

Calendar No. 166

117TH CONGRESS
1ST SESSION**S. 2428**

To amend title 31, United States Code, to modify False Claims Act procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

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

NOVEMBER 16, 2021

Reported by Mr. DURBIN, with an amendment

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

To amend title 31, United States Code, to modify False Claims Act procedures, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act ~~may be cited as the “False Claims Amend-~~
5 ~~ments Act of 2021”.~~

1 **SEC. 2. FALSE CLAIMS PROCEDURE.**

2 (a) **PROVING MATERIALITY.**—Section 3729 of title
3 31, United States Code, is amended by adding at the end
4 the following:

5 “(e) **PROVING MATERIALITY.**—

6 “(1) **IN GENERAL.**—In an action under this sec-
7 tion, the Government or relator may establish mate-
8 riality by a preponderance of the evidence.

9 “(2) **REBUTTAL.**—A defendant may rebut an
10 argument of materiality under paragraph (1) by
11 clear and convincing evidence.”.

12 (b) **COSTS.**—Section 3731 of title 31, United States
13 Code, is amended by adding at the end the following:

14 “(f) If the Government elects not to intervene in an
15 action brought under section 3730(b), the court shall,
16 upon a motion by the Government, order the requesting
17 party to pay the Government’s expenses, including costs
18 and attorneys’ fees, for responding to the party’s discovery
19 requests, unless the party can demonstrate that the infor-
20 mation sought is relevant, proportionate to the needs of
21 the case, and not unduly burdensome on the Govern-
22 ment.”.

23 **SEC. 3. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.**

24 Section 3730(c)(2)(A) of title 31, United States
25 Code, is amended by inserting before the period at the
26 end the following: “; at which the Government shall have

1 the burden of demonstrating reasons for dismissal, and
 2 the qui tam plaintiff shall have the opportunity to show
 3 that the reasons are fraudulent, arbitrary and capricious,
 4 or contrary to law”.

5 **SEC. 4. POST-EMPLOYMENT WHISTLEBLOWER RETALIA-**
 6 **TION.**

7 Section 3730(h)(1) of title 31, United States Code,
 8 is amended by inserting “current or former” after “Any”.

9 **SEC. 5. GAO REPORT.**

10 Not later than 18 months after the date of enactment
 11 of this Act, the Comptroller General of the United States
 12 shall submit a report to Congress on the effectiveness of
 13 the False Claims Act (31 U.S.C. 3729 et seq.) during the
 14 time period beginning on the date of enactment of the
 15 False Claims Amendments Act of 1986 (Public Law 99–
 16 562; 100 Stat. 3153) and ending on the date of enactment
 17 of this Act, which shall include—

18 (1) a description of the benefits and challenges
 19 of enforcement efforts under the False Claims Act
 20 (31 U.S.C. 3729 et seq.); and

21 (2) information on the amounts recovered by
 22 the Government under the False Claims Act since
 23 the date of enactment of the False Claims Amend-
 24 ments Act of 1986 (Public Law 99–562; 100 Stat.
 25 3153).

1 **SEC. 6. APPLICABILITY.**

2 The amendments made by sections 2, 3, and 4 of this
 3 Act shall apply to any case under the False Claims Act
 4 (31 U.S.C. 3729 et seq.) that is—

5 (1) filed on or after the date of enactment of
 6 this Act; or

7 (2) pending on the date of enactment of this
 8 Act.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “False Claims Amend-*
 11 *ments Act of 2021”.*

12 **SEC. 2. FALSE CLAIMS PROCEDURE.**

13 *Section 3729 of title 31, United States Code, is amend-*
 14 *ed by adding at the end the following:*

15 *“(e) PROVING MATERIALITY.—In determining materi-*
 16 *ality, the decision of the Government to forego a refund or*
 17 *to pay a claim despite actual knowledge of fraud or falsity*
 18 *shall not be considered dispositive if other reasons exist for*
 19 *the decision of the Government with respect to such refund*
 20 *or payment.”.*

21 **SEC. 3. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.**

22 *Section 3730(c)(2)(A) of title 31, United States Code,*
 23 *is amended by inserting before the period at the end the*
 24 *following: “, at which the Government shall identify a valid*
 25 *government purpose and a rational relation between dis-*
 26 *missal and accomplishment of the purpose, and the person*

1 *initiating the action shall have the burden of demonstrating*
 2 *that the dismissal is fraudulent, arbitrary and capricious,*
 3 *or illegal”.*

4 **SEC. 4. POST-EMPLOYMENT WHISTLEBLOWER RETALIA-**
 5 **TION.**

6 *Section 3730(h)(1) of title 31, United States Code, is*
 7 *amended by inserting “current or former” after “Any”.*

8 **SEC. 5. GAO REPORT.**

9 *Not later than 18 months after the date of enactment*
 10 *of this Act, the Comptroller General of the United States*
 11 *shall submit a report to Congress on the effectiveness of sec-*
 12 *tions 3729 through 3733 of title 31, United States Code,*
 13 *(referred to in this Act as the “False Claims Act”) during*
 14 *the time period beginning on the date of enactment of the*
 15 *False Claims Amendments Act of 1986 (Public Law 99–*
 16 *562; 100 Stat. 3153) and ending on the date of enactment*
 17 *of this Act, which shall include—*

- 18 *(1) a description of the benefits and challenges of*
 19 *enforcement efforts under the False Claims Act; and*
 20 *(2) information on the amounts recovered by the*
 21 *Government under the False Claims Act since the*
 22 *date of enactment of the False Claims Amendments*
 23 *Act of 1986 (Public Law 99–562; 100 Stat. 3153).*

1 **SEC. 6. APPLICABILITY.**

2 *The amendments made by sections 2, 3, and 4 of this*
3 *Act shall apply to any case under the False Claims Act*
4 *that is filed on or after the date of enactment of this Act.*

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