

115TH CONGRESS  
1ST SESSION

# S. 585

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IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2017

Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Veterans' Affairs, 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

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## AN ACT

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Dr. Chris Kirkpatrick Whistleblower Protection Act of  
 6 2017”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYEES GENERALLY

- Sec. 101. Definitions.
- Sec. 102. Stays; probationary employees.
- Sec. 103. Prohibited personnel practices.
- Sec. 104. Discipline of supervisors based on retaliation against whistleblowers.
- Sec. 105. Suicide by employees.
- Sec. 106. Training for supervisors.
- Sec. 107. Information on whistleblower protections.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

- Sec. 201. Prevention of unauthorized access to medical records of employees of the Department of Veterans Affairs.
- Sec. 202. Outreach on availability of mental health services available to employees of the Department of Veterans Affairs.
- Sec. 203. Protocols to address threats against employees of the Department of Veterans Affairs.
- Sec. 204. Comptroller General of the United States study on accountability of chiefs of police of Department of Veterans Affairs medical centers.

9 **TITLE I—EMPLOYEES**  
 10 **GENERALLY**

11 **SEC. 101. DEFINITIONS.**

12 In this title—

13 (1) the term “agency”—

14 (A) except as provided in subparagraph

15 (B), means an entity that is an agency, as de-

1            fined under section 2302 of title 5, United  
2            States Code, without regard to whether one or  
3            more portions of title 5 of the United States  
4            Code are inapplicable to the entity; and

5            (B) does not include any entity that is an  
6            element of the intelligence community, as de-  
7            fined in section 3(4) of the National Security  
8            Act of 1947 (50 U.S.C. 3003(4));

9            (2) the term “employee” means an employee  
10          (as defined in section 2105 of title 5, United States  
11          Code) of an agency; and

12          (3) the term “personnel action” has the mean-  
13          ing given that term under section 2302 of title 5,  
14          United States Code.

15 **SEC. 102. STAYS; PROBATIONARY EMPLOYEES.**

16          (a) REQUEST BY SPECIAL COUNSEL.—Section  
17 1214(b)(1) of title 5, United States Code, is amended by  
18 adding at the end the following:

19          “(E) If the Merit Systems Protection Board grants  
20 a stay under this subsection, the head of the agency em-  
21 ploying the employee shall give priority to a request for  
22 a transfer submitted by the employee.”.

23          (b) PROBATIONARY EMPLOYEES.—Section 1221 of  
24 title 5, United States Code, is amended by adding at the  
25 end the following:

1       “(k) If the Merit Systems Protection Board grants  
2 a stay to an employee in probationary status under sub-  
3 section (c), the head of the agency employing the employee  
4 shall give priority to a request for a transfer submitted  
5 by the employee.”.

6       (c) STUDY REGARDING RETALIATION AGAINST PRO-  
7 BATIONARY EMPLOYEES.—The Comptroller General of  
8 the United States shall submit to the Committee on  
9 Homeland Security and Governmental Affairs of the Sen-  
10 ate and the Committee on Oversight and Government Re-  
11 form of the House of Representatives a report discussing  
12 retaliation against employees in probationary status.

13 **SEC. 103. PROHIBITED PERSONNEL PRACTICES.**

14       Section 2302(b) of title 5, United States Code, is  
15 amended—

16           (1) in paragraph (12), by striking “or” at the  
17 end;

18           (2) in paragraph (13), by striking the period at  
19 the end and inserting “; or”; and

20           (3) by inserting after paragraph (13) the fol-  
21 lowing:

22           “(14) access the medical record of another em-  
23 ployee or an applicant for employment as a part of,  
24 or otherwise in furtherance of, any conduct de-  
25 scribed in paragraphs (1) through (13).”.

1 **SEC. 104. DISCIPLINE OF SUPERVISORS BASED ON RETAL-**  
2 **IATION AGAINST WHISTLEBLOWERS.**

3 (a) IN GENERAL.—Subchapter II of chapter 75 of  
4 title 5, United States Code, is amended by adding at the  
5 end the following:

6 **“§ 7515. Discipline of supervisors based on retaliation**  
7 **against whistleblowers**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘agency’—

10 “(A) except as provided in subparagraph  
11 (B), means an entity that is an agency, as de-  
12 fined under section 2302, without regard to  
13 whether any other provision of this chapter is  
14 applicable to the entity; and

15 “(B) does not include any entity that is an  
16 element of the intelligence community, as de-  
17 fined in section 3(4) of the National Security  
18 Act of 1947 (50 U.S.C. 3003(4));

19 “(2) the term ‘prohibited personnel action’  
20 means taking or failing to take an action in violation  
21 of paragraph (8), (9), or (14) of section 2302(b)  
22 against an employee of an agency; and

23 “(3) the term ‘supervisor’ means an employee  
24 who would be a supervisor, as defined under section  
25 7103(a), if the entity employing the employee was  
26 an agency.

1 “(b) PROPOSED DISCIPLINARY ACTIONS.—

2 “(1) IN GENERAL.—If the head of the agency  
3 employing a supervisor, an administrative law judge,  
4 the Merit Systems Protection Board, the Special  
5 Counsel, a judge of the United States, or the Inspec-  
6 tor General of the agency employing a supervisor de-  
7 termines that the supervisor has committed a pro-  
8 hibited personnel action, the head of the agency em-  
9 ploying the supervisor, in accordance with the proce-  
10 dures required under paragraph (2)—

11 “(A) for the first prohibited personnel ac-  
12 tion committed by a supervisor—

13 “(i) shall propose suspending the su-  
14 pervisor for a period of not less than 3  
15 days; and

16 “(ii) may, in addition to a suspension  
17 described in clause (i), propose any other  
18 action, including a reduction in grade or  
19 pay, that the head of the agency deter-  
20 mines appropriate; and

21 “(B) for the second prohibited personnel  
22 action committed by a supervisor, shall propose  
23 removing the supervisor.

24 “(2) PROCEDURES.—

1           “(A) NOTICE.—A supervisor against whom  
2 an action is proposed to be taken under para-  
3 graph (1) is entitled to written notice—

4           “(i) stating the specific reasons for  
5 the proposed action; and

6           “(ii) informing the supervisor of the  
7 right of the supervisor to review the mate-  
8 rial which is relied on to support the rea-  
9 sons for the proposed action.

10          “(B) ANSWER AND EVIDENCE.—

11          “(i) IN GENERAL.—A supervisor who  
12 is notified under subparagraph (A) that  
13 the supervisor is the subject of a proposed  
14 action under paragraph (1) is entitled to  
15 14 days following such notification to an-  
16 swer and furnish evidence in support of the  
17 answer.

18          “(ii) NO EVIDENCE FURNISHED; IN-  
19 SUFFICIENT EVIDENCE.—After the end of  
20 the 14-day period described in clause (i), if  
21 a supervisor does not furnish evidence as  
22 described in clause (i) or if the head of the  
23 agency determines that such evidence is  
24 not sufficient to reverse the proposed ac-

1                   tion, the head of the agency shall carry out  
2                   the action.

3                   “(C) SCOPE OF PROCEDURES.—An action  
4                   carried out under this section—

5                   “(i) except as provided in clause (ii),  
6                   shall be subject to the same requirements  
7                   and procedures (including regarding ap-  
8                   peals) as an action under section 7503,  
9                   7513, or 7543; and

10                  “(ii) shall not be subject to—

11                   “(I) paragraphs (1) and (2) of  
12                   section 7503(b);

13                   “(II) paragraphs (1) and (2) of  
14                   subsection (b) and subsection (c) of  
15                   section 7513; or

16                   “(III) paragraphs (1) and (2) of  
17                   subsection (b) and subsection (c) of  
18                   section 7543.

19                  “(3) DELEGATION.—

20                   “(A) IN GENERAL.—Except as provided in  
21                   paragraph (B), the head of an agency may dele-  
22                   gate any authority or responsibility under this  
23                   subsection.

24                   “(B) NONDELEGABILITY OF DETERMINA-  
25                   TION REGARDING PROHIBITED PERSONNEL AC-



1           TION.—If the head of an agency is responsible  
 2           for determining whether a supervisor has com-  
 3           mitted a prohibited personnel action for pur-  
 4           poses of paragraph (1), the head of the agency  
 5           may not delegate that responsibility.”.

6           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 7           The table of sections for subchapter II of chapter 75 of  
 8           title 5, United States Code, is amended by adding at the  
 9           end the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”.

10       **SEC. 105. SUICIDE BY EMPLOYEES.**

11           (a) REFERRAL.—The head of an agency shall refer  
 12           to the Special Counsel, along with any information known  
 13           to the agency regarding the circumstances described in  
 14           paragraphs (2) and (3), any instance in which the head  
 15           of the agency has information indicating—

16                   (1) an employee of the agency committed sui-  
 17           cide;

18                   (2) prior to the death of the employee, the em-  
 19           ployee made any disclosure of information which rea-  
 20           sonably evidences—

21                           (A) any violation of any law, rule, or regu-  
 22           lation; or

23                           (B) gross mismanagement, a gross waste  
 24           of funds, an abuse of authority, or a substantial

1           and specific danger to public health or safety;  
2           and

3           (3) after a disclosure described in paragraph  
4           (2), a personnel action was taken against the em-  
5           ployee.

6           (b) OFFICE OF SPECIAL COUNSEL REVIEW.—For  
7 any referral to the Special Counsel under subsection (a),  
8 the Special Counsel shall—

9           (1) examine whether any personnel action was  
10          taken because of any disclosure of information de-  
11          scribed in subsection (a)(2); and

12          (2) take any action the Special Counsel deter-  
13          mines appropriate under subchapter II of chapter 12  
14          of title 5, United States Code.

15 **SEC. 106. TRAINING FOR SUPERVISORS.**

16          In consultation with the Special Counsel and the In-  
17          spector General of the agency (or senior ethics official of  
18          the agency for an agency without an Inspector General),  
19          the head of each agency shall provide training regarding  
20          how to respond to complaints alleging a violation of whis-  
21          tleblower protections (as defined in section 2307 of title  
22          5, United States Code, as added by section 107) available  
23          to employees of the agency—

1 (1) to employees appointed to supervisory posi-  
2 tions in the agency who have not previously served  
3 as a supervisor; and

4 (2) on an annual basis, to all employees of the  
5 agency serving in a supervisory position.

6 **SEC. 107. INFORMATION ON WHISTLEBLOWER PROTEC-**  
7 **TIONS.**

8 (a) EXISTING PROVISION.—

9 (1) IN GENERAL.—Section 2302 of title 5,  
10 United States Code, is amended—

11 (A) by striking subsection (c); and

12 (B) by redesignating subsections (d), (e),  
13 and (f) as subsections (c), (d), and (e), respec-  
14 tively.

15 (2) TECHNICAL AND CONFORMING AMEND-  
16 MENTS.—

17 (A) Section 4505a(b)(2) of title 5, United  
18 States Code, is amended by striking “section  
19 2302(d)” and inserting “section 2302(c)”.

20 (B) Section 5755(b)(2) of title 5, United  
21 States Code, is amended by striking “section  
22 2302(d)” and inserting “section 2302(c)”.

23 (C) Section 110(b)(2) of the Whistleblower  
24 Protection Enhancement Act of 2012 (5 U.S.C.  
25 2302 note) is amended by striking “section

1           2302(f)(1) or (2)” and inserting “section  
2           2302(e)(1) or (2)”.

3           (D) Section 1217(d)(3) of the Panama  
4           Canal Act of 1979 (22 U.S.C. 3657(d)(3)) is  
5           amended by striking “section 2302(d)” and in-  
6           serting “section 2302(c)”.

7           (E) Section 1233(b) of the Panama Canal  
8           Act of 1979 (22 U.S.C. 3673(b)) is amended by  
9           striking “section 2302(d)” and inserting “sec-  
10          tion 2302(c)”.

11          (b) PROVISION OF INFORMATION.—Chapter 23 of  
12          title 5, United States Code, is amended by adding at the  
13          end the following:

14          **“§ 2307. Information on whistleblower protections**

15          “(a) DEFINITIONS.—In this section—

16                 “(1) the term ‘agency’—

17                         “(A) except as provided in subparagraph  
18                         (B), has the meaning given that term in section  
19                         2302; and

20                         “(B) does not include any entity that is an  
21                         element of the intelligence community, as de-  
22                         fined in section 3(4) of the National Security  
23                         Act of 1947 (50 U.S.C. 3003(4));

24                 “(2) the term ‘new employee’ means an indi-  
25          vidual—

1           “(A) appointed to a position as an em-  
2           ployee of an agency on or after the date of en-  
3           actment of the Dr. Chris Kirkpatrick Whistle-  
4           blower Protection Act of 2017; and

5           “(B) who has not previously served as an  
6           employee; and

7           “(3) the term ‘whistleblower protections’ means  
8           the protections against and remedies for a prohibited  
9           personnel practice described in paragraph (8), sub-  
10          paragraph (A)(i), (B), (C), or (D) of paragraph (9),  
11          or paragraph (14) of section 2302(b).

12          “(b) RESPONSIBILITIES OF HEAD OF AGENCY.—The  
13          head of each agency shall be responsible for the prevention  
14          of prohibited personnel practices, for the compliance with  
15          and enforcement of applicable civil service laws, rules, and  
16          regulations, and other aspects of personnel management,  
17          and for ensuring (in consultation with the Special Counsel  
18          and the Inspector General of the agency) that employees  
19          of the agency are informed of the rights and remedies  
20          available to them under this chapter and chapter 12, in-  
21          cluding—

22                 “(1) information regarding whistleblower pro-  
23                 tections available to new employees during the pro-  
24                 bationary period;

1           “(2) the role of the Office of Special Counsel  
2           and the Merit Systems Protection Board with regard  
3           to whistleblower protections; and

4           “(3) how to make a lawful disclosure of infor-  
5           mation that is specifically required by law or Execu-  
6           tive order to be kept classified in the interest of na-  
7           tional defense or the conduct of foreign affairs to the  
8           Special Counsel, the Inspector General of an agency,  
9           Congress, or other agency employee designated to  
10          receive such disclosures.

11          “(c) TIMING.—The head of each agency shall ensure  
12          that the information required to be provided under sub-  
13          section (b) is provided to each new employee of the agency  
14          not later than 6 months after the date the new employee  
15          begins performing service as an employee.

16          “(d) INFORMATION ONLINE.—The head of each  
17          agency shall make available information regarding whistle-  
18          blower protections applicable to employees of the agency  
19          on the public website of the agency, and on any online  
20          portal that is made available only to employees of the  
21          agency if one exists.

22          “(e) DELEGATES.—Any employee to whom the head  
23          of an agency delegates authority for personnel manage-  
24          ment, or for any aspect thereof, shall, within the limits

1 of the scope of the delegation, be responsible for the activi-  
 2 ties described in subsection (b).”.

3 (c) TECHNICAL AND CONFORMING AMENDMENT.—  
 4 The table of sections for chapter 23 of title 5, United  
 5 States Code, is amended by adding at the end the fol-  
 6 lowing:

“2307. Information on whistleblower protections.”.

7 **TITLE II—DEPARTMENT OF**  
 8 **VETERANS AFFAIRS EMPLOYEES**

9 **SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO**  
 10 **MEDICAL RECORDS OF EMPLOYEES OF THE**  
 11 **DEPARTMENT OF VETERANS AFFAIRS.**

12 (a) DEVELOPMENT OF PLAN.—

13 (1) IN GENERAL.—Not later than 180 days  
 14 after the date of the enactment of this Act, the Sec-  
 15 retary of Veterans Affairs shall—

16 (A) develop a plan to prevent access to the  
 17 medical records of employees of the Department  
 18 of Veterans Affairs by employees of the Depart-  
 19 ment who are not authorized to access such  
 20 records;

21 (B) submit to the appropriate committees  
 22 of Congress the plan developed under subpara-  
 23 graph (A); and

24 (C) upon request, provide a briefing to the  
 25 appropriate committees of Congress with re-

1           spect to the plan developed under subparagraph  
2           (A).

3           (2) ELEMENTS.—The plan required under  
4           paragraph (1) shall include the following:

5                   (A) A detailed assessment of strategic  
6                   goals of the Department for the prevention of  
7                   unauthorized access to the medical records of  
8                   employees of the Department.

9                   (B) A list of circumstances in which an  
10                  employee of the Department who is not a health  
11                  care provider or an assistant to a health care  
12                  provider would be authorized to access the med-  
13                  ical records of another employee of the Depart-  
14                  ment.

15                  (C) Steps that the Secretary will take to  
16                  acquire new or implement existing technology to  
17                  prevent an employee of the Department from  
18                  accessing the medical records of another em-  
19                  ployee of the Department without a specific  
20                  need to access such records.

21                  (D) Steps the Secretary will take, includ-  
22                  ing plans to issue new regulations, as necessary,  
23                  to ensure that an employee of the Department  
24                  may not access the medical records of another  
25                  employee of the Department for the purpose of





