

114TH CONGRESS
2D SESSION

S. 2591

To strengthen incentives and protections for whistleblowers in the financial industry and related regulatory agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2016

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To strengthen incentives and protections for whistleblowers in the financial industry and related regulatory 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 “Whistleblower Aug-
5 mented Reward and Nonretaliation Act of 2016” or the
6 “WARN Act of 2016”.

7 **SEC. 2. FINANCIAL INSTITUTIONS ANTI-FRAUD ENFORCE-**
8 **MENT ACT OF 1990.**

9 The Financial Institutions Anti-Fraud Enforcement
10 Act of 1990 (12 U.S.C. 4201 et seq.) is amended—

1 (1) in section 2565(d) (12 U.S.C. 4205(d))—

2 (A) in paragraph (1)(A), by striking clause

3 (i) and inserting the following:

4 “(i) The declarant shall be entitled, with
5 respect to the total recovery in the action or
6 any related actions, to—

7 “(I) not less than 10 percent; and

8 “(II) not greater than 30 percent.”;

9 and

10 (B) by adding at the end the following:

11 “(3) Any determination regarding an award
12 under this section may, not later than 30 days after
13 the date on which the determination is made, be ap-
14 pealed to the appropriate court of appeals of the
15 United States.”;

16 (2) by striking section 2572 (12 U.S.C. 4212)

17 and inserting the following:

18 **“SEC. 2572. PROTECTION FOR DECLARANTS.**

19 “(a) REMEDY.—A person may obtain all relief nec-
20 essary to make the person whole if—

21 “(1) an employer discharged, demoted, sus-
22 pended, threatened, harassed, or in any other man-
23 ner discriminated against the person in the terms
24 and conditions of the employment of the person be-
25 cause of lawful acts taken by the person—

1 “(A) in furtherance of a prosecution under
2 section 215, 225, 287, 656, 657, 1001, 1005,
3 1006, 1007, 1014, 1032, 1341, 1343, 1344, or
4 1517 of title 18, United States Code; and

5 “(B) including the provision of information
6 that relates to, initiates, or assists—

7 “(i) a prosecution described in sub-
8 paragraph (A); or

9 “(ii) the investigation of or testimony
10 in a prosecution described in subparagraph
11 (A); and

12 “(2) the person acted upon the direction of the
13 employer of the person to deliberately cause the vio-
14 lation disclosed.

15 “(b) RELIEF.—Relief under subsection (a) shall in-
16 clude—

17 “(1) reinstatement with the same seniority sta-
18 tus;

19 “(2) twice the amount of back pay and interest
20 to which the person would have been entitled but for
21 the action of the employer; and

22 “(3) compensation for any special damages sus-
23 tained as a result of the action of the employer, in-
24 cluding—

25 “(A) litigation costs;

1 “(B) expert witness fees; and

2 “(C) reasonable attorneys fees.

3 “(c) BURDENS OF PROOF.—Complaints for relief
4 under this section shall be governed by the procedures,
5 evidentiary standards, and burdens of proof under section
6 1057 of the Consumer Financial Protection Act of 2010
7 (12 U.S.C. 5567).”;

8 (3) in section 2573 (12 U.S.C. 4213)—

9 (A) by striking “The Attorney General”

10 and inserting the following:

11 “(a) IN GENERAL.—The Attorney General”; and

12 (B) by adding at the end the following:

13 “(b) EDUCATION.—The Attorney General shall issue
14 regulations requiring every employer covered under this
15 Act to provide education and training to the employees
16 of the employer on the rights and remedies provided under
17 this section, including by—

18 “(1) providing individual notice to the employ-
19 ees;

20 “(2) posting information on the home page of
21 the website of the employer; and

22 “(3) providing mandatory training for the em-
23 ployees.”;

24 (4) in section 2580 (12 U.S.C. 4225), by strik-
25 ing subsection (c) and inserting the following:

1 alter information previously provided)”
2 after “provided information”; and

3 (ii) in subparagraph (A), by striking
4 “a possible violation of any law or regula-
5 tion” and inserting “a possible violation of
6 any law, regulation, or agency statement of
7 policy”; and

8 (B) in paragraph (2), in the matter pre-
9 ceding subparagraph (A)—

10 (i) by striking “the Corporation” and
11 inserting “any such entity”;

12 (ii) by inserting “(or refused to alter
13 information previously provided)” after
14 “provided information”; and

15 (iii) by striking “any possible violation
16 of any law or regulation” and inserting
17 “any possible violation of any law, regula-
18 tion, or agency statement of policy,”; and

19 (2) in section 34 (12 U.S.C. 1831k)—

20 (A) by striking subsection (b) and insert-
21 ing the following:

22 “(b) PERCENTAGE LIMITATION.—An appropriate
23 Federal banking agency, when paying a reward under sub-
24 section (a), shall pay a reward equivalent to—

1 “(1) not less than 10 percent of the amount of
2 any fine, penalty, restitution, or forfeiture; and

3 “(2) not greater than 30 percent of the amount
4 of any fine, penalty, restitution, or forfeiture.”; and

5 (B) by striking subsection (d) and insert-
6 ing the following:

7 “(d) REVIEW.—Any determination regarding an
8 award under this section may, not later than 30 days after
9 the date on which the determination is made, be appealed
10 to the appropriate court of appeals of the United States.”.

11 **SEC. 4. SECURITIES EXCHANGE ACT OF 1934.**

12 Section 21F of the Securities Exchange Act of 1934
13 (15 U.S.C. 78u–6) is amended—

14 (1) in subsection (a), by striking paragraph (6);

15 (2) in subsection (c)(1)(B)—

16 (A) in clause (i)(IV), by striking “and” at
17 the end;

18 (B) in clause (ii), by striking the period at
19 the end and inserting a semicolon; and

20 (C) by adding at the end the following:

21 “(iii) may not deny eligibility for an
22 award that otherwise meets the require-
23 ments of this section if the information
24 that forms the basis for the award is sub-
25 mitted not later than 90 days after a whis-

1 whistleblower gains knowledge of the disclosed
2 misconduct;

3 “(iv) shall presume that a report
4 made by a whistleblower is timely sub-
5 mitted; and

6 “(v) may not reduce the award due to
7 delay, absent a finding that the disclosure
8 was deliberately postponed because of—

9 “(I) culpability of the whistle-
10 blower;

11 “(II) interference by the whistle-
12 blower with internal investigative
13 processes; or

14 “(III) attempts at self-enrich-
15 ment by the whistleblower.”;

16 (3) in subsection (h)—

17 (A) in paragraph (1)—

18 (i) in subparagraph (A)—

19 (I) in the matter preceding clause

20 (i)—

21 (aa) by striking “No em-
22 ployer” and inserting “No em-
23 ployer, prospective employer, or
24 former employer, as applicable,”;
25 and

1 (bb) by striking “a whistle-
2 blower in the terms and condi-
3 tions of employment because of
4 any lawful act done by the whis-
5 tleblower” and inserting “a whis-
6 tleblower with respect to the com-
7 pensation, terms, conditions, or
8 privileges of employment of the
9 whistleblower because of any law-
10 ful act done by the whistleblower
11 or perceived to have been done by
12 the whistleblower (or any person
13 acting pursuant to a request of
14 the whistleblower), whether at
15 the initiative of the whistleblower
16 or in the ordinary course of the
17 duties of the whistleblower”;

18 (II) in clause (ii) by striking “or”
19 at the end;

20 (III) in clause (iii) by striking
21 the period at the end and inserting a
22 semicolon; and

23 (IV) by adding at the end the fol-
24 lowing:

1 “(iv) in objecting to, or refusing to
2 participate in, any activity, policy, practice,
3 or assigned task that the whistleblower (or
4 other such person) reasonably believed to
5 be in violation of any law, rule, order,
6 standard, or prohibition that is subject to
7 the jurisdiction of, or enforceable by, the
8 Commission; or

9 “(v) in providing, preparing to pro-
10 vide, or assisting in the provision of infor-
11 mation to the employer, prospective em-
12 ployer, former employer, a person with su-
13 pervisory authority over the employee, or
14 another such person working for the em-
15 ployer with the authority to investigate,
16 discover, or terminate as a result of mis-
17 conduct relating to any violation of, or any
18 act or omission that the whistleblower be-
19 lieves to be a violation of any—

20 “(I) provision of this title;

21 “(II) other provision of law that
22 is subject to the jurisdiction of the
23 Commission; or

1 “(III) rule, order, standard, or
2 prohibition prescribed by the Commis-
3 sion.”;

4 (ii) in subparagraph (B), by adding at
5 the end the following:

6 “(iv) BURDEN OF PROOF.—Except as
7 otherwise provided in this section, com-
8 plaints for relief shall be governed by the
9 procedures, evidentiary standards, and
10 burdens of proof in section 1057 of the
11 Consumer Financial Protection Act of
12 2010 (12 U.S.C. 5567).”; and

13 (iii) in subparagraph (C)—

14 (I) in clause (ii), by striking
15 “and” at the end;

16 (II) in clause (iii), by striking the
17 period at the end and inserting a
18 semicolon; and

19 (III) by adding at the end the
20 following:

21 “(iv) compensatory damages; and

22 “(v) punitive damages in an amount
23 not greater than \$250,000.”; and

24 (B) in paragraph (2), by striking subpara-
25 graph (A) and inserting the following:

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B), (C), and (D), neither the
3 Commission nor any officer or employee of the
4 Commission may disclose any identifying infor-
5 mation about a whistleblower who has provided
6 information to the Commission—

7 “(i) unless the Commission has ob-
8 tained the written consent of the whistle-
9 blower;

10 “(ii) except in accordance with the
11 provisions of section 552a of title 5,
12 United States Code; or

13 “(iii) unless required to be disclosed
14 to a defendant or respondent in connection
15 with a public proceeding instituted by the
16 Commission.”; and

17 (4) by adding at the end the following:

18 “(k) NON-WAIVERABILITY OF RIGHTS AND REM-
19 EDIES.—An employer, prospective employer, or former
20 employer, as applicable, may not take any action to impede
21 an individual who is about to or has assisted or engaged
22 in activity protected by this section, including—

23 “(1) issuing, proposing, initiating, enforcing, or
24 threatening to enforce, a confidentiality agreement
25 (other than agreements dealing with information

1 covered by sections 240.21F-4(b)(4)(i) and
2 240.21F-4(b)(4)(ii) of title 17, Code of Federal
3 Regulations, as in effect on the date of the enact-
4 ment of this subsection) with respect to such com-
5 munications;

6 “(2) initiating, enforcing, or threatening to en-
7 force any agreement, policy, form, or condition of
8 employment, including by any predispute arbitration
9 agreement, that waives the rights and remedies pro-
10 vided under this section;

11 “(3) requiring the individual to waive, release,
12 or assign any monetary award that the individual
13 may receive from the Commission;

14 “(4) conditioning the right of the individual to
15 receive any contractual or employment-related ben-
16 efit on a waiver, release, or assignment described in
17 paragraph (3);

18 “(5) requiring the individual to disclose to any
19 private party whether the individual has, or in the
20 future intends to, communicate with the staff of the
21 Commission about a possible violation of commod-
22 ities law;

23 “(6) conditioning the right of the individual to
24 receive any contractual or employment-related ben-
25 efit on a representation that the individual has not

1 communicated with, or provided documents or other
2 information, to the staff of the Commission;

3 “(7) seeking civil or criminal liability for—

4 “(A) acquiring and communicating infor-
5 mation to the Commission; or

6 “(B) engaging in other activity protected
7 by this section;

8 “(8) seeking professional discipline through loss
9 of license, certification, or other disciplinary activi-
10 ties for engaging in activity protected by this sec-
11 tion;

12 “(9) seeking professional discipline of attorneys
13 for representation of activities protected by this sec-
14 tion, or any other action that obstructs the right to
15 counsel of the individual; and

16 “(10) engaging in any other discrimination that
17 would chill the exercise of activity protected by this
18 section.

19 “(1) INTERNAL COMPLIANCE PROGRAMS.—The Com-
20 mission shall promulgate regulations requiring each em-
21 ployer—

22 “(1) to have a procedure in place for an em-
23 ployee, applicant for employment, or former em-
24 ployee who believes that violations of this section
25 have occurred or are occurring at the place of em-

1 employment, place of prospective employment, or place
2 of former employment to report—

3 “(A) directly to the chief executive officer
4 of the employer;

5 “(B) to a representative appointed by and
6 reporting directly to the chief executive officer
7 who is specifically designated to receive such a
8 report; or

9 “(C) through a hotline consistent with pro-
10 fessional best practices to the audit committee
11 of the board of directors; and

12 “(2) not to discriminate against an employee,
13 applicant for employment, or former employee for
14 making a report under paragraph (1).

15 “(m) EXTRATERRITORIALITY.—The protections pro-
16 vided by this section shall apply to foreign nationals living
17 outside the United States.”.

18 **SEC. 5. COMMODITY EXCHANGE ACT.**

19 Section 23 of the Commodity Exchange Act (7 U.S.C.
20 26) is amended—

21 (1) in subsection (a), by striking paragraph (7);

22 (2) in subsection (c)(1)(B)—

23 (A) in clause (i)(IV), by striking “and” at
24 the end;

1 (B) in clause (ii), by striking the period at
2 the end and inserting a semicolon; and

3 (C) by adding at the end the following:

4 “(iii) may not deny eligibility for an
5 award that otherwise meets the require-
6 ments of this section if the information
7 that forms the basis for the award is sub-
8 mitted not later than 90 days after a whis-
9 tleblower gains knowledge of the disclosed
10 misconduct;

11 “(iv) shall presume that a report
12 made by a whistleblower is timely sub-
13 mitted; and

14 “(v) may not reduce the award due to
15 delay, absent a finding that the disclosure
16 was deliberately postponed because of—

17 “(I) culpability of the whistle-
18 blower;

19 “(II) interference by the whistle-
20 blower with internal investigative
21 processes; or

22 “(III) attempts at self-enrich-
23 ment by the whistleblower.”;

24 (3) in subsection (h)—

25 (A) in paragraph (1)—

1 (i) in subparagraph (A)—

2 (I) in the matter preceding clause

3 (i)—

4 (aa) by striking “No em-
5 ployer” and inserting “No em-
6 ployer, prospective employer, or
7 former employer, as applicable,”;
8 and

9 (bb) by striking “a whistle-
10 blower in the terms and condi-
11 tions of employment because of
12 any lawful act done by the whis-
13 tleblower” and inserting “a whis-
14 tleblower with respect to the com-
15 pensation, terms, conditions, or
16 privileges of employment of the
17 whistleblower because of any law-
18 ful act done by the whistleblower
19 or perceived to have been done by
20 the whistleblower (or any person
21 acting pursuant to a request of
22 the whistleblower), whether at
23 the initiative of the whistleblower
24 or in the ordinary course of the
25 duties of the whistleblower”;

1 (II) in clause (i), by striking “or”
2 at the end;

3 (III) in clause (ii), by striking
4 the period at the end and inserting a
5 semicolon; and

6 (IV) by adding at the end the fol-
7 lowing:

8 “(iii) in objecting to, or refusing to
9 participate in, any activity, policy, practice,
10 or assigned task the whistleblower (or
11 other such person) reasonably believed to
12 be in violation of any law, rule, order,
13 standard, or prohibition subject to the ju-
14 risdiction of, or enforceable by, the Com-
15 mission; or

16 “(iv) in providing, preparing to pro-
17 vide, or assisting in the provision of infor-
18 mation to the employer, the former em-
19 ployer, the prospective employer, a person
20 with supervisory authority over the em-
21 ployee, or another such person working for
22 the employer with the authority to inves-
23 tigate, discover, or terminate as a result of
24 misconduct relating to any violation of, or

1 any act or omission that the whistleblower
2 believes to be a violation of any—

3 “(I) provision of this title;

4 “(II) other provision of law that
5 is subject to the jurisdiction of the
6 Commission; or

7 “(III) rule, order, standard, or
8 prohibition prescribed by the Commis-
9 sion.”;

10 (ii) in subparagraph (B), by adding at
11 the end the following:

12 “(iv) BURDEN OF PROOF.—Except as
13 otherwise provided in this section, com-
14 plaints for relief shall be governed by the
15 procedures, evidentiary standards, and
16 burdens of proof in section 1057 of the
17 Consumer Financial Protection Act of
18 2010 (12 U.S.C. 5567).”; and

19 (iii) in subparagraph (C)—

20 (I) in clause (ii), by striking
21 “and” at the end;

22 (II) in clause (iii), by striking the
23 period at the end and inserting a
24 semicolon; and

1 (III) by adding at the end the
2 following:

3 “(iv) compensatory damages; and

4 “(v) punitive damages in an amount
5 not greater than \$250,000.”; and

6 (B) in paragraph (2)—

7 (i) by striking subparagraph (A) and
8 inserting the following:

9 “(A) IN GENERAL.—Except as provided in
10 subparagraphs (B), (C), and (D), neither the
11 Commission nor any officer or employee of the
12 Commission may disclose any identifying infor-
13 mation about a whistleblower who has provided
14 information to the Commission—

15 “(i) unless the Commission has ob-
16 tained the written consent of the whistle-
17 blower;

18 “(ii) except in accordance with the
19 provisions of section 552a of title 5,
20 United States Code; or

21 “(iii) unless required to be disclosed
22 to a defendant or respondent in connection
23 with a public proceeding instituted by the
24 Commission.”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(D) EXEMPTED STATUTE.—For purposes
4 of section 552 of title 5, United States Code,
5 this paragraph shall be considered a statute de-
6 scribed in subsection (b)(3)(B) of such section
7 552.”; and

8 (4) by adding at the end the following:

9 “(o) NON-WAIVERABILITY OF RIGHTS AND REM-
10 EDIES.—An employer, former employer, or prospective
11 employer, as applicable, may not take any action to impede
12 an individual who is about to or has assisted or engaged
13 in activity protected by this section, including—

14 “(1) issuing, proposing, initiating, enforcing, or
15 threatening to enforce, a confidentiality agreement
16 (other than agreements dealing with information
17 covered by sections 240.21F–4(b)(4)(i) and
18 240.21F–4(b)(4)(ii) of title 17, Code of Federal
19 Regulations, as in effect on the date of the enact-
20 ment of this subsection) with respect to such com-
21 munications;

22 “(2) initiating, enforcing, or threatening to en-
23 force any agreement, policy, form, or condition of
24 employment, including by any predispute arbitration

1 agreement, that waives the rights and remedies pro-
2 vided for in this section;

3 “(3) requiring the individual to waive, release,
4 or assign any monetary award that the individual
5 may receive from the Commission;

6 “(4) conditioning the right of the individual to
7 receive any contractual or employment-related ben-
8 efit on a waiver, release, or assignment described in
9 paragraph (3);

10 “(5) requiring the individual to disclose to any
11 private party whether the individual has, or in the
12 future intends to, communicate with the staff of the
13 Commission about a possible violation of this Act;

14 “(6) conditioning the right of the individual to
15 receive any contractual or employment-related ben-
16 efit on a representation that the individual has not
17 communicated with, or provided documents or other
18 information, to the staff of the Commission;

19 “(7) seeking civil or criminal liability for—

20 “(A) acquiring and communicating infor-
21 mation to the Commission; or

22 “(B) engaging in other activity protected
23 by this section;

24 “(8) seeking professional discipline through loss
25 of license, certification, or other disciplinary activi-

1 ties for engaging in activity protected by this sec-
2 tion;

3 “(9) seeking professional discipline of attorneys
4 for representation of activities protected by this sec-
5 tion, or any other action that obstructs the right to
6 counsel of the individual; and

7 “(10) engaging in any other discrimination that
8 would chill the exercise of activity protected by this
9 section.

10 “(p) INTERNAL COMPLIANCE PROGRAMS.—The
11 Commission shall issue regulations requiring each em-
12 ployer—

13 “(1) to have a procedure in place for an em-
14 ployee, applicant for employment, or former em-
15 ployee who believes that violations of this section
16 have occurred or are occurring at the place of em-
17 ployment, prospective employment, or place of
18 former employment to report—

19 “(A) directly to the chief executive officer
20 of the employer;

21 “(B) to a representative appointed by and
22 reporting directly to the chief executive officer
23 who is specifically designated to receive such a
24 report; or

1 “(C) through a hotline consistent with pro-
2 fessional best practices to the audit committee
3 of the board of directors; and

4 “(2) not to discriminate against an employee,
5 applicant for employment, or former employee for
6 making a report under paragraph (1).

7 “(q) EXTRATERRITORIALITY.—The protections pro-
8 vided by this section shall apply to foreign nationals living
9 outside the United States.”.

10 **SEC. 6. SARBANES-OXLEY ACT.**

11 Section 1514A of title 18, United States Code, is
12 amended—

13 (1) in subsection (a)—

14 (A) in the matter preceding paragraph (1),
15 by striking “in the terms and conditions of em-
16 ployment because of any lawful act done by the
17 employee” and inserting “with respect to com-
18 pensation, terms, conditions, or privileges of
19 employment because of any lawful act done by
20 an employee, applicant for employment, or
21 former employee or perceived to have been done
22 by an employee, applicant for employment, or
23 former employee (or any person acting pursu-
24 ant to the request of such an individual),
25 whether at the initiative of the employee, appli-

1 cant for employment, or former employee or in
2 the ordinary course of the duties of the em-
3 ployee, applicant for employment, or former em-
4 ployee”;

5 (B) in paragraph (1)(C), by striking “; or”
6 and inserting a semicolon;

7 (C) in paragraph (2), by striking the pe-
8 riod at the end and inserting a semicolon; and

9 (D) by adding at the end the following:

10 “(3) in objecting to, or refusing to participate
11 in, any activity, policy, practice, or assigned task the
12 employee, applicant for employment, or former em-
13 ployee (or other such person) reasonably believed to
14 be in violation of any law, rule, order, standard, or
15 prohibition subject to the jurisdiction of or enforced
16 by the Securities and Exchange Commission; or

17 “(4) in providing, preparing to provide, or as-
18 sisting in the provision of information to the em-
19 ployer or a person with supervisory authority over
20 the employee, applicant for employment, or former
21 employee (or such other person working for the em-
22 ployer who has the authority to investigate, discover,
23 or terminate employment as a result of misconduct)
24 relating to any violation of, or any act or omission

1 that the employee, applicant for employment, or
2 former employee believes to be a violation of any—

3 “(A) provision of this title;

4 “(B) provision of law that is subject to the
5 jurisdiction of the Securities and Exchange
6 Commission; or

7 “(C) rule, order, standard, or prohibition
8 prescribed by the Commission.”;

9 (2) in subsection (c)—

10 (A) in paragraph (2)(B), by inserting
11 “double” before “the amount of”; and

12 (B) by adding at the end the following:

13 “(3) PUNITIVE DAMAGES.—Relief for any ac-
14 tion under paragraph (1) may include punitive dam-
15 ages in an amount not greater than \$250,000.”; and

16 (3) by adding at the end the following:

17 “(f) CONFIDENTIALITY.—Neither the Securities and
18 Exchange Commission, the Secretary of Labor, nor any
19 officer or employee of the Commission or the Secretary
20 may disclose any identifying information about an em-
21 ployee, applicant for employment, or former employee de-
22 scribed in subsection (a) who has provided information to
23 the Commission or the Secretary—

1 “(1) unless the Commission or the Secretary
2 has obtained the written consent of the employee,
3 applicant for employment, or former employee;

4 “(2) except in accordance with the provisions of
5 section 552a of title 5; or

6 “(3) unless required to be disclosed to a defend-
7 ant or respondent in connection with a public pro-
8 ceeding instituted by the Commission or the Sec-
9 retary.”.

○