

113TH CONGRESS
1ST SESSION

S. 1081

To amend title 10, United States Code, to expand and enhance authorities on protected communications of members of the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2013

Mr. WARNER (for himself and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to expand and enhance authorities on protected communications of members of the Armed Forces, 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 “Military Whistleblower
5 Protection Enhancement Act of 2013”.

1 **SEC. 2. EXPANSION AND ENHANCEMENT OF AUTHORITIES**
 2 **RELATING PROTECTED COMMUNICATIONS**
 3 **OF MEMBERS OF THE ARMED FORCES AND**
 4 **PROHIBITED RETALIATORY ACTIONS.**

5 (a) EXPANSION OF PROHIBITED RETALIATORY PER-
 6 SONNEL ACTIONS.—Subsection (b) of section 1034 of title
 7 10, United States Code, is amended—

8 (1) in paragraph (1)—

9 (A) in subparagraph (A), by striking “or”
 10 at the end;

11 (B) in subparagraph (B)—

12 (i) in clause (i), by inserting “or a
 13 representative of a Member of Congress”
 14 after “a Member of Congress”;

15 (ii) in clause (iv), by striking “or” at
 16 the end;

17 (iii) by redesignating clause (v) as
 18 clause (vi);

19 (iv) by inserting after clause (v) the
 20 following new clause (v):

21 “(v) a court, grand jury, or court-martial
 22 proceeding, or an authorized official of the De-
 23 partment of Justice or another law enforcement
 24 agency; or”; and

25 (v) in clause (vi), as redesignated by
 26 clause (iii) of this subparagraph, by strik-

1 ing the period at the end and inserting “;
2 or”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(C) testimony, or otherwise participating in or
6 assisting in an investigation or proceeding related to
7 a communication under subparagraph (A) or (B), or
8 filing, causing to be filed, participating in, or other-
9 wise assisting in an action brought under this sec-
10 tion.”; and

11 (2) in paragraph (2), by inserting after “any
12 favorable action” the following: “, or a significant
13 change in a member’s duties, responsibilities, or
14 working conditions”.

15 (b) INSPECTOR GENERAL INVESTIGATIONS OF ALLE-
16 GATIONS.—Subsection (c) of such section is amended—

17 (1) in paragraph (1), by striking “paragraph
18 (3)” and inserting “paragraph (4)”;

19 (2) in paragraph (2), by striking subparagraph
20 (A) and inserting the following new subparagraph
21 (A):

22 “(A) Any violation of any law, rule, or regula-
23 tion, including a law or regulation prohibiting rape,
24 sexual assault, or other sexual misconduct in sec-
25 tions 920 through 920c of this title (articles 120

1 through 120c of the Uniform Code of Military Jus-
2 tice), sexual harassment or unlawful discrimina-
3 tion.”;

4 (3) by redesignating paragraphs (3), (4), and
5 (5) as paragraphs (4), (5), and (6), respectively;

6 (4) by inserting after paragraph (2) the fol-
7 lowing new paragraph (3):

8 “(3) A communication described in paragraph (2)
9 shall not be excluded from the protections provided in this
10 section because—

11 “(A) the communication was made to a person
12 who participated in an activity that the member rea-
13 sonably believed to be covered by paragraph (2);

14 “(B) the communication revealed information
15 that had previously been communicated;

16 “(C) of the member’s motive for making the
17 communication;

18 “(D) the communication was not made in writ-
19 ing;

20 “(E) the communication was made while the
21 member was off duty;

22 “(F) the communication was made during the
23 normal course of duties of the member.”;

24 (5) in subparagraph (D) of paragraph (4), as
25 redesignated by paragraph (3) of this subsection, by

1 inserting before the period at the end of the second
 2 sentence the following: “, with the consent of the
 3 member”; and

4 (6) in paragraph (5), as so redesignated—

5 (A) by striking “paragraph (3)(A)” and in-
 6 serting “paragraph (4)(A)”;

7 (B) by striking “paragraph (3)(D)” and
 8 inserting “paragraph (4)(D)”;

9 (C) by striking “60 days” and inserting
 10 “one year”.

11 (c) INSPECTOR GENERAL INVESTIGATIONS OF UN-
 12 DERLYING ALLEGATIONS.—Subsection (d) of such section
 13 is amended by striking “subparagraph (A) or (B) of sub-
 14 section (c)(2)” and inserting “subparagraph (A), (B), or
 15 (C) of subsection (c)(2)”.

16 (d) REPORTS ON INVESTIGATIONS.—Subsection (e)
 17 of such section is amended—

18 (1) in paragraph (1)—

19 (A) by striking “subsection (c)(3)(E)” both
 20 places it appears and inserting “subsection
 21 (c)(4)(E)”;

22 (B) by striking “the Secretary of Defense”
 23 and inserting “the Secretary of the military de-
 24 partment concerned”; and

1 (C) by striking “to the Secretary,” and in-
2 serting “to such Secretary,”;

3 (2) in paragraph (3), by striking “the Secretary
4 of Defense” and inserting “the Secretary of the mili-
5 tary department concerned”; and

6 (3) in paragraph (4), by striking the second
7 sentence and inserting the following new sentence:
8 “The report shall include an explicit determination
9 as to whether a personnel action prohibited by sub-
10 section (b) has occurred and a recommendation as to
11 the disposition of the complaint, including appro-
12 priate corrective action for the member.”.

13 (e) ACTION IN CASE OF VIOLATIONS.—Such section
14 is further amended—

15 (1) by redesignating subsections (f), (g), (h),
16 and (i) as subsections (g), (h), (j), and (k), respec-
17 tively; and

18 (2) by inserting after subsection (e) the fol-
19 lowing new subsection (f):

20 “(f) ACTION IN CASE OF VIOLATIONS.—(1) If an In-
21 spector General reports under subsection (e) that a per-
22 sonnel action prohibited by subsection (b) has occurred,
23 not later than 30 days after receiving such report from
24 the Inspector General, the Secretary of Homeland Secu-
25 rity or the Secretary of the military department concerned,

1 as applicable, shall order such action as is necessary to
 2 correct the record of a personnel action prohibited by sub-
 3 section (b), taking into account the recommendations in
 4 the report by the Inspector General. Such Secretary shall
 5 take any appropriate disciplinary action against the indi-
 6 vidual who committed such prohibited personnel action.

7 “(2) If the Secretary of Homeland Security or the
 8 Secretary of the military department concerned, as appli-
 9 cable, determines that an order for corrective or discipli-
 10 nary action is not appropriate, not later than 30 days after
 11 making the determination, such Secretary shall—

12 “(A) provide to the Secretary of Defense, the
 13 Committees on Armed Services of the Senate and
 14 the House of Representatives, and the member or
 15 former member, a notice of the determination and
 16 the reasons for not taking action; or

17 “(B) refer the report to the appropriate board
 18 for the correction of military records for further re-
 19 view under subsection (g).”.

20 (f) CORRECTION OF RECORDS.—Subsection (g) of
 21 such section, as redesignated by subsection (e)(1) of this
 22 section, is further amended—

23 (1) in paragraph (1), by striking “may review”
 24 and inserting “shall review”;

1 (2) in paragraph (2)(C), by striking “may” and
 2 inserting “upon the request of the member or former
 3 member, after an initial determination that a com-
 4 plaint is not frivolous and has not previously been
 5 addressed by the board, shall”; and

6 (3) in paragraph (3)—

7 (A) in the matter preceding subparagraph
 8 (A), by striking “board elects to hold” and in-
 9 serting “board holds”; and

10 (B) in subparagraph (A)—

11 (i) by striking “may be provided” and
 12 inserting “shall be provided”; and

13 (ii) in clause (ii), by striking “the case
 14 is unusually complex or otherwise re-
 15 quires” and inserting “the member or
 16 former member would benefit from”.

17 (g) REVIEW.—Subsection (h) of such section, as re-
 18 designated by subsection (e)(1) of this section, is further
 19 amended by striking “subsection (f)” and inserting “sub-
 20 section (g)”.

21 (h) BURDENS OF PROOF.—Such section is further
 22 amended by inserting after subsection (h), as so redesign-
 23 ated, the following new subsection (i):

24 “(i) BURDENS OF PROOF.—The burdens of proof
 25 specified in section 1221(e) of title 5 shall apply in any

1 investigation conducted by an Inspector General, and any
2 review conducted by the Secretary of Defense, the Sec-
3 retary of Homeland Security, and any board for the cor-
4 rection of military records, under this section.”.

5 (i) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date that is 30 days
7 after the date of the enactment of this Act, and shall apply
8 with respect to allegations pending or submitted under
9 section 1034 of title 10, United States Code, on or after
10 that date.

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