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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend title 38, United States Code, to make certain improvements in the laws relating to whistleblower protection at the Department of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title 38, United States Code, to make certain improvements in the laws relating to whistleblower protection at the Department of Veterans Affairs, 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 “Strengthening VA
5 Whistleblower Protection Act of 2021”.

1 **SEC. 2. INDEPENDENCE OF OFFICE OF ACCOUNTABILITY**
2 **AND WHISTLEBLOWER PROTECTION FROM**
3 **GENERAL COUNSEL.**

4 Subsection (e) of section 323 of title 38, United
5 States Code, is amended—

6 (1) by inserting “(1)” before “The Office”; and

7 (2) by adding at the end the following new
8 paragraphs:

9 “(2) The General Counsel of the Department shall
10 establish an Office of General Counsel for the Office of
11 Accountability and Whistleblower Protection. Such Office,
12 and the employees of such Office, shall be independent of
13 the Office of the General Counsel of the Department.

14 “(3) The General Counsel of the Department, or any
15 employee of the Office of the General Counsel of the De-
16 partment, may not directly or indirectly provide any rec-
17 ommendation, advisory opinion, or authoritative decision
18 for any matter relevant to a whistleblower case under the
19 jurisdiction of the Office and the Assistant Secretary.

20 “(4) No employee of the Office of the General Coun-
21 sel of the Department may be detailed, reassigned, or oth-
22 erwise employed by the Office of Accountability and Whis-
23 tleblower Protection before the date that is two years after
24 the date on which such employee ceases to be an employee
25 of the Office of the General Counsel of the Department.”.

1 **SEC. 3. TECHNICAL ASSISTANCE AND GUIDANCE FOR WHIS-**
2 **TLEBLOWERS.**

3 (a) IN GENERAL.—Subchapter II of chapter 7 of
4 such title is amended by adding at the end the following
5 new section:

6 **“§ 734. Technical assistance for whistleblowers**

7 “(a) IN GENERAL.—The Assistant Secretary for Ac-
8 countability and Whistleblower Protection shall—

9 “(1) make all reasonable efforts to—

10 “(A) guide, advise, and assist a whistle-
11 blower regarding a whistleblower’s rights and
12 the abilities and authorities of different entities
13 that assist or respond to whistleblowers;

14 “(B) obtain all evidence necessary to sub-
15 stantiate the complaint of the whistleblower of
16 any alleged—

17 “(i) violation of any law, rule, or regu-
18 lation;

19 “(ii) gross mismanagement;

20 “(iii) waste of funds;

21 “(iv) abuse of authority;

22 “(v) specific danger to public health
23 or safety; or

24 “(vi) censorship related to research,
25 analysis, or technical information; and

1 “(2) provide for an optional alternative dispute
2 resolution program, which shall include attempts to
3 mediate resolutions or find reassignments for De-
4 partment employees involved in whistleblower allega-
5 tions.

6 “(b) SHARING OF RECORDS.—As part of the assist-
7 ance provided under this section, the Assistant Secretary
8 shall make all reasonable efforts to obtain and share rel-
9 evant records to the claimant that the claimant adequately
10 identifies to the Secretary.

11 “(c) WHISTLEBLOWER DEFINED.—In this section,
12 the term ‘whistleblower’ has the meaning given such term
13 in section 323(g) of this title.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of such chapter is amended by inserting
16 after the item section 733 the following new item:

“734. Technical assistance for whistleblowers.”.

17 **SEC. 4. EXPANSION OF WHISTLEBLOWER PROTECTIONS.**

18 (a) CLARIFICATION OF PROHIBITED PERSONNEL AC-
19 TION.—Section 731(c)(3) of title 38, United States Code,
20 is amended by inserting “, making a referral to boards
21 of licensure,” after “negative peer review”.

22 (b) FUNCTION OF OFFICE OF ACCOUNTABILITY AND
23 WHISTLEBLOWER PROTECTION.—Section 323 of such
24 title, as amended by section 2, is further amended—

1 (1) in subsection (c)(1), by adding at the end
2 the following new subparagraph:

3 “(J) Without affecting other statutory rights or
4 remedies, issuing binding decisions for temporary re-
5 lief when a Department employee demonstrates, by
6 a preponderance of the evidence, that a prohibited
7 personnel action was a contributing factor with re-
8 spect to alleged retaliation against a Department
9 employee by a Department supervisor.”; and

10 (2) in subsection (g), by adding at the end the
11 following new paragraph:

12 “(4) The term ‘prohibited personnel action’ has
13 the meaning given such term in section 731(c) of
14 this title.”.

15 (c) ANTI-RETALIATION PROTECTION FOR SENIOR
16 EXECUTIVES.—

17 (1) IN GENERAL.—Section 713 of such title is
18 amended—

19 (A) by redesignating subsection (d) as sub-
20 section (e); and

21 (B) by inserting after subsection (c) the
22 following new subsection (d):

23 “(d) WHISTLEBLOWER PROTECTION.—(1) In the
24 case of a covered individual seeking corrective action (or
25 on behalf of whom corrective action is sought) from the

1 Office of Special Counsel based on an alleged prohibited
2 personnel practice described in section 2302(b) of title 5,
3 the Secretary may not reprimand or suspend, involuntarily
4 reassign, demote, or remove such covered individual under
5 subsection (a) without the approval of the Special Counsel
6 under section 1214(f) of title 5.

7 “(2) In the case of a covered individual who has made
8 a whistleblower disclosure to the Assistant Secretary for
9 Accountability and Whistleblower Protection, the Sec-
10 retary may not reprimand or suspend, involuntarily reas-
11 sign, demote, or remove such covered individual under
12 subsection (a) until—

13 “(A) in the case in which the Assistant Sec-
14 retary determines to refer the whistleblower disclo-
15 sure under section 323(c)(1)(D) of this title to an
16 office or other investigative entity, a final decision
17 with respect to the whistleblower disclosure has been
18 made by such office or other investigative entity; or

19 “(B) in the case in which the Assistant Sec-
20 retary determines not to refer the whistleblower dis-
21 closure under such section, the Assistant Secretary
22 makes such determination.”.

23 (2) CONFORMING AMENDMENTS.—Title 38,
24 United States Code, is amended—

1 (A) in section 323(c)(1)(H), by striking
2 “section 713(d)” and inserting “section
3 713(e)”;

4 (B) in section 714(h)(1)(A), by striking
5 “section 713(d)” and inserting “section
6 713(e)”;

7 (C) in section 727(c), by striking “section
8 713(d)” and inserting “section 713(e)”; and

9 (D) in section 7461(c)(1), by striking “sec-
10 tion 713(d)” and inserting “section 713(e)”.

11 **SEC. 5. REQUIREMENT FOR REGULATIONS.**

12 Not later than one year after the date of the enact-
13 ment of this Act, the Assistant Secretary for Account-
14 ability and Whistleblower Protection of the Department
15 of Veterans Affairs shall issue regulations to carry out all
16 activities under section 323 of title 38, United States
17 Code, as amended by this Act.