

Suspend the Rules and Pass the Bill, H.R. 3625, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

116TH CONGRESS
1ST SESSION

H. R. 3625

To establish a whistleblower program at the Public Company Accounting Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 5, 2019

Ms. GARCIA of Texas introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “PCAOB Whistleblower
5 Protection Act of 2019”.

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

7 The Sarbanes-Oxley Act of 2002 is amended—

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

3 “(f) WHISTLEBLOWER INCENTIVES AND PROTEC-
4 TION.—

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

7 “(A) COVERED PROCEEDING.—The term
8 ‘covered proceeding’ means any disciplinary
9 proceeding by the Board initiated after the date
10 of the enactment of this subsection that results
11 in monetary sanctions exceeding \$250,000.

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

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

16 “(ii) is not known to the Board from
17 any other source, unless the whistleblower
18 is the original source of the information;
19 and

20 “(iii) is not exclusively derived from
21 an allegation made in a disciplinary pro-
22 ceeding, in a judicial or administrative
23 hearing, in a governmental report, hearing,
24 audit, or investigation, or from the news

1 media, unless the whistleblower is a source
2 of the information.

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

8 “(D) WHISTLEBLOWER.—

9 “(i) IN GENERAL.—The term ‘whistle-
10 blower’ means any individual who provides,
11 or 2 or more individuals acting jointly who
12 provide, information relating to a violation
13 of this Act, the rules of the Board, the
14 provisions of the securities laws relating to
15 the preparation and issuance of audit re-
16 ports and the obligations and liabilities of
17 accountants with respect thereto, including
18 the rules of the Board issued pursuant to
19 this Act, or professional standards.

20 “(ii) SPECIAL RULE.—Solely for the
21 purposes of paragraph (7), the term ‘whis-
22 tleblower’ shall also include any individual
23 who takes an action described in para-
24 graph 7(A), or 2 or more individuals act-

1 ing jointly who take an action described in
2 paragraph 7(A).

3 “(2) AWARDS.—

4 “(A) IN GENERAL.—In any covered dis-
5 ciplinary proceeding, the Board shall pay an
6 award or awards to 1 or more whistleblowers
7 who voluntarily provided original information to
8 the Board that resulted in the board imposing
9 monetary sanctions, in an aggregate amount
10 determined in the discretion of the Board but
11 equal to—

12 “(i) not less than 10 percent, in total,
13 of what has been collected of the monetary
14 sanctions imposed; and

15 “(ii) not more than 30 percent, in
16 total, of what has been collected of the
17 monetary sanctions.

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

22 “(3) DETERMINATION OF AMOUNT OF AWARD;
23 DENIAL OF AWARD.—

24 “(A) DETERMINATION OF AMOUNT OF
25 AWARD.—

1 “(i) DISCRETION.—The determination
2 of the amount of an award made under
3 paragraph (2) shall be in the discretion of
4 the Board.

5 “(ii) CRITERIA.— In determining the
6 amount of an award made under subpara-
7 graph (A), the Board shall take into con-
8 sideration—

9 “(I) the significance of the infor-
10 mation provided by the whistleblower
11 to the success of the disciplinary pro-
12 ceeding;

13 “(II) the degree of assistance
14 provided by the whistleblower and any
15 legal representative of the whistle-
16 blower in a disciplinary proceeding;
17 and

18 “(III) the programmatic interest
19 of the Board in deterring violations by
20 making awards to whistleblowers who
21 provide information that lead to suc-
22 cessful enforcement.

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

1 “(i) to any whistleblower who is, or
2 was at the time the whistleblower acquired
3 the original information submitted to the
4 Board, a member, officer, or employee of—

5 “(I) an appropriate regulatory
6 agency (as such term is defined in
7 section 3 of the Securities Exchange
8 Act of 1934);

9 “(II) the Department of Justice;

10 “(III) a self-regulatory organiza-
11 tion (as such term is defined in sec-
12 tion 34 of the Securities Exchange
13 Act of 1934);

14 “(IV) the Public Company Ac-
15 counting Oversight Board; or

16 “(V) a law enforcement organiza-
17 tion;

18 “(ii) to any whistleblower who is con-
19 victed of a criminal violation related to the
20 Board finding for which the whistleblower
21 otherwise could receive an award under
22 this section;

23 “(iii) to any whistleblower who gains
24 the information through the performance
25 of an audit of financial statements re-

1 required under the securities laws and for
2 whom such submission would be contrary
3 to the requirements of section 10A of the
4 Securities Exchange Act of 1934 (15
5 U.S.C. 78j-1); and

6 “(iv) to any whistleblower who fails to
7 submit information to the Board in such
8 form as the Board may, by rule, require.

9 “(4) REPRESENTATION.—

10 “(A) PERMITTED REPRESENTATION.—Any
11 whistleblower who makes a claim for an award
12 under paragraph (2) may be represented by
13 counsel.

14 “(B) REQUIRED REPRESENTATION.—

15 “(i) IN GENERAL.—Any whistleblower
16 who anonymously makes a claim for an
17 award under paragraph (2) shall be rep-
18 resented by counsel if the whistleblower
19 anonymously submits the information upon
20 which the claim is based.

21 “(ii) DISCLOSURE OF IDENTITY.—

22 Prior to the payment of an award, a whis-
23 tleblower shall disclose the identity of the
24 whistleblower and provide such other infor-

1 mation as the Board may require, directly
2 or through counsel, for the whistleblower.

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

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

18 “(7) PROTECTION OF WHISTLEBLOWERS.—

19 “(A) PROHIBITION AGAINST RETALIA-
20 TION.—No employer may discharge, demote,
21 suspend, threaten, harass, directly or indirectly,
22 or in any other manner discriminate against, a
23 whistleblower in the terms and conditions of
24 employment because of any lawful act done by
25 the whistleblower—

1 “(i) in providing information to the
2 Board in accordance with this subsection;

3 “(ii) in initiating, testifying in, or as-
4 sisting in any investigation or judicial or
5 administrative action of the Board based
6 upon or related to such information; or

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

17 “(iv) in providing information regard-
18 ing any conduct that the whistleblower rea-
19 sonably believes constitutes a potential vio-
20 lation of any law, rule, or regulation sub-
21 ject to the jurisdiction of the Board or the
22 Commission (including disclosures that are
23 required or protected under the Sarbanes-
24 Oxley Act of 2002 or the Securities Ex-
25 change Act of 1934) to—

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

10 “(II) such other person working
11 for the employer described under sub-
12 clause (I) who has the authority to in-
13 vestigate, discover, or terminate mis-
14 conduct.

15 “(B) ENFORCEMENT OF PROHIBITION
16 AGAINST RETALIATION.—

17 “(i) CAUSE OF ACTION.—An indi-
18 vidual who alleges discharge or other dis-
19 crimination in violation of subparagraph
20 (A) may bring an action under this para-
21 graph in the appropriate district court of
22 the United States for the relief provided in
23 subparagraph (C).

24 “(ii) SUBPOENAS.—A subpoena re-
25 quiring the attendance of a witness at a

1 trial or hearing conducted under this sub-
2 section may be served at any place in the
3 United States.

4 “(iii) STATUTE OF LIMITATIONS.—

5 “(I) IN GENERAL.—An action
6 under this paragraph may not be
7 brought—

8 “(aa) more than 6 years
9 after the date on which the viola-
10 tion of subparagraph (A) oc-
11 curred; or

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

19 “(II) REQUIRED ACTION WITHIN
20 10 YEARS.—Notwithstanding sub-
21 clause (I), an action under this para-
22 graph may not in any circumstance be
23 brought more than 10 years after the
24 date on which the violation occurs.

1 “(C) RELIEF.—Relief for an individual
2 prevailing in an action brought under this para-
3 graph shall include—

4 “(i) reinstatement with the same se-
5 niority status that the individual would
6 have had, but for the discrimination;

7 “(ii) 2 times the amount of back pay
8 otherwise owed to the individual, with in-
9 terest; and

10 “(iii) compensation for litigation
11 costs, expert witness fees, and reasonable
12 attorneys’ fees.

13 “(D) CONFIDENTIALITY.—

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

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

9 “(iii) AVAILABILITY TO GOVERNMENT
10 AGENCIES.—

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

20 “(aa) the Attorney General
21 of the United States;

22 “(bb) an appropriate regu-
23 latory authority;

24 “(cc) a self-regulatory orga-
25 nization;

1 “(dd) a State attorney gen-
2 eral in connection with any crimi-
3 nal investigation;
4 “(ee) any appropriate State
5 regulatory authority;
6 “(ff) the Commission;
7 “(gg) a foreign securities
8 authority; and
9 “(hh) a foreign law enforce-
10 ment authority.
11 “(II) CONFIDENTIALITY.—
12 “(aa) IN GENERAL.—Each
13 of the entities described in items
14 (aa) through (ff) of subclause (I)
15 shall maintain such information
16 as confidential in accordance with
17 the requirements established
18 under clause (i).
19 “(bb) FOREIGN AUTHORI-
20 TIES.— Each of the entities de-
21 scribed in subclauses (gg) and
22 (hh) of subclause (I) shall main-
23 tain such information in accord-
24 ance with such assurances of con-

1 confidentiality as the Board deter-
2 mines appropriate.

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

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

11 “(A) knowingly and willfully makes any
12 false, fictitious, or fraudulent statement or rep-
13 resentation; or

14 “(B) uses any false writing or document
15 knowing the writing or document contains any
16 false, fictitious, or fraudulent statement or
17 entry.

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

23 “(10) COORDINATION.—To the maximum ex-
24 tent practicable, the Board shall coordinate with the
25 Office of the Whistleblower of the Securities Ex-

1 change Commission in carrying out this sub-
2 section.”; and

3 (2) in section 109(c)(2) (15 U.S.C. 7219(c)(2),
4 by striking “all funds collected” and inserting “at
5 least 50 percent of funds collected”.

6 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

7 The budgetary effects of this Act, for the purpose of
8 complying with the Statutory Pay-As-You-Go Act of 2010,
9 shall be determined by reference to the latest statement
10 titled “Budgetary Effects of PAYGO Legislation” for this
11 Act, submitted for printing in the Congressional Record
12 by the Chairman of the House Budget Committee, pro-
13 vided that such statement has been submitted prior to the
14 vote on passage.