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(Original Signature of Member)

109TH CONGRESS
2D SESSION

H. R. _____

To improve whistleblower protections.

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY (for himself and Mrs. MALONEY) introduced the following bill;
which was referred to the Committee on _____

A BILL

To improve whistleblower protections.

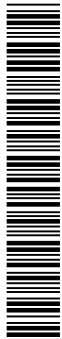
1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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-



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

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

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

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

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

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



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

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

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

7 (1) filing a complaint with the Secretary of
8 Labor; or

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

17 (b) PROCEDURE.—

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

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



1 (A) to the person named in the complaint;
2 and

3 (B) to the person's employer or, in the
4 case of a Federal contractor or subcontractor,
5 to the instrumentality of the Government with
6 which such contractor or subcontractor has en-
7 tered into, or submitted an offer to enter into,
8 a contract.

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

13 (4) STATUTE OF LIMITATIONS.—An action
14 under subsection (a) shall be commenced not later
15 than 6 years after the date on which the alleged vio-
16 lation occurred.

17 **SEC. 4. REMEDIES.**

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

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

23 (1) reinstatement with the same seniority status
24 and employment grade or pay level (or the equiva-



1 lent) that the covered individual would have had, but
2 for the discrimination;

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

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

9 (4) punitive damages in an amount not to ex-
10 ceed the greater of 3 times the amount of any mone-
11 etary damages awarded under this Act (apart from
12 this paragraph) or \$5,000,000.

13 **SEC. 5. STATE SECRETS PRIVILEGE.**

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

21 **SEC. 6. CRIMINAL PENALTIES.**

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



1 (b) REPORTING REQUIREMENTS.—The Department
2 of Justice shall (based on such periodic reports and other
3 information from the Department of Labor as the Depart-
4 ment of Justice may require) submit to Congress an an-
5 nual report on the enforcement of subsection (a). Each
6 such report shall—

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

9 (2) describe the status or disposition of each
10 such case; and

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

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

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

23 **SEC. 8. NOTIFICATION.**

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



1 **SEC. 9. DEFINITIONS.**

2 For purposes of this Act—

3 (1) the term “covered individual” means an em-
4 ployee or a member of the uniformed services (as de-
5 fined by section 2101(3) of title 5, United States
6 Code)—

7 (A) serving in or under—

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

20 (ii) a Federal contractor or subcon-
21 tractor; or

22 (iii) the Federal National Mortgage
23 Association, the Federal Home Loan Mort-
24 gage Corporation, and any other federally
25 chartered entity; or



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

4 (2) the term “employee” means—

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

9 (B) with respect to an employer referred to
10 in paragraph (1)(A)(ii) or (1)(B), any officer,
11 partner, employee, or agent;

12 such term, as defined by subparagraph (A), includes
13 an individual holding a position in an instrumen-
14 tality of the Government identified in the parenthet-
15 ical matter under paragraph (1)(A);

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

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



1 (5) the term “lawful” means not specifically
2 prohibited by law, except that, in the case of any in-
3 formation the disclosure of which is specifically pro-
4 hibited by Federal statute or specifically required by
5 Executive order to be kept secret in the interest of
6 national defense or the conduct of foreign affairs,
7 any disclosure of such information to any Member of
8 Congress, committee of Congress, or other recipient
9 authorized to receive such information, shall be
10 deemed lawful;

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

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

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

24 (9) the term “subcontractor”, with respect to a
25 Federal contractor, means any person, other than



1 the Federal contractor, who offers to furnish or fur-
2 nishes any supplies, materials, equipment, or serv-
3 ices of any kind under a contract with an instrumen-
4 tality of the Government or a subcontract (at any
5 tier) entered into under such a contract.

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

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

9 (b) **APPLICABILITY.**—This Act shall apply to—

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

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

