

Calendar No. 910

110TH CONGRESS
2D 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

JULY 29 (legislative day, JULY 28), 2008

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**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—

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

3 “(a) LIABILITY FOR CERTAIN ACTS.—

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

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

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

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

19 “(D) has possession, custody, or control of
20 Government money or property and, intending
21 to defraud the Government, to retain overpay-
22 ment, or knowingly to convert the money or
23 property, permanently or temporarily, to an un-
24 authorized use, fails to deliver or return, or
25 fails to cause the return or delivery of the

1 money or property, or delivers, returns, or
2 causes to be delivered, or returned less money
3 or property than the amount due or owed;

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

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

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

20 is liable to the United States Government for a civil
21 penalty of not less than \$5,000 and not more than
22 \$10,000 plus 3 times the amount of damages which
23 the Government, its grantee, or administrative bene-
24 ficiary sustains because of the act of that person.

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

3 “(A) the person committing the violation
4 of this subsection furnished officials of the
5 United States responsible for investigating false
6 claims violations with all information known to
7 such person about the violation within 30 days
8 after the date on which the defendant first ob-
9 tained the information;

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

12 “(C) at the time such person furnished the
13 United States with the information about the
14 violation, no criminal prosecution, civil action,
15 or administrative action had commenced under
16 this title with respect to such violation; and the
17 person did not have actual knowledge of the ex-
18 istence of an investigation into such violation;

19 the court may assess not less than 2 times the
20 amount of damages which the Government, its
21 grantee or administrative beneficiary sustains be-
22 cause of the act of the person.

23 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
24 lating this subsection shall also be liable to the
25 United States Government for the costs of a civil ac-

1 tion brought to recover any such penalty or dam-
 2 ages.”.

3 (2) by striking subsections (b) and (c) and in-
 4 serting the following:

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

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

9 “(A) has actual knowledge of the informa-
 10 tion;

11 “(B) acts in deliberate ignorance of the
 12 truth or falsity of the information; or

13 “(C) acts in reckless disregard of the truth
 14 or falsity of the information;

15 and no proof of specific intent to defraud is re-
 16 quired;

17 “(2) the term ‘Government money or property’
 18 means—

19 “(A) money or property belonging to the
 20 United States Government;

21 “(B) money or property the United States
 22 Government provides, has provided, or will re-
 23 imburse to a contractor, grantee, agent or other
 24 recipient to be spent or used on the Govern-

1 ment's behalf or to advance Government pro-
2 grams;

3 ~~“(C) money or property belonging to any~~
4 administrative beneficiary, as defined herein;

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

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

15 ~~(3) by redesignating subsections (d) and (e) as~~
16 subsections (c) and (d), respectively; and

17 ~~(4) in subsection (e), as redesignated, by strik-~~
18 ing ~~“subparagraphs (A) through (C) of subsection~~
19 ~~(a)” and inserting “subsection (a)(2)”.~~

20 **SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
21 **TIONS.**

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

24 ~~“(6)(A) Not later than 60 days after the date~~
25 of service under paragraph (2), the Government may

1 move to dismiss from the action the qui tam relator
2 that is an employee of the Federal Government if—

3 “(i) all the necessary and specific material
4 allegations contained in such action were de-
5 rived from an open and active fraud investiga-
6 tion by the Government; or

7 “(ii) the person bringing the action learned
8 of the information that underlies the alleged
9 violation of section 3729 that is the basis of the
10 action in the course of the person’s employment
11 by the United States; and none of the following
12 has occurred:

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

16 “(aa) disclosed in writing sub-
17 stantially all material evidence and in-
18 formation that relates to the alleged
19 violation that the person possessed to
20 such inspector general; and

21 “(bb) notified in writing the per-
22 son’s supervisor and the Attorney
23 General of the disclosure under divi-
24 sion (aa):

1 “(H) In a case in which the employing
2 agency does not have an inspector general,
3 such person, before bringing the action—

4 “(aa) disclosed in writing sub-
5 stantially all material evidence and in-
6 formation that relates to the alleged
7 violation that the person possessed, to
8 the Attorney General; and

9 “(bb) notified in writing the per-
10 son’s supervisor of the disclosure
11 under division (aa);

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

20 “(B) Prior to the expiration of the 12-month
21 period described under subparagraph (A)(ii)(III)
22 and upon notice to the person who has disclosed in-
23 formation and provided notice under subparagraph
24 (A)(ii) (I) or (II), the Attorney General may file a
25 motion seeking an extension of such 12-month pe-

1 riod. Such 12-month period may be extended by a
 2 court for not more than an additional 12-month pe-
 3 riod upon a showing by the Government that the ad-
 4 ditional period is necessary for the Government to
 5 decide whether or not to file such action. Any such
 6 motion may be filed in camera and may be sup-
 7 ported by affidavits or other submissions in camera.

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

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

12 “(ii) has supervisory authority over such
 13 person; and

14 “(iii) such person believes is not culpable
 15 of the violation upon which the action under
 16 this subsection is brought by such person.

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

20 “(E) Any person bringing a civil action under
 21 paragraph (1) shall be provided an opportunity to
 22 contest a motion to dismiss under this paragraph.
 23 The court may restrict access to the evidentiary ma-
 24 terials filed in support of the motion to dismiss, as
 25 the interests of justice require. A motion to dismiss

1 and papers filed in support or opposition of such
2 motion shall not be—

3 “(i) made public without the prior written
4 consent of the person bringing the civil action;
5 and

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

7 “(F) If the motion to dismiss under this para-
8 graph is granted, the matter shall remain under
9 seal.

10 “(G) No later than 6 months after the date of
11 the enactment of this paragraph, and every 6
12 months thereafter, the Department of Justice shall
13 report to the Committee on the Judiciary of the
14 Senate and the Committee on the Judiciary of the
15 House of Representatives relating to—

16 “(i) the cases in which the Department of
17 Justice has filed a motion to dismiss under this
18 paragraph;

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

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

22 **SEC. 4. BARRED ACTIONS.**

23 (a) PROVISIONS RELATING TO ACTIONS BARRED.—

24 Section 3730(b)(1) of title 31, United States Code, is
25 amended by adding at the end the following: “No claim

1 for a violation of section 3729 may be waived or released
 2 by any action of any person, except insofar as such action
 3 is part of a court approved settlement of a false claim civil
 4 action brought under this section. Nothing in this section
 5 shall be construed to limit the ability of the United States
 6 to decline to pursue any claim brought under this sub-
 7 chapter.”.

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

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

19 “(B) In this paragraph:

20 “(i) The term ‘public disclosure’ includes only
 21 disclosures made on the public record or that have
 22 otherwise been disseminated broadly to the general
 23 public.

24 “(ii) The person bringing the action does not
 25 create a public disclosure by obtaining information

1 from a Freedom of Information Act request or from
 2 information exchanges with law enforcement and
 3 other Government employees if such information
 4 does not otherwise qualify as publicly disclosed.

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

10 (c) QUI TAM AWARDS.—Section 3730(d)(3) of title
 11 31, United States Code, is amended to read as follows:

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

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

22 “(ii) derived the knowledge of the claims in the
 23 action primarily from specific information relating to
 24 allegations or transactions (other than information
 25 provided by the person bringing the action) that the

1 Government publicly disclosed, as that term is de-
 2 fined in subsection (e)(4)(A), or that the Govern-
 3 ment disclosed privately to the person bringing the
 4 action in the course of its investigation into potential
 5 violations of this subchapter.

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

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

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

16 “(h) RELIEF FROM RETALIATORY ACTIONS.—

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

1 the employee, government contractor, or agent or as-
 2 sociated others in furtherance of other efforts to
 3 stop 1 or more violations of this subchapter.

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

15 **SEC. 6. STATUTE OF LIMITATIONS.**

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

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

21 “(2) Upon intervention, the Government may file its
 22 own complaint in intervention or amend the complaint of
 23 a person who has brought an action under section 3730(b)
 24 to clarify or add detail to the claims in which the Govern-
 25 ment is intervening and to add any additional claims with

1 respect to which the Government contends it is entitled
 2 to relief. For statute of limitations purposes, any such
 3 Government pleading shall relate back to the filing date
 4 of the complaint of the person who originally brought the
 5 action, to the extent that the claim of the Government
 6 arises out of the conduct, transactions, or occurrences set
 7 forth, or attempted to be set forth, in the prior complaint
 8 of that person.”.

9 **SEC. 7. CIVIL INVESTIGATIVE DEMANDS.**

10 Section ~~3733~~(a)(1) of title ~~31~~, United States Code,
 11 is amended—

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

16 (2) in the matter following subparagraph (D),
 17 by—

18 (A) striking “may not delegate” and in-
 19 serting “may delegate”; and

20 (B) adding at the end the following: “Any
 21 information obtained by the Attorney General
 22 or a designee of the Attorney General under
 23 this section may be shared with any qui tam re-
 24 lator if the Attorney General or designee deter-

1 mine it is necessary as part of any false claims
2 act investigation.”.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “False Claims Act Correc-*
5 *tion Act of 2008”.*

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

7 *Section 3729 of title 31, United States Code, is amend-*
8 *ed—*

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

11 “(a) *LIABILITY FOR CERTAIN ACTS.—*

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

14 *“(A) knowingly presents, or causes to be*
15 *presented, a false or fraudulent claim for pay-*
16 *ment or approval;*

17 *“(B) knowingly makes, uses, or causes to be*
18 *made or used, a false record or statement to get*
19 *a false or fraudulent claim paid or approved;*

20 *“(C) conspires to commit a violation of sub-*
21 *paragraph (A), (B), (D), (E), (F), or (G) or oth-*
22 *erwise to defraud the Government by getting a*
23 *false or fraudulent claim paid or approved;*

24 *“(D) has possession, custody, or control of*
25 *property or money used, or to be used, by the*

1 *Government and knowingly delivers, or causes to*
2 *be delivered, less than all of that money or prop-*
3 *erty;*

4 *“(E) is authorized to make or deliver a doc-*
5 *ument certifying receipt of property used, or to*
6 *be used, by the Government and, intending to de-*
7 *fraud the Government, makes or delivers the re-*
8 *ceipt without completely knowing that the infor-*
9 *mation on the receipt is true;*

10 *“(F) knowingly buys, or receives as a pledge*
11 *of an obligation or debt, public property from an*
12 *officer or employee of the Government, or a mem-*
13 *ber of the Armed Forces, who lawfully may not*
14 *sell or pledge property; or*

15 *“(G) knowingly makes, uses, or causes to be*
16 *made or used, a false record or statement to con-*
17 *ceal, avoid, or decrease an obligation to pay or*
18 *transmit money or property to the Government,*
19 *or knowingly conceals, avoids, or decreases an*
20 *obligation to pay or transmit money or property*
21 *to the Government,*

22 *is liable to the United States Government for a civil*
23 *penalty of not less than \$5,000 and not more than*
24 *\$10,000, as adjusted by the Federal Civil Penalties*
25 *Inflation Adjustment Act of 1990 (28 U.S.C. 2461*

1 *note; Public Law 104–410), plus 3 times the amount*
 2 *of money or property paid or approved because of the*
 3 *act of that person.*

4 “(2) *REDUCED DAMAGES.—If the court finds*
 5 *that—*

6 “(A) *the person committing the violation of*
 7 *this subsection furnished officials of the United*
 8 *States responsible for investigating false claims*
 9 *violations with all information known to such*
 10 *person about the violation within 30 days after*
 11 *the date on which the defendant first obtained*
 12 *the information;*

13 “(B) *such person fully cooperated with any*
 14 *Government investigation of such violation; and*

15 “(C) *at the time such person furnished the*
 16 *United States with the information about the*
 17 *violation, no criminal prosecution, civil action,*
 18 *or administrative action had commenced under*
 19 *this title with respect to such violation, and the*
 20 *person did not have actual knowledge of the ex-*
 21 *istence of an investigation into such violation,*
 22 *the court may assess not less than 2 times the amount*
 23 *of money or property paid or approved because of the*
 24 *act of that person.*

1 “(3) *COSTS OF CIVIL ACTIONS.*—A person vio-
 2 *lating this subsection shall also be liable to the United*
 3 *States Government for the costs of a civil action*
 4 *brought to recover any such penalty or damages.”;*

5 (2) *by striking subsections (b) and (c) and in-*
 6 *serting the following:*

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

8 “(1) *the terms ‘knowing’ and ‘knowingly’ mean*
 9 *that a person, with respect to information—*

10 *“(A) has actual knowledge of the informa-*
 11 *tion;*

12 *“(B) acts in deliberate ignorance of the*
 13 *truth or falsity of the information; or*

14 *“(C) acts in reckless disregard of the truth*
 15 *or falsity of the information,*

16 *and no proof of specific intent to defraud is required;*

17 “(2) *the term ‘claim’—*

18 *“(A) means any request or demand, whether*
 19 *under a contract or otherwise, for money or*
 20 *property and whether or not the United States*
 21 *has title to the money or property, that—*

22 *“(i) is presented to an officer, em-*
 23 *ployee, or agent of the United States; or*

1 “(ii) is made to a contractor, grantee,
2 or other recipient if the United States Gov-
3 ernment—

4 “(I) provides or has provided any
5 portion of the money or property re-
6 quested or demanded; or

7 “(II) will reimburse such con-
8 tractor, grantee, or other recipient for
9 any portion of the money or property
10 which is requested or demanded; and

11 “(B) does not include requests or demands
12 for money or property that the Government has
13 paid to an individual as compensation for Fed-
14 eral employment or as an income subsidy with
15 no restrictions on that individual’s use of the
16 money or property; and

17 “(3) the term ‘obligation’ means a fixed duty, or
18 a contingent duty arising from an express or implied
19 contractual, quasi-contractual, grantor-grantee, licen-
20 sor-licensee, fee-based, or similar relationship, includ-
21 ing customs duties for mismarking country of origin,
22 and the retention of any overpayment.”;

23 (3) by redesignating subsections (d) and (e) as
24 subsections (c) and (d), respectively; and

1 (4) in subsection (c), as redesignated, by striking
 2 “subparagraphs (A) through (C) of subsection (a)”
 3 and inserting “subsection (a)(2)”.

4 **SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
 5 **TIONS.**

6 Section 3730(b) of title 31, United States Code, is
 7 amended—

8 (1) in paragraph (2), by striking “Rule 4(d)(4)”
 9 and inserting “rule 4”; and

10 (2) by adding at the end the following:

11 “(6)(A) Not later than 120 days after the date
 12 of service under paragraph (2), the Government may
 13 move to dismiss from the action a qui tam relator
 14 that is an employee of the Federal Government, or
 15 that is a family member of an employee of the Fed-
 16 eral Government, if—

17 “(i) the necessary and specific material al-
 18 legations contained in such action were derived
 19 from a filed criminal indictment or information
 20 or an open and active criminal, civil, or admin-
 21 istrative investigation or audit by the Govern-
 22 ment into substantially the same fraud alleged
 23 in the action;

24 “(ii) the duties of the employee’s position
 25 specifically include uncovering and reporting the

1 *particular type of fraud that is alleged in the ac-*
 2 *tion, and the employee, as part of the duties of*
 3 *that employee's position, is participating in or*
 4 *has knowledge of an open and active criminal,*
 5 *civil, or administrative investigation or audit by*
 6 *the Government of the alleged fraud;*

7 *“(iii) the person bringing the action learned*
 8 *of the information that underlies the alleged vio-*
 9 *lation of section 3729 that is the basis of the ac-*
 10 *tion in the course of the person's employment by*
 11 *the United States, and either—*

12 *“(I) in a case in which the employing*
 13 *agency has an inspector general, such per-*
 14 *son, before bringing the action has not—*

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

20 *“(bb) notified in writing the per-*
 21 *son's supervisor and the Attorney Gen-*
 22 *eral of the disclosure under division*
 23 *(aa); or*

24 *“(II) in a case in which the employing*
 25 *agency does not have an inspector general,*

1 *such person, before bringing the action has*
2 *not—*

3 *“(aa) disclosed in writing sub-*
4 *stantially all material evidence and in-*
5 *formation that relates to the alleged*
6 *violation that the person possessed, to*
7 *the Attorney General; and*

8 *“(bb) notified in writing the per-*
9 *son’s supervisor of the disclosure under*
10 *division (aa); or*

11 *“(iv) the person bringing the action learned*
12 *of the information that underlies the alleged vio-*
13 *lation of section 3729 that is the basis of the ac-*
14 *tion in the course of the person’s employment by*
15 *the United States, made the required disclosures*
16 *and notifications under clause (iii), and—*

17 *“(I) less than 18 months (and any pe-*
18 *riod of extension as provided for under sub-*
19 *paragraph (B)) have elapsed since the dis-*
20 *closures of information and notification*
21 *under clause (iii) were made; or*

22 *“(II) within 18 months (and any pe-*
23 *riod of extension as provided for under sub-*
24 *paragraph (B)) after the disclosures of in-*
25 *formation and notification under clause*

1 *(iii) were made, the Attorney General has*
2 *filed an action based on such information.*

3 *“(B) Prior to the expiration of the 18-month pe-*
4 *riod described under subparagraph (A)(iv)(II) and*
5 *upon notice to the person who has disclosed informa-*
6 *tion and provided notice under subparagraph*
7 *(A)(iii), the Attorney General may extend such 18-*
8 *month period by 1 additional 12-month period.*

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

11 *“(i) is in a position of the next highest clas-*
12 *sification to the position of such person;*

13 *“(ii) has supervisory authority over such*
14 *person; and*

15 *“(iii) such person believes is not culpable of*
16 *the violation upon which the action under this*
17 *subsection is brought by such person.*

18 *“(D) A motion to dismiss under this paragraph*
19 *shall set forth documentation of the allegations, evi-*
20 *dence, and information in support of the motion.*

21 *“(E) Any person against whom the Government*
22 *has filed a motion to dismiss under subparagraph (A)*
23 *shall be provided an opportunity to contest a motion*
24 *to dismiss under this paragraph. The court may re-*
25 *strict access to the evidentiary materials filed in sup-*

1 *port of the motion to dismiss, as the interests of jus-*
 2 *tice require. A motion to dismiss and evidentiary ma-*
 3 *terial filed in support or opposition of such motion*
 4 *shall not be—*

5 *“(i) made public without the prior written*
 6 *consent of the person bringing the civil action;*
 7 *and*

8 *“(ii) subject to discovery by the defendant.*

9 *“(F) Upon granting a motion filed under sub-*
 10 *paragraph (A), the court shall dismiss the qui tam re-*
 11 *lator from the action.*

12 *“(G) If the motion to dismiss under this para-*
 13 *graph is granted, the matter shall remain under seal.*

14 *“(H) Not later than 12 months after the date of*
 15 *the enactment of this paragraph, and every 12*
 16 *months thereafter, the Department of Justice shall*
 17 *submit a report to the Committee on the Judiciary of*
 18 *the Senate and the Committee on the Judiciary of the*
 19 *House of Representatives relating to—*

20 *“(i) the cases in which the Department of*
 21 *Justice has filed a motion to dismiss under this*
 22 *paragraph;*

23 *“(ii) the outcome of such motions; and*

24 *“(iii) the status of false claims civil actions*
 25 *in which such motions were filed.*

1 “(I) Nothing in this paragraph shall be con-
 2 strued to limit the authority of the Government to
 3 dismiss an action or claim, or a person who brings
 4 an action or claim, under this subsection for any rea-
 5 son other than the grant of a motion filed under sub-
 6 paragraph (A).”.

7 **SEC. 4. BARRED ACTIONS.**

8 (a) *PROVISIONS RELATING TO ACTIONS BARRED.*—
 9 Section 3730(b)(1) of title 31, United States Code, is
 10 amended by adding at the end the following: “No claim for
 11 a violation of section 3729 may be waived or released by
 12 any action of any person who brings an action under this
 13 subsection, except insofar as such action is part of a court
 14 approved settlement of a false claim civil action brought
 15 under this section. Nothing in this paragraph shall be con-
 16 strued to limit the ability of the United States to decline
 17 to pursue any claim brought under this subsection, or to
 18 require court approval of a settlement by the Government
 19 with a defendant of an action brought under subsection (a),
 20 or under this subsection, unless the person bringing the ac-
 21 tion objects to the settlement under subsection (c)(2)(B).”.

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

24 “(4) A court shall dismiss an action or claim or
 25 the person bringing the action or claim under sub-

1 *section (b), upon a motion by the Government filed*
2 *on or before service of a complaint on the defendant*
3 *under subsection (b), or thereafter for good cause*
4 *shown if—*

5 *“(A) on the date the action or claim was*
6 *filed, substantially the same matters, involving*
7 *the same wrongdoer, as alleged in the action or*
8 *claim were contained in, or the subject of—*

9 *“(i) a filed criminal indictment or in-*
10 *formation, or an open and active criminal,*
11 *civil, or administrative investigation or*
12 *audit; or*

13 *“(ii) a news media report, or public*
14 *congressional hearing, report, or investiga-*
15 *tion, if within 90 days after the issuance or*
16 *completion of such news media report or*
17 *congressional hearing, report, or investiga-*
18 *tion, the Department of Justice or an Office*
19 *of Inspector General opened a fraud inves-*
20 *tigation or audit of the facts contained in*
21 *such news media report or congressional*
22 *hearing, report, or investigation as a result*
23 *of learning about the public report, hearing,*
24 *or investigation;*

1 “(B) any new information provided by the
 2 person does not add substantial grounds for ad-
 3 ditional recovery beyond those encompassed with-
 4 in the Government’s existing criminal indict-
 5 ment or information, or an open and active
 6 criminal, civil, or administrative investigation
 7 or audit; and

8 “(C) the Government’s existing criminal in-
 9 dictment or information, or an open and active
 10 criminal, civil, or administrative investigation
 11 or audit, or the news media report, or congres-
 12 sional hearing, report, or investigation was not
 13 initiated or published after the Government’s re-
 14 ceipt of information about substantially the same
 15 matters voluntarily brought by the person to the
 16 Government.”.

17 (c) QUI TAM AWARDS.—Section 3730(d) of title 31,
 18 United States Code, is amended—

19 (1) in paragraph (1), by striking the second sen-
 20 tence and inserting “If the person bringing the action
 21 is not dismissed under subsection (e)(4) because the
 22 person provided new information that adds substan-
 23 tial grounds for additional recovery beyond those en-
 24 compassed within the Government’s existing indict-
 25 ment, information, investigation, or audit, then such

1 *person shall be entitled to receive a share only of pro-*
 2 *ceeds of the action or settlement that are attributable*
 3 *to the new basis for recovery that is stated in the ac-*
 4 *tion brought by that person.”; and*

5 *(2) by striking paragraph (3) and inserting the*
 6 *following:*

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

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

17 *“(ii) derived the knowledge of the claims in the*
 18 *action primarily from specific information relating to*
 19 *allegations or transactions (other than information*
 20 *provided by the person bringing the action) that the*
 21 *Government publicly disclosed, as that term is defined*
 22 *in subsection (e)(4)(A), or that the Government dis-*
 23 *closed privately to the person bringing the action in*
 24 *the course of its investigation into potential violations*
 25 *of this subchapter.*

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

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

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

11 “(h) **RELIEF FROM RETALIATORY ACTIONS.**—

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

24 “(2) **RELIEF.**—Relief under paragraph (1) shall
 25 include reinstatement with the same seniority status

1 *that employee, government contractor, or agent would*
 2 *have had but for the discrimination, 2 times the*
 3 *amount of back pay, interest on the back pay, and*
 4 *compensation for any special damages sustained as a*
 5 *result of the discrimination, including litigation costs*
 6 *and reasonable attorneys' fees. An action under this*
 7 *subsection may be brought in the appropriate district*
 8 *court of the United States for the relief provided in*
 9 *this subsection.”.*

10 **SEC. 6. STATUTE OF LIMITATIONS.**

11 *Section 3731(b) of title 31, United States Code, is*
 12 *amended to read as follows:*

13 *“(b)(1) A civil action under section 3730 may not be*
 14 *brought more than 10 years after the date on which the vio-*
 15 *lation of section 3729 or 3730 is committed.*

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

1 *the conduct, transactions, or occurrences set forth, or at-*
 2 *tempted to be set forth, in the prior complaint of that per-*
 3 *son.”.*

4 **SEC. 7. CIVIL INVESTIGATIVE DEMANDS.**

5 *Section 3733 of title 31, United States Code, is amend-*
 6 *ed—*

7 *(1) in subsection (a)—*

8 *(A) in paragraph (1)—*

9 *(i) in the matter preceding subpara-*
 10 *graph (A)—*

11 *(I) by inserting “, or a designee*
 12 *(for purposes of this section),” after*
 13 *“Whenever the Attorney General”; and*

14 *(II) by striking “the Attorney*
 15 *General may, before commencing a*
 16 *civil proceeding under section 3730 or*
 17 *other false claims law,” and inserting*
 18 *“the Attorney General, or a designee,*
 19 *may, before commencing a civil pro-*
 20 *ceeding under section 3730(a) or other*
 21 *false claims law, or electing under sec-*
 22 *tion 3730(b),”; and*

23 *(ii) in the matter following subpara-*
 24 *graph (D)—*

1 (I) by striking “may not delegate”
2 and inserting “may delegate”; and

3 (II) by adding at the end the fol-
4 lowing: “Any information obtained by
5 the Attorney General or a designee of
6 the Attorney General under this section
7 may be shared with any qui tam rela-
8 tor if the Attorney General or designee
9 determine it is necessary as part of
10 any false claims act investigation.”;
11 and

12 (B) in paragraph (2)(G), by striking the
13 second sentence;

14 (2) in subsection(i)(2)—

15 (A) in subparagraph (B), by striking
16 “, who is authorized for such use under regula-
17 tions which the Attorney General shall issue”;
18 and

19 (B) in subparagraph (C), by striking “Dis-
20 closure of information to any such other agency
21 shall be allowed only upon application, made by
22 the Attorney General to a United States district
23 court, showing substantial need for the use of the
24 information by such agency in furtherance of its
25 statutory responsibilities.”; and

1 (3) in subsection (l)—

2 (A) in paragraph (6), by striking “and”
3 after the semicolon; and

4 (B) in paragraph (7), by striking the period
5 and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(8) the term ‘official use’ means any use that
8 is consistent with the law, and the regulations and
9 policies of the Department of Justice, including use in
10 connection with internal Department of Justice
11 memoranda and reports; communications between the
12 Department of Justice and a Federal, State, or local
13 government agency, or a contractor of a Federal,
14 State, or local government agency, undertaken in fur-
15 therance of a Department of Justice investigation or
16 prosecution of a case; interviews of any qui tam rela-
17 tor or other witness; oral examinations; depositions;
18 preparation for and response to civil discovery re-
19 quests; introduction into the record of a case or pro-
20 ceeding; applications, motions, memoranda and briefs
21 submitted to a court or other tribunal; and commu-
22 nications with Government investigators, auditors,
23 consultants and experts, the counsel of other parties,
24 arbitrators and mediators, concerning an investiga-
25 tion, case or proceeding.”.

1 **SEC. 8. SEVERABILITY.**

2 *If any provision or application of this Act is held in-*
3 *valid, the invalidity shall not affect other provisions or ap-*
4 *plications of this Act which can be given effect without re-*
5 *gard to the invalid provision or application, and to this*
6 *end the provisions or applications of this Act are severable.*

7 **SEC. 9. EFFECTIVE DATE AND APPLICATION.**

8 (a) *IN GENERAL.*—*Except as provided under sub-*
9 *sections (b) and (c), the amendments made by this Act shall*
10 *take effect on the date of enactment of this Act and shall*
11 *apply to all civil actions filed before, on, or after that date.*

12 (b) *FALSE CLAIMS.*—*The amendments made by section*
13 *2 shall take effect on the date of enactment of this Act and*
14 *shall apply to conduct occurring after that date of enact-*
15 *ment.*

16 (c) *STATUTE OF LIMITATION.*—*The amendment made*
17 *to section 3731(b)(1) of title 31, United States Code, by sec-*
18 *tion 6 of this Act shall take effect on the date of enactment*
19 *of this Act and shall apply to civil actions filed after that*
20 *date of enactment.*

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110TH CONGRESS
2^D Session

S. 2041

A BILL

To amend the False Claims Act.

JULY 29 (legislative day, JULY 28), 2008

Reported with an amendment