and/or the employee en-
7 gaging in a prohibited regulatory practice to pay to
8 the injured person such damages as may be nec-
9 essary to compensate the person for any harm re-
10 sulting from the practice, including damages for—

11 (A) injury to, deterioration of, or destruc-
12 tion of real or personal property;

13 (B) loss of profits from idle or
14 underutilized resources, and from business for-
15 gone;

16 (C) costs incurred, including costs of com-
17 pliance where appropriate;

18 (D) loss in value of a business;

19 (E) reasonable legal, consulting and expert
20 witness fees; or

21 (F) payments to third parties;

22 (6) order the payment of punitive damages, in
23 an amount not to exceed \$25,000 for each such pro-
24 hibited regulatory practice, provided that, in the case
25 of a continuing prohibited regulatory practice, each

1 day that the practice continues shall be deemed a
2 separate practice.

3 **SEC. 7. OFFICE OF THE SPECIAL COUNSEL.**

4 (a) Any person who has reason to believe that any
5 employee of any agency has engaged in a prohibited regu-
6 latory practice may request the Special Counsel estab-
7 lished by section 1211 of title 5, United States Code, to
8 investigate.

9 (b) The Special Counsel shall have the same power
10 to investigate prohibited regulatory practices that it has
11 to investigate prohibited personnel practices pursuant to
12 section 1212 of title 5, United States Code.

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