

Calendar No. 629

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-346 }

TO AMEND TITLE 5, UNITED STATES CODE,
TO ALLOW WHISTLEBLOWERS TO DISCLOSE
INFORMATION TO CERTAIN RECIPIENTS

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 2196



OCTOBER 11, 2018.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 2196]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs,
to which was referred the bill (H.R. 2196) to amend title 5, United
States Code, to allow whistleblowers to disclose information to cer-
tain recipients, having considered the same, reports favorably
thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of H.R. 2196 is to add a Federal employee’s super-
visor and chain-of-command to the list of individuals that he or she
is legally permitted to make protected disclosures to under Federal
whistleblower law.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Federal law protects Federal employees from being retaliated
against for blowing the whistle on waste, fraud, or abuse in the

Federal Government or for reporting violations of law, rule, or regulation.¹ Current law requires that, to be protected from retaliation, such disclosures be made to the Office of Special Counsel, an Inspector General of an agency, or “another employee designated by the head of the agency to receive such disclosures.”²

Federal whistleblower protection laws for the intelligence community and the Federal Bureau of Investigation (FBI) also permit protected disclosures to be made to an employee’s supervisor. In 2012, President Barack Obama issued Presidential Policy Directive 19 (PPD–19), which provided whistleblower protections for disclosures of waste, fraud, and abuse, for employees serving in the intelligence community or for employees making disclosures concerning classified information.³ PPD–19 includes “a supervisor in the employee’s direct chain of command up to and including the head of the employing agency” in its definition of a “protected disclosure” for which an employee would be protected against retaliation.⁴ The Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016 included identical language to protect disclosures made by employees to their supervisors.⁵

H.R. 2196 would ensure other Federal employees have the same protections from retaliation to make disclosures as intelligence community and FBI employees do by permitting disclosures of waste, fraud, abuse, or violations of law, rule, or regulation to a supervisor in their direct chain of command.

III. LEGISLATIVE HISTORY

H.R. 2196 was introduced on April 27, 2017, by Representatives Steve Russell (R–OK–5), Elijah Cummings (D–MD–7), and Stephen Lynch (D–MA–8). Representative Blake Farenthold (R–TX–27) was added as a co-sponsor to the Act on May 2, 2017. The Act was passed by the House of Representatives on October 11, 2017, by voice vote. The Act was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs on October 16, 2017.

The Committee considered H.R. 2196 at a business meeting on September 27, 2018. The legislation was passed by voice vote *en bloc* with Senators Johnson, Portman, Lankford, Enzi, Hoeven, Daines, McCaskill, Heitkamp, Peters, Hassan, Harris, and Jones present.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Recipients of whistleblower disclosures

This section adds “a supervisor in the employee’s direct chain of command up to and including the head of the employing agency” to the list of individuals to which a Federal employee may make a protected disclosure.

¹ 5 U.S.C. § 2302(b)(8).

² 5 U.S.C. § 2302(b)(8)(B). *See also* Civil Service Reform Act of 1978, Pub. L. No. 95–454, 92 Stat. 1111, 1116 (1978).

³ President Barack Obama, Presidential Policy Directive 19/PPD–19 (Oct. 10, 2012).

⁴ *Id.*

⁵ Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016, Pub. L. No. 114–302, 130 Stat. 1516 (2016).

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

OCTOBER 3, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2196, an act to amend title 5, United States Code, to allow whistleblowers to disclose information to certain recipients.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2196—An act to amend title 5, United States Code, to allow whistleblowers to disclose information to certain recipients

H.R. 2196 would amend the Whistleblower Protection Act (WPA) to extend protections to disclosures of classified information to any supervisor in an employee's chain of command. Under current law, only disclosures to a direct supervisor are protected.

The Merit Systems Protection Board (MSPB) hears claims against federal agencies brought by whistleblowers. Expanding the scope of the protections to include additional supervisors could increase the number of such hearings and any related costs (such as those related to job restoration, back pay, reimbursement of attorneys' fees, and medical costs). However, based on information from the MSPB and the Office of Special Counsel about the likely number of additional cases under the act, CBO expects that additional cases dealing with disclosures of classified information would be very limited in number. Thus, CBO estimates that implementing H.R. 2196 would have no significant cost.

Enacting the legislation could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net increase in spending by those agencies would be negligible. Enacting H.R. 2196 would not affect revenues.

CBO estimates that enacting H.R. 2196 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 2196 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On May 22, 2017, CBO transmitted a cost estimate for H.R. 2196, as ordered reported by the House Committee on Oversight and Government Reform on May 2, 2017. The two versions of the legislation are similar and the estimated budgetary effects are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart A—General Provisions

* * * * *

CHAPTER 23—MERIT SYSTEM PRINCIPLES

* * * * *

SEC. 2302. PROHIBITED PERSONNEL PRACTICES.

(a) * * *

(b) * * *

(1) * * *

* * * * *

(8) * * *

(A) * * *

(B) any disclosure to the Special Counsel, [or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures] *the Inspector General of an agency, a supervisor in the employee's direct chain of command up to and including the head of the employing agency, or to an employee designated by any of the aforementioned individuals for the*

purpose of receiving such disclosures, of information which
the employee or applicant reasonably believes evidences—

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