

Union Calendar No. 466

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3307**

[Report No. 104-859]

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## **A BILL**

To amend title 5, United States Code, to provide for a limitation on sanctions imposed by agencies and for other purposes.

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SEPTEMBER 28, 1996

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1996

Mr. GEKAS (for himself, Mr. MOORHEAD, Mr. SENSENBRENNER, Mr. COBLE, Mr. SMITH of Texas, Mr. INGLIS of South Carolina, Mr. HOKE, Mr. BONO, Mr. BRYANT of Tennessee, Mr. BARR of Georgia, Mr. TALENT, Mr. TAUZIN, and Mr. ZELIFF) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 28, 1996

Additional sponsors: Mr. FLANAGAN, Mr. ENGLISH of Pennsylvania, Mr. BUNNING of Kentucky, Mr. CANADY of Florida, Mr. LIVINGSTON, Mr. HANCOCK, Mr. SHAW, Mr. LINDER, Mr. GOODLATTE, Mr. MCCOLLUM, Mr. HEINEMAN, Mr. BUYER, Mr. GALLEGLY, Mr. STENHOLM, Mr. PICKETT, Mr. PARKER, Mr. BREWSTER, Mr. PETERSON of Minnesota, Mr. HALL of Texas, Mr. SISISKY, Mr. CONDIT, Mr. PETE GEREN of Texas, and Mr. CRANE

SEPTEMBER 28, 1996

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 24, 1996]

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## A BILL

To amend title 5, United States Code, to provide for a

limitation on sanctions imposed by 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 “Regulatory Fair Warn-*  
5 *ing Act”.*

6 **SEC. 2. AFFIRMATIVE DEFENSE AGAINST IMPOSITION OF**  
7 **FINES OR OTHER PENALTIES BY AGENCIES.**

8       *Section 558 of title 5, United States Code, is amended*  
9 *by adding at the end the following new subsection:*

10       “(d)(1) *No fine or other penalty shall be imposed on*  
11 *a person by an agency for a violation of a rule if the agency*  
12 *finds that—*

13               “(A) *the rule, other general statements of policy,*  
14 *and related guidances, policies, and other public*  
15 *statements—*

16                       “(i) *published in the Federal Register by the*  
17 *agency, or*

18                       “(ii) *as to which such person had actual no-*  
19 *tice,*

20 *failed to give such person fair warning of the conduct*  
21 *that the rule prohibits or requires; or*

22               “(B) *such person committed the violation in rea-*  
23 *sonable reliance upon a written statement by a Fed-*  
24 *eral or State official, with real or apparent authority*

1        *to interpret such rule, made after disclosure by such*  
2        *person of all material facts that such person was in*  
3        *compliance with, exempt from, or otherwise not sub-*  
4        *ject to, the requirements of the rule.*

5        *“(2) In an action brought to impose a fine or other*  
6        *penalty on a person for an alleged violation of a rule, an*  
7        *agency shall not give deference to any interpretation of such*  
8        *rule relied on by the agency that was not published in the*  
9        *Federal Register or was not otherwise available to such per-*  
10       *son prior to the alleged violation.*

11       *“(3) For purposes of this subsection, a person shall be*  
12       *considered to have received fair warning of the conduct that*  
13       *a rule of an agency prohibits or requires—*

14                *“(A) if a person, acting reasonably and in good*  
15        *faith, would be able to identify, with ascertainable*  
16        *certainty, the standards with which such agency ex-*  
17        *pects such person’s conduct to conform, or*

18                *“(B) when a person first received notice of the*  
19        *initiation of a proceeding against such person for vio-*  
20        *lation of such rule by the agency which issued such*  
21        *rule.*

22        *“(4) The defenses authorized by this subsection shall*  
23        *not apply with respect to a violation of a rule which is*  
24        *a health or safety related rule which has been issued on an*  
25        *emergency basis.”.*

1 **SEC. 3. AFFIRMATIVE DEFENSE AGAINST IMPOSITION OF**  
2 **FINES OR OTHER PENALTIES BY COURTS.**

3 (a) *IN GENERAL.*—Chapter 111 of title 28, United  
4 States Code, is amended by adding at the end the following  
5 new section:

6 **“§1660. Affirmative defense against fines or other**  
7 **penalties for violations of agency rules**

8 “(a) *No civil or criminal fine or other penalty shall*  
9 *be imposed on a person by a court for a violation of a rule*  
10 *and no fine or other penalty imposed by an agency for a*  
11 *violation of a rule shall be approved by a court if the court*  
12 *finds that—*

13 “(1) *the rule, other general statements of policy,*  
14 *and related guidances, policies, and other public*  
15 *statements—*

16 “(A) *published in the Federal Register by*  
17 *the agency which promulgated such rule, or*

18 “(B) *as to which such person had actual no-*  
19 *tice,*

20 *failed to give such person fair warning of the conduct*  
21 *that the rule prohibits or requires; or*

22 “(2) *such person committed the violation in rea-*  
23 *sonable reliance upon a written statement by a Fed-*  
24 *eral or State official, with real or apparent authority*  
25 *to interpret such rule, made after disclosure by such*  
26 *person of all material facts, that such person was in*

1        *compliance with, exempt from, or otherwise not sub-*  
2        *ject to, the requirements of the rule.*

3        *“(b) In an action brought to impose a civil or criminal*  
4        *fine or other penalty on a person for an alleged violation*  
5        *of a rule, the court shall not give deference to any interpre-*  
6        *tation of such rule relied on by the agency that promulgated*  
7        *the rule that was not published in the Federal Register or*  
8        *was not otherwise available to such person prior to the al-*  
9        *leged violation.*

10       *“(c) For purposes of this section, a person shall be con-*  
11       *sidered to have received fair warning of the conduct that*  
12       *a rule of an agency prohibits or requires—*

13                *“(1) if a person, acting reasonably and in good*  
14        *faith, would be able to identify, with ascertainable*  
15        *certainty, the standards with which such agency ex-*  
16        *pects such person’s conduct to conform, or*

17                *“(2) when a person first received notice of the*  
18        *initiation of a proceeding against such person for vio-*  
19        *lation of such rule by the agency which issued such*  
20        *rule.*

21        *“(d) The defenses authorized by this section shall not*  
22        *apply with respect to a violation of a rule which is a health*  
23        *or safety related rule which has been issued on an emer-*  
24        *gency basis.”.*

1           **(b) CLERICAL AMENDMENT.**—*The table of sections at*  
2 *the beginning of chapter 111 of title 28, United States Code,*  
3 *is amended by adding after the item relating to section 1659*  
4 *the following new item:*

*“1660. Affirmative defense against fines or other penalties for violations of agency rules.”.*

Amend the title so as to read: “A bill to amend title 5, United States Code, to provide an affirmative defense against fines or other penalties imposed by agencies and for other purposes.”.