

116TH CONGRESS
2D SESSION

S. 4565

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

SEPTEMBER 10, 2020

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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”; and

1 (iv) by adding at the end the fol-
2 lowing:

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

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

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

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

1 “(viii) comply with all legal require-
 2 ments concerning disciplinary actions re-
 3 lated to whistleblower retaliation.”;

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

7 (C) in subparagraph (C), by striking “sub-
 8 paragraph (A)(i)” and inserting “clause (i),
 9 (iv), or (v) of subparagraph (A)”;

10 (D) in subparagraph (D)—

11 (i) by striking “assessment” and in-
 12 serting “investigation”;

13 (ii) by striking “subparagraph (A)(i)”
 14 and inserting “clause (i), (iv), or (v) of
 15 subparagraph (A)”;

16 (iii) by inserting “, misconduct, or
 17 whistleblower retaliation” after “aviation
 18 safety”.

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

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

1 (3) CONFORMING AMENDMENTS.—Section
2 106(t) of title 49, United States Code, as amend-
3 ed—

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

7 (B) in paragraph (7)—

8 (i) in the matter preceding subpara-
9 graph (A)—

10 (I) by striking “October 1” and
11 inserting “November 15”; and

12 (II) by inserting “directly” after
13 “the Director shall submit”; and

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

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

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

1 **SEC. 3. OFFICE OF THE WHISTLEBLOWER OMBUDSMAN IN**
2 **THE FEDERAL AVIATION ADMINISTRATION.**

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

5 “(u) OFFICE OF THE WHISTLEBLOWER OMBUDS-
6 MAN.—

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

12 “(2) OMBUDSMAN.—The Office shall be headed
13 by an Ombudsman, who shall be appointed by the
14 Administrator.

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

17 “(A) Educate Agency employees about pro-
18 hibitions on retaliation and any specific rights
19 or remedies with respect to any retaliatory
20 practice.

21 “(B) Serve as an independent confidential
22 resource for Agency employees to discuss any
23 specific retaliation allegation and available
24 rights or remedies based on the circumstances.

25 “(C) Coordinate with Human Resource
26 Management, the Office of Accountability and

1 Whistleblower Protection, the Office of Profes-
 2 sional Responsibility, and the Office of the
 3 Chief Counsel, as necessary.

4 “(D) Coordinate with the Office of the In-
 5 spector General of the Department of Transpor-
 6 tation’s Whistleblower Protection Coordinator
 7 and the Office of the Special Counsel, as nec-
 8 essary.

9 “(E) Conduct outreach and training within
 10 the Agency to mitigate retaliation and promote
 11 timely and appropriate processing of any pro-
 12 tected disclosure or allegation of retaliation.

13 “(4) STAFF AND RESOURCES.—The Adminis-
 14 trator shall ensure that the Ombudsman has such
 15 staff, resources, and access to information as may be
 16 necessary to carry out the functions of the Office.”.

17 **SEC. 4. OFFICE OF PROFESSIONAL RESPONSIBILITY IN THE**
 18 **FEDERAL AVIATION ADMINISTRATION.**

19 Section 106 of title 49, United States Code, as
 20 amended by section 3, is amended by adding at the end
 21 the following:

22 “(v) OFFICE OF PROFESSIONAL RESPONSIBILITY.—
 23 “(1) ESTABLISHMENT.—The Administrator
 24 shall establish in the Federal Aviation Administra-
 25 tion (in this subsection referred to as the ‘Agency’)

1 an Office of Professional Responsibility (in this sub-
2 section referred to as the ‘Office’).

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

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

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

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

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

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

“(D) Retain and independently investigate in accordance with subsection (w) any allegation, other than an allegation investigated by the Office of Accountability and Whistleblower Protection or referred outside of the Agency, that carries a possible penalty of suspension of pay for more than 14 days.

“(E) Record and track the disposition of each misconduct case received under this paragraph.

“(3) STAFF AND RESOURCES.—The Administrator shall ensure that the Office has such staff, resources, and access to information as may be necessary to carry out the functions of the Office.

“(4) DEFINITION.—For purposes of this subsection, the term ‘manager’ means an employee of the Agency who is a supervisor or management official, as defined in section 7103(a) of title 5, United States Code.”.

SEC. 5. MISCONDUCT INVESTIGATIONS AND ADJUDICATIONS IN THE FEDERAL AVIATION ADMINISTRATION.

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

1 “(w) MISCONDUCT INVESTIGATIONS.—

2 “(1) ESTABLISHMENT OF POLICY.—

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

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

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

23 “(A) managing case files to ensure the in-
24 tegrity of the information contained in such
25 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).”.

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