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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Strengthening VA Whistleblower Protection Act of 2021”.

(Original Signature of Member)
SEC. 2. INDEPENDENCE OF OFFICE OF ACCOUNTABILITY
AND WHISTLEBLOWER PROTECTION FROM
GENERAL COUNSEL.

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

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

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

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

“(3) The General Counsel of the Department, or any employee of the Office of the General Counsel of the Department, may not directly or indirectly provide any recommendation, advisory opinion, or authoritative decision for any matter relevant to a whistleblower case under the jurisdiction of the Office and the Assistant Secretary.

“(4) No employee of the Office of the General Counsel of the Department may be detailed, reassigned, or otherwise employed by the Office of Accountability and Whistleblower Protection before the date that is two years after the date on which such employee ceases to be an employee of the Office of the General Counsel of the Department.”.
SEC. 3. TECHNICAL ASSISTANCE AND GUIDANCE FOR WHISTLEBLOWERS.

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

§ 734. Technical assistance for whistleblowers

“(a) IN GENERAL.—The Assistant Secretary for Accountability and Whistleblower Protection shall—

“(1) make all reasonable efforts to—

“(A) guide, advise, and assist a whistleblower regarding a whistleblower’s rights and the abilities and authorities of different entities that assist or respond to whistleblowers;

“(B) obtain all evidence necessary to substantiate the complaint of the whistleblower of any alleged—

“(i) violation of any law, rule, or regulation;

“(ii) gross mismanagement;

“(iii) waste of funds;

“(iv) abuse of authority;

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

“(vi) censorship related to research, analysis, or technical information; and
“(2) provide for an optional alternative dispute resolution program, which shall include attempts to mediate resolutions or find reassignments for Department employees involved in whistleblower allegations.

“(b) SHARING OF RECORDS.—As part of the assistance provided under this section, the Assistant Secretary shall make all reasonable efforts to obtain and share relevant records to the claimant that the claimant adequately identifies to the Secretary.

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

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

“734. Technical assistance for whistleblowers.”.

SEC. 4. EXPANSION OF WHISTLEBLOWER PROTECTIONS.

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

(b) FUNCTION OF OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.—Section 323 of such title, as amended by section 2, is further amended—
(1) in subsection (c)(1), by adding at the end the following new subparagraph:

“(J) Without affecting other statutory rights or remedies, issuing binding decisions for temporary relief when a Department employee demonstrates, by a preponderance of the evidence, that a prohibited personnel action was a contributing factor with respect to alleged retaliation against a Department employee by a Department supervisor.”; and

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

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

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

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

(A) by redesignating subsection (d) as subsection (e); and

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

“(d) WHISTLEBLOWER PROTECTION.—(1) In the case of a covered individual seeking corrective action (or on behalf of whom corrective action is sought) from the
Office of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not reprimand or suspend, involuntarily reassign, demote, or remove such covered individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

“(2) In the case of a covered individual who has made a whistleblower disclosure to the Assistant Secretary for Accountability and Whistleblower Protection, the Secretary may not reprimand or suspend, involuntarily reassign, demote, or remove such covered individual under subsection (a) until—

“(A) in the case in which the Assistant Secretary determines to refer the whistleblower disclosure under section 323(c)(1)(D) of this title to an office or other investigative entity, a final decision with respect to the whistleblower disclosure has been made by such office or other investigative entity; or

“(B) in the case in which the Assistant Secretary determines not to refer the whistleblower disclosure under such section, the Assistant Secretary makes such determination.”.

(2) CONFORMING AMENDMENTS.—Title 38, United States Code, is amended—
(A) in section 323(c)(1)(H), by striking “section 713(d)” and inserting “section 713(e)”;  
(B) in section 714(h)(1)(A), by striking “section 713(d)” and inserting “section 713(e)”;  
(C) in section 727(c), by striking “section 713(d)” and inserting “section 713(e)”; and  
(D) in section 7461(c)(1), by striking “section 713(d)” and inserting “section 713(e)”.  

SEC. 5. REQUIREMENT FOR REGULATIONS.  

Not later than one year after the date of the enactment of this Act, the Assistant Secretary for Accountability and Whistleblower Protection of the Department of Veterans Affairs shall issue regulations to carry out all activities under section 323 of title 38, United States Code, as amended by this Act.