

106TH CONGRESS
2D SESSION

S. 3190

To amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, SEPTEMBER 22), 2000

Mr. AKAKA (for himself and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, 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. PROTECTION OF CERTAIN DISCLOSURES OF IN-**
2 **FORMATION BY FEDERAL EMPLOYEES.**

3 (a) CLARIFICATION OF DISCLOSURES COVERED.—
4 Section 2302(b)(8)(A) of title 5, United States Code, is
5 amended—

6 (1) by striking “by an employee or applicant”
7 and inserting “, without restriction to time, place,
8 form, motive, or context, made to any person by an
9 employee or applicant, including a disclosure made
10 in the ordinary course of an employee’s duties,”; and

11 (2) in clause (i) by striking “a violation” and
12 inserting “any violation”.

13 (b) NONDISCLOSURE POLICIES, FORMS, AND AGREE-
14 MENTS.—

15 (1) PERSONNEL ACTION.—Section
16 2302(a)(2)(A) of title 5, United States Code, is
17 amended—

18 (A) in clause (x) by striking “and” after
19 the semicolon; and

20 (B) by redesignating clause (xi) as clause
21 (xii) and inserting after clause (x) the following:

22 “(xi) the implementation or enforcement of
23 any nondisclosure policy, form, or agreement;
24 and”.

1 (2) PROHIBITED PERSONNEL PRACTICE.—Sec-
2 tion 2302(b) of title 5, United States Code, is
3 amended—

4 (A) in paragraph (11), by striking “or” at
5 the end;

6 (B) in paragraph (12), by striking the pe-
7 riod and inserting “; or”; and

8 (C) by inserting after paragraph (12) the
9 following:

10 “(13) implement or enforce any nondisclosure
11 policy, form, or agreement, if such policy, form, or
12 agreement does not contain the following statement:

13 ““These provisions are consistent with and do not su-
14 persede, conflict with, or otherwise alter the employee obli-
15 gations, rights, or liabilities created by Executive Order
16 No. 12958; section 7211 of title 5, United States Code
17 (governing disclosures to Congress); section 1034 of title
18 10, United States Code (governing disclosure to Congress
19 by members of the military); section 2302(b)(8) of title
20 5, United States Code (governing disclosures of illegality,
21 waste, fraud, abuse, or public health or safety threats);
22 the Intelligence Identities Protection Act of 1982 (50
23 U.S.C. 421 et seq.) (governing disclosures that could ex-
24 pose confidential Government agents); and the statutes
25 which protect against disclosures that could compromise

1 national security, including sections 641, 793, 794, 798,
 2 and 952 of title 18, United States Code, and section 4(b)
 3 of the Subversive Activities Act of 1950 (50 U.S.C.
 4 783(b)). The definitions, requirements, obligations, rights,
 5 sanctions, and liabilities created by such Executive order
 6 and such statutory provisions are incorporated into this
 7 agreement and are controlling.’”.

8 (c) AUTHORITY OF SPECIAL COUNSEL RELATING TO
 9 CIVIL ACTIONS.—

10 (1) REPRESENTATION OF SPECIAL COUNSEL.—

11 Section 1212 of title 5, United States Code, is
 12 amended by adding at the end the following:

13 “(h) Except as provided in section 518 of title 28,
 14 relating to litigation before the Supreme Court, attorneys
 15 designated by the Special Counsel may appear for the Spe-
 16 cial Counsel and represent the Special Counsel in any civil
 17 action brought in connection with section 2302(b)(8) or
 18 subchapter III of chapter 73, or as otherwise authorized
 19 by law.”.

20 (2) JUDICIAL REVIEW OF MERIT SYSTEMS PRO-
 21 TECTION BOARD DECISIONS.—Section 7703 of title
 22 5, United States Code, is amended by adding at the
 23 end the following:

24 “(e) The Special Counsel may obtain review of any
 25 final order or decision of the Board by filing a petition

1 for judicial review in the United States Court of Appeals
2 for the Federal Circuit if the Special Counsel determines,
3 in the discretion of the Special Counsel, that the Board
4 erred in deciding a case arising under section 2302(b)(8)
5 or subchapter III of chapter 73 and that the Board's deci-
6 sion will have a substantial impact on the enforcement of
7 section 2302(b)(8) or subchapter III of chapter 73. If the
8 Special Counsel was not a party or did not intervene in
9 a matter before the Board, the Special Counsel may not
10 petition for review of a Board decision under this section
11 unless the Special Counsel first petitions the Board for
12 reconsideration of its decision, and such petition is denied.
13 In addition to the named respondent, the Board and all
14 other parties to the proceedings before the Board shall
15 have the right to appear in the proceedings before the
16 Court of Appeals. The granting of the petition for judicial
17 review shall be at the discretion of the Court of Appeals.”.

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