



BANKRUPTING PUBLIC PROTECTIONS

Reasons to Oppose Santorum Amendment to Bankruptcy Bill (S. 256)

Industry will seize yet more special breaks at the expense of the public health, safety, civil rights, and environment in the Santorum “small business” amendments to S.256. Under the guise of benefiting “small business,” these measures will create perverse incentives for corporate special interests to refuse to provide the information we need to protect the public.

Letting Small Business Deny Us the Information We Need

The Santorum amendment endangers the public’s right to know by prohibiting federal agencies from fining small businesses for “first-time” violations of paperwork requirements as long as the company complies within six months of notice of the violation (with some enumerated exceptions, such as tax collection paperwork). Currently, agencies almost always waive fines for first-time violations. In fact, the Santorum amendment could encourage even more violations, because small businesses would know they could avoid reporting requirements — without fear of fine — until they are caught for the first time.

Businesses could have *many* “first-time” violations under the Santorum amendment. As the “first-time” exemption is defined, an agency can only count violations from *that* agency’s requirements — and cannot look at a small business’s violations of requirements from *other* agencies. A business could fail to comply with a workplace safety requirement for OSHA, a toxic substance report for EPA, and a pension fund report under ERISA — each time getting the “first-time” violator exemption.

The Public Needs This Information

These measures threaten the public’s ability to demand the information we need to keep the public healthy and safe. What’s at stake is not simply mindless government “paperwork” — it is any information collection or reporting that affects 10 or more people, which means almost every requirement for reporting, labeling, or collecting the information we need to protect the public.

Gathering and reporting information is the very basis of public protection. For example, when a worker safety protection is issued, businesses often need to report information so that agencies know whether or not businesses are actually complying and whether workers are getting the full benefit of the new protective standard. Businesses might also be required to post information so that workers know about their rights or learn about potential hazards and protect themselves on the job. Under the Santorum amendment, corporate special interests would be allowed to deny us this needed information without consequences.

Delaying Information Can Be Disastrous

The penalty exemption periods for correcting so-called “first time” violations — six months for most violations, and 24 hours for selected public health and safety violations — would allow small businesses to endanger us all with delays in releasing the information that we need. Time is of the essence with many information requirements. For example, the SEC needed to issue penalties to first-time violators in order to ensure rapid compliance with Y2K measures. In the case of chemical plants, we need information to protect workers and our communities by planning responses to potential accidents. For a plant to correct emergency information violations 24 hours after a chemical explosion may be too little, too late.

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The Public Health and Safety Clauses Are Too Weak

The Santorum amendment does set aside some special provisions for a “first-time” information violation that “presents a danger to the public health and safety.” As a gesture to the public interest concerns that have been raised against this same language in previous Congresses, the Santorum amendment merely shortens the penalty exemption period from six months to 24 hours for this class of information violations. Keep in mind that the 24-hour clock does not start running with the violation, but only with notice from the agency that the violation must be corrected — which could be months after the violation.

Moreover, it can be difficult for an agency to know whether there is a danger to health or safety if it does not have the appropriate information to draw that conclusion in the first instance. Routine collection of information could alert public health or safety agencies to signs of developing problems that need to be addressed. In fact, the Department of Justice testified before Congress in the late 90s, when similar language was offered, that these measures would severely impair drug enforcement.

There is Too Much at Stake

We need information to be able to protect the public. The Santorum amendment could have devastating consequences for public safeguards.

- Sarah Brady wrote the House of Representatives in the late 1990s that similar measures would weaken inspection of gun dealers under the Brady Act, which in turn could lead to an increase in weapon sales to criminals.
- Firefighters rely on businesses to report on hazardous chemicals so that they can respond safely and effectively to potential chemical fires. The first-time violator immunity could reduce disclosure of chemical hazards and put firefighters at risk.
- The Drug Enforcement Administration relies on written reports from pharmaceutical companies to ensure that controlled substances are not illegally diverted. The Santorum amendment would embolden drug traffickers to avoid detection without fear of fine.
- Pension administrators must file annual reports on pension fund management under ERISA. An administrator mishandling funds could withhold the annual report, covering up the misdeed knowing that no fine could be levied under the Santorum amendment.
- EPA relies on self-monitoring and reporting under the Clean Water Act and the Safe Drinking Water Act to head off potential dangers to the water supply. The information requirement is critical: EPA cannot inspect all 200,000 public water systems alone. Without reliable reporting, we cannot assure water quality. The Santorum amendment puts that important safeguard at risk.

Special Favors for Special Interests

Instead of ensuring that the public has the information it needs to strengthen safeguards of the public health, safety, civil rights, and environment, the Santorum amendment offers special favors to corporate special interests. It exploits the mom-and-pop romantic fiction of “small business,” which is defined so broadly that 97% of American businesses fall under the category. It does not matter to the public whether a chemical fire or workplace injury is caused by a “small business” or a large one. Helping small business should not mean hurting the public.

For these reasons, we strongly urge you to vote NO on the Santorum amendment to S. 256.