

113TH CONGRESS  
1ST SESSION

# S. 42

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## AN ACT

To provide anti-retaliation protections for antitrust  
whistleblowers.

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. SHORT TITLE.**

2 This Act may be cited as the “Criminal Antitrust  
3 Anti-Retaliation Act of 2013”.

4 **SEC. 2. AMENDMENT TO ACPERA.**

5 The Antitrust Criminal Penalty Enhancement and  
6 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1  
7 note) is amended by adding after section 215 the fol-  
8 lowing:

9 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**  
10 **BLOWERS.**

11 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-  
12 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

13 “(1) IN GENERAL.—No employer may dis-  
14 charge, demote, suspend, threaten, harass, or in any  
15 other manner discriminate against a covered indi-  
16 vidual in the terms and conditions of employment of  
17 the covered individual because—

18 “(A) the covered individual provided or  
19 caused to be provided to the employer or the  
20 Federal Government information relating to—

21 “(i) any violation of, or any act or  
22 omission the covered individual reasonably  
23 believes to be a violation of the antitrust  
24 laws; or

25 “(ii) any violation of, or any act or  
26 omission the covered individual reasonably

1 believes to be a violation of another crimi-  
2 nal law committed in conjunction with a  
3 potential violation of the antitrust laws or  
4 in conjunction with an investigation by the  
5 Department of Justice of a potential viola-  
6 tion of the antitrust laws; or

7 “(B) the covered individual filed, caused to  
8 be filed, testified, participated in, or otherwise  
9 assisted an investigation or a proceeding filed  
10 or about to be filed (with any knowledge of the  
11 employer) relating to—

12 “(i) any violation of, or any act or  
13 omission the covered individual reasonably  
14 believes to be a violation of the antitrust  
15 laws; or

16 “(ii) any violation of, or any act or  
17 omission the covered individual reasonably  
18 believes to be a violation of another crimi-  
19 nal law committed in conjunction with a  
20 potential violation of the antitrust laws or  
21 in conjunction with an investigation by the  
22 Department of Justice of a potential viola-  
23 tion of the antitrust laws.

1           “(2) LIMITATION ON PROTECTIONS.—Para-  
2 graph (1) shall not apply to any covered individual  
3 if—

4           “(A) the covered individual planned and  
5 initiated a violation or attempted violation of  
6 the antitrust laws;

7           “(B) the covered individual planned and  
8 initiated a violation or attempted violation of  
9 another criminal law in conjunction with a vio-  
10 lation or attempted violation of the antitrust  
11 laws; or

12           “(C) the covered individual planned and  
13 initiated an obstruction or attempted obstruc-  
14 tion of an investigation by the Department of  
15 Justice of a violation of the antitrust laws.

16           “(3) DEFINITIONS.—In this section:

17           “(A) ANTITRUST LAWS.—The term ‘anti-  
18 trust laws’ means section 1 or 3 of the Sher-  
19 man Act (15 U.S.C. 1, 3).

20           “(B) COVERED INDIVIDUAL.—The term  
21 ‘covered individual’ means an employee, con-  
22 tractor, subcontractor, or agent of an employer.

23           “(C) EMPLOYER.—The term ‘employer’  
24 means a person, or any officer, employee, con-  
25 tractor, subcontractor, or agent of such person.

1           “(D) PERSON.—The term ‘person’ has the  
2           same meaning as in subsection (a) of the first  
3           section of the Clayton Act (15 U.S.C. 12(a)).

4           “(4) RULE OF CONSTRUCTION.—The term ‘vio-  
5           lation’, with respect to the antitrust laws, shall not  
6           be construed to include a civil violation of any law  
7           that is not also a criminal violation.

8           “(b) ENFORCEMENT ACTION.—

9           “(1) IN GENERAL.—A covered individual who  
10          alleges discharge or other discrimination by any em-  
11          ployer in violation of subsection (a) may seek relief  
12          under subsection (c) by—

13               “(A) filing a complaint with the Secretary  
14               of Labor; or

15               “(B) if the Secretary has not issued a final  
16               decision within 180 days of the filing of the  
17               complaint and there is no showing that such  
18               delay is due to the bad faith of the claimant,  
19               bringing an action at law or equity for de novo  
20               review in the appropriate district court of the  
21               United States, which shall have jurisdiction  
22               over such an action without regard to the  
23               amount in controversy.

24           “(2) PROCEDURE.—

1           “(A) IN GENERAL.—A complaint filed with  
2 the Secretary of Labor under paragraph (1)(A)  
3 shall be governed under the rules and proce-  
4 dures set forth in section 42121(b) of title 49,  
5 United States Code.

6           “(B) EXCEPTION.—Notification made  
7 under section 42121(b)(1) of title 49, United  
8 States Code, shall be made to any individual  
9 named in the complaint and to the employer.

10           “(C) BURDENS OF PROOF.—A complaint  
11 filed with the Secretary of Labor under para-  
12 graph (1)(A) shall be governed by the legal bur-  
13 dens of proof set forth in section 42121(b) of  
14 title 49, United States Code.

15           “(D) STATUTE OF LIMITATIONS.—A com-  
16 plaint under paragraph (1)(A) shall be filed  
17 with the Secretary of Labor not later than 180  
18 days after the date on which the violation oc-  
19 curs.

20           “(E) CIVIL ACTIONS TO ENFORCE.—If a  
21 person fails to comply with an order or prelimi-  
22 nary order issued by the Secretary of Labor  
23 pursuant to the procedures in section 42121(b),  
24 the Secretary of Labor or the person on whose  
25 behalf the order was issued may bring a civil

1           action to enforce the order in the district court  
2           of the United States for the judicial district in  
3           which the violation occurred.

4           “(c) REMEDIES.—

5           “(1) IN GENERAL.—A covered individual pre-  
6           vailing in any action under subsection (b)(1) shall be  
7           entitled to all relief necessary to make the covered  
8           individual whole.

9           “(2) COMPENSATORY DAMAGES.—Relief for any  
10          action under paragraph (1) shall include—

11           “(A) reinstatement with the same seniority  
12           status that the covered individual would have  
13           had, but for the discrimination;

14           “(B) the amount of back pay, with inter-  
15           est; and

16           “(C) compensation for any special damages  
17           sustained as a result of the discrimination in-  
18           cluding litigation costs, expert witness fees, and  
19           reasonable attorney’s fees.

20          “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—

21          Nothing in this section shall be deemed to diminish the  
22          rights, privileges, or remedies of any covered individual

- 1 under any Federal or State law, or under any collective
- 2 bargaining agreement.”.

Passed the Senate November 4, 2013.

Attest:

*Secretary.*





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