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1ST SESSION

H. R. 3625

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2019

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To establish a whistleblower program at the Public Company
Accounting Oversight Board, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “PCAOB Whistleblower
3 Protection Act of 2019”.

4 **SEC. 2. WHISTLEBLOWER INCENTIVES AND PROTECTION.**

5 The Sarbanes-Oxley Act of 2002 is amended—

6 (1) in section 105 (15 U.S.C. 7215) by adding
7 at the end the following:

8 “(f) WHISTLEBLOWER INCENTIVES AND PROTEC-
9 TION.—

10 “(1) DEFINITIONS.—In this subsection the fol-
11 lowing definitions shall apply:

12 “(A) COVERED PROCEEDING.—The term
13 ‘covered proceeding’ means any disciplinary
14 proceeding by the Board initiated after the date
15 of the enactment of this subsection that results
16 in monetary sanctions exceeding \$250,000.

17 “(B) ORIGINAL INFORMATION.—The term
18 ‘original information’ means information that—

19 “(i) is derived from the independent
20 knowledge or analysis of a whistleblower;

21 “(ii) is not known to the Board from
22 any other source, unless the whistleblower
23 is the original source of the information;
24 and

25 “(iii) is not exclusively derived from
26 an allegation made in a disciplinary pro-

1 ceeding, in a judicial or administrative
2 hearing, in a governmental report, hearing,
3 audit, or investigation, or from the news
4 media, unless the whistleblower is a source
5 of the information.

6 “(C) MONETARY SANCTIONS.—The term
7 ‘monetary sanctions’ means any civil money
8 penalties imposed by the Board under sub-
9 section (c)(4) as modified by the Commission
10 under section 107(c)(3).

11 “(D) WHISTLEBLOWER.—

12 “(i) IN GENERAL.—The term ‘whistle-
13 blower’ means any individual who provides,
14 or two or more individuals acting jointly
15 who provide, information relating to a vio-
16 lation of this Act, the rules of the Board,
17 the provisions of the securities laws relat-
18 ing to the preparation and issuance of
19 audit reports and the obligations and li-
20 abilities of accountants with respect there-
21 to, including the rules of the Board issued
22 pursuant to this Act, or professional stand-
23 ards.

24 “(ii) SPECIAL RULE.—Solely for the
25 purposes of paragraph (7), the term ‘whis-

1 whistleblower' shall also include any individual
2 who takes an action described in para-
3 graph 7(A), or two or more individuals act-
4 ing jointly who take an action described in
5 paragraph 7(A).

6 “(2) AWARDS.—

7 “(A) IN GENERAL.—In any covered dis-
8 ciplinary proceeding, the Board shall pay an
9 award or awards to one or more whistleblowers
10 who voluntarily provided original information to
11 the Board that resulted in the board imposing
12 monetary sanctions, in an aggregate amount
13 determined in the discretion of the Board but
14 equal to—

15 “(i) not less than 10 percent, in total,
16 of what has been collected of the monetary
17 sanctions imposed; and

18 “(ii) not more than 30 percent, in
19 total, of what has been collected of the
20 monetary sanctions.

21 “(B) PAYMENT OF AWARDS.—Any amount
22 paid under this subparagraph shall be paid
23 from any funds generated from the collection of
24 monetary sanctions.

1 “(3) DETERMINATION OF AMOUNT OF AWARD;
2 DENIAL OF AWARD.—

3 “(A) DETERMINATION OF AMOUNT OF
4 AWARD.—

5 “(i) DISCRETION.—The determination
6 of the amount of an award made under
7 paragraph (2) shall be in the discretion of
8 the Board.

9 “(ii) CRITERIA.—In determining the
10 amount of an award made under subpara-
11 graph (A), the Board shall take into con-
12 sideration—

13 “(I) the significance of the infor-
14 mation provided by the whistleblower
15 to the success of the disciplinary pro-
16 ceeding;

17 “(II) the degree of assistance
18 provided by the whistleblower and any
19 legal representative of the whistle-
20 blower in a disciplinary proceeding;
21 and

22 “(III) the programmatic interest
23 of the Board in deterring violations by
24 making awards to whistleblowers who

1 provide information that lead to suc-
2 cessful enforcement.

3 “(B) DENIAL OF AWARD.—No award
4 under subparagraph (A) shall be made—

5 “(i) to any whistleblower who is, or
6 was at the time the whistleblower acquired
7 the original information submitted to the
8 Board, a member, officer, or employee of—

9 “(I) an appropriate regulatory
10 agency (as such term is defined in
11 section 3 of the Securities Exchange
12 Act of 1934);

13 “(II) the Department of Justice;

14 “(III) a self-regulatory organiza-
15 tion (as such term is defined in sec-
16 tion 34 of the Securities Exchange
17 Act of 1934);

18 “(IV) the Public Company Ac-
19 counting Oversight Board; or

20 “(V) a law enforcement organiza-
21 tion;

22 “(ii) to any whistleblower who is con-
23 victed of a criminal violation related to the
24 Board finding for which the whistleblower

1 otherwise could receive an award under
2 this section;

3 “(iii) to any whistleblower who gains
4 the information through the performance
5 of an audit of financial statements re-
6 quired under the securities laws and for
7 whom such submission would be contrary
8 to the requirements of section 10A of the
9 Securities Exchange Act of 1934 (15
10 U.S.C. 78j-1); and

11 “(iv) to any whistleblower who fails to
12 submit information to the Board in such
13 form as the Board may, by rule, require.

14 “(4) REPRESENTATION.—

15 “(A) PERMITTED REPRESENTATION.—Any
16 whistleblower who makes a claim for an award
17 under paragraph (2) may be represented by
18 counsel.

19 “(B) REQUIRED REPRESENTATION.—

20 “(i) IN GENERAL.—Any whistleblower
21 who anonymously makes a claim for an
22 award under paragraph (2) shall be rep-
23 resented by counsel if the whistleblower
24 anonymously submits the information upon
25 which the claim is based.

1 “(ii) DISCLOSURE OF IDENTITY.—

2 Prior to the payment of an award, a whis-
3 tleblower shall disclose the identity of the
4 whistleblower and provide such other infor-
5 mation as the Board may require, directly
6 or through counsel, for the whistleblower.

7 “(5) NO CONTRACT NECESSARY.—No contract
8 with the Board is necessary for any whistleblower to
9 receive an award under paragraph (2), unless other-
10 wise required by the Board by rule.

11 “(6) APPEALS.—Any determination made under
12 this subsection, including whether, to whom, or in
13 what amount to make awards, shall be in the discre-
14 tion of the Board. Any such determination, except
15 the determination of the amount of an award if the
16 award was made in accordance with this paragraph,
17 may be appealed to the Commission not more than
18 30 days after the determination is issued by the
19 Board. The Commission shall review the determina-
20 tion made by the Board in accordance with section
21 107(c).

22 “(7) PROTECTION OF WHISTLEBLOWERS.—

23 “(A) PROHIBITION AGAINST RETALIA-
24 TION.—No employer may discharge, demote,
25 suspend, threaten, harass, directly or indirectly,

1 or in any other manner discriminate against, a
2 whistleblower in the terms and conditions of
3 employment because of any lawful act done by
4 the whistleblower—

5 “(i) in providing information to the
6 Board in accordance with this subsection;

7 “(ii) in initiating, testifying in, or as-
8 sisting in any investigation or judicial or
9 administrative action of the Board based
10 upon or related to such information; or

11 “(iii) in making disclosures that are
12 required or protected under the Sarbanes-
13 Oxley Act of 2002 (15 U.S.C. 7201 et
14 seq.), the Securities Exchange Act of 1934
15 (15 U.S.C. 78a et seq.), including section
16 10A(m) of such Act (15 U.S.C. 78f(m)),
17 section 1513(e) of title 18, United States
18 Code, and any other law, rule, or regula-
19 tion subject to the jurisdiction of the Secu-
20 rities Exchange Commission.

21 “(iv) in providing information regard-
22 ing any conduct that the whistleblower rea-
23 sonably believes constitutes a potential vio-
24 lation of any law, rule, or regulation sub-
25 ject to the jurisdiction of the Board or the

1 Commission (including disclosures that are
2 required or protected under the Sarbanes-
3 Oxley Act of 2002 or the Securities Ex-
4 change Act of 1934) to—

5 “(I) a person with supervisory
6 authority over the whistleblower at the
7 whistleblower’s employer, where such
8 employer is an entity registered with
9 or required to be registered with the
10 Board, the Commission, a self-regu-
11 latory organization, or a State securi-
12 ties commission or office performing
13 like functions; or

14 “(II) such other person working
15 for the employer described under sub-
16 clause (I) who has the authority to in-
17 vestigate, discover, or terminate mis-
18 conduct.

19 “(B) ENFORCEMENT OF PROHIBITION
20 AGAINST RETALIATION.—

21 “(i) CAUSE OF ACTION.—An indi-
22 vidual who alleges discharge or other dis-
23 crimination in violation of subparagraph
24 (A) may bring an action under this para-
25 graph in the appropriate district court of

1 the United States for the relief provided in
2 subparagraph (C).

3 “(ii) SUBPOENAS.—A subpoena re-
4 quiring the attendance of a witness at a
5 trial or hearing conducted under this sub-
6 section may be served at any place in the
7 United States.

8 “(iii) STATUTE OF LIMITATIONS.—

9 “(I) IN GENERAL.—An action
10 under this paragraph may not be
11 brought—

12 “(aa) more than 6 years
13 after the date on which the viola-
14 tion of subparagraph (A) oc-
15 curred; or

16 “(bb) more than 3 years
17 after the date when facts mate-
18 rial to the right of action are
19 known or reasonably should have
20 been known by the employee al-
21 leging a violation of subpara-
22 graph (A).

23 “(II) REQUIRED ACTION WITHIN
24 10 YEARS.—Notwithstanding sub-
25 clause (I), an action under this para-

1 graph may not in any circumstance be
2 brought more than 10 years after the
3 date on which the violation occurs.

4 “(C) RELIEF.—Relief for an individual
5 prevailing in an action brought under this para-
6 graph shall include—

7 “(i) reinstatement with the same se-
8 niority status that the individual would
9 have had, but for the discrimination;

10 “(ii) two times the amount of back
11 pay otherwise owed to the individual, with
12 interest; and

13 “(iii) compensation for litigation
14 costs, expert witness fees, and reasonable
15 attorneys’ fees.

16 “(D) CONFIDENTIALITY.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), the Board and any of-
19 ficer or employee of the Board may not
20 disclose any information, including infor-
21 mation provided by a whistleblower to the
22 Board, which could reasonably be expected
23 to reveal the identity of a whistleblower
24 unless and until required to be disclosed to
25 a defendant or respondent in connection

1 with a public proceeding instituted by the
2 Commission or any entity described in
3 clause (iii).

4 “(ii) RULE OF CONSTRUCTION.—
5 Nothing in this section is intended to limit,
6 or shall be construed to limit, the ability of
7 the Attorney General to present such evi-
8 dence to a grand jury or to share such evi-
9 dence with potential witnesses or defend-
10 ants in the course of an ongoing criminal
11 investigation.

12 “(iii) AVAILABILITY TO GOVERNMENT
13 AGENCIES.—

14 “(I) IN GENERAL.—Without the
15 loss of its status as confidential in the
16 hands of the Board, all information
17 referred to in clause (i) may, in the
18 discretion of the Board, when deter-
19 mined by the Board to be necessary to
20 accomplish the purposes of this Act
21 and to protect investors, be made
22 available to—

23 “(aa) the Attorney General
24 of the United States;

1 “(bb) an appropriate regu-
2 latory authority;

3 “(cc) a self-regulatory orga-
4 nization;

5 “(dd) a State attorney gen-
6 eral in connection with any crimi-
7 nal investigation;

8 “(ee) any appropriate State
9 regulatory authority;

10 “(ff) the Commission;

11 “(gg) a foreign securities
12 authority; and

13 “(hh) a foreign law enforce-
14 ment authority.

15 “(II) CONFIDENTIALITY.—

16 “(aa) IN GENERAL.—Each
17 of the entities described in items
18 (aa) through (ff) of subclause (I)
19 shall maintain such information
20 as confidential in accordance with
21 the requirements established
22 under clause (i).

23 “(bb) FOREIGN AUTHORI-
24 TIES.—Each of the entities de-
25 scribed in subclauses (gg) and

1 (hh) of subclause (I) shall main-
2 tain such information in accord-
3 ance with such assurances of con-
4 fidentiality as the Board deter-
5 mines appropriate.

6 “(E) RIGHTS RETAINED.—Nothing in this
7 subsection shall be deemed to diminish the
8 rights, privileges, or remedies of any whistle-
9 blower under any Federal or State law, or
10 under any collective bargaining agreement.

11 “(8) PROVISION OF FALSE INFORMATION.—A
12 whistleblower shall not be entitled to an award under
13 this section if the whistleblower—

14 “(A) knowingly and willfully makes any
15 false, fictitious, or fraudulent statement or rep-
16 resentation; or

17 “(B) uses any false writing or document
18 knowing the writing or document contains any
19 false, fictitious, or fraudulent statement or
20 entry.

21 “(9) RULEMAKING AUTHORITY.—The Board
22 shall have the authority to issue such rules and
23 standards as may be necessary or appropriate to im-
24 plement the provisions of this section consistent with
25 the purposes of this section.

