



AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide enhanced civil and criminal penalties for consumer protection.

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

S. 1732

To authorize elements of the Department of Transportation, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BLUMENTHAL

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . CIVIL PENALTIES.**

3 (a) IN GENERAL.—Section 30165(a) is amended—

4 (1) in paragraph (1)—

5 (A) in the first sentence—

6 (i) by inserting “or causes the viola-
7 tion of” after “violates”; and

8 (ii) by striking “\$5,000” and insert-
9 ing “\$25,000”; and

10 (B) by striking the third sentence;

11 (2) in paragraph (2)—

1 (A) in subparagraph (A), by striking
2 “\$10,000” and inserting “\$100,000”; and

3 (B) in subparagraph (B), by striking the
4 second sentence; and
5 (3) in paragraph (3)—

6 (A) in the first sentence, by inserting “or
7 causes the violation of” after “violates”;

8 (B) in the second sentence, by striking
9 “\$5,000” and inserting “\$25,000”; and

10 (C) by striking the third sentence.

11 (b) CONSTRUCTION.—Nothing in this section shall be
12 construed as preventing the imposition of penalties under
13 section 30165 of title 49, United States Code, prior to
14 the issuance of a final rule under section 31203(b) of the
15 Moving Ahead for Progress in the 21st Century Act (49
16 U.S.C. 30165 note).

17 **SEC. ____ . CRIMINAL PENALTIES.**

18 (a) REPORTING STANDARDS.—

19 (1) IN GENERAL.—Part I of title 18, United
20 States Code, is amended by inserting after chapter
21 101 the following:

22 **“CHAPTER 101A—REPORTING STANDARDS**

“Sec.

“2081. Definitions.

“2082. Failure to inform and warn.

“2083. Relationship to existing law.

1 **“§ 2081. Definitions**

2 “In this chapter—

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

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

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

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

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

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

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

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

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

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

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

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

17 “(i) an appropriate Federal agency;

18 “(ii) employees of the business entity;

19 or

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

23 “(7) the term ‘serious bodily injury’ means an
24 impairment of the physical condition of an indi-

1 vidual, including as a result of trauma, repetitive
2 motion, or disease, that—

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

4 “(B) causes—

5 “(i) serious permanent disfigurement;

6 “(ii) unconsciousness;

7 “(iii) extreme pain; or

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

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

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

1 **“§ 2082. Failure to inform and warn**

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

9 “(1) as soon as practicable and not later than
10 24 hours after acquiring such knowledge, verbally
11 inform an appropriate Federal agency of the serious
12 danger, unless the business entity or responsible cor-
13 porate officer has actual knowledge that an appro-
14 priate Federal agency has been so informed;

15 “(2) not later than 15 days after acquiring such
16 knowledge, inform an appropriate Federal agency in
17 writing of the serious danger;

18 “(3) as soon as practicable, but not later than
19 30 days after acquiring such knowledge, warn af-
20 fected employees in writing, unless the business enti-
21 ty or responsible corporate officer has actual knowl-
22 edge that affected employees have been so warned;
23 and

24 “(4) as soon as practicable, but not later than
25 30 days after acquiring such knowledge, inform indi-
26 viduals, other than affected employees, who may be

1 exposed to the serious danger of the serious danger
2 if such individuals can reasonably be identified.

3 “(b) PENALTY.—

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

7 “(2) PROHIBITION OF PAYMENT BY BUSINESS
8 ENTITIES.—If a final judgment is rendered and a
9 fine is imposed on an individual under this sub-
10 section, the fine may not be paid, directly or indi-
11 rectly, out of the assets of any business entity on be-
12 half of the individual.

13 “(c) CIVIL ACTION TO PROTECT AGAINST RETALIA-
14 TION.—

15 “(1) PROHIBITION.—It shall be unlawful to
16 knowingly discriminate against any person in the
17 terms or conditions of employment, in retention in
18 employment, or in hiring because the person in-
19 formed a Federal agency, warned employees, or in-
20 formed other individuals of a serious danger associ-
21 ated with a covered product, covered service, or busi-
22 ness practice, as required under this section.

23 “(2) ENFORCEMENT ACTION.—

24 “(A) IN GENERAL.—A person who alleges
25 discharge or other discrimination by any person

1 in violation of paragraph (1) may seek relief
2 under paragraph (3), by—

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

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

15 “(B) PROCEDURE.—

16 “(i) IN GENERAL.—An action under
17 subparagraph (A)(i) shall be governed
18 under the rules and procedures set forth in
19 section 42121(b) of title 49.

20 “(ii) EXCEPTION.—Notification made
21 under section 42121(b)(1) of title 49 shall
22 be made to the person named in the com-
23 plaint and to the employer.

24 “(iii) BURDENS OF PROOF.—An ac-
25 tion brought under subparagraph (A)(ii)

1 shall be governed by the legal burdens of
2 proof set forth in section 42121(b) of title
3 49.

4 “(iv) STATUTE OF LIMITATIONS.—An
5 action under subparagraph (A) shall be
6 commenced not later than 180 days after
7 the date on which the violation occurs, or
8 after the date on which the employee be-
9 came aware of the violation.

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

13 “(3) REMEDIES.—

14 “(A) IN GENERAL.—An employee pre-
15 vailing in any action under paragraph (2)(A)
16 shall be entitled to all relief necessary to make
17 the employee whole.

18 “(B) COMPENSATORY DAMAGES.—Relief
19 for any action under subparagraph (A) shall in-
20 clude—

21 “(i) reinstatement with the same se-
22 niority status that the employee would
23 have had, but for the discrimination;

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

1 “(iii) compensation for any special
2 damages sustained as a result of the dis-
3 crimination, including litigation costs, ex-
4 pert witness fees, and reasonable attorney
5 fees.

6 “(4) RIGHTS RETAINED BY EMPLOYEE.—Noth-
7 ing in this subsection shall be deemed to diminish
8 the rights, privileges, or remedies of any employee
9 under any Federal or State law, or under any collec-
10 tive bargaining agreement.

11 “(5) NONENFORCEABILITY OF CERTAIN PROVI-
12 SIONS WAIVING RIGHTS AND REMEDIES OR REQUIR-
13 ING ARBITRATION OF DISPUTES.—

14 “(A) WAIVER OF RIGHTS AND REM-
15 EDIES.—The rights and remedies provided for
16 in this subsection may not be waived by any
17 agreement, policy form, or condition of employ-
18 ment, including by a predispute arbitration
19 agreement.

20 “(B) PREDISPUTE ARBITRATION AGREE-
21 MENTS.—No predispute arbitration agreement
22 shall be valid or enforceable, if the agreement
23 requires arbitration of a dispute arising under
24 this subsection.

1 **“§ 2083. Relationship to existing law**

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

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

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

16 “(2) limit or otherwise reduce the penalties for
17 any violation of Federal or State law under any
18 other provision of law.”.

19 (2) TECHNICAL AND CONFORMING AMEND-
20 MENT.—The table of chapters for part I of title 18,
21 United States Code, is amended by inserting after
22 the item relating to chapter 101 the following:

“101A. Reporting standards 2081”.

23 (3) EFFECTIVE DATE.—The amendments made
24 by paragraphs (1) and (2) shall take effect on the

1 date that is 1 year after the date of enactment of
2 this Act.

3 (b) PROHIBITION ON RENDERING SAFETY ELE-
4 MENTS INOPERATIVE.—Section 30122 is amended by
5 amending subsection (b) to read as follows:

6 “(b) PROHIBITION.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), a person may not knowingly make inoper-
9 ative any part of a device or element of design in-
10 stalled on or in a motor vehicle or motor vehicle
11 equipment in compliance with an applicable motor
12 vehicle safety standard prescribed under this chapter
13 unless the person reasonably believes the vehicle or
14 equipment will not be used (except for testing or a
15 similar purpose during maintenance or repair) when
16 the device or element is inoperative.

17 “(2) EXCEPTION.—The prohibition under para-
18 graph (1) does not apply to a modification made by
19 an individual to a motor vehicle or item of equip-
20 ment owned or leased by that individual.”.

21 (c) CRIMINAL LIABILITY.—Section 30170 is amend-
22 ed by adding at the end the following;

23 “(c) CRIMINAL LIABILITY FOR TAMPERING WITH
24 MOTOR VEHICLE SAFETY ELEMENTS.—Whoever knowing
25 that he will endanger the safety of any person on board

1 a motor vehicle or anyone who he believes will board the
2 same, or with a reckless disregard for the safety of human
3 life, violates section 30122(b) under this title shall be sub-
4 ject to criminal penalties under section 33(a) of title 18.”.