

117TH CONGRESS
1ST SESSION

H. R. 1265

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 2021

Mr. SWALWELL (for himself, Mr. COHEN, Mrs. DEMINGS, and Ms. NORTON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, 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 “Enhancing Protections
5 for Whistleblower Anonymity Act”.

1 **SEC. 2. CRIMINAL PENALTY FOR THE DISCLOSURE OF THE**
2 **IDENTITY OF A WHISTLEBLOWER.**

3 (a) IN GENERAL.—Chapter 88 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

6 **“§ 1802. Disclosure of whistleblower identity**

7 “(a) IN GENERAL.—Except under the circumstances
8 described in subsection (b), whoever, being an employee
9 of the Federal Government or contractor of the Federal
10 Government, knowingly makes a prohibited disclosure
11 shall be fined under this title, imprisoned not more than
12 1 year, or both.

13 “(b) EXCEPTIONS.—The circumstances described in
14 this subsection are the following:

15 “(1) The prohibited disclosure—

16 “(A) is made to—

17 “(i) an employee of the Federal Gov-
18 ernment;

19 “(ii) an employee of a State govern-
20 ment; or

21 “(iii) an employee of a local govern-
22 ment; and

23 “(B) is expressly permitted by any other
24 law.

25 “(2) The whistleblower provides written consent
26 before the prohibited disclosure is made.

1 “(c) APPLICABILITY.—Subsection (a) shall only apply
2 to a prohibited disclosure that is made after the date of
3 enactment of this section.

4 “(d) DEFINITIONS.—In this section:

5 “(1) EMPLOYEE OF THE FEDERAL GOVERN-
6 MENT.—The term ‘employee of the Federal Govern-
7 ment’ means an officer or employee of the United
8 States Government, including—

9 “(A) a member of the uniformed service;

10 “(B) a Member of Congress; and

11 “(C) the President of the United States.

12 “(2) MEMBER OF CONGRESS.—The term ‘Mem-
13 ber of Congress’ has the meaning given such term
14 in section 2106 of title 5.

15 “(3) PROHIBITED DISCLOSURE.—The term
16 ‘prohibited disclosure’ means a formal or informal
17 communication or transmission of—

18 “(A) the identity of a whistleblower; or

19 “(B) identifying information relating to a
20 whistleblower.

21 “(4) WHISTLEBLOWER.—The term ‘whistle-
22 blower’ means each of the following:

23 “(A) An employee, former employee, or ap-
24 plicant for employment (as such terms are used
25 in section 1213(a) of title 5) who makes a dis-

1 closure that is described in paragraph (1) or (2)
2 of such section.

3 “(B) An employee of an agency or appli-
4 cant for employment at an agency (as such
5 terms are used in section 2302(b)(8)(C) of title
6 5) who makes a disclosure as described in such
7 section.

8 “(C) A former employee of the Federal
9 Government who makes a disclosure to Con-
10 gress of information described in section
11 2302(b)(8)(C) of title 5.

12 “(D) An employee that makes a complaint
13 or otherwise provides information to the Inspec-
14 tor General (as the terms ‘employee’ and ‘In-
15 spector General’ are used in the Inspector Gen-
16 eral Act of 1978 (5 U.S.C. App.)) pursuant to
17 the requirements of section 7 of such Act.

18 “(E) A member of the Armed Forces
19 that—

20 “(i) complains of or discloses informa-
21 tion; and

22 “(ii) is protected against retaliation
23 for such actions under section 1034 of title
24 10.

1 “(F) An employee (as the term ‘employee’
2 is used in section 103H of the National Secu-
3 rity Act of 1947 (50 U.S.C. 3033)) who the In-
4 spector General of the Intelligence Community
5 may not disclose the identity of pursuant to the
6 requirements of section 103H(g)(3)(A) of such
7 Act (50 U.S.C. 3033(g)(3)(A)).

8 “(G) An employee (as the term ‘employee’
9 is used in section 4712(a)(3)(A) of title 41)
10 who is deemed to have made a disclosure under
11 such section.

12 “(H) A individual not otherwise covered by
13 subparagraphs (A) through (G) who—

14 “(i) is protected by law to make a dis-
15 closure of—

16 “(I) a violation of law or regula-
17 tion; or

18 “(II) gross mismanagement,
19 gross waste of funds, abuse of author-
20 ity, or a substantial and specific dan-
21 ger to public health or the safety of a
22 Federal entity;

23 “(ii) makes such a disclosure;

24 “(iii) is not prohibited by law to make
25 such a disclosure; and

1 (b) **JURY TRIAL.**—A party to an action brought
2 under subsection (a) shall be entitled to trial by jury.

3 (c) **DEFINITIONS.**—In this section, the terms “em-
4 ployee of the Federal Government”, “prohibited disclo-
5 sure”, and “whistleblower” have the meanings given such
6 terms in section 1802(d) of title 18, United States Code,
7 as added by this Act.

○