



AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

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

S. 304

To improve motor vehicle safety by encouraging the sharing of certain information.

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. THUNE (for himself and Mr. NELSON)

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 “Motor Vehicle Safety
5 Whistleblower Act”.

6 **SEC. 2. MOTOR VEHICLE SAFETY WHISTLEBLOWER INCEN-
7 TIVES AND PROTECTIONS.**

8 (a) IN GENERAL.—Subchapter IV of chapter 301 of
9 title 49, United States Code, is amended by adding at the
10 end the following:

11 **“§ 30172. Whistleblower incentives and protections**

12 “(a) DEFINITIONS.—In this section:

1 “(1) COVERED ACTION.—The term ‘covered ac-
2 tion’ means any administrative or judicial action, in-
3 cluding any related administrative or judicial action,
4 brought by the Secretary or the Attorney General
5 under this chapter that in the aggregate results in
6 monetary sanctions exceeding \$1,000,000.

7 “(2) MONETARY SANCTIONS.—The term ‘mone-
8 tary sanctions’ means monies, including penalties
9 and interest, ordered or agreed to be paid.

10 “(3) ORIGINAL INFORMATION.—The term
11 ‘original information’ means information that—

12 “(A) is derived from the independent
13 knowledge or analysis of an individual;

14 “(B) is not known to the Secretary from
15 any other source, unless the individual is the
16 original source of the information; and

17 “(C) is not exclusively derived from an al-
18 legation made in a judicial or an administrative
19 action, in a governmental report, a hearing, an
20 audit, or an investigation, or from the news
21 media, unless the individual is a source of the
22 information.

23 “(4) PART SUPPLIER.—The term ‘part supplier’
24 means a manufacturer of motor vehicle equipment.

1 “(5) SUCCESSFUL RESOLUTION.—The term
2 ‘successful resolution’ includes any settlement or ad-
3 judication of a covered action.

4 “(6) WHISTLEBLOWER.—The term ‘whistle-
5 blower’ means any employee or contractor of a
6 motor vehicle manufacturer, part supplier, or dealer-
7 ship who voluntarily provides to the Secretary origi-
8 nal information relating to any motor vehicle defect,
9 noncompliance, or any violation or alleged violation
10 of any notification or reporting requirement of this
11 chapter which is likely to cause unreasonable risk of
12 death or serious physical injury.

13 “(b) AWARDS.—

14 “(1) IN GENERAL.—If the original information
15 that a whistleblower provided to the Secretary led to
16 the successful resolution of a covered action, the
17 Secretary, subject to subsection (c), may pay an
18 award or awards to 1 or more whistleblowers in an
19 aggregate amount of not more than 30 percent, in
20 total, of collected monetary sanctions.

21 “(2) PAYMENT OF AWARDS.—Any amount pay-
22 able under paragraph (1) shall be paid from the
23 monetary sanctions collected, and any monetary
24 sanctions so collected shall be available for such pay-
25 ment.

1 “(c) DETERMINATION OF AWARDS; DENIAL OF
2 AWARDS.—

3 “(1) DETERMINATION OF AWARDS.—

4 “(A) DISCRETION.—The determination of
5 whether, to whom, or in what amount to make
6 an award shall be in the discretion of the Sec-
7 retary.

8 “(B) CRITERIA.—In determining an award
9 made under subsection (b), the Secretary shall
10 take into consideration—

11 “(i) if appropriate, whether a whistle-
12 blower reported or attempted to report the
13 information internally to an applicable
14 motor vehicle manufacturer, part supplier,
15 or dealership;

16 “(ii) the significance of the original
17 information provided by the whistleblower
18 to the successful resolution of the covered
19 action;

20 “(iii) the degree of assistance provided
21 by the whistleblower and any legal rep-
22 resentative of the whistleblower in the cov-
23 ered action; and

24 “(iv) such additional factors as the
25 Secretary considers relevant.

1 “(2) DENIAL OF AWARDS.—No award under
2 subsection (b) shall be made—

3 “(A) to any whistleblower who is convicted
4 of a criminal violation related to the covered ac-
5 tion for which the whistleblower otherwise could
6 receive an award under this section;

7 “(B) to any whistleblower who, acting
8 without direction from an applicable motor ve-
9 hicle manufacturer, part supplier, or dealership,
10 or agent thereof, deliberately causes or substan-
11 tially contributes to the alleged violation of a
12 requirement of this chapter;

13 “(C) to any whistleblower who submits in-
14 formation to the Secretary that is based on the
15 facts underlying the covered action submitted
16 previously by another whistleblower;

17 “(D) to any whistleblower who fails to pro-
18 vide the original information to the Secretary in
19 such form as the Secretary may require by reg-
20 ulation; or

21 “(E) to any whistleblower who fails to re-
22 port or attempt to report the information inter-
23 nally to an applicable motor vehicle manufac-
24 turer, parts supplier, or dealership, unless—

1 “(i) the whistleblower reasonably be-
2 lieved that such an internal report would
3 have resulted in retaliation, notwith-
4 standing section 30171(a); or

5 “(ii) the whistleblower reasonably be-
6 lieved that the information—

7 “(I) was already internally re-
8 ported;

9 “(II) was already subject to or
10 part of an internal inquiry or inves-
11 tigation; or

12 “(III) was otherwise already
13 known to the motor vehicle manufac-
14 turer, part supplier, or dealership.

15 “(d) REPRESENTATION.—A whistleblower may be
16 represented by counsel.

17 “(e) NO CONTRACT NECESSARY.—No contract with
18 the Secretary is necessary for any whistleblower to receive
19 an award under subsection (b).

20 “(f) PROTECTION OF WHISTLEBLOWERS; CONFIDEN-
21 TIALITY.—

22 “(1) IN GENERAL.—Notwithstanding section
23 30167, and except as provided in paragraphs (4)
24 and (5) of this subsection, the Secretary, and any
25 officer or employee of the Department of Transpor-

1 tation, shall not disclose any information, including
2 information provided by a whistleblower to the Sec-
3 retary, which could reasonably be expected to reveal
4 the identity of a whistleblower, except in accordance
5 with the provisions of section 552a of title 5, un-
6 less—

7 “(A) required to be disclosed to a defend-
8 ant or respondent in connection with a public
9 proceeding instituted by the Secretary or any
10 entity described in paragraph (5);

11 “(B) the whistleblower provides prior writ-
12 ten consent for the information to be disclosed;
13 or

14 “(C) the Secretary, or other officer or em-
15 ployee of the Department of Transportation, re-
16 ceives the information through another source,
17 such as during an inspection or investigation
18 under section 30166, and has authority under
19 other law to release the information.

20 “(2) REDACTION.—The Secretary, and any offi-
21 cer or employee of the Department of Transpor-
22 tation, shall take reasonable measures to not reveal
23 the identity of the whistleblower when disclosing any
24 information under paragraph (1).

1 “(3) SECTION 552(B)(3)(B).—For purposes of
2 section 552 of title 5, paragraph (1) of this sub-
3 section shall be considered a statute described in
4 subsection (b)(3)(B) of that section.

5 “(4) EFFECT.—Nothing in this subsection is
6 intended to limit the ability of the Attorney General
7 to present such evidence to a grand jury or to share
8 such evidence with potential witnesses or defendants
9 in the course of an ongoing criminal investigation.

10 “(5) AVAILABILITY TO GOVERNMENT AGEN-
11 CIES.—

12 “(A) IN GENERAL.—Without the loss of its
13 status as confidential in the hands of the Sec-
14 retary, all information referred to in paragraph
15 (1) may, in the discretion of the Secretary,
16 when determined by the Secretary to be nec-
17 essary or appropriate to accomplish the pur-
18 poses of this chapter and in accordance with
19 subparagraph (B), be made available to the fol-
20 lowing:

21 “(i) The Department of Justice.

22 “(ii) An appropriate department or
23 agency of the Federal Government, acting
24 within the scope of its jurisdiction.

1 “(B) MAINTENANCE OF INFORMATION.—

2 Each entity described in subparagraph (A) shall
3 maintain information described in that subpara-
4 graph as confidential, in accordance with the
5 requirements in paragraph (1).

6 “(g) PROVISION OF FALSE INFORMATION.—A whis-
7 tleblower who knowingly and willfully makes any false, fic-
8 titious, or fraudulent statement or representation, or who
9 makes or uses any false writing or document knowing the
10 same to contain any false, fictitious, or fraudulent state-
11 ment or entry, shall not be entitled to an award under
12 this section and shall be subject to prosecution under sec-
13 tion 1001 of title 18.

14 “(h) APPEALS.—

15 “(1) IN GENERAL.—Any determination made
16 under this section, including whether, to whom, or in
17 what amount to make an award, shall be in the dis-
18 cretion of the Secretary.

19 “(2) APPEALS.—Any determination made by
20 the Secretary under this section may be appealed by
21 a whistleblower to the appropriate court of appeals
22 of the United States not later than 30 days after the
23 determination is issued by the Secretary.

1 “(3) REVIEW.—The court shall review the de-
2 termination made by the Secretary in accordance
3 with section 706 of title 5.

4 “(i) REGULATIONS.—Not later than 18 months after
5 the date of enactment of the Motor Vehicle Safety Whistle-
6 blower Act, the Secretary shall promulgate regulations on
7 the requirements of this section, consistent with this sec-
8 tion.”.

9 (b) RULE OF CONSTRUCTION.—

10 (1) ORIGINAL INFORMATION.—Information sub-
11 mitted to the Secretary of Transportation by a whis-
12 tleblower in accordance with the requirements of sec-
13 tion 30172 of title 49, United States Code, shall not
14 lose its status as original information solely because
15 the whistleblower submitted the information prior to
16 the effective date of the regulations if that informa-
17 tion was submitted after the date of enactment of
18 this Act.

19 (2) AWARDS.—A whistleblower may receive an
20 award under section 30172 of title 49, United States
21 Code, regardless of whether the violation underlying
22 the covered action occurred prior to the date of en-
23 actment of this Act, and may receive an award prior
24 to the Secretary of Transportation promulgating the
25 regulations under section 30172(i) of that title.

1 (e) CONFORMING AMENDMENTS.—The table of con-
2 tents of subchapter IV of chapter 301 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

“30172. Whistleblower incentives and protections.”.