

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 1599**

To provide anti-retaliation protections for antitrust  
whistleblowers.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. GRASSLEY (for himself and Mr.  
LEAHY)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Criminal Antitrust  
5 Anti-Retaliation Act of 2015”.

6 **SEC. 2. AMENDMENT TO ACPERA.**

7 The Antitrust Criminal Penalty Enhancement and  
8 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1  
9 note) is amended by inserting after section 215 the fol-  
10 lowing:

1 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**  
2 **BLOWERS.**

3 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-  
4 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

5 “(1) IN GENERAL.—No employer may dis-  
6 charge, demote, suspend, threaten, harass, or in any  
7 other manner discriminate against a covered indi-  
8 vidual in the terms and conditions of employment of  
9 the covered individual because of any lawful act done  
10 by the covered individual—

11 “(A) to provide or cause to be provided to  
12 the employer or the Federal Government infor-  
13 mation relating to—

14 “(i) any violation of, or any act or  
15 omission the covered individual reasonably  
16 believes to be a violation of, the antitrust  
17 laws; or

18 “(ii) any violation of, or any act or  
19 omission the covered individual reasonably  
20 believes to be a violation of, another crimi-  
21 nal law committed in conjunction with a  
22 potential violation of the antitrust laws or  
23 in conjunction with an investigation by the  
24 Department of Justice of a potential viola-  
25 tion of the antitrust laws; or

1           “(B) to cause to be filed, testify in, partici-  
2           pate in, or otherwise assist a Federal Govern-  
3           ment investigation or a Federal Government  
4           proceeding filed or about to be filed (with any  
5           knowledge of the employer) relating to—

6                   “(i) any violation of, or any act or  
7                   omission the covered individual reasonably  
8                   believes to be a violation of, the antitrust  
9                   laws; or

10                   “(ii) any violation of, or any act or  
11                   omission the covered individual reasonably  
12                   believes to be a violation of, another crimi-  
13                   nal law committed in conjunction with a  
14                   potential violation of the antitrust laws or  
15                   in conjunction with an investigation by the  
16                   Department of Justice of a potential viola-  
17                   tion of the antitrust laws.

18           “(2) LIMITATION ON PROTECTIONS.—Para-  
19           graph (1) shall not apply to any covered individual  
20           if—

21                   “(A) the covered individual planned and  
22                   initiated a violation or attempted violation of  
23                   the antitrust laws;

24                   “(B) the covered individual planned and  
25                   initiated a violation or attempted violation of

1 another criminal law in conjunction with a vio-  
2 lation or attempted violation of the antitrust  
3 laws; or

4 “(C) the covered individual planned and  
5 initiated an obstruction or attempted obstruc-  
6 tion of an investigation by the Department of  
7 Justice of a violation of the antitrust laws.

8 “(3) DEFINITIONS.—In this section:

9 “(A) ANTITRUST LAWS.—The term ‘anti-  
10 trust laws’ means section 1 or 3 of the Sher-  
11 man Act (15 U.S.C. 1 and 3).

12 “(B) COVERED INDIVIDUAL.—The term  
13 ‘covered individual’ means an employee, con-  
14 tractor, subcontractor, or agent of an employer.

15 “(C) EMPLOYER.—The term ‘employer’  
16 means a person, or any officer, employee, con-  
17 tractor, subcontractor, or agent of such person.

18 “(D) FEDERAL GOVERNMENT.—The term  
19 ‘Federal Government’ means—

20 “(i) a Federal regulatory or law en-  
21 forcement agency; or

22 “(ii) any Member of Congress or com-  
23 mittee of Congress.

1           “(E) PERSON.—The term ‘person’ has the  
2           same meaning as in subsection (a) of the first  
3           section of the Clayton Act (15 U.S.C. 12(a)).

4           “(4) RULE OF CONSTRUCTION.—The term ‘vio-  
5           lation’, with respect to the antitrust laws, shall not  
6           be construed to include a civil violation of any law  
7           that is not also a criminal violation.

8           “(b) ENFORCEMENT ACTION.—

9           “(1) IN GENERAL.—A covered individual who  
10          alleges discharge or other discrimination by any em-  
11          ployer in violation of subsection (a) may seek relief  
12          under subsection (c) by—

13                 “(A) filing a complaint with the Secretary  
14                 of Labor; or

15                 “(B) if the Secretary of Labor has not  
16                 issued a final decision within 180 days of the  
17                 filing of the complaint and there is no showing  
18                 that such delay is due to the bad faith of the  
19                 claimant, bringing an action at law or equity  
20                 for de novo review in the appropriate district  
21                 court of the United States, which shall have ju-  
22                 risdiction over such an action without regard to  
23                 the amount in controversy.

24           “(2) PROCEDURE.—

1           “(A) IN GENERAL.—A complaint filed with  
2 the Secretary of Labor under paragraph (1)(A)  
3 shall be governed under the rules and proce-  
4 dures set forth in section 42121(b) of title 49,  
5 United States Code.

6           “(B) EXCEPTION.—Notification made  
7 under section 42121(b)(1) of title 49, United  
8 States Code, shall be made to any individual  
9 named in the complaint and to the employer.

10           “(C) BURDENS OF PROOF.—A complaint  
11 filed with the Secretary of Labor under para-  
12 graph (1)(A) shall be governed by the legal bur-  
13 dens of proof set forth in section 42121(b) of  
14 title 49, United States Code.

15           “(D) STATUTE OF LIMITATIONS.—A com-  
16 plaint under paragraph (1)(A) shall be filed  
17 with the Secretary of Labor not later than 180  
18 days after the date on which the violation oc-  
19 curs.

20           “(E) CIVIL ACTIONS TO ENFORCE.—If a  
21 person fails to comply with an order or prelimi-  
22 nary order issued by the Secretary of Labor  
23 pursuant to the procedures set forth in section  
24 42121(b) of title 49, United States Code, the  
25 Secretary of Labor or the person on whose be-

1 half the order was issued may bring a civil ac-  
2 tion to enforce the order in the district court of  
3 the United States for the judicial district in  
4 which the violation occurred.

5 “(c) REMEDIES.—

6 “(1) IN GENERAL.—A covered individual pre-  
7 vailing in any action under subsection (b)(1) shall be  
8 entitled to all relief necessary to make the covered  
9 individual whole.

10 “(2) COMPENSATORY DAMAGES.—Relief for any  
11 action under paragraph (1) shall include—

12 “(A) reinstatement with the same seniority  
13 status that the covered individual would have  
14 had, but for the discrimination;

15 “(B) the amount of back pay, with inter-  
16 est; and

17 “(C) compensation for any special damages  
18 sustained as a result of the discrimination in-  
19 cluding litigation costs, expert witness fees, and  
20 reasonable attorney’s fees.

21 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—

22 Nothing in this section shall be deemed to diminish the  
23 rights, privileges, or remedies of any covered individual  
24 under any Federal or State law, or under any collective  
25 bargaining agreement.”.