116TH CONGRESS
2D SESSION

H. R. _____

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Swalwell of California introduced the following bill; which was referred to the Committee on __________________

A BILL

To amend title 18, United States Code, to make the disclosure of the identity of a whistleblower a criminal offense, to provide a civil right of action for the disclosure of the identity of a whistleblower, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Enhancing Protections for Whistleblower Anonymity Act”.

SEC. 2. CRIMINAL PENALTY FOR THE DISCLOSURE OF THE
IDENTITY OF A WHISTLEBLOWER.

(a) IN GENERAL.—Chapter 88 of title 18, United
States Code, is amended by adding at the end the fol-
lowing new section:

§ 1802. Disclosure of whistleblower identity

“(a) IN GENERAL.—Except under the circumstances
described in subsection (b), whoever, being an employee
of the Federal Government or contractor of the Federal
Government, knowingly makes a prohibited disclosure
shall be fined under this title, imprisoned not more than
1 year, or both.

“(b) EXCEPTIONS.—The circumstances described in
this subsection are the following:

“(1) The prohibited disclosure—

“(A) is made to—

“(i) an employee of the Federal Gov-
ernment;

“(ii) an employee of a State govern-
ment; or

“(iii) an employee of a local govern-
ment; and

“(B) is expressly permitted by any other
law.

“(2) The whistleblower provides written consent
before the prohibited disclosure is made.
“(c) APPLICABILITY.—Subsection (a) shall only apply to a prohibited disclosure that is made after the date of enactment of this section.

“(d) DEFINITIONS.—In this section:

“(1) EMPLOYEE OF THE FEDERAL GOVERNMENT.—The term ‘employee of the Federal Government’ means an officer or employee of the United States Government, including—

“(A) a member of the uniformed service;

“(B) a Member of Congress; and

“(C) the President of the United States.

“(2) MEMBER OF CONGRESS.—The term ‘Member of Congress’ has the meaning given such term in section 2106 of title 5.

“(3) PROHIBITED DISCLOSURE.—The term ‘prohibited disclosure’ means a formal or informal communication or transmission of—

“(A) the identity of a whistleblower; or

“(B) identifying information relating to a whistleblower.

“(4) WHISTLEBLOWER.—The term ‘whistleblower’ means each of the following:

“(A) An employee, former employee, or applicant for employment (as such terms are used in section 1213(a) of title 5) who makes a dis-
closure that is described in paragraph (1) or (2) of such section.

“(B) An employee of an agency or applicant for employment at an agency (as such terms are used in section 2302(b)(8)(C) of title 5) who makes a disclosure as described in such section.

“(C) A former employee of the Federal Government who makes a disclosure to Congress of information described in section 2302(b)(8)(C) of title 5.

“(D) An employee that makes a complaint or otherwise provides information to the Inspector General (as the terms ‘employee’ and ‘Inspector General’ are used in the Inspector General Act of 1978 (5 U.S.C. App.)) pursuant to the requirements of section 7 of such Act.

“(E) A member of the armed forces that—

“(i) complains of or discloses information; and

“(ii) is protected against retaliation for such actions under section 1034 of title 10.

“(F) An employee (as the term ‘employee’ is used in section 103H of the National Secu-
rity Act of 1947 (50 U.S.C. 3033)) who the In-
spector General of the Intelligence Community
may not disclose the identity of pursuant to the
requirements of section 103H(g)(3)(A) of such
Act (50 U.S.C. 3033(g)(3)(A)).

“(G) An employee (as the term ‘employee’
is used in section 4712(a)(3)(A) of title 41)
who is deemed to have made a disclosure under
such section.

“(H) A individual not otherwise covered by
subparagraphs (A) through (F) who—

“(i) is protected by law to make a dis-
closure of—

“(I) a violation of law or regula-
tion; or

“(II) gross mismanagement,
gross waste of funds, abuse of author-
ity, or a substantial and specific dan-
ger to public health or the safety of a
Federal entity;

“(ii) makes such a disclosure;

“(iii) is not prohibited by law to make
such a disclosure; and

“(iv) is not disclosing information
that is determined pursuant to Executive
Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information), or a successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to require protection against unauthorized disclosure.”.

(b) Clerical Amendment.—The table of sections for chapter 88 of title 18, United States Code, is amended by adding at the end the following new item:

“1802. Disclosure of whistleblower identity.”.

SEC. 3. CIVIL RIGHT OF ACTION AGAINST DISCLOSURE OF WHISTLEBLOWER IDENTITY.

(a) Prohibited Disclosure.—A whistleblower may bring a civil action before the appropriate district court—

(1) for appropriate relief, including injunctive relief, compensatory damages, and punitive damages, against any employee of the Federal Government or contractor of the Federal Government who makes a prohibited disclosure, with respect to such whistleblower; or

(2) for injunctive relief against any employee of the Federal Government or contractor of the Federal Government who threatens to make a prohibited disclosure, with respect to such whistleblower.

(b) Jury Trial.—A party to an action brought under subsection (a) shall be entitled to trial by jury.
(c) DEFINITIONS.—In this section, the terms “employee of the Federal Government”, “prohibited disclosure”, and “whistleblower” have the meanings given such terms in section 1802(d) of title 18, United States Code, as added by this Act.