

# Calendar No. 36

114TH CONGRESS  
1ST SESSION

# S. 304

[Report No. 114–13]

To improve motor vehicle safety by encouraging the sharing of certain information.

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IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2015

Mr. THUNE (for himself, Mr. NELSON, Mr. HELLER, Mrs. MCCASKILL, Ms. KLOBUCHAR, Ms. AYOTTE, Mr. MORAN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

APRIL 13, 2015

Reported by Mr. THUNE, with an amendment

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

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## A BILL

To improve motor vehicle safety by encouraging the sharing of certain information.

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 “Motor Vehicle Safety  
5 Whistleblower Act”.

1 **SEC. 2. MOTOR VEHICLE SAFETY WHISTLEBLOWER INCEN-**  
 2 **TIVES AND PROTECTIONS.**

3 (a) IN GENERAL.—Subchapter IV of chapter 301 of  
 4 title 49, United States Code, is amended by adding at the  
 5 end the following:

6 **“§ 30172. Whistleblower incentives and protections**

7 “(a) DEFINITIONS.—In this section:

8 “(1) COVERED ACTION.—The term ‘covered ac-  
 9 tion’ means any administrative or judicial action, in-  
 10 cluding any related administrative or judicial action,  
 11 brought by the Secretary or the Attorney General  
 12 under this chapter that in the aggregate results in  
 13 monetary sanctions exceeding \$1,000,000.

14 “(2) MONETARY SANCTIONS.—The term ‘mone-  
 15 tary sanctions’ means monies, including penalties  
 16 and interest, ordered or agreed to be paid.

17 “(3) ORIGINAL INFORMATION.—The term  
 18 ‘original information’ means information that—

19 “(A) is derived from the independent  
 20 knowledge or analysis of an individual;

21 “(B) is not known to the Secretary from  
 22 any other source, unless the individual is the  
 23 original source of the information; and

24 “(C) is not exclusively derived from an al-  
 25 legation made in a judicial or an administrative  
 26 action, in a governmental report, a hearing, an

1           audit, or an investigation, or from the news  
2           media, unless the individual is a source of the  
3           information.

4           “(4) PART SUPPLIER.—The term ‘part supplier’  
5           means a manufacturer of motor vehicle equipment.

6           “(5) SUCCESSFUL RESOLUTION.—The term  
7           ‘successful resolution’ includes any settlement or ad-  
8           judication of a covered action.

9           “(6) WHISTLEBLOWER.—The term ‘whistle-  
10          blower’ means any employee or contractor of a  
11          motor vehicle manufacturer, part supplier, or dealer-  
12          ship who voluntarily provides to the Secretary origi-  
13          nal information relating to any motor vehicle defect,  
14          noncompliance, or any violation or alleged violation  
15          of any notification or reporting requirement of this  
16          chapter which is likely to cause unreasonable risk of  
17          death or serious physical injury.

18          “(b) AWARDS.—

19                 “(1) IN GENERAL.—If the original information  
20                 that a whistleblower provided to the Secretary led to  
21                 the successful resolution of a covered action, the  
22                 Secretary, subject to subsection (c) and under the  
23                 regulations promulgated under subsection (i), may  
24                 pay an award or awards to 1 or more whistleblowers

1 in an aggregate amount of not more than 30 per-  
2 cent, in total, of collected monetary sanctions.

3 ~~“(2) PAYMENT OF AWARDS.—~~Any amount pay-  
4 able under paragraph (1) shall be paid from the  
5 monetary sanctions collected, and any monetary  
6 sanctions so collected shall be available for such pay-  
7 ment.

8 ~~“(e) DETERMINATION OF AWARDS; DENIAL OF~~  
9 ~~AWARDS.—~~

10 ~~“(1) DETERMINATION OF AWARDS.—~~

11 ~~“(A) DISCRETION.—~~The determination of  
12 whether, to whom, or in what amount to make  
13 an award shall be in the discretion of the Sec-  
14 retary.

15 ~~“(B) CRITERIA.—~~In determining an award  
16 made under subsection (b), the Secretary shall  
17 take into consideration—

18 ~~“(i) if appropriate, whether a whistle-~~  
19 ~~blower reported or attempted to report the~~  
20 ~~information internally to an applicable~~  
21 ~~motor vehicle manufacturer, part supplier,~~  
22 ~~or dealership;~~

23 ~~“(ii) the significance of the original~~  
24 ~~information provided by the whistleblower~~

1 to the successful resolution of the covered  
2 action;

3 “(iii) the degree of assistance provided  
4 by the whistleblower and any legal rep-  
5 resentative of the whistleblower in the cov-  
6 ered action; and

7 “(iv) such additional factors as the  
8 Secretary considers relevant.

9 “(2) DENIAL OF AWARDS.—No award under  
10 subsection (b) shall be made—

11 “(A) to any whistleblower who is convicted  
12 of a criminal violation related to the covered ac-  
13 tion for which the whistleblower otherwise could  
14 receive an award under this section;

15 “(B) to any whistleblower who, acting  
16 without direction from an applicable motor ve-  
17 hicle manufacturer, part supplier, or dealership,  
18 or agent thereof, deliberately causes or substan-  
19 tially contributes to the alleged violation of a  
20 requirement of this chapter;

21 “(C) to any whistleblower who submits in-  
22 formation to the Secretary that is based on the  
23 facts underlying the covered action submitted  
24 previously by another whistleblower; or

1           “(D) to any whistleblower who fails to pro-  
2           vide the original information to the Secretary in  
3           such form as the Secretary may require by reg-  
4           ulation.

5           “(d) REPRESENTATION.—A whistleblower who makes  
6 a claim for an award under subsection (b) may be rep-  
7 resented by counsel.

8           “(e) NO CONTRACT NECESSARY.—No contract with  
9 the Secretary is necessary for any whistleblower to receive  
10 an award under subsection (b).

11          “(f) APPEALS.—

12           “(1) IN GENERAL.—Any determination made  
13 under this section, including whether, to whom, or in  
14 what amount to make an award, shall be in the dis-  
15 cretion of the Secretary.

16           “(2) APPEALS.—Any determination made by  
17 the Secretary under this section may be appealed by  
18 a whistleblower to the appropriate court of appeals  
19 of the United States not later than 30 days after the  
20 determination is issued by the Secretary.

21           “(3) REVIEW.—The court shall review the de-  
22 termination made by the Secretary in accordance  
23 with section 706 of title 5, United States Code.

24           “(g) PROTECTION OF WHISTLEBLOWERS; CON-  
25 FIDENTIALITY.—

1           “(1) IN GENERAL.—Notwithstanding section  
2     30167, and except as provided in paragraphs (2)  
3     and (3) of this subsection, the Secretary, and any  
4     officer or employee of the Department of Transpor-  
5     tation, shall not disclose any information, including  
6     information provided by a whistleblower to the Sec-  
7     retary, which could reasonably be expected to reveal  
8     the identity of a whistleblower, except in accordance  
9     with the provisions of section 552a of title 5, United  
10    States Code, unless and until required to be dis-  
11    closed to a defendant or respondent in connection  
12    with a public proceeding instituted by the Secretary  
13    or any entity described in paragraph (3). For pur-  
14    poses of section 552 of title 5, United States Code,  
15    this paragraph shall be considered a statute de-  
16    scribed in subsection (b)(3)(B) of that section.

17           “(2) EFFECT.—Nothing in this subsection is  
18    intended to limit the ability of the Attorney General  
19    to present such evidence to a grand jury or to share  
20    such evidence with potential witnesses or defendants  
21    in the course of an ongoing criminal investigation.

22           “(3) AVAILABILITY TO GOVERNMENT AGEN-  
23    CIES.—

24           “(A) IN GENERAL.—Without the loss of its  
25    status as confidential in the hands of the Sec-

1           retary, all information referred to in paragraph  
 2           (1) may, in the discretion of the Secretary,  
 3           when determined by the Secretary to be nec-  
 4           essary or appropriate to accomplish the pur-  
 5           poses of this chapter and in accordance with  
 6           subparagraph (B), be made available to the fol-  
 7           lowing:

8                       “(i) The Department of Justice.

9                       “(ii) An appropriate department or  
 10                      agency of the Federal Government, acting  
 11                      within the scope of its jurisdiction.

12                     “(B) MAINTENANCE OF INFORMATION.—

13           Each entity described in subparagraph (A) shall  
 14           maintain information described in that subpara-  
 15           graph as confidential, in accordance with the  
 16           requirements in paragraph (1).

17           “(h) PROVISION OF FALSE INFORMATION.—A whis-

18           tleblower who knowingly and willfully makes any false, fie-  
 19           titious, or fraudulent statement or representation, or who  
 20           makes or uses any false writing or document knowing the  
 21           same to contain any false, fictitious, or fraudulent state-  
 22           ment or entry, shall not be entitled to an award under  
 23           this section and shall be subject to prosecution under sec-  
 24           tion 1001 of title 18.



1       “(i) REGULATIONS.—Not later than 1 year after the  
2 date of enactment of the Motor Vehicle Safety Whistle-  
3 blower Act, the Secretary shall promulgate regulations to  
4 implement the requirements of this section.”.

5       (b) RULE OF CONSTRUCTION.—

6           (1) ORIGINAL INFORMATION.—Information sub-  
7 mitted to the Secretary of Transportation by a whis-  
8 tleblower in accordance with the regulations to im-  
9 plement the requirements of section 30172, United  
10 States Code, shall not lose its status as original in-  
11 formation solely because the whistleblower submitted  
12 the information prior to the effective date of the reg-  
13 ulations if that information was submitted after the  
14 date of enactment of this Act.

15           (2) AWARDS.—A whistleblower may receive an  
16 award under section 30172, United States Code, re-  
17 gardless of whether the violation underlying the cov-  
18 ered action occurred prior to the date of enactment  
19 of this Act.

20       (c) CONFORMING AMENDMENTS.—The table of con-  
21 tents of subchapter IV of chapter 301 of title 49, United  
22 States Code, is amended by adding at the end the fol-  
23 lowing:

“30172. Whistleblower incentives and protections.”.

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Motor Vehicle Safety*  
 3 *Whistleblower Act”.*

4 **SEC. 2. MOTOR VEHICLE SAFETY WHISTLEBLOWER INCEN-**  
 5 **TIVES AND PROTECTIONS.**

6       (a) *IN GENERAL.*—*Subchapter IV of chapter 301 of*  
 7 *title 49, United States Code, is amended by adding at the*  
 8 *end the following:*

9 **“§ 30172. Whistleblower incentives and protections**

10       “(a) *DEFINITIONS.*—*In this section:*

11               “(1) *COVERED ACTION.*—*The term ‘covered ac-*  
 12 *tion’ means any administrative or judicial action, in-*  
 13 *cluding any related administrative or judicial action,*  
 14 *brought by the Secretary or the Attorney General*  
 15 *under this chapter that in the aggregate results in*  
 16 *monetary sanctions exceeding \$1,000,000.*

17               “(2) *MONETARY SANCTIONS.*—*The term ‘mone-*  
 18 *tary sanctions’ means monies, including penalties*  
 19 *and interest, ordered or agreed to be paid.*

20               “(3) *ORIGINAL INFORMATION.*—*The term ‘origi-*  
 21 *nal information’ means information that—*

22                       “(A) *is derived from the independent knowl-*  
 23 *edge or analysis of an individual;*

24                       “(B) *is not known to the Secretary from*  
 25 *any other source, unless the individual is the*  
 26 *original source of the information; and*

1           “(C) is not exclusively derived from an alle-  
2           gation made in a judicial or an administrative  
3           action, in a governmental report, a hearing, an  
4           audit, or an investigation, or from the news  
5           media, unless the individual is a source of the  
6           information.

7           “(4) PART SUPPLIER.—The term ‘part supplier’  
8           means a manufacturer of motor vehicle equipment.

9           “(5) SUCCESSFUL RESOLUTION.—The term ‘suc-  
10          cessful resolution’ includes any settlement or adju-  
11          dication of a covered action.

12          “(6) WHISTLEBLOWER.—The term ‘whistle-  
13          blower’ means any employee or contractor of a motor  
14          vehicle manufacturer, part supplier, or dealership  
15          who voluntarily provides to the Secretary original in-  
16          formation relating to any motor vehicle defect, non-  
17          compliance, or any violation or alleged violation of  
18          any notification or reporting requirement of this  
19          chapter which is likely to cause unreasonable risk of  
20          death or serious physical injury.

21          “(b) AWARDS.—

22                 “(1) IN GENERAL.—If the original information  
23                 that a whistleblower provided to the Secretary led to  
24                 the successful resolution of a covered action, the Sec-  
25                 retary, subject to subsection (c), may pay an award

1        *or awards to 1 or more whistleblowers in an aggregate amount of not more than 30 percent, in total, of*  
 2        *collected monetary sanctions.*

4            *“(2) PAYMENT OF AWARDS.—Any amount payable under paragraph (1) shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.*

8            *“(c) DETERMINATION OF AWARDS; DENIAL OF*  
 9 *AWARDS.—*

10            *“(1) DETERMINATION OF AWARDS.—*

11            *“(A) DISCRETION.—The determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Secretary.*

15            *“(B) CRITERIA.—In determining an award made under subsection (b), the Secretary shall take into consideration—*

18            *“(i) if appropriate, whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership;*

23            *“(ii) the significance of the original information provided by the whistleblower to*

1           *the successful resolution of the covered ac-*  
2           *tion;*

3           “(iii) *the degree of assistance provided*  
4           *by the whistleblower and any legal rep-*  
5           *resentative of the whistleblower in the cov-*  
6           *ered action; and*

7           “(iv) *such additional factors as the*  
8           *Secretary considers relevant.*

9           “(2) *DENIAL OF AWARDS.—No award under sub-*  
10          *section (b) shall be made—*

11           “(A) *to any whistleblower who is convicted*  
12           *of a criminal violation related to the covered ac-*  
13           *tion for which the whistleblower otherwise could*  
14           *receive an award under this section;*

15           “(B) *to any whistleblower who, acting with-*  
16           *out direction from an applicable motor vehicle*  
17           *manufacturer, part supplier, or dealership, or*  
18           *agent thereof, deliberately causes or substantially*  
19           *contributes to the alleged violation of a require-*  
20           *ment of this chapter;*

21           “(C) *to any whistleblower who submits in-*  
22           *formation to the Secretary that is based on the*  
23           *facts underlying the covered action submitted*  
24           *previously by another whistleblower;*

1           “(D) to any whistleblower who fails to pro-  
2           vide the original information to the Secretary in  
3           such form as the Secretary may require by regu-  
4           lation; or

5           “(E) to any whistleblower who fails to re-  
6           port or attempt to report the information inter-  
7           nally to an applicable motor vehicle manufac-  
8           turer, parts supplier, or dealership, unless—

9                   “(i) the whistleblower reasonably be-  
10                  lieved that such an internal report would  
11                  have resulted in retaliation, notwith-  
12                  standing section 30171(a); or

13                   “(ii) the whistleblower reasonably be-  
14                  lieved that the information—

15                           “(I) was already internally re-  
16                           ported;

17                           “(II) was already subject to or  
18                           part of an internal inquiry or inves-  
19                           tigation; or

20                           “(III) was otherwise already  
21                           known to the motor vehicle manufac-  
22                           turer, part supplier, or dealership.

23           “(d) REPRESENTATION.—A whistleblower may be rep-  
24           resented by counsel.

1       “(e) *NO CONTRACT NECESSARY.*—No contract with the  
2 Secretary is necessary for any whistleblower to receive an  
3 award under subsection (b).

4       “(f) *PROTECTION OF WHISTLEBLOWERS; CONFIDEN-*  
5 *TIALITY.*—

6           “(1) *IN GENERAL.*—Notwithstanding section  
7 30167, and except as provided in paragraphs (4) and  
8 (5) of this subsection, the Secretary, and any officer  
9 or employee of the Department of Transportation,  
10 shall not disclose any information, including infor-  
11 mation provided by a whistleblower to the Secretary,  
12 which could reasonably be expected to reveal the iden-  
13 tity of a whistleblower, except in accordance with the  
14 provisions of section 552a of title 5, unless—

15           “(A) required to be disclosed to a defendant  
16 or respondent in connection with a public pro-  
17 ceeding instituted by the Secretary or any entity  
18 described in paragraph (5);

19           “(B) the whistleblower provides prior writ-  
20 ten consent for the information to be disclosed; or

21           “(C) the Secretary, or other officer or em-  
22 ployee of the Department of Transportation, re-  
23 ceives the information through another source,  
24 such as during an inspection or investigation

1           *under section 30166, and has authority under*  
2           *other law to release the information.*

3           “(2) *REDACTION.*—*The Secretary, and any offi-*  
4           *cer or employee of the Department of Transportation,*  
5           *shall take reasonable measures to not reveal the iden-*  
6           *tity of the whistleblower when disclosing any informa-*  
7           *tion under paragraph (1).*

8           “(3) *SECTION 552(b)(3)(B).*—*For purposes of*  
9           *section 552 of title 5, paragraph (1) of this subsection*  
10          *shall be considered a statute described in subsection*  
11          *(b)(3)(B) of that section.*

12          “(4) *EFFECT.*—*Nothing in this subsection is in-*  
13          *tended to limit the ability of the Attorney General to*  
14          *present such evidence to a grand jury or to share such*  
15          *evidence with potential witnesses or defendants in the*  
16          *course of an ongoing criminal investigation.*

17          “(5) *AVAILABILITY TO GOVERNMENT AGEN-*  
18          *CIES.*—

19                 “(A) *IN GENERAL.*—*Without the loss of its*  
20                 *status as confidential in the hands of the Sec-*  
21                 *retary, all information referred to in paragraph*  
22                 *(1) may, in the discretion of the Secretary, when*  
23                 *determined by the Secretary to be necessary or*  
24                 *appropriate to accomplish the purposes of this*



1 chapter and in accordance with subparagraph  
2 (B), be made available to the following:

3 “(i) *The Department of Justice.*

4 “(ii) *An appropriate department or*  
5 *agency of the Federal Government, acting*  
6 *within the scope of its jurisdiction.*

7 “(B) *MAINTENANCE OF INFORMATION.—*  
8 *Each entity described in subparagraph (A) shall*  
9 *maintain information described in that subpara-*  
10 *graph as confidential, in accordance with the re-*  
11 *quirements in paragraph (1).*

12 “(g) *PROVISION OF FALSE INFORMATION.—A whistle-*  
13 *blower who knowingly and willfully makes any false, ficti-*  
14 *tious, or fraudulent statement or representation, or who*  
15 *makes or uses any false writing or document knowing the*  
16 *same to contain any false, fictitious, or fraudulent state-*  
17 *ment or entry, shall not be entitled to an award under this*  
18 *section and shall be subject to prosecution under section*  
19 *1001 of title 18.*

20 “(h) *APPEALS.—*

21 “(1) *IN GENERAL.—Any determination made*  
22 *under this section, including whether, to whom, or in*  
23 *what amount to make an award, shall be in the dis-*  
24 *cretion of the Secretary.*

1           “(2) *APPEALS.*—Any determination made by the  
2           Secretary under this section may be appealed by a  
3           whistleblower to the appropriate court of appeals of  
4           the United States not later than 30 days after the de-  
5           termination is issued by the Secretary.

6           “(3) *REVIEW.*—The court shall review the deter-  
7           mination made by the Secretary in accordance with  
8           section 706 of title 5.

9           “(i) *REGULATIONS.*—Not later than 18 months after  
10          the date of enactment of the Motor Vehicle Safety Whistle-  
11          blower Act, the Secretary shall promulgate regulations on  
12          the requirements of this section, consistent with this sec-  
13          tion.”.

14          (b) *RULE OF CONSTRUCTION.*—

15                 (1) *ORIGINAL INFORMATION.*—Information sub-  
16                 mitted to the Secretary of Transportation by a whis-  
17                 tleblower in accordance with the requirements of sec-  
18                 tion 30172 of title 49, United States Code, shall not  
19                 lose its status as original information solely because  
20                 the whistleblower submitted the information prior to  
21                 the effective date of the regulations if that information  
22                 was submitted after the date of enactment of this Act.

23                 (2) *AWARDS.*—A whistleblower may receive an  
24                 award under section 30172 of title 49, United States  
25                 Code, regardless of whether the violation underlying

1        *the covered action occurred prior to the date of enact-*  
2        *ment of this Act, and may receive an award prior to*  
3        *the Secretary of Transportation promulgating the reg-*  
4        *ulations under section 30172(i) of that title.*

5        *(c) CONFORMING AMENDMENTS.—The table of contents*  
6        *of subchapter IV of chapter 301 of title 49, United States*  
7        *Code, is amended by adding at the end the following:*

      “30172. Whistleblower incentives and protections.”.

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114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

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**A BILL**

To improve motor vehicle safety by encouraging the sharing of certain information.

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APRIL 13, 2015

Reported with an amendment