

110TH CONGRESS
1ST SESSION

S. 2041

To amend the False Claims Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SPECTER, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the False Claims Act.

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 “False Claims Act Cor-
5 rection Act of 2007”.

6 **SEC. 2. FALSE CLAIMS GENERALLY.**

7 Section 3729 of title 31, United States Code, is
8 amended—

9 (1) by striking subsection (a) and inserting the
10 following:

11 “(a) LIABILITY FOR CERTAIN ACTS.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 any person who—

3 “(A) knowingly presents, or causes to be
4 presented a false or fraudulent claim for Gov-
5 ernment money or property for payment or ap-
6 proval;

7 “(B) knowingly makes, uses, or causes to
8 be made or used, a false record or statement to
9 get a false or fraudulent claim for Government
10 money or property paid or approved;

11 “(C) conspires to commit any substantive
12 violation set forth in this section or otherwise to
13 defraud the Government by getting a false or
14 fraudulent claim for Government money or
15 property paid or approved;

16 “(D) has possession, custody, or control of
17 Government money or property and, intending
18 to defraud the Government, to retain overpay-
19 ment, or knowingly to convert the money or
20 property, permanently or temporarily, to an un-
21 authorized use, fails to deliver or return, or
22 fails to cause the return or delivery of the
23 money or property, or delivers, returns, or
24 causes to be delivered, or returned less money
25 or property than the amount due or owed;

1 “(E) authorized to make or deliver a docu-
2 ment certifying receipt of property used, or to
3 be used, by the Government and, intending to
4 defraud the Government, makes or delivers the
5 receipt without completely knowing that the in-
6 formation on the receipt is true;

7 “(F) knowingly buys, or receives as a
8 pledge of an obligation or debt, public property
9 from an officer or employee of the Government,
10 or a member of the Armed Forces, who lawfully
11 may not sell or pledge property; or

12 “(G) knowingly makes, uses, or causes to
13 be made or used, a false record or statement to
14 conceal, avoid, or decrease an obligation to pay
15 or transmit money or property to the Govern-
16 ment,

17 is liable to the United States Government for a civil
18 penalty of not less than \$5,000 and not more than
19 \$10,000 plus 3 times the amount of damages which
20 the Government, its grantee, or administrative bene-
21 ficiary sustains because of the act of that person.

22 “(2) LESSER PENALTY.—If the court finds
23 that—

24 “(A) the person committing the violation
25 of this subsection furnished officials of the

1 United States responsible for investigating false
2 claims violations with all information known to
3 such person about the violation within 30 days
4 after the date on which the defendant first ob-
5 tained the information;

6 “(B) such person fully cooperated with any
7 Government investigation of such violation; and

8 “(C) at the time such person furnished the
9 United States with the information about the
10 violation, no criminal prosecution, civil action,
11 or administrative action had commenced under
12 this title with respect to such violation, and the
13 person did not have actual knowledge of the ex-
14 istence of an investigation into such violation,
15 the court may assess not less than 2 times the
16 amount of damages which the Government, its
17 grantee or administrative beneficiary sustains be-
18 cause of the act of the person.

19 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
20 lating this subsection shall also be liable to the
21 United States Government for the costs of a civil ac-
22 tion brought to recover any such penalty or dam-
23 ages.”.

24 (2) by striking subsections (b) and (c) and in-
25 serting the following:

1 “(b) DEFINITIONS.—For purposes of this section—

2 “(1) the terms ‘known’, ‘knowing’, and ‘know-
3 ingly’ mean that a person, with respect to informa-
4 tion—

5 “(A) has actual knowledge of the informa-
6 tion;

7 “(B) acts in deliberate ignorance of the
8 truth or falsity of the information; or

9 “(C) acts in reckless disregard of the truth
10 or falsity of the information,

11 and no proof of specific intent to defraud is re-
12 quired;

13 “(2) the term ‘Government money or property’
14 means—

15 “(A) money or property belonging to the
16 United States Government;

17 “(B) money or property the United States
18 Government provides, has provided, or will re-
19 imburse to a contractor, grantee, agent or other
20 recipient to be spent or used on the Govern-
21 ment’s behalf or to advance Government pro-
22 grams;

23 “(C) money or property belonging to any
24 administrative beneficiary, as defined herein;

1 “(3) the term ‘claim’ includes any request or
 2 demand, whether under a contract or otherwise, for
 3 Government money or property; and

4 “(4) the term ‘administrative beneficiary’
 5 means any natural person or entity, including any
 6 governmental or quasi-governmental entity, on whose
 7 behalf the United States Government, alone or with
 8 others, collects, possesses, transmits, administers,
 9 manages, or acts as custodian of money or prop-
 10 erty.”;

11 (3) by redesignating subsections (d) and (e) as
 12 subsections (c) and (d), respectively; and

13 (4) in subsection (c), as redesignated, by strik-
 14 ing “subparagraphs (A) through (C) of subsection
 15 (a)” and inserting “subsection (a)(2)”.

16 **SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
 17 **TIONS.**

18 Section 3730(b) of title 31, United States Code, is
 19 amended by adding at the end thereof the following:

20 “(6)(A) Not later than 60 days after the date
 21 of service under paragraph (2), the Government may
 22 move to dismiss from the action the qui tam relator
 23 that is an employee of the Federal Government if—

24 “(i) all the necessary and specific material
 25 allegations contained in such action were de-

1 rived from an open and active fraud investiga-
2 tion by the Government; or

3 “(ii) the person bringing the action learned
4 of the information that underlies the alleged
5 violation of section 3729 that is the basis of the
6 action in the course of the person’s employment
7 by the United States, and none of the following
8 has occurred:

9 “(I) In a case in which the employing
10 agency has an inspector general, such per-
11 son, before bringing the action—

12 “(aa) disclosed in writing sub-
13 stantially all material evidence and in-
14 formation that relates to the alleged
15 violation that the person possessed to
16 such inspector general; and

17 “(bb) notified in writing the per-
18 son’s supervisor and the Attorney
19 General of the disclosure under divi-
20 sion (aa).

21 “(II) In a case in which the employing
22 agency does not have an inspector general,
23 such person, before bringing the action—

24 “(aa) disclosed in writing sub-
25 stantially all material evidence and in-

1 formation that relates to the alleged
2 violation that the person possessed, to
3 the Attorney General; and

4 “(bb) notified in writing the per-
5 son’s supervisor of the disclosure
6 under division (aa).

7 “(III) Not less than 12 months (and
8 any period of extension as provided for
9 under subparagraph (B)) have elapsed
10 since the disclosure of information and no-
11 tification under either subclause (I) or (II)
12 were made and the Attorney General has
13 not filed an action based on such informa-
14 tion.

15 “(B) Prior to the expiration of the 12-month
16 period described under subparagraph (A)(ii)(III)
17 and upon notice to the person who has disclosed in-
18 formation and provided notice under subparagraph
19 (A)(ii) (I) or (II), the Attorney General may file a
20 motion seeking an extension of such 12-month pe-
21 riod. Such 12-month period may be extended by a
22 court for not more than an additional 12-month pe-
23 riod upon a showing by the Government that the ad-
24 ditional period is necessary for the Government to
25 decide whether or not to file such action. Any such

1 motion may be filed in camera and may be sup-
2 ported by affidavits or other submissions in camera.

3 “(C) For purposes of subparagraph (A), a per-
4 son’s supervisor is the officer or employee who—

5 “(i) is in a position of the next highest
6 classification to the position of such person;

7 “(ii) has supervisory authority over such
8 person; and

9 “(iii) such person believes is not culpable
10 of the violation upon which the action under
11 this subsection is brought by such person.

12 “(D) A motion to dismiss under this paragraph
13 shall set forth documentation of the allegations, evi-
14 dence, and information in support of the motion.

15 “(E) Any person bringing a civil action under
16 paragraph (1) shall be provided an opportunity to
17 contest a motion to dismiss under this paragraph.

18 The court may restrict access to the evidentiary ma-
19 terials filed in support of the motion to dismiss, as
20 the interests of justice require. A motion to dismiss
21 and papers filed in support or opposition of such
22 motion shall not be—

23 “(i) made public without the prior written
24 consent of the person bringing the civil action;
25 and

1 “(ii) subject to discovery by the defendant.

2 “(F) If the motion to dismiss under this para-
3 graph is granted, the matter shall remain under
4 seal.

5 “(G) No later than 6 months after the date of
6 the enactment of this paragraph, and every 6
7 months thereafter, the Department of Justice shall
8 report to the Committee on the Judiciary of the
9 Senate and the Committee on the Judiciary of the
10 House of Representatives relating to—

11 “(i) the cases in which the Department of
12 Justice has filed a motion to dismiss under this
13 paragraph;

14 “(ii) the outcome of such motions; and

15 “(iii) the status of false claims civil actions
16 in which such motions were filed.”.

17 **SEC. 4. BARRED ACTIONS.**

18 (a) PROVISIONS RELATING TO ACTIONS BARRED.—
19 Section 3730(b)(1) of title 31, United States Code, is
20 amended by adding at the end the following: “No claim
21 for a violation of section 3729 may be waived or released
22 by any action of any person, except insofar as such action
23 is part of a court approved settlement of a false claim civil
24 action brought under this section. Nothing in this section
25 shall be construed to limit the ability of the United States

1 to decline to pursue any claim brought under this sub-
2 chapter.”.

3 (b) DISMISSAL.—Section 3730(e)(4) of title 31,
4 United States Code, is amended to read as follows:

5 “(4)(A) Upon timely motion of the Attorney General,
6 a court shall dismiss an action or claim brought under
7 section 3730(b) if the allegations relating to all essential
8 elements of liability of the action or claim are based exclu-
9 sively on the public disclosure of allegations or trans-
10 actions in a Federal criminal, civil, or administrative hear-
11 ing, in a congressional, Federal administrative, or Govern-
12 ment Accountability Office report, hearing, audit or inves-
13 tigation, or from the news media.

14 “(B) In this paragraph:

15 “(i) The term ‘public disclosure’ includes only
16 disclosures made on the public record or that have
17 otherwise been disseminated broadly to the general
18 public.

19 “(ii) The person bringing the action does not
20 create a public disclosure by obtaining information
21 from a Freedom of Information Act request or from
22 information exchanges with law enforcement and
23 other Government employees if such information
24 does not otherwise qualify as publicly disclosed.

1 “(iii) An action or claim is based on a public
 2 disclosure only if the person bringing the action de-
 3 rived his knowledge of all essential elements of liabil-
 4 ity of the action or claim alleged in his complaint
 5 from the public disclosure.”.

6 (c) QUI TAM AWARDS.—Section 3730(d)(3) of title
 7 31, United States Code, is amended to read as follows:

8 “(3)(A) Whether or not the Government proceeds
 9 with the action, the court may, to the extent the court
 10 considers appropriate, reduce the share of the proceeds of
 11 the action which a person would otherwise receive under
 12 paragraph (1) or (2) of this subsection (taking into ac-
 13 count the role of that person in advancing the case to liti-
 14 gation and any relevant circumstances pertaining to the
 15 violation), if the court finds that person—

16 “(i) planned and initiated the violation of sec-
 17 tion 3729 upon which the action was brought; or

18 “(ii) derived the knowledge of the claims in the
 19 action primarily from specific information relating to
 20 allegations or transactions (other than information
 21 provided by the person bringing the action) that the
 22 Government publicly disclosed, as that term is de-
 23 fined in subsection (e)(4)(A), or that the Govern-
 24 ment disclosed privately to the person bringing the

1 action in the course of its investigation into potential
2 violations of this subchapter.

3 “(B) If the person bringing the action is convicted
4 of criminal conduct arising from the role of that person
5 in the violation of section 3729, that person shall be dis-
6 missed from the civil action and shall not receive any share
7 of the proceeds of the action. Such dismissal shall not
8 prejudice the right of the United States to continue the
9 action, represented by the Department of Justice.”.

10 **SEC. 5. RELIEF FROM RETALIATORY ACTIONS.**

11 Section 3730(h) of title 31, United States Code, is
12 amended to read as follows:

13 “(h) RELIEF FROM RETALIATORY ACTIONS.—

14 “(1) IN GENERAL.—Any employee, government
15 contractor, or agent shall be entitled to all relief nec-
16 essary to make that employee, government con-
17 tractor whole, if that employee, government con-
18 tractor, or agent is discharged, demoted, suspended,
19 threatened, harassed, or in any other manner dis-
20 criminated against in the terms and conditions of
21 employment because of lawful acts done by the em-
22 ployee, government contractor, or agent on behalf of
23 the employee, government contractor, or agent or as-
24 sociated others in furtherance of other efforts to
25 stop 1 or more violations of this subchapter.

1 “(2) RELIEF.—Relief under paragraph (1) shall
2 include reinstatement with the same seniority status
3 that employee, government contractor, or agent
4 would have had but for the discrimination, 2 times
5 the amount of back pay, interest on the back pay,
6 and compensation for any special damages sustained
7 as a result of the discrimination, including litigation
8 costs and reasonable attorneys’ fees. An action
9 under this subsection may be brought in the appro-
10 priate district court of the United States for the re-
11 lief provided in this subsection.”.

12 **SEC. 6. STATUTE OF LIMITATIONS.**

13 Section 3731(b) of title 31, United States Code, is
14 amended to read as follows:

15 “(b)(1) A civil action under section 3730 may not be
16 brought more than 10 years after the date on which the
17 violation of section 3729 or 3730 is committed.

18 “(2) Upon intervention, the Government may file its
19 own complaint in intervention or amend the complaint of
20 a person who has brought an action under section 3730(b)
21 to clarify or add detail to the claims in which the Govern-
22 ment is intervening and to add any additional claims with
23 respect to which the Government contends it is entitled
24 to relief. For statute of limitations purposes, any such
25 Government pleading shall relate back to the filing date

1 of the complaint of the person who originally brought the
 2 action, to the extent that the claim of the Government
 3 arises out of the conduct, transactions, or occurrences set
 4 forth, or attempted to be set forth, in the prior complaint
 5 of that person.”.

6 **SEC. 7. CIVIL INVESTIGATIVE DEMANDS.**

7 Section 3733(a)(1) of title 31, United States Code,
 8 is amended—

9 (1) in the matter preceding subparagraph (A),
 10 by inserting “, or a designee (for purposes of this
 11 section),” after “Whenever the Attorney General”;
 12 and

13 (2) in the matter following subparagraph (D),
 14 by—

15 (A) striking “may not delegate” and in-
 16 serting “may delegate”; and

17 (B) adding at the end the following: “Any
 18 information obtained by the Attorney General
 19 or a designee of the Attorney General under
 20 this section may be shared with any qui tam re-
 21 lator if the Attorney General or designee deter-
 22 mine it is necessary as part of any false claims
 23 act investigation.”.

○