109TH CONGRESS 2D SESSION

H. R. 4925

To improve whistleblower protections.

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

A BILL

To improve whistleblower protections.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for
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.

SEC. 2. DISCRIMINATION AGAINST WHISTLEBLOWERS PROHIBITED.

It shall be unlawful for any person to discharge, demote, suspend, reprimand, investigate, or take or fail to take any other personnel action that in any manner discriminates against any covered individual, or in any other manner discriminate against any covered individual (including by a denial, suspension, or revocation of a security clearance or by any other security access determination, or by denial of award of a Federal contract or subcontract), or to threaten or recommend the discharge, demotion, suspension, reprimand, investigation, other personnel action (or rejection of such action) that in any manner discriminates against any covered individual, or other manner of discrimination if such action, discrimination, or recommendation is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the covered individual—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation or proceeding regarding any conduct which the covered individual reasonably believes constitutes evidence of a violation of any law, rule, or regulation,
a threat to national or homeland security, a substantial and specific threat to public health or safety, or fraud, abuse of authority, waste, or mismanagement of public funds, if the information or assistance is provided to or the investigation is conducted by—

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

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office;

(C) any person with supervisory or managerial authority over the covered individual (or any other person who has the authority to investigate, discover, or terminate misconduct); or

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

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

(3) to refuse to violate or assist in the violation of any law, rule, or regulation.
SEC. 3. ENFORCEMENT ACTION.

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

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

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

(b) PROCEDURE.—

(1) IN GENERAL.—An action under subsection (a)(1) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(2) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made—

(A) to the person named in the complaint;

and

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

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

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

SEC. 4. REMEDIES.

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

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

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

(2) compensatory damages, including the
amount of any back pay, with interest;
(3) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys fees; and

(4) punitive damages in an amount not to exceed the greater of 3 times the amount of any monetary damages awarded under this Act (apart from this paragraph) or $5,000,000.

SEC. 5. STATE SECRETS PRIVILEGE.

If, in any action brought under section 3(a)(2), the Government asserts as a defense the privilege commonly referred to as the “state secrets privilege” and the assertion of such privilege prevents the plaintiff from establishing a prima facie case in support of the plaintiff’s claim, the court shall enter judgment for the plaintiff and shall determine the relief to be granted.

SEC. 6. CRIMINAL PENALTIES.

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

(b) Reporting requirements.—The Department of Justice shall (based on such periodic reports and other information from the Department of Labor as the Department of Justice may require) submit to Congress an an-
nual report on the enforcement of subsection (a). Each such report shall—

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

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

(3) in any actions under section 3(a)(2) in which the covered individual was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under subsection (a) have been brought and, if not, the reasons therefor.

SEC. 7. RIGHTS RETAINED BY COVERED INDIVIDUAL.

Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement. The rights and remedies in this Act may not be waived by any agreement, policy, form, or condition of employment.

SEC. 8. NOTIFICATION.

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

SEC. 9. DEFINITIONS.

For purposes of this Act—

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

(A) serving in or under—

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

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

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

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

(2) the term “employee” means—
(A) with respect to an employer referred to in paragraph (1)(A)(i), an employee as defined by section 2105 of title 5, United States Code; and

(B) with respect to an employer referred to in paragraph (1)(A)(ii) or (1)(B), any officer, partner, employee, or agent; such term, as defined by subparagraph (A), includes an individual holding a position in an instrumentality of the Government identified in the parenthetical matter under paragraph (1)(A);

(3) the term “evidence” means information that meets the standard for admissibility under the Federal Rules of Evidence, or is used as part of the record in support of a finding in an investigative report or decision by a government office with jurisdiction;

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

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

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

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

(8) the term “reasonably believes”, with respect to information provided by a covered individual, means only that a disinterested observer with knowledge of the essential facts known to and readily ascertained by the covered individual could conclude that the information constitutes evidence of conduct described under section 2(1); and

(9) the term “subcontractor”, with respect to a Federal contractor, means any person, other than the Federal contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a contract with an instrumen-
tality of the Government or a subcontract (at any
tier) entered into under such a contract.

SEC. 10. EFFECTIVE DATE; APPLICABILITY.

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

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

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

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