

114TH CONGRESS
1ST SESSION

S. 2140

To establish criminal penalties for failing to inform and warn of serious dangers.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. BLUMENTHAL (for himself and Mr. CASEY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To establish criminal penalties for failing to inform and warn of serious dangers.

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 “Hide No Harm Act
5 of 2015”.

6 **SEC. 2. CRIMINAL PENALTIES.**

7 (a) IN GENERAL.—Part I of title 18, United States
8 Code, is amended by inserting after chapter 101 the fol-
9 lowing:

1 “CHAPTER 101A—REPORTING STANDARDS

“Sec.

“2081. Definitions.

“2082. Failure to inform and warn.

“2083. Relationship to existing law.

2 “§ 2081. Definitions

3 “In this chapter—

4 “(1) the term ‘appropriate Federal agency’
5 means an agency with jurisdiction over a covered
6 product, covered service, or business practice;

7 “(2) the term ‘business entity’ means a cor-
8 poration, company, association, firm, partnership,
9 sole proprietor, or other business entity;

10 “(3) the term ‘business practice’ means a meth-
11 od or practice of—

12 “(A) manufacturing, assembling, design-
13 ing, researching, importing, or distributing a
14 covered product;

15 “(B) conducting, providing, or preparing
16 to provide a covered service; or

17 “(C) otherwise carrying out business oper-
18 ations relating to covered products or covered
19 services;

20 “(4) the term ‘covered product’ means a prod-
21 uct manufactured, assembled, designed, researched,
22 imported, or distributed by a business entity that en-
23 ters interstate commerce;

1 “(5) the term ‘covered service’ means a service
2 conducted or provided by a business entity that en-
3 ters interstate commerce;

4 “(6) the term ‘responsible corporate officer’
5 means a person who—

6 “(A) is an employer, director, or officer of
7 a business entity;

8 “(B) has the responsibility and authority,
9 by reason of his or her position in the business
10 entity and in accordance with the rules or prac-
11 tice of the business entity, to acquire knowledge
12 of any serious danger associated with a covered
13 product (or component of a covered product),
14 covered service, or business practice of the busi-
15 ness entity; and

16 “(C) has the responsibility, by reason of
17 his or her position in the business entity, to
18 communicate information about the serious
19 danger to—

20 “(i) an appropriate Federal agency;

21 “(ii) employees of the business entity;

22 or

23 “(iii) individuals, other than employ-
24 ees of the business entity, who may be ex-
25 posed to the serious danger;

1 “(7) the term ‘serious bodily injury’ means an
2 impairment of the physical condition of an indi-
3 vidual, including as a result of trauma, repetitive
4 motion, or disease, that—

5 “(A) creates a substantial risk of death; or

6 “(B) causes—

7 “(i) serious permanent disfigurement;

8 “(ii) unconsciousness;

9 “(iii) extreme pain; or

10 “(iv) permanent or protracted loss or
11 impairment of the function of any bodily
12 member, organ, bodily system, or mental
13 faculty;

14 “(8) the term ‘serious danger’ means a danger,
15 not readily apparent to a reasonable person, that the
16 normal or reasonably foreseeable use of, or the expo-
17 sure of an individual to, a covered product, covered
18 service, or business practice has an imminent risk of
19 causing death or serious bodily injury to an indi-
20 vidual; and

21 “(9) the term ‘warn affected employees’ means
22 take reasonable steps to give, to each individual who
23 is exposed or may be exposed to a serious danger in
24 the course of work for a business entity, a descrip-

1 tion of the serious danger that is sufficient to make
2 the individual aware of the serious danger.

3 **“§ 2082. Failure to inform and warn**

4 “(a) REQUIREMENT.—After acquiring actual knowl-
5 edge of a serious danger associated with a covered product
6 (or component of a covered product), covered service, or
7 business practice of a business entity, a business entity
8 and any responsible corporate officer with respect to the
9 covered product, covered service, or business practice,
10 shall—

11 “(1) as soon as practicable and not later than
12 24 hours after acquiring such knowledge, verbally
13 inform an appropriate Federal agency of the serious
14 danger, unless the business entity or responsible cor-
15 porate officer has actual knowledge that an appro-
16 priate Federal agency has been so informed;

17 “(2) not later than 15 days after acquiring such
18 knowledge, inform an appropriate Federal agency in
19 writing of the serious danger, unless the business
20 entity or responsible corporate officer has actual
21 knowledge than an appropriate Federal agency has
22 been so informed;

23 “(3) as soon as practicable, warn affected em-
24 ployees in writing, unless the business entity or re-

1 responsible corporate officer has actual knowledge that
2 affected employees have been so warned; and

3 “(4) as soon as practicable, inform individuals,
4 other than affected employees, who may be exposed
5 to the serious danger of the serious danger if such
6 individuals can reasonably be identified, unless the
7 business entity or responsible corporate officer has
8 actual knowledge that such individuals have been
9 warned.

10 “(b) PENALTY.—

11 “(1) IN GENERAL.—Whoever knowingly violates
12 subsection (a) shall be fined under this title, impris-
13 oned for not more than 5 years, or both.

14 “(2) PROHIBITION OF PAYMENT BY BUSINESS
15 ENTITIES.—If a final judgment is rendered and a
16 fine is imposed on an individual under this sub-
17 section, the fine may not be paid, directly or indi-
18 rectly, out of the assets of any business entity on be-
19 half of the individual.

20 “(c) CIVIL ACTION TO PROTECT AGAINST RETALIA-
21 TION.—

22 “(1) PROHIBITION.—It shall be unlawful to
23 knowingly discriminate against any person in the
24 terms or conditions of employment, in retention in
25 employment, or in hiring because the person in-

1 formed a Federal agency, warned employees, or in-
2 formed other individuals of a serious danger associ-
3 ated with a covered product, covered service, or busi-
4 ness practice, as required under this section.

5 “(2) ENFORCEMENT ACTION.—

6 “(A) IN GENERAL.—A person who alleges
7 discharge or other discrimination by any person
8 in violation of paragraph (1) may seek relief
9 under paragraph (3), by—

10 “(i) filing a complaint with the Sec-
11 retary of Labor; or

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

22 “(B) PROCEDURE.—

23 “(i) IN GENERAL.—An action under
24 subparagraph (A)(i) shall be governed

1 under the rules and procedures set forth in
2 section 42121(b) of title 49.

3 “(ii) EXCEPTION.—Notification made
4 under section 42121(b)(1) of title 49 shall
5 be made to the person named in the com-
6 plaint and to the employer.

7 “(iii) BURDENS OF PROOF.—An ac-
8 tion brought under subparagraph (A)(ii)
9 shall be governed by the legal burdens of
10 proof set forth in section 42121(b) of title
11 49.

12 “(iv) STATUTE OF LIMITATIONS.—An
13 action under subparagraph (A) shall be
14 commenced not later than 180 days after
15 the date on which the violation occurs, or
16 after the date on which the employee be-
17 came aware of the violation.

18 “(v) JURY TRIAL.—A party to an ac-
19 tion brought under subparagraph (A)(ii)
20 shall be entitled to trial by jury.

21 “(3) REMEDIES.—

22 “(A) IN GENERAL.—An employee pre-
23 vailing in any action under paragraph (2)(A)
24 shall be entitled to all relief necessary to make
25 the employee whole.

1 “(B) COMPENSATORY DAMAGES.—Relief
2 for any action under subparagraph (A) shall in-
3 clude—

4 “(i) reinstatement with the same se-
5 niority status that the employee would
6 have had, but for the discrimination;

7 “(ii) the amount of back pay, with in-
8 terest; and

9 “(iii) compensation for any special
10 damages sustained as a result of the dis-
11 crimination, including litigation costs, ex-
12 pert witness fees, and reasonable attorney
13 fees.

14 “(4) RIGHTS RETAINED BY EMPLOYEE.—Noth-
15 ing in this subsection shall be deemed to diminish
16 the rights, privileges, or remedies of any employee
17 under any Federal or State law, or under any collec-
18 tive bargaining agreement.

19 “(5) NONENFORCEABILITY OF CERTAIN PROVI-
20 SIONS WAIVING RIGHTS AND REMEDIES OR REQUIR-
21 ING ARBITRATION OF DISPUTES.—

22 “(A) WAIVER OF RIGHTS AND REM-
23 EDIES.—The rights and remedies provided for
24 in this subsection may not be waived by any
25 agreement, policy form, or condition of employ-

1 ment, including by a predispute arbitration
2 agreement.

3 “(B) PREDISPUTE ARBITRATION AGREE-
4 MENTS.—No predispute arbitration agreement
5 shall be valid or enforceable, if the agreement
6 requires arbitration of a dispute arising under
7 this subsection.

8 **“§ 2083. Relationship to existing law**

9 “(a) RIGHTS TO INTERVENE.—Nothing in this chap-
10 ter shall be construed to limit the right of any individual
11 or group of individuals to initiate, intervene in, or other-
12 wise participate in any proceeding before a regulatory
13 agency or court, nor to relieve any regulatory agency,
14 court, or other public body of any obligation, or affect its
15 discretion to permit intervention or participation by an in-
16 dividual or a group or class of consumers, employees, or
17 citizens in any proceeding or activity.

18 “(b) RULE OF CONSTRUCTION.—Nothing in this
19 chapter shall be construed to—

20 “(1) increase the time period for informing of
21 a serious danger or other harm under any other pro-
22 vision of law; or

23 “(2) limit or otherwise reduce the penalties for
24 any violation of Federal or State law under any
25 other provision of law.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of chapters for part I of title 18, United States

3 Code, is amended by inserting after the item relating to

4 chapter 101 the following:

“101A. Reporting standards 2081”.

5 (c) EFFECTIVE DATE.—The amendments made by

6 subsections (a) and (b) shall take effect on the date that

7 is 1 year after the date of enactment of this Act.

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