

113TH CONGRESS
2D SESSION

S. 2615

To establish criminal penalties for failing to inform and warn of serious dangers.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2014

Mr. BLUMENTHAL (for himself, Mr. HARKIN, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish criminal penalties for failing to inform and warn of serious dangers.

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. CRIMINAL PENALTIES.**

4 (a) IN GENERAL.—Part I of title 18, United States
5 Code, is amended by inserting after chapter 101 the fol-
6 lowing:

7 **“CHAPTER 101A—REPORTING STANDARDS**

“Sec.

“2081. Definitions.

“2082. Failure to inform and warn.

“2083. Relationship to existing law.

1 **“§ 2081. Definitions**

2 “In this chapter—

3 “(1) the term ‘appropriate Federal agency’
4 means an agency with jurisdiction over a covered
5 product, covered service, or business practice;

6 “(2) the term ‘business entity’ means a cor-
7 poration, company, association, firm, partnership,
8 sole proprietor, or other business entity;

9 “(3) the term ‘business practice’ means a meth-
10 od or practice of—

11 “(A) manufacturing, assembling, design-
12 ing, researching, importing, or distributing a
13 covered product;

14 “(B) conducting, providing, or preparing
15 to provide a covered service; or

16 “(C) otherwise carrying out business oper-
17 ations relating to covered products or covered
18 services;

19 “(4) the term ‘covered product’ means a prod-
20 uct manufactured, assembled, designed, researched,
21 imported, or distributed by a business entity that en-
22 ters interstate commerce;

23 “(5) the term ‘covered service’ means a service
24 conducted or provided by a business entity that en-
25 ters interstate commerce;

1 “(6) the term ‘responsible corporate officer’
2 means a person who—

3 “(A) is an employer, director, or officer of
4 a business entity;

5 “(B) has the responsibility and authority,
6 by reason of his or her position in the business
7 entity and in accordance with the rules or prac-
8 tice of the business entity, to acquire knowledge
9 of any serious danger associated with a covered
10 product (or component of a covered product),
11 covered service, or business practice of the busi-
12 ness entity; and

13 “(C) has the responsibility, by reason of
14 his or her position in the business entity, to
15 communicate information about the serious
16 danger to—

17 “(i) an appropriate Federal agency;

18 “(ii) employees of the business entity;

19 or

20 “(iii) individuals, other than employ-
21 ees of the business entity, who may be ex-
22 posed to the serious danger;

23 “(7) the term ‘serious bodily injury’ means an
24 impairment of the physical condition of an indi-

1 vidual, including as a result of trauma, repetitive
2 motion, or disease, that—

3 “(A) creates a substantial risk of death; or

4 “(B) causes—

5 “(i) serious permanent disfigurement;

6 “(ii) unconsciousness;

7 “(iii) extreme pain; or

8 “(iv) permanent or protracted loss or
9 impairment of the function of any bodily
10 member, organ, bodily system, or mental
11 faculty;

12 “(8) the term ‘serious danger’ means a danger,
13 not readily apparent to a reasonable person, that the
14 normal or reasonably foreseeable use of, or the expo-
15 sure of an individual to, a covered product, covered
16 service, or business practice has an imminent risk of
17 causing death or serious bodily injury to an indi-
18 vidual; and

19 “(9) the term ‘warn affected employees’ means
20 take reasonable steps to give, to each individual who
21 is exposed or may be exposed to a serious danger in
22 the course of work for a business entity, a descrip-
23 tion of the serious danger that is sufficient to make
24 the individual aware of the serious danger.

1 **“§ 2082. Failure to inform and warn**

2 “(a) REQUIREMENT.—After acquiring actual knowl-
3 edge of a serious danger associated with a covered product
4 (or component of a covered product), covered service, or
5 business practice of a business entity, a business entity
6 and any responsible corporate officer with respect to the
7 covered product, covered service, or business practice,
8 shall—

9 “(1) as soon as practicable and not later than
10 24 hours after acquiring such knowledge, verbally
11 inform an appropriate Federal agency of the serious
12 danger, unless the business entity or responsible cor-
13 porate officer has actual knowledge that an appro-
14 priate Federal agency has been so informed;

15 “(2) not later than 15 days after acquiring such
16 knowledge, inform an appropriate Federal agency in
17 writing of the serious danger;

18 “(3) as soon as practicable, warn affected em-
19 ployees in writing, unless the business entity or re-
20 sponsible corporate officer has actual knowledge that
21 affected employees have been so warned; and

22 “(4) as soon as practicable, inform individuals,
23 other than affected employees, who may be exposed
24 to the serious danger of the serious danger if such
25 individuals can reasonably be identified.

26 “(b) PENALTY.—

1 “(1) IN GENERAL.—Whoever knowingly violates
2 subsection (a) shall be fined under this title, impris-
3 oned for not more than 5 years, or both.

4 “(2) PROHIBITION OF PAYMENT BY BUSINESS
5 ENTITIES.—If a final judgment is rendered and a
6 fine is imposed on an individual under this sub-
7 section, the fine may not be paid, directly or indi-
8 rectly, out of the assets of any business entity on be-
9 half of the individual.

10 “(c) CIVIL ACTION TO PROTECT AGAINST RETALIA-
11 TION.—

12 “(1) PROHIBITION.—It shall be unlawful to
13 knowingly discriminate against any person in the
14 terms or conditions of employment, in retention in
15 employment, or in hiring because the person in-
16 formed a Federal agency, warned employees, or in-
17 formed other individuals of a serious danger associ-
18 ated with a covered product, covered service, or busi-
19 ness practice, as required under this section.

20 “(2) ENFORCEMENT ACTION.—

21 “(A) IN GENERAL.—A person who alleges
22 discharge or other discrimination by any person
23 in violation of paragraph (1) may seek relief
24 under paragraph (3), by—

1 “(i) filing a complaint with the Sec-
2 retary of Labor; or

3 “(ii) if the Secretary has not issued a
4 final decision within 180 days of the filing
5 of the complaint and there is no showing
6 that such delay is due to the bad faith of
7 the claimant, bringing an action at law or
8 equity for de novo review in the appro-
9 priate district court of the United States,
10 which shall have jurisdiction over such an
11 action without regard to the amount in
12 controversy.

13 “(B) PROCEDURE.—

14 “(i) IN GENERAL.—An action under
15 subparagraph (A)(i) shall be governed
16 under the rules and procedures set forth in
17 section 42121(b) of title 49.

18 “(ii) EXCEPTION.—Notification made
19 under section 42121(b)(1) of title 49 shall
20 be made to the person named in the com-
21 plaint and to the employer.

22 “(iii) BURDENS OF PROOF.—An ac-
23 tion brought under subparagraph (A)(ii)
24 shall be governed by the legal burdens of

1 proof set forth in section 42121(b) of title
2 49.

3 “(iv) STATUTE OF LIMITATIONS.—An
4 action under subparagraph (A) shall be
5 commenced not later than 180 days after
6 the date on which the violation occurs, or
7 after the date on which the employee be-
8 came aware of the violation.

9 “(v) JURY TRIAL.—A party to an ac-
10 tion brought under subparagraph (A)(ii)
11 shall be entitled to trial by jury.

12 “(3) REMEDIES.—

13 “(A) IN GENERAL.—An employee pre-
14 vailing in any action under paragraph (2)(A)
15 shall be entitled to all relief necessary to make
16 the employee whole.

17 “(B) COMPENSATORY DAMAGES.—Relief
18 for any action under subparagraph (A) shall in-
19 clude—

20 “(i) reinstatement with the same se-
21 niority status that the employee would
22 have had, but for the discrimination;

23 “(ii) the amount of back pay, with in-
24 terest; and

1 “(iii) compensation for any special
2 damages sustained as a result of the dis-
3 crimination, including litigation costs, ex-
4 pert witness fees, and reasonable attorney
5 fees.

6 “(4) RIGHTS RETAINED BY EMPLOYEE.—Noth-
7 ing in this subsection shall be deemed to diminish
8 the rights, privileges, or remedies of any employee
9 under any Federal or State law, or under any collec-
10 tive bargaining agreement.

11 “(5) NONENFORCEABILITY OF CERTAIN PROVI-
12 SIONS WAIVING RIGHTS AND REMEDIES OR REQUIR-
13 ING ARBITRATION OF DISPUTES.—

14 “(A) WAIVER OF RIGHTS AND REM-
15 EDIES.—The rights and remedies provided for
16 in this subsection may not be waived by any
17 agreement, policy form, or condition of employ-
18 ment, including by a predispute arbitration
19 agreement.

20 “(B) PREDISPUTE ARBITRATION AGREE-
21 MENTS.—No predispute arbitration agreement
22 shall be valid or enforceable, if the agreement
23 requires arbitration of a dispute arising under
24 this subsection.

1 **“§ 2083. Relationship to existing law**

2 “(a) RIGHTS TO INTERVENE.—Nothing in this chap-
 3 ter shall be construed to limit the right of any individual
 4 or group of individuals to initiate, intervene in, or other-
 5 wise participate in any proceeding before a regulatory
 6 agency or court, nor to relieve any regulatory agency,
 7 court, or other public body of any obligation, or affect its
 8 discretion to permit intervention or participation by an in-
 9 dividual or a group or class of consumers, employees, or
 10 citizens in any proceeding or activity.

11 “(b) RULE OF CONSTRUCTION.—Nothing in this
 12 chapter shall be construed to—

13 “(1) increase the time period for informing of
 14 a serious danger or other harm under any other pro-
 15 vision of law; or

16 “(2) limit or otherwise reduce the penalties for
 17 any violation of Federal or State law under any
 18 other provision of law.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 20 The table of chapters for part I of title 18, United States
 21 Code, is amended by inserting after the item relating to
 22 chapter 101 the following:

“101A. Reporting standards 2081”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 subsections (a) and (b) shall take effect on the date that
3 is 1 year after the date of enactment of this Act.

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