

103D CONGRESS
1ST SESSION

S. 841

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

IN THE SENATE OF THE UNITED STATES

APRIL 29 (legislative day, APRIL 19), 1993

Mr. GRASSLEY introduced the following bill; which was read twice and 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 qui tam relator
4 if—

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

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

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

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

23 “(bb) notified in writing the per-
24 son’s supervisor and the Attorney

1 General of the disclosure under divi-
2 sion (aa).

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

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

11 “(bb) notified in writing the per-
12 son’s supervisor of the disclosure
13 under division (aa).

14 “(III) Twelve months (and any period
15 of extension as provided for under sub-
16 paragraph (B)) have elapsed since the dis-
17 closure of information and notification
18 under either subclause (I) or (II) were
19 made and the Attorney General has not
20 filed an action based on such information.

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

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

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
12 classification to the position of such person;

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

15 “(iii) such person believes is not culpable
16 of the violation upon which the action under
17 this 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 bringing a civil action under
22 paragraph (1) shall be provided an opportunity to
23 contest a motion to dismiss under this paragraph.
24 The court may restrict access to the evidentiary ma-
25 terials filed in support of the motion to dismiss, as

1 the interests of justice require. A motion to dismiss
2 and papers filed in support or opposition of such
3 motion shall not be—

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

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

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

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

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

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

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

1 **SEC. 3. PROVISIONS RELATING TO ACTIONS BARRED AND**
2 **QUI TAM AWARDS.**

3 Section 3730 of title 31, United States Code, is fur-
4 ther amended—

5 (1) in subsection (b)(1) by adding at the end
6 thereof “No claim for a violation of section 3729
7 may be waived or released by any action of any per-
8 son, except insofar as such action is part of a court
9 approved settlement of a false claim civil action
10 brought under this section.”;

11 (2) in subsection (d)—

12 (A) in the first sentence by striking out “,
13 subject to the second sentence of this para-
14 graph,”; and

15 (B) by striking out the second sentence;
16 and

17 (3) in subsection (e) by striking out paragraph
18 (4).

19 **SEC. 4. WHISTLEBLOWER PROTECTION.**

20 Section 3730(h) of title 31, United States Code, is
21 amended—

22 (1) by striking out “(h)” and inserting in lieu
23 thereof “(h) WHISTLEBLOWER PROTECTION.—(1)”;
24 and

25 (2) by adding at the end thereof the following
26 new paragraphs:

1 “(2)(A) In any action brought by an employee
2 under paragraph (1), the employee shall be entitled
3 to relief if, based upon a preponderance of the evi-
4 dence, the employee demonstrates that a lawful act
5 described under paragraph (1) was a contributing
6 factor in the action by the employer against the em-
7 ployee that is alleged in the complaint.

8 “(B) Notwithstanding the provisions of sub-
9 paragraph (A), such employee shall not be entitled
10 to relief, if the employer demonstrates by clear and
11 convincing evidence that the employer would have
12 taken the same action against the employee in the
13 absence of such lawful act.”.

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

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

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

22 **SEC. 6. STATUTE OF LIMITATIONS.**

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

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

4 “(2) For the purpose of computing the period de-
5 scribed under paragraph (1), there shall be excluded all
6 periods during which facts material to the right of action
7 are not known and reasonably could not be known by the
8 official of the United States with authority to act in the
9 circumstances.”.

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

11 Section 3733 of title 31, United States Code, is
12 amended—

13 (1) in subsection (a)(1)—

14 (A) in the matter preceding subparagraph
15 (A) by inserting “or an Assistant Attorney Gen-
16 eral” after “Attorney General” each place it ap-
17 pears; and

18 (B) in the matter following subparagraph

19 (D)—

20 (i) in the first sentence by inserting
21 “or an Assistant Attorney General” after
22 “Attorney General”; and

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

25 (2) in subsection (a)(2)—

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

3 (B) in subparagraph (G) by inserting “or
4 an Assistant Attorney General” after “Attorney
5 General” each place it appears;

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

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

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

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

14 (a) IN GENERAL.—(1) The amendments made by
15 this Act shall take effect on the date of the enactment
16 of this Act and shall apply to cases filed on or after the
17 date of enactment of this Act.

18 (2) The provisions of section 3730(b)(6)(A)(i) of title
19 31, United States Code (as added by section 2 of this Act),
20 and section 3730 (d) and (e) of such title (as amended
21 by section 3 (2) and (3) of this Act), shall apply to cases
22 pending on the date of the enactment of this Act. In any
23 case that is pending on the date of the enactment of this
24 Act in which the Government has elected to proceed with
25 the action under section 3730(b)(4) of title 31, United

1 States Code, the Government may file a motion to dismiss
2 a qui tam relator under section 3730(b)(6)(A)(i) of such
3 title (as added by section 2 of this Act), no later than
4 120 days after the date of the enactment of this Act.

5 (b) PRIOR LAWS.—(1) The amendments made by the
6 False Claims Amendments Act of 1986 (Public Law 99–
7 562) shall apply to cases filed on or after the date of the
8 enactment of such Act, and to cases pending on such date
9 that are still pending on the date of the enactment of this
10 Act.

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

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