

105TH CONGRESS
2D SESSION

H. R. 4049

To amend titles 5 and 28, United States Code, to provide for a limitation on sanctions imposed by agencies and courts in certain circumstances.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1998

Mr. GEKAS (for himself, Mrs. BONO, Mr. BUYER, Mr. ENGLISH of Pennsylvania, Mr. GRAHAM, Mr. HALL of Texas, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. PICKETT, Mr. SENSENBRENNER, Mr. SISISKY, Mr. SMITH of Texas, Mr. STENHOLM, Mr. STRICKLAND, and Mr. TALENT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend titles 5 and 28, United States Code, to provide for a limitation on sanctions imposed by agencies and courts in certain circumstances.

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 of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Federal regulations advance many impor-
2 tant goals, including protecting the environment and
3 the health and safety of all Americans.

4 (2) For regulations to effectively protect the
5 public and promote the public interest, the fact of
6 their existence and what they mean must be avail-
7 able to the persons and entities willing to investigate
8 what the law and regulations require.

9 (3) Fairness also requires that a person should
10 be able to learn of regulations and of their meanings
11 before they can be sanctioned for violating them.

12 (4) Fairness also should prevent a person from
13 being sanctioned for violating a regulation if an offi-
14 cial has misled the person as to what the regulation
15 prohibits or requires and the person has reasonably
16 relied upon such misleading information.

17 (5) The Due Process Clause of the Fifth
18 Amendment gives Americans a right to have access
19 to regulations and the opportunity to learn their
20 meanings before such regulations can be the basis
21 for depriving them of life, liberty, or property.

22 (6) Effective procedures for protecting this
23 right can improve the effectiveness of regulation,
24 foster the sense that regulations are fairly enforced,

1 and ensure that the right to due process actually
2 benefits Americans.

3 (7) Ensuring that agencies give Americans ac-
4 cess to regulations and the opportunity to learn their
5 meanings and accurate information about them be-
6 fore any sanction can be imposed will encourage
7 agencies to make regulatory requirements clearly
8 known, will encourage people and entities to learn
9 what regulations require of them, and will foster le-
10 gality, fairness, and justice in the enforcement of
11 Federal regulations.

12 **SEC. 3. BAN ON IMPOSITION OF SANCTIONS BY AGENCIES**
13 **IN CERTAIN CIRCUMSTANCES.**

14 Section 558 of title 5, United States Code, is amend-
15 ed by adding at the end the following new subsection:

16 “(d)(1) No sanction shall be imposed on a person by
17 an agency for a violation of a rule if the agency finds—

18 “(A) that the rule was not—

19 “(i) printed in the Code of Federal Regula-
20 tions;

21 “(ii) printed in the Federal Register;

22 “(iii) known to the person; or

23 “(iv) knowable to a person who has en-
24 gaged in a reasonable, good faith investigation

1 of the rules applicable to the conduct that alleg-
2 edly violated the rule;

3 “(B) that the rule failed to give the person fair
4 warning of the conduct that the rule prohibits or re-
5 quires; or

6 “(C) that, with respect only to a retrospective
7 sanction, official representations to the person about
8 what the rule prohibits or requires were misleading
9 and were reasonably relied upon by the person.

10 “(2) For purposes of this subsection, an agency shall
11 find that a rule gives fair warning of the conduct that the
12 rule prohibits or requires if a reasonable person, acting
13 in good faith, would be able to identify, with ascertainable
14 certainty, the standards with which the rule requires the
15 person’s conduct to conform.”.

16 **SEC. 4. BAN ON IMPOSITION OF SANCTIONS BY COURTS IN**
17 **CERTAIN CIRCUMSTANCES.**

18 (a) IN GENERAL.—Chapter 111 of title 28, United
19 States Code, is amended by adding at the end the follow-
20 ing new section:

21 **“§ 1660. Ban on sanctions for violations of agency**
22 **rules in certain circumstances**

23 “(a) No civil or criminal sanction may be imposed
24 by a court for a violation of a rule if the court finds—

25 “(1) that the rule was not—

1 “(A) printed in the Code of Federal Regu-
2 lations;

3 “(B) printed in the Federal Register;

4 “(C) known to the person; or

5 “(D) knowable to a person who has en-
6 gaged in a reasonable, good faith investigation
7 of the rules applicable to the conduct that alleg-
8 edly violated the rule;

9 “(2) that the rule failed to give the person fair
10 warning of the conduct that the rule prohibits or re-
11 quires; or

12 “(3) that, with respect only to a retrospective
13 sanction, official representations to the person about
14 what the rule prohibits or requires were misleading
15 and were reasonably relied upon by the person.

16 “(b) For purposes of this section, a court shall find
17 that a rule gives fair warning of the conduct that the rule
18 prohibits or requires if a reasonable person, acting in good
19 faith, would be able to identify, with ascertainable cer-
20 tainty, the standards with which the rule requires the per-
21 son’s conduct to conform.

22 “(c) For purposes of this section, the term ‘rule’ shall
23 have the meaning given that term by section 551 of title
24 5.”.

