

103^D CONGRESS
1ST SESSION

H. R. 2915

To amend chapter 37 of title 31, United States Code, relating to false claims actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. BERMAN (for himself, Mr. FRANK of Massachusetts, and Mr. GLICKMAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 37 of title 31, United States Code, relating to false claims actions, 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 1993”.

6 **SEC. 2. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
7 **TIONS.**

8 Section 3730(b) of title 31, United States Code, is
9 amended by adding at the end thereof the following new
10 paragraph:

1 “(6)(A) No later than 60 days after the date of
2 service under paragraph (2), the Government may
3 move to dismiss from the action the person bringing
4 the action if—

5 “(i) such person first learned all the nec-
6 essary and specific facts underlying the mate-
7 rial allegations contained in the action from—

8 “(I) a fraud investigation that the ex-
9 ecutive branch of the Government is ac-
10 tively pursuing, or

11 “(II) a news media report or a con-
12 gressional hearing or report, if the execu-
13 tive branch of the Government, before such
14 person filed the complaint in the action,
15 commenced a fraud investigation of such
16 allegations on the basis of such facts, and
17 if the executive branch is actively pursuing
18 such investigation; or

19 “(ii) such person learned of the informa-
20 tion that underlies the alleged violation of sec-
21 tion 3729 that is the basis of the action in
22 the course of the person’s employment by the
23 United States, and none of the following has oc-
24 curred:

1 “(I) In a case in which the employing
2 agency has an inspector general, such per-
3 son, 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 such inspector general; and

9 “(bb) notified in writing the per-
10 son’s supervisor and the Attorney
11 General of the disclosure under divi-
12 sion (aa).

13 “(II) In a case in which the employing
14 agency does not have an inspector general,
15 such person, 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 the Attorney General; and

21 “(bb) notified in writing the per-
22 son’s supervisor of the disclosure
23 under division (aa).

24 “(III) Twelve months (and any period
25 of extension as provided for under sub-

1 paragraph (B)) have elapsed since the dis-
2 closure of information and notification
3 under either subclause (I) or (II) were
4 made and the Attorney General has not
5 filed an action based on such information.

6 “(B) Prior to the expiration of the 12-month
7 period described under subparagraph (A)(ii)(III)
8 and upon notice to the person who has disclosed in-
9 formation and provided notice under subparagraph
10 (A)(ii) (I) or (II), the Attorney General may file a
11 motion seeking an extension of such 12-month pe-
12 riod. Such 12-month period may be extended by a
13 court for not more than an additional 12-month pe-
14 riod upon a showing by the Government that the ad-
15 ditional period is necessary for the Government to
16 decide whether or not to file such action. Any such
17 motion may be filed in camera and may be sup-
18 ported by affidavits or other submissions in camera.

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

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

23 “(ii) has supervisory authority over such
24 person; and

1 “(iii) such person believes is not culpable
2 of the violation upon which the action under
3 this subsection is brought by such person.

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

7 “(E) Any person bringing a civil action under
8 paragraph (1) shall be provided an opportunity to
9 contest a motion to dismiss under this paragraph.
10 The court may restrict access to the evidentiary ma-
11 terials filed in support of the motion to dismiss, as
12 the interests of justice require. A motion to dismiss
13 and papers filed in support or opposition of such
14 motion shall not be—

15 “(i) made public without the prior written
16 consent of the person bringing the civil action;
17 or

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

19 “(F) If the motion to dismiss under this para-
20 graph is granted, the matter shall remain under
21 seal.

22 “(G) No later than 6 months after the date of
23 the enactment of this paragraph, and every 6
24 months thereafter, the Department of Justice shall
25 report to the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the
2 House of Representatives relating to—

3 “(i) the cases in which the Department of
4 Justice has filed a motion to dismiss under this
5 paragraph;

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

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

9 **SEC. 3. PROVISIONS RELATING TO ACTIONS BARRED AND**
10 **QUI TAM AWARDS.**

11 Section 3730 of title 31, United States Code, is
12 amended—

13 (1) in subsection (b)(1) by adding at the end
14 thereof “A right of action for a violation of section
15 3729 may not be waived or released by any person,
16 except as part of a court approved settlement of a
17 civil action brought under this section.”;

18 (2) in subsection (d)(1)—

19 (A) in the first sentence—

20 (i) by striking out “, subject to the
21 second sentence of this paragraph,”; and

22 (ii) by inserting after “proceeds of the
23 action or settlement of the claim,” the fol-
24 lowing: “including all proceeds or settle-
25 ment amounts attributable to allegations

1 developed as a result of information pro-
2 vided to the Government by such person,”;

3 (B) in the third sentence by striking out
4 “or the second sentence”; and

5 (C) by striking out the second sentence;
6 and

7 (3) in subsection (e) by striking out paragraph
8 (4).

9 **SEC. 4. WHISTLEBLOWER PROTECTION.**

10 Section 3730(h) of title 31, United States Code, is
11 amended—

12 (1) by striking out “(h)” and inserting in lieu
13 thereof “(h) WHISTLEBLOWER PROTECTION.—(1)”;
14 and

15 (2) by adding at the end thereof the following
16 new paragraph:

17 “(2)(A) In any action brought by an employee under
18 paragraph (1), the employee shall be entitled to relief if,
19 based upon a preponderance of the evidence, the employee
20 demonstrates that a lawful act described under paragraph
21 (1) was a contributing factor in the action by the employer
22 against the employee that is alleged in the complaint.

23 “(B) Notwithstanding subparagraph (A), an em-
24 ployee who brings an action under paragraph (1) shall not
25 be entitled to relief if the employer demonstrates by clear

1 and convincing evidence that the employer would have
2 taken the same action against the employee in the absence
3 of the lawful act that was a contributing factor described
4 in subparagraph (A).”.

5 **SEC. 5. DEFINITION OF PERSON.**

6 Section 3730 of title 31, United States Code, is fur-
7 ther amended by inserting at the end thereof the following
8 new subsection:

9 “(i) DEFINITION.—For purposes of this section, the
10 term ‘person’ means any natural person, partnership, cor-
11 poration, association, or other legal entity, including any
12 State or political subdivision of a State.”.

13 **SEC. 6. STATUTE OF LIMITATIONS.**

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

16 “(b)(1) A civil action under section 3730 may not be
17 brought more than 6 years after the date on which the
18 violation of section 3729 is committed.

19 “(2) For the purpose of computing the period de-
20 scribed under paragraph (1), there shall be excluded all
21 periods during which facts material to the right of action
22 are not known and reasonably could not be known by the
23 official of the United States with authority to act in the
24 circumstances.”.

1 **SEC. 7. AUTHORITY TO ISSUE INVESTIGATIVE DEMANDS.**

2 Section 3733 of title 31, United States Code, is
3 amended—

4 (1) in subsection (a)(1)—

5 (A) in the matter preceding subparagraph
6 (A) by inserting “or an Assistant Attorney Gen-
7 eral” after “Attorney General” each place it ap-
8 pears; and

9 (B) in the matter following subparagraph
10 (D)—

11 (i) in the first sentence by inserting
12 “or an Assistant Attorney General” after
13 “Attorney General”; and

14 (ii) in the second sentence by striking
15 out “, the Deputy Attorney General,”;

16 (2) in subsection (a)(2)—

17 (A) in subparagraph (F) by striking out
18 “designated by the Attorney General”; and

19 (B) in subparagraph (G) by inserting “or
20 an Assistant Attorney General” after “Attorney
21 General” each place it appears;

22 (3) in subsection (h)(6) by striking out “, the
23 Deputy Attorney General,”;

24 (4) in subsection (i) by inserting “or an Assist-
25 ant Attorney General” after “Attorney General”
26 each place it appears; and

1 (5) in subsection (l)(6) by inserting “or an As-
2 sistant Attorney General” after “Attorney General”.

3 **SEC. 8. APPLICABILITY AND EFFECTIVE DATE.**

4 (a) IN GENERAL.—(1) The amendments made by
5 this Act shall take effect on the date of the enactment
6 of this Act and shall apply to cases filed on or after the
7 date of enactment of this Act.

8 (2) The provisions of section 3730(b)(6)(A)(i) of title
9 31, United States Code (as added by section 2 of this Act),
10 and section 3730 (d) and (e) of such title (as amended
11 by section 3 (2) and (3) of this Act), shall apply to cases
12 pending on the date of the enactment of this Act. In any
13 case that is pending on the date of the enactment of this
14 Act in which the Government has elected to proceed with
15 the action under section 3730(b)(4) of title 31, United
16 States Code, the Government may file a motion to dismiss
17 a qui tam relator under section 3730(b)(6)(A)(i) of such
18 title (as added by section 2 of this Act), no later than
19 120 days after the date of the enactment of this Act.

20 (b) PRIOR LAWS.—(1) The amendments made by the
21 False Claims Amendments Act of 1986 (Public Law 99–
22 562) shall apply to cases filed on or after the date of the
23 enactment of such Act, and to cases pending on such date
24 that are still pending on the date of the enactment of this
25 Act.

1 (2) The amendments made by section 9 of the Major
2 Fraud Act of 1988 (Public Law 100–700) shall apply to
3 cases filed on or after the date of the enactment of such
4 Act, and to cases pending on such date that are still pend-
5 ing on the date of enactment of this Act.

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