

114TH CONGRESS
1ST SESSION

H. R. 571

To amend title 38, United States Code, to improve the treatment of whistleblower complaints by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2015

Mr. MILLER of Florida introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 38, United States Code, to improve the treatment of whistleblower complaints by the Secretary of Veterans Affairs, 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 “Veterans Affairs Retal-
5 iation Prevention Act of 2015”.

1 **SEC. 2. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**
2 **DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United
4 States Code, is amended by adding at the end the fol-
5 lowing new subchapter:

6 “SUBCHAPTER II—WHISTLEBLOWER
7 COMPLAINTS

8 **“§ 721. Whistleblower complaint defined**

9 “In this subchapter, the term ‘whistleblower com-
10 plaint’ means a complaint by an employee of the Depart-
11 ment disclosing, or assisting another employee to disclose,
12 a potential violation of any law, rule, or regulation, or
13 gross mismanagement, gross waste of funds, abuse of au-
14 thority, or substantial and specific danger to public health
15 and safety.

16 **“§ 722. Treatment of whistleblower complaints**

17 “(a) FILING.—(1) In addition to any other method
18 established by law in which an employee may file a whistle-
19 blower complaint, an employee of the Department may file
20 a whistleblower complaint with a supervisor of the em-
21 ployee.

22 “(2) In making a whistleblower complaint under
23 paragraph (1), an employee shall file the initial complaint
24 with the immediate supervisor of the employee.

25 “(b) NOTIFICATION.—(1) Not later than two busi-
26 ness days after the date on which a supervisor receives

1 a whistleblower complaint by an employee under this sec-
2 tion, the supervisor shall notify, in writing, the employee
3 of whether the supervisor determines that there is a rea-
4 sonable likelihood that the complaint discloses a violation
5 of any law, rule, or regulation, or gross mismanagement,
6 gross waste of funds, abuse of authority, or substantial
7 and specific danger to public health and safety. The super-
8 visor shall retain written documentation regarding the
9 whistleblower complaint and shall submit to the next-level
10 supervisor and the Office of Accountability Review of the
11 Department a written report on the complaint.

12 “(2) On a monthly basis, the supervisor shall submit
13 to the appropriate director or other official who is superior
14 to the supervisor a written report that includes the num-
15 ber of whistleblower complaints received by the supervisor
16 under this section during the month covered by the report,
17 the disposition of such complaints, and any actions taken
18 because of such complaints pursuant to subsection (c). In
19 the case in which such a director or official carries out
20 this paragraph, the director or official shall submit such
21 monthly report to the supervisor of the director or official
22 and to the Office of Accountability Review.

23 “(c) POSITIVE DETERMINATION.—If a supervisor
24 makes a positive determination under subsection (b)(1) re-
25 garding a whistleblower complaint of an employee, the su-

1 supervisor shall include in the notification to the employee
2 under such subsection the specific actions that the super-
3 visor will take to address the complaint.

4 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-
5 VISORS.—(1) If a supervisor does not make a timely deter-
6 mination under subsection (b)(1) regarding a whistle-
7 blower complaint, or if the employee who made the com-
8 plaint determines that the supervisor did not adequately
9 address the complaint pursuant to subsection (c), the em-
10 ployee may file such whistleblower complaint with the
11 next-level supervisor who shall treat such complaint in ac-
12 cordance with this section.

13 “(2) An employee may file a whistleblower complaint
14 with the Secretary if the employee has filed the whistle-
15 blower complaint to each level of supervisors between the
16 employee and the Secretary in accordance with paragraph
17 (1).

18 “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-
19 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-
20 tive determination under subsection (b)(1) regarding a
21 whistleblower complaint filed by an employee, the Sec-
22 retary shall—

23 “(1) inform the employee of the ability to vol-
24 unteer for a transfer in accordance with section
25 3352 of title 5; and

1 “(2) give preference to the employee for such a
2 transfer in accordance with such section.

3 “(f) PROHIBITION ON EXEMPTION.—The Secretary
4 may not exempt any employee of the Department from
5 being covered by this section.

6 **“§ 723. Adverse actions against employees who com-**
7 **mit prohibited personnel actions relating**
8 **to whistleblower complaints**

9 “(a) IN GENERAL.—(1) In accordance with para-
10 graph (2), the Secretary shall carry out the following ad-
11 verse actions against employees whom the Secretary, an
12 administrative judge, the Merit Systems Protection Board,
13 the Office of Special Counsel, an adjudicating body pro-
14 vided under a union contract, a Federal judge, or the In-
15 specter General of the Department determines committed
16 a prohibited personnel action described in subsection (d):

17 “(A) With respect to the first offense, an ad-
18 verse action that is not less than a 14-day suspen-
19 sion and not more than removal.

20 “(B) With respect to the second offense, re-
21 moval.

22 “(2)(A) Except as provided by subparagraph (B),
23 and notwithstanding subsections (b) and (c) of section
24 7513 and section 7543 of title 5, the provisions of sub-
25 sections (d) and (e) of section 713 of this title shall apply

1 with respect to an adverse action carried out under para-
2 graph (1).

3 “(B) An employee who is notified of being the subject
4 of a proposed adverse action under paragraph (1) may not
5 be given more than five days following such notification
6 to provide evidence to dispute such proposed adverse ac-
7 tion. If the employee does not provide any such evidence,
8 or if the Secretary determines that such evidence is not
9 sufficient to reverse the determination to propose the ad-
10 verse action, the Secretary shall carry out the adverse ac-
11 tion following such five-day period.

12 “(b) FEES.—(1) In addition to any adverse action
13 carried out under subsection (a), to recoup costs borne by
14 the Federal Government by reason of prohibited personnel
15 actions described in subsection (d), the Secretary shall
16 charge a fee to each employee who is found to have com-
17 mitted such a prohibited personnel action by an adminis-
18 trative judge, the Merit Systems Protection Board, the Of-
19 fice of Special Counsel, an adjudicating body provided
20 under a union contract, a Federal judge, or, in the case
21 of a settlement of a whistleblower complaint (regardless
22 of whether any fault was assigned under such settlement),
23 the Secretary. The Secretary shall afford such an em-
24 ployee notice and an opportunity for a hearing before
25 charging such fee.

1 “(2) In carrying out paragraph (1), the Secretary
2 shall prescribe a schedule of fees that takes into account
3 the cost to the Federal Government of the prohibited per-
4 sonnel action committed by an employee described in such
5 paragraph, including such costs paid by the Federal Gov-
6 ernment pursuant to an order to pay attorney fees de-
7 scribed in section 1204(m) of title 5 or other similar order
8 of an administrative judge or Federal judge.

9 “(c) LIMITATION ON OTHER ADVERSE ACTIONS.—
10 With respect to a prohibited personnel action described in
11 subsection (d), if the Secretary carries out an adverse ac-
12 tion against an employee or charges a fee to an employee
13 under a provision of law other than this section, the Sec-
14 retary may carry out an additional adverse action or
15 charge an additional fee under this section based on the
16 same prohibited personnel action if the total severity of
17 the adverse actions do not exceed the level specified in sub-
18 section (a) and the total fees charged do not exceed the
19 amount prescribed under subsection (b)(2).

20 “(d) PROHIBITED PERSONNEL ACTION DE-
21 SCRIBED.—A prohibited personnel action described in this
22 subsection is any of the following actions:

23 “(1) Taking or failing to take a personnel ac-
24 tion in violation of section 2302 of title 5 against an
25 employee relating to the employee—

1 “(A) filing a whistleblower complaint in ac-
2 cordance with section 722 of this title;

3 “(B) filing a whistleblower complaint with
4 the Inspector General of the Department, the
5 Special Counsel, or Congress;

6 “(C) providing information or participating
7 as a witness in an investigation of a whistle-
8 blower complaint in accordance with section
9 722 or with the Inspector General of the De-
10 partment, the Special Counsel, or Congress;

11 “(D) participating in an audit or investiga-
12 tion by the Comptroller General of the United
13 States;

14 “(E) refusing to perform an action that is
15 unlawful or prohibited by the Department; or

16 “(F) engaging in communications that are
17 related to the duties of the position or are oth-
18 erwise protected.

19 “(2) Interfering with an employee making an
20 action described in any of subparagraphs (A)
21 through (F) of paragraph (1).

22 “(3) Conducting a peer review or opening a re-
23 taliatory investigation relating to an activity of an
24 employee that is protected by section 2302 of title
25 5.

1 “(4) Requesting a contractor to carry out an
2 action that is prohibited by section 4705(b) or sec-
3 tion 4712(a)(1) of title 41, as the case may be.

4 **“§ 724. Evaluation criteria of supervisors and treat-**
5 **ment of bonuses**

6 “(a) EVALUATION CRITERIA.—(1) In evaluating the
7 performance of supervisors of the Department, the Sec-
8 retary shall include the criteria described in paragraph
9 (2).

10 “(2) The criteria described in this subsection are the
11 following:

12 “(A) Whether the supervisor treats whistle-
13 blower complaints in accordance with section 722.

14 “(B) Whether the appropriate deciding official,
15 performance review board, or performance review
16 committee determines that the supervisor was found
17 to have committed a prohibited personnel action de-
18 scribed in section 723(c) by an administrative judge,
19 the Merit Systems Protection Board, the Office of
20 Special Counsel, an adjudicating body provided
21 under a union contract, a Federal judge, or, in the
22 case of a settlement of a whistleblower complaint
23 (regardless of whether any fault was assigned under
24 such settlement), the Secretary.

1 “(b) BONUSES.—(1) The Secretary may not pay to
 2 a supervisor described in subsection (a)(2)(B) an award
 3 or bonus under this title or title 5, including under chapter
 4 45 or 53 of such title, during the one-year period begin-
 5 ning on the date on which the determination was made
 6 under such subsection.

7 “(2) Notwithstanding any other provision of law, the
 8 Secretary shall issue an order directing a supervisor de-
 9 scribed in subsection (a)(2)(B) to repay the amount of any
 10 award or bonus paid under this title or title 5, including
 11 under chapter 45 or 53 of such title, if—

12 “(A) such award or bonus was paid for per-
 13 formance during a period in which the supervisor
 14 committed a prohibited personnel action as deter-
 15 mined pursuant to such subsection (a)(2)(B);

16 “(B) the Secretary determines such repayment
 17 appropriate pursuant to regulations prescribed by
 18 the Secretary to carry out this section; and

19 “(C) the supervisor is afforded notice and an
 20 opportunity for a hearing before making such repay-
 21 ment.

22 **“§ 725. Training regarding whistleblower complaints**

23 “(a) TRAINING.—The Secretary, in coordination with
 24 the Whistleblower Protection Ombudsman designated
 25 under section 3(d)(1)(C) of the Inspector General Act of

1 1978 (5 U.S.C. App.), shall annually provide to each em-
2 ployee of the Department training regarding whistleblower
3 complaints, including—

4 “(1) an explanation of each method established
5 by law in which an employee may file a whistle-
6 blower complaint;

7 “(2) an explanation of prohibited personnel ac-
8 tions described by section 723(d) of this title;

9 “(3) with respect to supervisors, how to treat
10 whistleblower complaints in accordance with section
11 722 of this title;

12 “(4) the right of the employee to petition Con-
13 gress regarding a whistleblower complaint in accord-
14 ance with section 7211 of title 5;

15 “(5) an explanation that the employee may not
16 be prosecuted or reprimed against for disclosing in-
17 formation to Congress in instances where such dis-
18 closure is permitted by law, including under sections
19 5701, 5705, and 7732 of this title, under section
20 552a of title 5 (commonly referred to as the Privacy
21 Act), under chapter 93 of title 18, and pursuant to
22 regulations promulgated under section 264(c) of the
23 Health Insurance Portability and Accountability Act
24 of 1996 (Public Law 104–191);

1 “(6) an explanation of the language that is re-
2 quired to be included in all nondisclosure policies,
3 forms, and agreements pursuant to section
4 115(a)(1) of the Whistleblower Protection Enhance-
5 ment Act of 2012 (5 U.S.C. 2302 note); and

6 “(7) the right of contractors to be protected
7 from reprisal for the disclosure of certain informa-
8 tion under section 4705 or 4712 of title 41.

9 “(b) CERTIFICATION.—The Secretary shall annually
10 provide training on merit system protection in a manner
11 that the Special Counsel certifies as being satisfactory.

12 “(c) PUBLICATION.—The Secretary shall publish on
13 the Internet website of the Department, and display
14 prominently at each facility of the Department, the rights
15 of an employee to file a whistleblower complaint and to
16 petition Congress regarding a whistleblower complaint as
17 described in paragraphs (3) and (4) of subsection (a).

18 **“§ 726. Reports to Congress**

19 “(a) ANNUAL REPORTS.—The Secretary shall annu-
20 ally submit to the Committees on Veterans’ Affairs of the
21 House of Representatives and the Senate a report that
22 includes—

23 “(1) with respect to whistleblower complaints
24 filed under section 722 during the year covered by
25 the report—

1 “(A) the number of such complaints filed;

2 “(B) the disposition of such complaints;

3 and

4 “(C) the ways in which the Secretary ad-

5 dressed such complaints in which a positive de-

6 termination was made by a supervisor under

7 subsection (b)(1) of such section;

8 “(2) the number of whistleblower complaints

9 filed during the year covered by the report that are

10 not included under paragraph (1), including—

11 “(A) the method in which such complaints

12 were filed;

13 “(B) the disposition of such complaints;

14 and

15 “(C) the ways in which the Secretary ad-

16 dressed such complaints; and

17 “(3) with respect to disclosures made by a con-

18 tractor under section 4705 or 4712 of title 41—

19 “(A) the number of complaints relating to

20 such disclosures that were investigated by the

21 Inspector General of the Department of Vet-

22 erans Affairs during the year covered by the re-

23 port;

24 “(B) the disposition of such complaints;

25 and

11 (b) CONFORMING AND CLERICAL AMENDMENTS.—

15 “SUBCHAPTER I—GENERAL EMPLOYEE
16 MATTERS”.

19 (A) by inserting before the item relating to
20 section 701 the following new item:

21 and

“SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

“722. Treatment of whistleblower complaints.

- “723. Adverse actions against employees who commit prohibited personnel actions relating to whistleblower complaints.
- “724. Evaluation criteria of supervisors and treatment of bonuses.
- “725. Training regarding whistleblower complaints.
- “726. Reports to Congress.”.

