

Union Calendar No. 44

111TH CONGRESS
1ST SESSION

H. R. 1788

[Report No. 111-97]

To amend the provisions of title 31, United States Code, relating to false claims to clarify and make technical amendments to those provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2009

Mr. BERMAN (for himself, Mr. SENSENBRENNER, Mr. DANIEL E. LUNGREN of California, Mr. CONYERS, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 5, 2009

Additional sponsors: Ms. LINDA T. SÁNCHEZ of California, Mr. THOMPSON of Mississippi, Mr. PLATTS, Mr. SHERMAN, and Mr. BRALEY of Iowa

MAY 5, 2009

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the provisions of title 31, United States Code, relating to false claims to clarify and make technical amendments to those provisions, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “False Claims Act Cor-
3 rection Act of 2009”.

4 **SEC. 2. LIABILITY FOR FALSE CLAIMS.**

5 Section 3729 of title 31, United States Code, is
6 amended to read as follows:

7 **“§ 3729. False claims**

8 “(a) LIABILITY FOR CERTAIN ACTS.—

9 “(1) IN GENERAL.—Any person who—

10 “(A) knowingly presents, or causes to be
11 presented for payment or approval, a false or
12 fraudulent claim for Government money or
13 property,

14 “(B) knowingly makes, uses, or causes to
15 be made or used, a false record or statement to
16 get a false or fraudulent claim for Government
17 money or property paid or approved,

18 “(C) has possession, custody, or control of
19 Government money or property and either—

20 “(i) fails to comply with a statutory
21 or contractual obligation to disclose an
22 overpayment about which the person is on
23 actual notice, or

24 “(ii) intending to—

25 “(I) defraud the Government, or

1 “(II) knowingly convert the
2 money or property, permanently or
3 temporarily, to an unauthorized use,
4 fails to deliver or return, or fails to cause
5 the return or delivery of, the money or
6 property, or delivers, returns, or causes to
7 be delivered or returned less money or
8 property than the amount due or owed,

9 “(D) authorized to make or deliver a docu-
10 ment certifying receipt of property used, or to
11 be used, by the Government and, intending to
12 defraud the Government, makes or delivers the
13 receipt without completely knowing that the in-
14 formation on the receipt is true,

15 “(E) knowingly buys, or receives as a
16 pledge of an obligation or debt, Government
17 money or property from an officer or employee
18 of the Government, or a member of the Armed
19 Forces, who lawfully may not sell or pledge the
20 money or property,

21 “(F) knowingly makes, uses, or causes to
22 be made or used, a false record or statement to
23 conceal, avoid, or decrease an obligation to pay
24 or transmit money or property to the Govern-
25 ment, or

1 “(G) conspires to commit any violation set
2 forth in any of subparagraphs (A) through (F),
3 is liable to the United States Government for a civil
4 penalty of not less than \$5,000 and not more than
5 \$10,000, plus 3 times the amount of damages that
6 the Government or its administrative beneficiary
7 sustains because of the act of that person, subject
8 to paragraphs (2) and (3).

9 “(2) LESSER PENALTY IF DEFENDANT COOPER-
10 ATES WITH INVESTIGATION.—In an action brought
11 for a violation under paragraph (1), the court may
12 assess not less than 2 times the amount of damages
13 that the Government or its administrative bene-
14 ficiary sustains because of the act of the person
15 committing the violation if the court finds that—

16 “(A) such person provided to those officials
17 of the United States who are responsible for in-
18 vestigating false claims violations, all informa-
19 tion known to the person about the violation
20 within 30 days after the date on which the per-
21 son first obtained the information;

22 “(B) such person fully cooperated with any
23 Government investigation of the violation; and

24 “(C) at the time such person provided to
25 the United States the information about the

1 violation under subparagraph (A), no criminal
2 prosecution, civil action, or administrative ac-
3 tion had commenced with respect to such viola-
4 tion, and the person did not have actual knowl-
5 edge of the existence of an investigation into
6 such violation.

7 “(3) ASSESSMENT OF COSTS.—A person vio-
8 lating paragraph (1) shall, in addition to a penalty
9 or damages assessed under paragraph (1) or (2), be
10 liable to the United States Government for the costs
11 of a civil action brought to recover such penalty or
12 damages.

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

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

17 “(A) has actual knowledge of the informa-
18 tion,

19 “(B) acts in deliberate ignorance of the
20 truth or falsity of the information, or

21 “(C) acts in reckless disregard of the truth
22 or falsity of the information,

23 and no proof of specific intent to defraud is re-
24 quired;

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

3 “(A) money or property belonging to the
4 United States Government;

5 “(B) money or property that—

6 “(i) the United States Government
7 provides or has provided to a contractor,
8 grantee, agent, or other recipient, or for
9 which the United States Government will
10 reimburse a contractor, grantee, agent, or
11 other recipient; and

12 “(ii) is to be spent or used on the
13 Government’s behalf or to advance a Gov-
14 ernment program; and

15 “(C) money or property that the United
16 States holds in trust or administers for any ad-
17 ministrative beneficiary;

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

21 “(4) the term ‘administrative beneficiary’
22 means any entity, including any governmental or
23 quasi-governmental entity, on whose behalf the
24 United States Government, alone or with others,

1 serves as custodian or trustee of money or property
2 owned by that entity.

3 “(c) STATUTORY CAUSE OF ACTION.—Liability
4 under this section is a statutory cause of action all ele-
5 ments of which are set forth in this section. No proof of
6 any additional element of common law fraud or other
7 cause of action is implied or required for liability to exist
8 for a violation of subsection (a).

9 “(d) EXEMPTION FROM DISCLOSURE.—Any informa-
10 tion that a person provides pursuant to subparagraphs (A)
11 through (C) of subsection (a)(2) shall be exempt from dis-
12 closure under section 552 of title 5.

13 “(e) EXCLUSION.—This section does not apply to
14 claims, records, or statements made under the Internal
15 Revenue Code of 1986.”.

16 **SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.**

17 (a) ACTIONS BY PRIVATE PERSONS GENERALLY.—
18 Section 3730(b) of title 31, United States Code, is amend-
19 ed—

20 (1) in paragraph (1), by striking the last sen-
21 tence and inserting the following: “The action may
22 be dismissed only with the consent of the court and
23 the Attorney General.”;

24 (2) in paragraph (2), by inserting after the sec-
25 ond sentence the following: “In the absence of a

1 showing of extraordinary need, the written disclosure
2 of any material evidence and information, and any
3 other attorney work product, that the person bring-
4 ing the action provides to the Government shall not
5 be subject to discovery.”;

6 (3) in paragraph (4), by striking subparagraph
7 (B) and inserting the following:

8 “(B) notify the court that it declines to take
9 over the action, in which case the person bringing
10 the action shall have the right to conduct the action,
11 and, within 45 days after the Government provides
12 such notice, shall either—

13 “(i) move to dismiss the action without
14 prejudice; or

15 “(ii) notify the court of the person’s inten-
16 tion to proceed with the action and move the
17 court to unseal the complaint, and any amend-
18 ments thereto, so as to permit service on the
19 defendant and litigation of the action in a pub-
20 lic forum.

21 A person who elects to proceed with the action under sub-
22 paragraph (B)(ii) shall serve the complaint within 120
23 days after the person’s complaint is unsealed under such
24 subparagraph.”; and

1 (4) by amending paragraph (5) to read as fol-
2 lows:

3 “(5) When a person brings an action under this sub-
4 section, no person other than the Government may join
5 or intervene in the action, except with the consent of the
6 person who brought the action. In addition, when a person
7 brings an action that is pled in accordance with this sub-
8 section and section 3731(e), no other person may bring
9 a separate action under this subsection based on the facts
10 underlying a cause of action in the pending action.”.

11 (b) RIGHTS OF THE PARTIES TO QUI TAM AC-
12 TIONS.—Section 3730(c)(5) of title 31, United States
13 Code, is amended by striking the second sentence and in-
14 serting the following: “An alternate remedy includes—

15 “(A) anything of value received by the Govern-
16 ment from the defendant, whether funds, credits, or
17 in-kind goods or services, in exchange for an agree-
18 ment by the Government either to release claims
19 brought in, or to decline to intervene in or inves-
20 tigate, the action initiated under subsection (b); and

21 “(B) anything of value received by the Govern-
22 ment based on the claims alleged by the person initi-
23 ating the action, if that person subsequently prevails
24 on the claims.

1 If any such alternate remedy is pursued in another pro-
2 ceeding, the person initiating the action shall have the
3 same rights in such proceeding as such person would have
4 had if the action had continued under this section, except
5 that the person initiating the action may not obtain an
6 award calculated on more than the total amount of dam-
7 ages, plus any fines or penalties, that could be recovered
8 by the United States under section 3729(a).”.

9 (c) AWARD TO QUI TAM PLAINTIFF.—Section
10 3730(d) of title 31, United States Code, is amended—

11 (1) in paragraph (1)—

12 (A) in the first sentence, by inserting “an
13 award of” after “receive”;

14 (B) by striking the second and third sen-
15 tences and inserting the following: “Any pay-
16 ment to a person under this paragraph or
17 under paragraph (2) or (3) shall be made from
18 the proceeds, and shall accrue interest, at the
19 underpayment rate under section 6621 of the
20 Internal Revenue Code of 1986, beginning 30
21 days after the date the proceeds are paid to the
22 United States, and continuing until payment is
23 made to the person by the United States.”; and

24 (C) in the next to the last sentence, by
25 striking “necessarily”;

1 (2) in paragraph (2)—

2 (A) in the second sentence, by striking

3 “and shall be paid out of such proceeds”; and

4 (B) in the third sentence, by striking “nec-
5 essarily”; and

6 (3) by amending paragraph (3) to read as fol-
7 lows:

8 “(3)(A) Whether or not the Government proceeds
9 with the action, if the court finds that the action was
10 brought by a person who either—

11 “(i) planned and initiated the violation of sec-
12 tion 3729 upon which the action was brought, or

13 “(ii) derived his or her knowledge of the action
14 primarily from specific information relating to alle-
15 gations or transactions (other than information pro-
16 vided by the person bringing the action) that the
17 Government publicly disclosed, within the meaning
18 of subsection (e)(4)(A), or that it disclosed privately
19 to the person bringing the action in the course of its
20 investigation into potential violations of section
21 3729,

22 then the court may, to the extent the court considers ap-
23 propriate, reduce the share of the proceeds of the action
24 that the person would otherwise receive under paragraph
25 (1) or (2) of this subsection, taking into account the role

1 of that person in advancing the case to litigation and any
2 relevant circumstances pertaining to the violation. The
3 court shall direct the defendant to pay any such person
4 an amount for reasonable expenses that the court finds
5 to have been incurred, plus reasonable attorneys' fees and
6 costs.

7 “(B) If the person bringing the action is convicted
8 of criminal conduct arising from his or her role in the vio-
9 lation of section 3729, that person shall be dismissed from
10 the civil action and shall not receive any share of the pro-
11 ceeds of the action. Such dismissal shall not prejudice the
12 right of the United States to continue the action, rep-
13 resented by the Department of Justice.”.

14 (d) CERTAIN ACTIONS BARRED.—Section 3730(e)(4)
15 of title 31, United States Code, is amended to read as
16 follows:

17 “(4)(A) Upon timely motion of the Attorney General
18 of the United States, a court shall dismiss an action or
19 claim brought by a person under subsection (b) if the alle-
20 gations relating to all essential elements of liability of the
21 action or claim are based exclusively on the public dislo-
22 sure of allegations or transactions in a Federal criminal,
23 civil, or administrative hearing, in a congressional, Federal
24 administrative, or Government Accountability Office re-

1 port, hearing, audit, or investigation, or from the news
2 media.

3 “(B) For purposes of this paragraph, a ‘public disclo-
4 sure’ includes only disclosures that are made on the public
5 record or have otherwise been disseminated broadly to the
6 general public. An action or claim is ‘based on’ a public
7 disclosure only if the person bringing the action derived
8 the person’s knowledge of all essential elements of liability
9 of the action or claim alleged in the complaint from the
10 public disclosure. The person bringing the action does not
11 create a public disclosure by obtaining information from
12 a request for information made under section 552 of title
13 5 or from exchanges of information with law enforcement
14 and other Government employees if such information does
15 not otherwise qualify as publicly disclosed under this para-
16 graph.”.

17 (e) RELIEF FROM RETALIATORY ACTIONS.—Section
18 3730(h) of title 31, United States Code, is amended to
19 read as follows:

20 “(h) RELIEF FROM RETALIATORY ACTION.—Any
21 person who is discharged, demoted, suspended, threat-
22 ened, harassed, or in any other manner discriminated
23 against in the terms or conditions of employment, or is
24 materially hindered in obtaining new employment or other
25 business opportunities, by any other person because of

1 lawful acts done by the person discriminated against or
2 others associated with that person—

3 “(1) in furtherance of an actual or potential ac-
4 tion under this section, including investigation for,
5 initiation of, testimony for, or assistance in an ac-
6 tion filed or to be filed under this section, or

7 “(2) in furtherance of other efforts to stop one
8 or more violations of section 3729,

9 shall be entitled to all relief, from the person who has en-
10 gaged in the discrimination, that is necessary to make the
11 person whole. Such relief shall include reinstatement with
12 the same seniority status such person would have had but
13 for the discrimination, 2 times the amount of back pay
14 or business loss, interest on the back pay or business loss,
15 and compensation for any special damages sustained as
16 a result of the discrimination, including litigation costs
17 and reasonable attorneys’ fees. An action under this sub-
18 section may be brought in the appropriate district court
19 of the United States for the relief provided in this sub-
20 section.”.

21 (f) RELIEF TO ADMINISTRATIVE BENEFICIARIES.—
22 Section 3730 of title 31, United States Code, is amended
23 by adding at the end the following new subsection:

24 “(i) DAMAGES COLLECTED FOR FINANCIAL LOSSES
25 SUFFERED BY ADMINISTRATIVE BENEFICIARIES.—

1 “(1) IN GENERAL.—After paying any awards
2 due one or more persons who brought an action
3 under subsection (b), the Government shall pay from
4 the proceeds of the action to any administrative ben-
5 eficiary, as defined in section 3729(b), all amounts
6 that the Government has collected in the action for
7 financial losses suffered by such administrative bene-
8 ficiary. Any remaining proceeds collected by the
9 Government shall be treated in the same manner as
10 proceeds collected by the Government for direct
11 losses the Government suffers because of violations
12 of section 3729.

13 “(2) ALTERNATIVE REMEDIES.—Nothing in
14 section 3729 or this section precludes administrative
15 beneficiaries from pursuing any alternate remedies
16 available to them for losses or other harm suffered
17 by them that are not pursued or recovered in an ac-
18 tion under this section, except that if proceedings for
19 such alternate remedies are initiated after a person
20 has initiated an action under subsection (b), such
21 person shall be entitled to have such alternative rem-
22 edies considered in determining any award in the ac-
23 tion under subsection (b) to the same extent that
24 such person would be entitled under subsection

1 (c)(5) with respect to any alternate remedy pursued
2 by the Government.”.

3 **SEC. 4. FALSE CLAIMS PROCEDURE.**

4 (a) STATUTE OF LIMITATIONS; INTERVENTION BY
5 THE GOVERNMENT.—Section 3731(b) of title 31, United
6 States Code, is amended to read as follows:

7 “(b) STATUTE OF LIMITATIONS; INTERVENTION BY
8 THE GOVERNMENT.—

9 “(1) STATUTE OF LIMITATIONS.—A civil action
10 under section 3730 (a), (b), or (h) may not be
11 brought more than 8 years after the date on which
12 the violation of section 3729 or 3730(h) (as the case
13 may be) is committed.

14 “(2) INTERVENTION.—If the Government elects
15 to intervene and proceed with an action brought
16 under section 3730(b), the Government may file its
17 own complaint, or amend the complaint of the per-
18 son who brought the action under section 3730(b),
19 to clarify or add detail to the claims in which it is
20 intervening and to add any additional claims with
21 respect to which the Government contends it is enti-
22 tled to relief. For purposes of paragraph (1), any
23 such Government pleading shall relate back to the
24 filing date of the complaint of the person who origi-
25 nally brought the action to the extent that the Gov-

1 ernment’s claim arises out of the conduct, trans-
2 actions, or occurrences set forth, or attempted to be
3 set forth, in the person’s prior complaint.”.

4 (b) STANDARD OF PROOF.—Section 3731(c) of title
5 31, United States Code, is amended—

6 (1) by striking “(c) In” and inserting “(c)
7 STANDARD OF PROOF.—In”; and

8 (2) by striking “United States” and inserting
9 “plaintiff”.

10 (c) NOTICE OF CLAIMS; VOID CONTRACTS, AGREE-
11 MENTS, AND CONDITIONS OF EMPLOYMENT.—Section
12 3731 of title 31, United States Code, is amended by add-
13 ing at the end the following new subsections:

14 “(e) NOTICE OF CLAIMS.—In pleading an action
15 brought under section 3730(b), a person shall not be re-
16 quired to identify specific claims that result from an al-
17 leged course of misconduct if the facts alleged in the com-
18 plaint, if ultimately proven true, would provide a reason-
19 able indication that one or more violations of section 3729
20 are likely to have occurred, and if the allegations in the
21 pleading provide adequate notice of the specific nature of
22 the alleged misconduct to permit the Government effec-
23 tively to investigate and defendants fairly to defend the
24 allegations made.

1 “(f) VOID CONTRACT, AGREEMENTS, AND CONDI-
2 TIONS OF EMPLOYMENT.—

3 “(1) IN GENERAL.—Any contract, private
4 agreement, or private term or condition of employ-
5 ment that has the purpose or effect of limiting or
6 circumventing the rights of a person to take other-
7 wise lawful steps to initiate, prosecute, or support an
8 action under section 3730, or to limit or circumvent
9 the rights or remedies provided to persons bringing
10 actions under section 3730(b) and other cooperating
11 persons under section 3729 shall be void to the full
12 extent of such purpose or effect.

13 “(2) EXCEPTION.—Paragraph (1) shall not pre-
14 clude a contract or private agreement that is entered
15 into—

16 “(A) with the United States and a person
17 bringing an action under section 3730(b) who
18 would be affected by such contract or agree-
19 ment specifically to settle claims of the United
20 States and the person under section 3730; or

21 “(B) specifically to settle any discrimina-
22 tion claim under section 3730(h) of a person af-
23 fected by such contract or agreement.”.

24 (d) CONFORMING AMENDMENTS.—Section 3731 of
25 title 31, United States Code, is amended—

1 (1) in subsection (a), by striking “(a) A sub-
2 pena” and inserting “(a) SERVICE OF SUB-
3 POENAS.—A subpoena”; and

4 (2) in subsection (d), by striking “(d) Notwith-
5 standing” and inserting “(d) ESTOPPEL.—Notwith-
6 standing”.

7 **SEC. 5. FALSE CLAIMS JURISDICTION.**

8 Section 3732 of title 31, United States Code, is
9 amended by adding at the end the following new sub-
10 section:

11 “(c) SERVICE ON STATE OR LOCAL AUTHORITIES.—
12 With respect to any State or local government that is
13 named as a co-plaintiff with the United States in an action
14 brought under subsection (b), a seal on the action ordered
15 by the court under section 3730(b) shall not preclude the
16 Government or the person bringing the action from serv-
17 ing the complaint, any other pleadings, or the written dis-
18 closure of substantially all material evidence and informa-
19 tion possessed by the person bringing the action on the
20 law enforcement authorities that are authorized under the
21 law of that State or local government to investigate and
22 prosecute such actions on behalf of such governments.”.

23 **SEC. 6. CIVIL INVESTIGATIVE DEMANDS.**

24 (a) CIVIL INVESTIGATIVE DEMANDS.—Section
25 3733(a) of title 31, United States Code, is amended—

1 (1) in paragraph (1)—

2 (A) in the matter following subparagraph

3 (D)—

4 (i) by striking “The Attorney General
5 may not delegate” and all that follows
6 through “subsection.”; and

7 (ii) by striking “, the Deputy Attorney
8 General, or an Assistant Attorney Gen-
9 eral”; and

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

11 “Any information obtained by the Attorney
12 General under this section may be shared with
13 any a person bringing an action under section
14 3730(b) if the Attorney General determines
15 that it is necessary as part of any false claims
16 law investigation.”; and

17 (2) in paragraph (2)—

18 (A) in subparagraph (F), by striking “or
19 an Assistant Attorney General designated by
20 the Attorney General”; and

21 (B) in subparagraph (G), by striking the
22 second sentence.

23 (b) PROCEDURES.—

24 (1) ORAL EXAMINATIONS.—Section 3733(h)(6)
25 of title 31, United States Code, is amended by strik-

1 ing “, the Deputy Attorney General, or an Assistant
2 Attorney General”.

3 (2) CUSTODIANS.—Section 3733(i)(3) of title
4 31, United States Code, is amended to read as fol-
5 lows:

6 “(3) USE OF MATERIAL, ANSWERS, OR TRAN-
7 SCRIPTS IN FALSE CLAIMS ACTIONS AND OTHER
8 PROCEEDINGS.—Whenever any attorney of the De-
9 partment of Justice has been designated to handle
10 any false claims law investigation or proceeding, or
11 any other administrative, civil, or criminal investiga-
12 tion, case, or proceeding, the custodian of any docu-
13 mentary material, answers to interrogatories, or
14 transcripts of oral testimony received under this sec-
15 tion may deliver to such attorney such material, an-
16 swers, or transcripts for official use in connection
17 with any such investigation, case, or proceeding as
18 such attorney determines to be required. Upon the
19 completion of any such investigation, case, or pro-
20 ceeding, such attorney shall return to the custodian
21 any such material, answers, or transcripts so deliv-
22 ered that have not passed into the control of a court,
23 grand jury, or agency through introduction into the
24 record of such case or proceeding.”.

1 (c) DEFINITIONS.—Section 3733(l) of title 31,
2 United States Code, is amended—

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

5 (2) in paragraph (7), by striking the period at
6 the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(8) the term ‘official use’ means all lawful,
9 reasonable uses in furtherance of an investigation,
10 case, or proceeding, such as disclosures in connec-
11 tion with interviews of fact witnesses, settlement dis-
12 cussions, coordination of an investigation with a
13 State Medicaid Fraud Control Unit or other govern-
14 ment personnel, consultation with experts, and use
15 in court pleadings and hearings.”.

16 (d) DELEGATION OF AUTHORITY.—Section 3733 of
17 title 31, United States Code, is amended by adding at the
18 end the following:

19 “(m) DELEGATION.—The Attorney General may del-
20 egate any authority that the Attorney General has under
21 this section.”.

22 **SEC. 7. EFFECTIVE DATE.**

23 (a) IN GENERAL.—The amendments made by this
24 Act shall take effect on the date of the enactment of this

1 Act and, except as provided in subsection (b), shall apply
2 to any case pending on, or filed on or after, that date.

3 (b) EXCEPTIONS.—The following provisions of title
4 31, United States Code, as amended by this Act, shall
5 apply only to cases filed on or after the date of the enact-
6 ment of this Act:

7 (1) Section 3729(a)(1)(C)(i), relating to the
8 failure to comply with a statutory or contractual ob-
9 ligation to disclose an overpayment.

10 (2) Section 3730(h), to the extent such section
11 applies to discrimination against a person because of
12 lawful acts done by others associated with that per-
13 son.

14 (3) Section 3731(b)(1).

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