

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4925

To improve whistleblower protections.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2006

Mr. MARKEY (for himself and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Armed Services, Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To improve whistleblower protections.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Paul Revere Freedom to Warn Act”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Discrimination against whistleblowers prohibited.
- Sec. 3. Enforcement action.
- Sec. 4. Remedies.
- Sec. 5. State secrets privilege.

Sec. 6. Criminal penalties.  
Sec. 7. Rights retained by covered individual.  
Sec. 8. Notification.  
Sec. 9. Definitions.  
Sec. 10. Effective date; applicability.

1 **SEC. 2. DISCRIMINATION AGAINST WHISTLEBLOWERS PRO-**  
2 **HIBITED.**

3 It shall be unlawful for any person to discharge, de-  
4 mote, suspend, reprimand, investigate, or take or fail to  
5 take any other personnel action that in any manner dis-  
6 criminate against any covered individual, or in any other  
7 manner discriminate against any covered individual (in-  
8 cluding by a denial, suspension, or revocation of a security  
9 clearance or by any other security access determination,  
10 or by denial of award of a Federal contract or sub-  
11 contract), or to threaten or recommend the discharge, de-  
12 motion, suspension, reprimand, investigation, other per-  
13 sonnel action (or rejection of such action) that in any  
14 manner discriminates against any covered individual, or  
15 other manner of discrimination if such action, discrimina-  
16 tion, or recommendation is due, in whole or in part, to  
17 any lawful act done, perceived to have been done, or in-  
18 tended to be done by the covered individual—

19 (1) to provide information, cause information to  
20 be provided, or otherwise assist in an investigation  
21 or proceeding regarding any conduct which the cov-  
22 ered individual reasonably believes constitutes evi-  
23 dence of a violation of any law, rule, or regulation,

1 a threat to national or homeland security, a substan-  
2 tial and specific threat to public health or safety, or  
3 fraud, abuse of authority, waste, or mismanagement  
4 of public funds, if the information or assistance is  
5 provided to or the investigation is conducted by—

6 (A) a Federal, State, or local regulatory or  
7 law enforcement agency (including an office of  
8 Inspector General under the Inspector General  
9 Act of 1978);

10 (B) any Member of Congress, any com-  
11 mittee of Congress, or the Government Ac-  
12 countability Office;

13 (C) any person with supervisory or mana-  
14 gerial authority over the covered individual (or  
15 any other person who has the authority to in-  
16 vestigate, discover, or terminate misconduct); or

17 (D) a potential witness to or other person  
18 affected by or aware of the conduct described in  
19 this section;

20 (2) to file, cause to be filed, testify, participate  
21 in, or otherwise assist in a proceeding or action filed  
22 or about to be filed relating to an alleged violation  
23 of any law, rule, or regulation; or

24 (3) to refuse to violate or assist in the violation  
25 of any law, rule, or regulation.

1 **SEC. 3. ENFORCEMENT ACTION.**

2 (a) IN GENERAL.—A covered individual who alleges  
3 discharge or other discrimination by any person in viola-  
4 tion of section 2 may seek relief under section 4 by—

5 (1) filing a complaint with the Secretary of  
6 Labor; or

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

15 (b) PROCEDURE.—

16 (1) IN GENERAL.—An action under subsection  
17 (a)(1) shall be governed under the rules and proce-  
18 dures set forth in section 42121(b) of title 49,  
19 United States Code.

20 (2) EXCEPTION.—Notification made under sec-  
21 tion 42121(b)(1) of title 49, United States Code,  
22 shall be made—

23 (A) to the person named in the complaint;

24 and

25 (B) to the person's employer or, in the  
26 case of a Federal contractor or subcontractor,

1 to the instrumentality of the Government with  
2 which such contractor or subcontractor has en-  
3 tered into, or submitted an offer to enter into,  
4 a contract.

5 (3) BURDENS OF PROOF.—An action brought  
6 under subsection (a)(2) shall be governed by the  
7 legal burdens of proof set forth in section 42121(b)  
8 of title 49, United States Code.

9 (4) STATUTE OF LIMITATIONS.—An action  
10 under subsection (a) shall be commenced not later  
11 than 6 years after the date on which the alleged vio-  
12 lation occurred.

13 **SEC. 4. REMEDIES.**

14 (a) IN GENERAL.—A covered individual prevailing in  
15 any action under section 3(a) shall be entitled to all relief  
16 appropriate to make the covered individual whole.

17 (b) DAMAGES.—Relief for any action under sub-  
18 section (a) may include—

19 (1) reinstatement with the same seniority status  
20 and employment grade or pay level (or the equiva-  
21 lent) that the covered individual would have had, but  
22 for the discrimination;

23 (2) compensatory damages, including the  
24 amount of any back pay, with interest;

1           (3) compensation for any special damages sus-  
2           tained as a result of the discrimination, including  
3           litigation costs, expert witness fees, and reasonable  
4           attorneys fees; and

5           (4) punitive damages in an amount not to ex-  
6           ceed the greater of 3 times the amount of any mone-  
7           tary damages awarded under this Act (apart from  
8           this paragraph) or \$5,000,000.

9   **SEC. 5. STATE SECRETS PRIVILEGE.**

10          If, in any action brought under section 3(a)(2), the  
11          Government asserts as a defense the privilege commonly  
12          referred to as the “state secrets privilege” and the asser-  
13          tion of such privilege prevents the plaintiff from estab-  
14          lishing a prima facie case in support of the plaintiff’s  
15          claim, the court shall enter judgment for the plaintiff and  
16          shall determine the relief to be granted.

17   **SEC. 6. CRIMINAL PENALTIES.**

18          (a) IN GENERAL.—Any person violating section 2  
19          may be fined under title 18 of the United States Code,  
20          imprisoned not more than 10 years, or both.

21          (b) REPORTING REQUIREMENTS.—The Department  
22          of Justice shall (based on such periodic reports and other  
23          information from the Department of Labor as the Depart-  
24          ment of Justice may require) submit to Congress an an-

1 nual report on the enforcement of subsection (a). Each  
2 such report shall—

3 (1) identify each case in which formal charges  
4 under subsection (a) were brought;

5 (2) describe the status or disposition of each  
6 such case; and

7 (3) in any actions under section 3(a)(2) in  
8 which the covered individual was the prevailing party  
9 or the substantially prevailing party, indicate wheth-  
10 er or not any formal charges under subsection (a)  
11 have been brought and, if not, the reasons therefor.

12 **SEC. 7. RIGHTS RETAINED BY COVERED INDIVIDUAL.**

13 Nothing in this Act shall be deemed to diminish the  
14 rights, privileges, or remedies of any covered individual  
15 under any Federal or State law, or under any collective  
16 bargaining agreement. The rights and remedies in this Act  
17 may not be waived by any agreement, policy, form, or con-  
18 dition of employment.

19 **SEC. 8. NOTIFICATION.**

20 The provisions of this Act shall be prominently posted  
21 in any place of employment to which this Act applies.

22 **SEC. 9. DEFINITIONS.**

23 For purposes of this Act—

24 (1) the term “covered individual” means an em-  
25 ployee or a member of the uniformed services (as de-

1        fined by section 2101(3) of title 5, United States  
2        Code)—

3                (A) serving in or under—

4                        (i) an Executive agency (as defined by  
5                        section 105 of such title 5), a military de-  
6                        partment (as defined by section 103 of  
7                        such title 5), or any other instrumentality  
8                        of the Government (which, for purposes of  
9                        this Act, includes the Department of  
10                        Homeland Security, the Transportation Se-  
11                        curity Administration, and any other in-  
12                        strumentality of the Government, notwith-  
13                        standing any special personnel authorities  
14                        which might be available to such instru-  
15                        mentality under law);

16                        (ii) a Federal contractor or subcon-  
17                        tractor; or

18                        (iii) the Federal National Mortgage  
19                        Association, the Federal Home Loan Mort-  
20                        gage Corporation, and any other federally  
21                        chartered entity; or

22                (B) employed by an employer within the  
23                meaning of section 701(b) of the Civil Rights  
24                Act of 1964 (42 U.S.C. 2000e(b));

25                (2) the term “employee” means—

1 (A) with respect to an employer referred to  
2 in paragraph (1)(A)(i), an employee as defined  
3 by section 2105 of title 5, United States Code;  
4 and

5 (B) with respect to an employer referred to  
6 in paragraph (1)(A)(ii) or (1)(B), any officer,  
7 partner, employee, or agent;

8 such term, as defined by subparagraph (A), includes  
9 an individual holding a position in an instrumen-  
10 tality of the Government identified in the parenthet-  
11 ical matter under paragraph (1)(A);

12 (3) the term “evidence” means information that  
13 meets the standard for admissibility under the Fed-  
14 eral Rules of Evidence, or is used as part of the  
15 record in support of a finding in an investigative re-  
16 port or decision by a government office with jurisdic-  
17 tion;

18 (4) the term “Federal contractor” means a per-  
19 son who has entered into, or responded to a request  
20 for proposals or solicitation for bids to enter into, a  
21 contract with an instrumentality of the Government;

22 (5) the term “lawful” means not specifically  
23 prohibited by law, except that, in the case of any in-  
24 formation the disclosure of which is specifically pro-  
25 hibited by Federal statute or specifically required by

1 Executive order to be kept secret in the interest of  
2 national defense or the conduct of foreign affairs,  
3 any disclosure of such information to any Member of  
4 Congress, committee of Congress, or other recipient  
5 authorized to receive such information, shall be  
6 deemed lawful;

7 (6) the term “law, rule, or regulation” refers to  
8 a law of the United States and any rule or regula-  
9 tion prescribed under any such law;

10 (7) the term “person” means a corporation,  
11 partnership, State entity, business association of any  
12 kind, trust, joint-stock company, or individual;

13 (8) the term “reasonably believes”, with respect  
14 to information provided by a covered individual,  
15 means only that a disinterested observer with knowl-  
16 edge of the essential facts known to and readily  
17 ascertained by the covered individual could conclude  
18 that the information constitutes evidence of conduct  
19 described under section 2(1); and

20 (9) the term “subcontractor”, with respect to a  
21 Federal contractor, means any person, other than  
22 the Federal contractor, who offers to furnish or fur-  
23 nishes any supplies, materials, equipment, or serv-  
24 ices of any kind under a contract with an instrumen-

1 tality of the Government or a subcontract (at any  
2 tier) entered into under such a contract.

3 **SEC. 10. EFFECTIVE DATE; APPLICABILITY.**

4 (a) EFFECTIVE DATE.—This Act shall take effect 90  
5 days after the date of the enactment of this Act.

6 (b) APPLICABILITY.—This Act shall apply to—

7 (1) any administrative or judicial proceeding  
8 pending on the effective date of this Act; and

9 (2) any administrative or judicial proceeding  
10 brought on or after the effective date of this Act.

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