

104TH CONGRESS
2D SESSION

H. R. 3307

To amend title 5, United States Code, to provide for a limitation on sanctions imposed by agencies and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1996

Mr. GEKAS (for himself, Mr. MOORHEAD, Mr. SENSENBRENNER, Mr. COBLE, Mr. SMITH of Texas, Mr. INGLIS of South Carolina, Mr. HOKE, Mr. BONO, Mr. BRYANT of Tennessee, Mr. BARR of Georgia, Mr. TALENT, Mr. TAUZIN, and Mr. ZELIFF) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to provide for a limitation on sanctions imposed by agencies 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 “Regulatory Fair Warn-
5 ing Act”.

1 **SEC. 2. LIMITATION ON IMPOSITION OF SANCTIONS BY**
2 **AGENCIES.**

3 Section 558 of title 5, United States Code, is amend-
4 ed by adding at the end the following new subsection:

5 “(d)(1) No civil or criminal sanction shall be imposed
6 by an agency for a violation of a rule—

7 “(A) if the agency finds that the rule, other
8 general statements of policy, and related guidances
9 and policies published in the Federal Register by the
10 agency failed to give the defendant fair warning of
11 the conduct that the rule prohibits or requires; or

12 “(B) if the agency finds that the defendant—

13 “(i) prior to the violation reasonably and
14 in good faith determined, based upon the text
15 of the rule and other related guidances and
16 policies published by the agency, that the de-
17 fendant was in compliance with, exempt from,
18 or otherwise not subject to, the requirements of
19 the rule; or

20 “(ii) committed the violation in reasonable
21 reliance upon a written statement by a Federal
22 or State official authorized to implement or en-
23 sure compliance with the rule, made after dis-
24 closure by the defendant of all material facts,
25 that the defendant was in compliance with, ex-

1 empt from, or otherwise not subject to, the re-
2 quirements of the rule.

3 “(2) In an action brought to impose a civil or crimi-
4 nal sanction for an alleged violation of a rule, an agency
5 shall not give deference to any interpretation of such rule
6 relied on by the agency that was not published in the Fed-
7 eral Register or was not otherwise available to the defend-
8 ant prior to the alleged violation.”.

**SEC. 3. LIMITATION ON IMPOSITION OF SANCTIONS BY
COURTS.**

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

“§ 1660. Sanctions for violations of agency rules

“(a) No civil or criminal sanction shall be imposed by a court for a violation of a rule—

“(1) if the court finds that the rule, other general statements of policy, and related guidances and policies published in the Federal Register by the agency which promulgated such rule, failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

“(2) if the court finds that the defendant—

“(A) prior to the violation, reasonably and in good faith determined, based upon the text

of the rule and other related guidances and policies published by the agency, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

“(B) committed the violation in reasonable reliance upon a written statement by a Federal or State official authorized to implement or ensure compliance with the rule, made after disclosure by the defendant of all material facts, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule.

“(b) In an action brought to impose a civil or criminal sanction for an alleged violation of a rule, the court shall not give deference to any interpretation of such rule relied on by the agency that promulgated the rule that was not published in the Federal Register or was not otherwise available to the defendant prior to the alleged violation.

“(c) For purposes of this section, the term ‘rule’ shall have the meaning given that term by section 551 of title 5.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States

Code, is amended by adding after the item relating to section 1659 the following new item:

“1660. Sanctions for violations of agency rules.”.

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