

116TH CONGRESS
2D SESSION

S. _____

To amend title 49, United States Code, to rename the Aviation Safety Whistleblower Investigation Office and to establish an Office of Professional Responsibility and an Office of the Ombudsman in the Federal Aviation Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 49, United States Code, to rename the Aviation Safety Whistleblower Investigation Office and to establish an Office of Professional Responsibility and an Office of the Ombudsman in the Federal Aviation Administration, and for other purposes.

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 “Federal Aviation Ad-
5 ministration Accountability Enhancement Act”.

1 **SEC. 2. ENHANCEMENT OF THE AVIATION SAFETY WHIS-**
2 **TLBLOWER INVESTIGATION OFFICE IN THE**
3 **FEDERAL AVIATION ADMINISTRATION.**

4 (a) RENAMING OF THE OFFICE.—Section 106(t)(1)
5 of title 49, United States Code, is amended by striking
6 “an Aviation Safety Whistleblower Investigation Office”
7 and inserting “the Office of Accountability and Whistle-
8 blower Protection”.

9 (b) DUTIES.—

10 (1) IN GENERAL.—Section 106(t)(3) of title 49,
11 United States Code, is amended—

12 (A) in subparagraph (A)—

13 (i) in clause (i)—

14 (I) by inserting “and investigate
15 in accordance with subsection (w)”
16 after “receive”; and

17 (II) by striking “(if the certifi-
18 cate holder does not have a similar in-
19 house whistleblower or safety and reg-
20 ulatory noncompliance reporting proc-
21 ess)”;

22 (ii) in clause (ii), by striking “and” at
23 the end;

24 (iii) in clause (iii), by striking the pe-
25 riod at the end and inserting “; and”;

26 (iv) adding at the end the following:

1 “(iv) investigate in accordance with
2 subsection (w) any misconduct alleged or
3 discovered as a result of an investigation
4 conducted pursuant to clause (i);

5 “(v) receive and investigate in accord-
6 ance with subsection (w) complaints and
7 information concerning whistleblower retal-
8 iation by employees of the Agency;

9 “(vi) assess the results of any inves-
10 tigation under clause (i), (iv), or (v), and
11 if there is a finding of whistleblower retal-
12 iation or related misconduct, provide a rec-
13 ommendation for a range of disciplinary
14 actions to the Agency proposing official;

15 “(vii) if the Agency proposing official
16 deviates from the recommended range of
17 disciplinary action described in clause (vi),
18 or if the Agency deciding official deviates
19 from the range of disciplinary actions pro-
20 posed by the Agency proposing official, no-
21 tify Congress in writing not later than 10
22 days after such deviation; and

23 “(viii) comply with all legal require-
24 ments concerning disciplinary actions re-
25 lated to whistleblower retaliation.”;

1 (B) in subparagraph (B), by striking “sub-
2 paragraph (A)(i)” and inserting “clause (i),
3 (iv), or (v) of subparagraph (A)”;

4 (C) in subparagraph (C), by striking “sub-
5 paragraph (A)(i)” and inserting “clause (i),
6 (iv), or (v) of subparagraph (A)”;

7 (D) in subparagraph (D)—

8 (i) by striking “assessment” and in-
9 serting “investigation”;

10 (ii) by striking “subparagraph (A)(i)”
11 and inserting “clause (i), (iv), or (v) of
12 subparagraph (A)”;

13 (iii) by inserting “, misconduct, or
14 whistleblower retaliation” after “aviation
15 safety”.

16 (2) LIMITATION.—Section 106(t)(2) of title 49,
17 United States Code, is amended by adding at the
18 end the following:

19 “(E) LIMITATION OF DUTIES.— The Ad-
20 ministrator may only assign to the Director re-
21 sponsibilities relating to the duties of the Office
22 described in paragraph (3).”.

23 (3) CONFORMING AMENDMENTS.—Section
24 106(t) of title 49, United States Code, as amend-
25 ed—

1 (A) in paragraph (5), by inserting “, mis-
2 conduct, or whistleblower retaliation” after
3 “aviation safety”;

4 (B) in paragraph (7)—

5 (i) in the matter preceding subpara-
6 graph (A)—

7 (I) by striking “October 1” and
8 inserting “November 15”; and

9 (II) by inserting “directly” after
10 “the Director shall submit”; and

11 (ii) in subparagraph (A), by striking
12 “paragraph (3)(A)(i) in the preceding 12-
13 month period” and inserting “clause (i),
14 (iv), or (v) of paragraph 3(A) in the pre-
15 ceding fiscal year”; and

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

17 “(8) STAFF AND RESOURCES.—The Adminis-
18 trator shall ensure that the Director has such staff,
19 resources, and access to information as may be nec-
20 essary to carry out the functions of the Office.”.

21 **SEC. 3. OFFICE OF THE WHISTLEBLOWER OMBUDSMAN IN**
22 **THE FEDERAL AVIATION ADMINISTRATION.**

23 Section 106 of title 49, United States Code, is
24 amended by adding at the end the following:

1 “(u) OFFICE OF THE WHISTLEBLOWER OMBUDS-
2 MAN.—

3 “(1) ESTABLISHMENT.—The Administrator
4 shall establish in the Federal Aviation Administra-
5 tion (in this subsection referred to as the ‘Agency’)
6 an Office of the Whistleblower Ombudsman (in this
7 subsection referred to as the ‘Office’).

8 “(2) OMBUDSMAN.—The Office shall be headed
9 by an Ombudsman, who shall be appointed by the
10 Administrator.

11 “(3) DUTIES.—The Ombudsman shall carry out
12 the following duties:

13 “(A) Educate Agency employees about pro-
14 hibitions on retaliation and any specific rights
15 or remedies with respect to any retaliatory
16 practice.

17 “(B) Serve as an independent confidential
18 resource for Agency employees to discuss any
19 specific retaliation allegation and available
20 rights or remedies based on the circumstances.

21 “(C) Coordinate with Human Resource
22 Management, the Office of Accountability and
23 Whistleblower Protection, the Office of Profes-
24 sional Responsibility, and the Office of the
25 Chief Counsel, as necessary.

1 “(2) DUTIES.—The Office shall carry out the
2 following duties:

3 “(A) Receive any complaints and informa-
4 tion concerning misconduct by managers within
5 the Agency.

6 “(B) Assess any complaint and informa-
7 tion concerning misconduct by managers re-
8 ceived under this paragraph and determine
9 whether sufficient information exists to initiate
10 an investigation in accordance with subsection
11 (w).

12 “(C) Except as provided in subparagraph
13 (D), refer each misconduct case, based on the
14 nature of the allegations, to—

15 “(i) the Office of the Inspector Gen-
16 eral of the Department of Transportation
17 for investigation and appropriate referral,
18 as necessary; or

19 “(ii) the appropriate venue within the
20 Agency for investigation in accordance
21 with subsection (w) and adjudication in ac-
22 cordance with subsection (x), unless the
23 Office decides to retain such case.

24 “(D) Retain and independently investigate
25 in accordance with subsection (w) any allega-

1 tion, other than an allegation investigated by
2 the Office of Accountability and Whistleblower
3 Protection or referred outside of the Agency,
4 that carries a possible penalty of suspension of
5 pay for more than 14 days.

6 “(E) Record and track the disposition of
7 each misconduct case received under this para-
8 graph.

9 “(3) STAFF AND RESOURCES.—The Adminis-
10 trator shall ensure that the Office has such staff, re-
11 sources, and access to information as may be nec-
12 essary to carry out the functions of the Office.

13 “(4) DEFINITION.—For purposes of this sub-
14 section, the term ‘manager’ means an employee of
15 the Agency who is a supervisor or management offi-
16 cial, as defined in section 7103(a) of title 5, United
17 States Code.”.

18 **SEC. 5. MISCONDUCT INVESTIGATIONS AND ADJUDICA-**
19 **TIONS IN THE FEDERAL AVIATION ADMINIS-**
20 **TRATION.**

21 Section 106 of title 49, United States Code, as
22 amended by section 4, is amended by adding at the end
23 the following:

24 “(w) MISCONDUCT INVESTIGATIONS.—

25 “(1) ESTABLISHMENT OF POLICY.—

1 “(A) IN GENERAL.—The Administrator
2 shall establish an investigative policy that gov-
3 erns any investigation of misconduct by a man-
4 ager conducted by the Federal Aviation Admin-
5 istration (in this subsection referred to as the
6 ‘Agency’).

7 “(B) PRESERVATION OF COLLECTIVE BAR-
8 GAINING AGREEMENTS.—The investigative pol-
9 icy established under subparagraph (A) shall
10 not apply to, or in the future, be extended by
11 the Administrator to apply to, any employee
12 covered by or eligible to be covered by a collec-
13 tive bargaining agreement entered into by the
14 Agency.

15 “(2) REQUIREMENTS.—The investigative policy
16 established under paragraph (1) shall require the
17 utilization of investigative best practices to ensure
18 independent and objective investigation and accurate
19 recording and reporting of such investigation, in-
20 cluding—

21 “(A) managing case files to ensure the in-
22 tegrity of the information contained in such
23 case files;

1 “(B) conducting interviews in a manner
2 that ensures truthful answers and accurate
3 records of such interviews;

4 “(C) coordinating with the Office of the
5 Inspector General of the Department of Trans-
6 portation, the Office of the Special Counsel,
7 and the Attorney General, as necessary; and

8 “(D) completing investigations in a timely
9 manner.

10 “(3) DEFINITION.—For purposes of this sub-
11 section, the term ‘manager’ has the meaning given
12 such term in subsection (v)(4).

13 “(x) DISCIPLINE MANAGEMENT.—

14 “(1) ESTABLISHMENT OF POLICY.—

15 “(A) IN GENERAL.—The Administrator
16 shall establish a discipline management policy
17 that governs any adjudication of an investiga-
18 tion of misconduct by a manager conducted by
19 the Federal Aviation Administration (in this
20 subsection referred to as the ‘Agency’).

21 “(B) PRESERVATION OF COLLECTIVE BAR-
22 GAINING AGREEMENTS.—The discipline man-
23 agement policy established under subparagraph
24 (A) shall not apply to, or in the future, be ex-
25 tended by the Administrator to apply to, any

1 employee covered by or eligible to be covered by
2 a collective bargaining agreement entered into
3 by the Agency.

4 “(2) REQUIREMENTS.—The discipline manage-
5 ment policy established under paragraph (1) shall
6 require—

7 “(A) except as provided in subsection
8 (t)(3)(A) or in a case where the allegation in-
9 volved carries a possible penalty of suspension
10 of pay for 14 days or less, the Administrator to
11 appoint an individual to serve as the Agency
12 proposing official in any adjudication conducted
13 by the Agency;

14 “(B) except in a case where the allegation
15 involved carries a possible penalty of suspension
16 of pay for 14 days or less, the Administrator to
17 appoint an individual to serve as the Agency de-
18 ciding official in any adjudication conducted by
19 the Agency;

20 “(C) the Agency to conduct any adjudica-
21 tion in accordance with best practices; and

22 “(D) the Agency to complete—

23 “(i) the discipline proposal process,
24 including an opportunity for employee re-
25 sponse, not later than 60 days after the re-

1 ceipt of a completed misconduct investiga-
2 tion; and

3 “(ii) the decision process, including
4 any employee appeal, not later than 60
5 days after the conclusion of the discipline
6 proposal process.

7 “(3) DEFINITION.—For purposes of this sub-
8 section, the term ‘manager’ has the meaning given
9 such term in subsection (v)(4).”.