

S 2628

Federal Employee Protection of Disclosures Act

Congress: 108 (2003–2005, Ended)

Chamber: Senate

Policy Area: Government Operations and Politics

Introduced: Jul 8, 2004

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 782.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 782. (Oct 8, 2004)

Official Text: https://www.congress.gov/bill/108th-congress/senate-bill/2628

Sponsor

Name: Sen. Akaka, Daniel K. [D-HI]  
Party: Democratic • State: HI • Chamber: Senate

Cosponsors (14 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Collins, Susan M. [R-ME]	R · ME		Jul 8, 2004
Sen. Dayton, Mark [D-MN]	D · MN		Jul 8, 2004
Sen. Durbin, Richard J. [D-IL]	D · IL		Jul 8, 2004
Sen. Fitzgerald, Peter [R-IL]	R · IL		Jul 8, 2004
Sen. Grassley, Chuck [R-IA]	R · IA		Jul 8, 2004
Sen. Johnson, Tim [D-SD]	D · SD		Jul 8, 2004
Sen. Lautenberg, Frank R. [D-NJ]	D · NJ		Jul 8, 2004
Sen. Leahy, Patrick J. [D-VT]	D · VT		Jul 8, 2004
Sen. Levin, Carl [D-MI]	D · MI		Jul 8, 2004
Sen. Lieberman, Joseph I. [D-CT]	D · CT		Jul 8, 2004
Sen. Pryor, Mark L. [D-AR]	D · AR		Jul 8, 2004
Sen. Voinovich, George V. [R-OH]	R · OH		Jul 8, 2004
Sen. Carper, Thomas R. [D-DE]	D · DE		Jul 14, 2004
Sen. Coleman, Norm [R-MN]	R · MN		Jul 16, 2004

Committee Activity

Committee	Chamber	Activity	Date
Homeland Security and Governmental Affairs Committee	Senate	Referred to	Jul 9, 2004

Subjects & Policy Tags

Policy Area:

Government Operations and Politics

Related Bills

Bill	Relationship	Last Action
108 S 1358	Related bill	<b>May 5, 2004:</b> Sponsor introductory remarks on measure. (CR S4901-4902)

**(This measure has not been amended since it was introduced. The summary has been expanded because action occurred on the measure.)**

Federal Employee Protection of Disclosures Act - Revises the definition of protected employee disclosures (whistleblowing) to include: (1) any lawful disclosure without restriction to time, place, form, motive, context, or prior disclosure; and (2) formal or informal communications or transmissions. Excludes from such definition disclosures pertaining to policy decisions that lawfully exercise discretionary authority unless the disclosing employee reasonably believes that there is evidence of a violation of law or government waste, fraud, or abuse. Protects certain disclosures involving classified information to Members of Congress and congressional employees who are authorized to receive classified information. Provides for employee discipline for disclosures to congressional employees who are not authorized to receive such information.

Codifies the legal standard for determining whether a whistleblower has a reasonable belief that a disclosure evidences governmental waste, fraud, or abuse, or a violation of law.

Provides that the following actions may not be taken against whistleblowers for protected disclosures: (1) the implementation or enforcement of any nondisclosure policy, form, or agreement; (2) a security clearance suspension or revocation; and (3) an investigation (other than routine nondiscretionary agency investigations) of an employee or applicant for employment.

Authorizes the Merit Systems Protection Board (MSPB) to conduct an expedited review of cases charging retaliation for whistleblowing when the whistleblower's security clearance or access determination is suspended, revoked, or otherwise adversely affected. Requires an agency that improperly revokes a whistleblower's security clearance to report to Congress explaining its actions. Exempts an agency from this requirement if the agency can show by a preponderance of the evidence (currently, clear and convincing evidence required) that it would have taken the same personnel action in the absence of the whistleblower disclosure.

Authorizes the President to exclude certain agencies engaged in the conduct of foreign intelligence or counterintelligence activities from whistleblower protections if such exclusion is made prior to any personnel action against the whistleblower.

Expands the authority of the MSPB to impose disciplinary action for prohibited personnel practices.

Authorizes the Office of Special Counsel to appear as amicus curiae (friend of the court) in any civil action involving whistleblowers and the Hatch Act.

Allows petitions for review of whistleblower actions to be filed in any Federal Court of Appeals of competent jurisdiction (currently limited to the U.S. Court of Appeals for the Federal Circuit), for five years after the date of enactment of this Act.

Requires all Federal agency nondisclosure policies, forms, and agreements to contain specified language preserving the right of Federal employees to disclose certain protected information.

Amends the Homeland Security Act of 2002 to extend existing whistleblower rights for independently obtained information that may also qualify as voluntarily submitted critical infrastructure information under such Act.

Requires Federal agencies to instruct employee how to make a lawful disclosure of classified information to the Special

Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such information.

### **Actions Timeline**

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- **Oct 8, 2004:** Committee on Governmental Affairs. Reported by Senator Collins without amendment. With written report No. 108-392.
- **Oct 8, 2004:** Committee on Governmental Affairs. Reported by Senator Collins without amendment. With written report No. 108-392.
- **Oct 8, 2004:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 782.
- **Jul 21, 2004:** Committee on Governmental Affairs. Ordered to be reported without amendment favorably.
- **Jul 9, 2004:** Committee on Governmental Affairs referred to Subcommittee on Financial Management, the Budget, and International Security.
- **Jul 8, 2004:** Introduced in Senate
- **Jul 8, 2004:** Sponsor introductory remarks on measure. (CR S7839-7840)
- **Jul 8, 2004:** Read twice and referred to the Committee on Governmental Affairs. (text of measure as introduced: CR S7840-7842)