

AMENDMENT TO S. 585

OFFERED BY _____

At the end of the bill, add the following:

1 **TITLE III—FEDERAL EMPLOYEE**
2 **ANTIDISCRIMINATION**

3 **SEC. 301. SENSE OF CONGRESS.**

4 Section 102 of the Notification and Federal Em-
5 ployee Antidiscrimination and Retaliation Act of 2002 (5
6 U.S.C. 2301 note) is amended—

7 (1) in paragraph (4), to read as follows:

8 “(4) accountability in the enforcement of Fed-
9 eral employee rights is furthered when Federal agen-
10 cies take appropriate disciplinary action against
11 Federal employees who have been found to have
12 committed discriminatory or retaliatory acts;” and

13 (2) in paragraph (5)(A)—

14 (A) by striking “nor is accountability” and
15 inserting “but accountability is not”; and

16 (B) by inserting “for what by law the
17 agency is responsible” after “under this Act”.

18 **SEC. 302. NOTIFICATION OF VIOLATION.**

19 Section 202 of the Notification and Federal Em-
20 ployee Antidiscrimination and Retaliation Act of 2002 (5

1 U.S.C. 2301 note) is amended by adding at the end the
2 following:

3 “(d) NOTIFICATION OF FINAL AGENCY ACTION.—

4 “(1) Not later than 30 days after a Federal
5 agency takes final action or the Equal Employment
6 Opportunity Commission issues an appellate decision
7 involving a finding of discrimination or retaliation
8 prohibited by a provision of law covered by para-
9 graph (1) or (2) of section 201(a), as applicable, the
10 head of the agency subject to the finding shall pro-
11 vide notice for at least 1 year on the agency’s Inter-
12 net Web site in a clear and prominent location
13 linked directly from the agency’s Internet home page
14 stating that a finding of discrimination or retaliation
15 has been made.

16 “(2) The notification shall identify the date the
17 finding was made, the date or dates on which the
18 discriminatory or retaliatory act or acts occurred,
19 and the law or laws violated by the discriminatory
20 or retaliatory act or acts. The notification shall also
21 advise Federal employees of the rights and protec-
22 tions available under the respective provisions of law
23 covered by paragraph (1) or (2) of section 201(a).”.

24 **SEC. 303. REPORTING REQUIREMENTS.**

25 (a) ELECTRONIC FORMAT REQUIREMENT.—

1 (1) IN GENERAL.—Section 203(a) of the Notifi-
2 cation and Federal Employee Antidiscrimination and
3 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
4 amended—

5 (A) by inserting “Homeland Security and”
6 before “Governmental Affairs”;

7 (B) by inserting “Oversight and” before
8 “Government Reform”; and

9 (C) by inserting “(in an electronic format
10 prescribed by the Office of Personnel Manage-
11 ment)” after “an annual report”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1)(C) shall take effect on the date
14 that is 1 year after the date of enactment of this
15 Act.

16 (3) TRANSITION PERIOD.—Notwithstanding the
17 requirements of section 203(a) of the Notification
18 and Federal Employee Antidiscrimination and Retal-
19 iation Act of 2002 (5 U.S.C. 2301 note), the report
20 required under such section may be submitted in an
21 electronic format, as prescribed by the Office of Per-
22 sonnel Management, during the period beginning on
23 the date of enactment of this Act and ending on the
24 effective date in paragraph (2).

1 (b) REPORTING REQUIREMENT FOR DISCIPLINARY
2 ACTION.—Section 203 of such Act is amended by adding
3 at the end the following:

4 “(c) DISCIPLINARY ACTION REPORT.—Not later
5 than 60 days after the date on which a Federal agency
6 takes final action or a Federal agency receives an appel-
7 late decision issued by the Equal Employment Oppor-
8 tunity Commission involving a finding of discrimination
9 or retaliation in violation of a provision of law covered by
10 paragraph (1) or (2) of section 201(a), as applicable, the
11 employing Federal agency shall submit to the Commission
12 a report stating whether disciplinary action has been initi-
13 ated against a Federal employee as a result of the viola-
14 tion.”.

15 **SEC. 304. DATA TO BE POSTED BY EMPLOYING FEDERAL**
16 **AGENCIES.**

17 Section 301(b) of the Notification and Federal Em-
18 ployee Antidiscrimination and Retaliation Act of 2002 (5
19 U.S.C. 2301 note) is amended—

20 (1) in paragraph (9)—

21 (A) in subparagraph (A), by striking
22 “and” at the end;

23 (B) in subparagraph (B)(ii), by striking
24 the period at the end and inserting “, and”;
25 and

1 (C) by adding at the end the following:

2 “(C) for each such finding counted under
3 subparagraph (A), the agency shall specify—

4 “(i) the date of the finding;

5 “(ii) the affected agency;

6 “(iii) the law violated; and

7 “(iv) whether a decision has been
8 made regarding necessary disciplinary ac-
9 tion as a result of the finding.”; and

10 (2) by adding at the end the following:

11 “(11) Data regarding each class action com-
12 plaint filed against the agency alleging discrimina-
13 tion or retaliation, including—

14 “(A) information regarding the date on
15 which each complaint was filed;

16 “(B) a general summary of the allegations
17 alleged in the complaint;

18 “(C) an estimate of the total number of
19 plaintiffs joined in the complaint if known;

20 “(D) the current status of the complaint,
21 including whether the class has been certified;
22 and

23 “(E) the case numbers for the civil actions
24 in which discrimination or retaliation has been
25 found.”.

1 **SEC. 305. DATA TO BE POSTED BY THE EQUAL EMPLOY-**
2 **MENT OPPORTUNITY COMMISSION.**

3 Section 302(b) of the Notification and Federal Em-
4 ployee Antidiscrimination and Retaliation Act of 2002 (5
5 U.S.C. 2301 note) is amended by striking “(10)” and in-
6 serting “(11)”.

7 **SEC. 306. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
8 **DISCRIMINATION AND RETALIATION ACT**
9 **AMENDMENTS.**

10 (a) NOTIFICATION REQUIREMENTS.—The Notifica-
11 tion and Federal Employee Antidiscrimination and Retal-
12 iation Act of 2002 (5 U.S.C. 2301 note) is amended by
13 adding after section 206 the following:

14 **“SEC. 207. COMPLAINT TRACKING.**

15 “Not later than 1 year after the date of enactment
16 of the Federal Employee Antidiscrimination Act of 2017,
17 each Federal agency shall establish a system to track each
18 complaint of discrimination arising under section
19 2302(b)(1) of title 5, United States Code, and adjudicated
20 through the Equal Employment Opportunity process from
21 inception to resolution of the complaint, including whether
22 a decision has been made regarding necessary disciplinary
23 action as the result of a finding of discrimination.

24 **“SEC. 208. NOTATION IN PERSONNEL RECORD.**

25 “If a Federal agency takes an adverse action covered
26 under section 7512 of title 5, United States Code, against

1 a Federal employee for an act of discrimination or retalia-
2 tion prohibited by a provision of law covered by paragraph
3 (1) or (2) of section 201(a), the agency shall, after all
4 appeals relating to such action have been exhausted, in-
5 clude a notation of the adverse action and the reason for
6 the action in the employee's personnel record.”.

7 (b) PROCESSING AND REFERRAL.—The Notification
8 and Federal Employee Antidiscrimination and Retaliation
9 Act of 2002 (5 U.S.C. 2301 note) is amended by adding
10 at the end the following:

11 **“TITLE IV—PROCESSING AND**
12 **REFERRAL**

13 **“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.**

14 “Each Federal agency is responsible for the fair, im-
15 partial processing and resolution of complaints of employ-
16 ment discrimination and retaliation arising in the Federal
17 administrative process and shall establish a model Equal
18 Employment Opportunity Program that—

19 “(1) is not under the control, either structurally
20 or practically, of a Human Capital or General Coun-
21 sel office;

22 “(2) is devoid of internal conflicts of interest
23 and ensures fairness and inclusiveness within the or-
24 ganization; and

1 “(3) ensures the efficient and fair resolution of
2 complaints alleging discrimination or retaliation.

3 **“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-
4 ERAL COUNSEL ADVICE.**

5 “Nothing in this title shall prevent a Federal agency’s
6 Human Capital or General Counsel office from providing
7 advice or counsel to Federal agency personnel on the proc-
8 essing and resolution of a complaint, including providing
9 legal representation to a Federal agency in any pro-
10 ceeding.

11 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF
12 AGENCY.**

13 “‘The head of each Federal agency’s Equal Employ-
14 ment Opportunity Program shall report directly to the
15 head of the agency.

16 **“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.**

17 “(a) EEOC FINDINGS OF DISCRIMINATION.—Not
18 later than 30 days after the Equal Employment Oppor-
19 tunity Commission issues an appellate decision involving
20 a finding of discrimination or retaliation within a Federal
21 agency, the Commission shall refer the matter to the Of-
22 fice of Special Counsel.

23 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
24 of Special Counsel shall accept and review a referral from
25 the Commission under subsection (a) for purposes of seek-

1 ing disciplinary action under its authority against a Fed-
2 eral employee who commits an act of discrimination or re-
3 taliation.

4 “(c) NOTIFICATION.—The Office of Special Counsel
5 shall notify the Commission in a case in which the Office
6 of Special Counsel initiates disciplinary action.

7 “(d) SPECIAL COUNSEL APPROVAL.—A Federal
8 agency may not take disciplinary action against a Federal
9 employee for an alleged act of discrimination or retaliation
10 referred by the Commission under this section except in
11 accordance with the requirements of section 1214(f) of
12 title 5, United States Code.”.

13 (c) CONFORMING AMENDMENTS.—The table of con-
14 tents in section 1(b) of the Notification and Federal Em-
15 ployee Antidiscrimination and Retaliation Act of 2002 (5
16 U.S.C. 2301 note) is amended—

17 (1) by inserting after the item relating to sec-
18 tion 206 the following:

“Sec. 207. Complaint tracking.
“Sec. 208. Notation in personnel record.”;

19 and

20 (2) by adding at the end the following:

“TITLE IV—PROCESSING AND REFERRAL

“Sec. 401. Processing and resolution of complaints.
“Sec. 402. No limitation on Human Capital or General Counsel advice.
“Sec. 403. Head of Program reports to head of agency.
“Sec. 404. Referrals of findings of discrimination.”.

1 **SEC. 307. NONDISCLOSURE AGREEMENT LIMITATION.**

2 Section 2302(b) of title 5, United States Code, is fur-
3 ther amended—

4 (1) in paragraph (13)—

5 (A) by inserting “or the Office of Special
6 Counsel” after “Inspector General”; and

7 (B) by striking “implement” and inserting
8 “(A) implement”; and

9 (2) by inserting before “; or” (as added by sec-
10 tion 103(2) of this Act), the following:

11 “(B) implement or enforce any nondisclosure
12 policy, form, or agreement, if such policy, form, or
13 agreement prohibits or restricts an employee from
14 disclosing to Congress, the Office of Special Counsel,
15 or an Office of the Inspector General any informa-
16 tion that relates to any violation of any law, rule, or
17 regulation, or mismanagement, a gross waste of
18 funds, an abuse of authority, or a substantial, and
19 specific danger to public health or safety, or any
20 other whistleblower protection”.

