

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the False Claims Act.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 2041

To amend the False Claims Act.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “False Claims Act Cor-
5 rection Act of 2008”.

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

7 Section 3729 of title 31, United States Code, is
8 amended—

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

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

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

3 “(A) knowingly presents, or causes to be
4 presented, a false or fraudulent claim for pay-
5 ment or approval;

6 “(B) knowingly makes, uses, or causes to
7 be made or used, a false record or statement to
8 get a false or fraudulent claim paid or ap-
9 proved;

10 “(C) conspires to commit a violation of
11 subparagraph (A), (B), (D), (E), (F), or (G) or
12 otherwise to defraud the Government by getting
13 a false or fraudulent claim paid or approved;

14 “(D) has possession, custody, or control of
15 property or money used, or to be used, by the
16 Government and knowingly delivers, or causes
17 to be delivered, less than all of that money or
18 property;

19 “(E) is authorized to make or deliver a
20 document certifying receipt of property used, or
21 to be used, by the Government and, intending
22 to defraud the Government, makes or delivers
23 the receipt without completely knowing that the
24 information on the receipt is true;

1 “(F) knowingly buys, or receives as a
2 pledge of an obligation or debt, public property
3 from an officer or employee of the Government,
4 or a member of the Armed Forces, who lawfully
5 may not sell or pledge property; or

6 “(G) knowingly makes, uses, or causes to
7 be made or used, a false record or statement to
8 conceal, avoid, or decrease an obligation to pay
9 or transmit money or property to the Govern-
10 ment, or knowingly conceals, avoids, or de-
11 creases an obligation to pay or transmit money
12 or property to the Government,

13 is liable to the United States Government for a civil
14 penalty of not less than \$5,000 and not more than
15 \$10,000, as adjusted by the Federal Civil Penalties
16 Inflation Adjustment Act of 1990 (28 U.S.C. 2461
17 note; Public Law 104–410), plus 3 times the
18 amount of money or property paid or approved be-
19 cause of the act of that person.

20 “(2) REDUCED DAMAGES.—If the court finds
21 that—

22 “(A) the person committing the violation
23 of this subsection furnished officials of the
24 United States responsible for investigating false
25 claims violations with all information known to

1 such person about the violation within 30 days
2 after the date on which the defendant first ob-
3 tained the information;

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

6 “(C) at the time such person furnished the
7 United States with the information about the
8 violation, no criminal prosecution, civil action,
9 or administrative action had commenced under
10 this title with respect to such violation, and the
11 person did not have actual knowledge of the ex-
12 istence of an investigation into such violation,
13 the court may assess not less than 2 times the
14 amount of money or property paid or approved be-
15 cause of the act of that person.

16 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
17 lating this subsection shall also be liable to the
18 United States Government for the costs of a civil ac-
19 tion brought to recover any such penalty or dam-
20 ages.”;

21 (2) by striking subsections (b) and (c) and in-
22 serting the following:

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

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

1 “(A) has actual knowledge of the informa-
2 tion;

3 “(B) acts in deliberate ignorance of the
4 truth or falsity of the information; or

5 “(C) acts in reckless disregard of the truth
6 or falsity of the information,

7 and no proof of specific intent to defraud is re-
8 quired;

9 “(2) the term ‘claim’—

10 “(A) means any request or demand, wheth-
11 er under a contract or otherwise, for money or
12 property and whether or not the United States
13 has title to the money or property, that—

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

16 “(ii) is made to a contractor, grantee,
17 or other recipient if the United States Gov-
18 ernment—

19 “(I) provides or has provided any
20 portion of the money or property re-
21 quested or demanded; or

22 “(II) will reimburse such con-
23 tractor, grantee, or other recipient for
24 any portion of the money or property
25 which is requested or demanded; and

1 “(B) does not include requests or demands
2 for money or property that the Government has
3 paid to an individual as compensation for Fed-
4 eral employment or as an income subsidy with
5 no restrictions on that individual’s use of the
6 money or property; and

7 “(3) the term ‘obligation’ means a fixed duty,
8 or a contingent duty arising from an express or im-
9 plied contractual, quasi-contractual, grantor-grantee,
10 licensor-licensee, fee-based, or similar relationship,
11 including customs duties for mismarking country of
12 origin, and the retention of any overpayment.”;

13 (3) by redesignating subsections (d) and (e) as
14 subsections (c) and (d), respectively; and

15 (4) in subsection (c), as redesignated, by strik-
16 ing “subparagraphs (A) through (C) of subsection
17 (a)” and inserting “subsection (a)(2)”.

18 **SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
19 **TIONS.**

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

22 (1) in paragraph (2), by striking “Rule
23 4(d)(4)” and inserting “rule 4”; and

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

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

7 “(i) the necessary and specific material al-
8 legations contained in such action were derived
9 from a filed criminal indictment or information
10 or an open and active criminal, civil, or admin-
11 istrative investigation or audit by the Govern-
12 ment into substantially the same fraud alleged
13 in the action;

14 “(ii) the duties of the employee’s position
15 specifically include uncovering and reporting the
16 particular type of fraud that is alleged in the
17 action, and the employee, as part of the duties
18 of that employee’s position, is participating in
19 or has knowledge of an open and active crimi-
20 nal, civil, or administrative investigation or
21 audit by the Government of the alleged fraud;

22 “(iii) the person bringing the action
23 learned of the information that underlies the al-
24 leged violation of section 3729 that is the basis

1 of the action in the course of the person’s em-
2 ployment by the United States, and either—

3 “(I) in a case in which the employing
4 agency has an inspector general, such per-
5 son, before bringing the action has not—

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 such inspector general; and

11 “(bb) notified in writing the per-
12 son’s supervisor and the Attorney
13 General of the disclosure under divi-
14 sion (aa); or

15 “(II) in a case in which the employing
16 agency does not have an inspector general,
17 such person, before bringing the action has
18 not—

19 “(aa) disclosed in writing sub-
20 stantially all material evidence and in-
21 formation that relates to the alleged
22 violation that the person possessed, to
23 the Attorney General; and

1 “(bb) notified in writing the per-
2 son’s supervisor of the disclosure
3 under division (aa); or

4 “(iv) the person bringing the action
5 learned of the information that underlies the al-
6 leged violation of section 3729 that is the basis
7 of the action in the course of the person’s em-
8 ployment by the United States, made the re-
9 quired disclosures and notifications under
10 clause (iii), and—

11 “(I) less than 18 months (and any pe-
12 riod of extension as provided for under
13 subparagraph (B)) have elapsed since the
14 disclosures of information and notification
15 under clause (iii) were made; or

16 “(II) within 18 months (and any pe-
17 riod of extension as provided for under
18 subparagraph (B)) after the disclosures of
19 information and notification under clause
20 (iii) were made, the Attorney General has
21 filed an action based on such information.

22 “(B) Prior to the expiration of the 18-month
23 period described under subparagraph (A)(iv)(II) and
24 upon notice to the person who has disclosed informa-
25 tion and provided notice under subparagraph

1 (A)(iii), the Attorney General may extend such 18-
2 month period by 1 additional 12-month period.

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

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

7 “(ii) has supervisory authority over such
8 person; and

9 “(iii) such person believes is not culpable
10 of the violation upon which the action under
11 this subsection is brought by such person.

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

15 “(E) Any person against whom the Government
16 has filed a motion to dismiss under subparagraph
17 (A) shall be provided an opportunity to contest a
18 motion to dismiss under this paragraph. The court
19 may restrict access to the evidentiary materials filed
20 in support of the motion to dismiss, as the interests
21 of justice require. A motion to dismiss and evi-
22 dentiary material filed in support or opposition of
23 such motion shall not be—

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

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

5 “(F) Upon granting a motion filed under sub-
6 paragraph (A), the court shall dismiss the qui tam
7 relator from the action.

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

11 “(H) Not later than 12 months after the date
12 of the enactment of this paragraph, and every 12
13 months thereafter, the Department of Justice shall
14 submit a report to the Committee on the Judiciary
15 of the Senate and the Committee on the Judiciary
16 of the 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.

23 “(I) Nothing in this paragraph shall be con-
24 strued to limit the authority of the Government to
25 dismiss an action or claim, or a person who brings

1 an action or claim, under this subsection for any
2 reason other than the grant of a motion filed under
3 subparagraph (A).”.

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

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

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

22 “(4) A court shall dismiss an action or claim or
23 the person bringing the action or claim under sub-
24 section (b), upon a motion by the Government filed
25 on or before service of a complaint on the defendant

1 under subsection (b), or thereafter for good cause
2 shown if—

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

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

11 “(ii) a news media report, or public
12 congressional hearing, report, or investiga-
13 tion, if within 90 days after the issuance
14 or completion of such news media report or
15 congressional hearing, report, or investiga-
16 tion, the Department of Justice or an Of-
17 fice of Inspector General opened a fraud
18 investigation or audit of the facts con-
19 tained in such news media report or con-
20 gressional hearing, report, or investigation
21 as a result of learning about the public re-
22 port, hearing, or investigation;

23 “(B) any new information provided by the
24 person does not add substantial grounds for ad-
25 ditional recovery beyond those encompassed

1 within the Government’s existing criminal in-
2 dictment or information, or an open and active
3 criminal, civil, or administrative investigation or
4 audit; and

5 “(C) the Government’s existing criminal
6 indictment or information, or an open and ac-
7 tive criminal, civil, or administrative investiga-
8 tion or audit, or the news media report, or con-
9 gressional hearing, report, or investigation was
10 not initiated or published after the Govern-
11 ment’s receipt of information about substan-
12 tially the same matters voluntarily brought by
13 the person to the Government.”.

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

16 (1) in paragraph (1), by striking all after “If”
17 and inserting “the person bringing the action is not
18 dismissed under subsection (e)(4) because the person
19 provided new information that adds substantial
20 grounds for additional recovery beyond those encom-
21 passed within the Government’s existing indictment,
22 information, investigation, or audit, then such per-
23 son shall be entitled to receive a share only of pro-
24 ceeds of the action or settlement that are attrib-

1 utable to the new basis for recovery that is stated
2 in the action brought by that person.”; and

3 (2) by striking paragraph (3) and inserting the
4 following:

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

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

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

24 “(B) If the person bringing the action is convicted
25 of criminal conduct arising from the role of that person

1 in the violation of section 3729, that person shall be dis-
2 missed from the civil action and shall not receive any share
3 of the proceeds of the action. Such dismissal shall not
4 prejudice the right of the United States to continue the
5 action, represented by the Department of Justice.”.

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

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

9 “(h) RELIEF FROM RETALIATORY ACTIONS.—

10 “(1) IN GENERAL.—Any employee, government
11 contractor, or agent shall be entitled to all relief nec-
12 essary to make that employee, government con-
13 tractor, or agent whole, if that employee, govern-
14 ment contractor, or agent is discharged, demoted,
15 suspended, threatened, harassed, or in any other
16 manner discriminated against in the terms and con-
17 ditions of employment because of lawful acts done by
18 the employee, government contractor, or agent on
19 behalf of the employee, government contractor, or
20 agent or associated others in furtherance of other ef-
21 forts to stop 1 or more violations of this subchapter.

22 “(2) RELIEF.—Relief under paragraph (1) shall
23 include reinstatement with the same seniority status
24 that employee, government contractor, or agent
25 would have had but for the discrimination, 2 times

1 the amount of back pay, interest on the back pay,
2 and compensation for any special damages sustained
3 as a result of the discrimination, including litigation
4 costs and reasonable attorneys' fees. An action
5 under this subsection may be brought in the appro-
6 priate district court of the United States for the re-
7 lief provided in this subsection.”.

8 **SEC. 6. STATUTE OF LIMITATIONS.**

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

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

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

1 forth, or attempted to be set forth, in the prior complaint
2 of that person.”.

3 **SEC. 7. CIVIL INVESTIGATIVE DEMANDS.**

4 Section 3733 of title 31, United States Code, is
5 amended—

6 (1) in subsection (a)(1)—

7 (A) in the matter preceding subparagraph

8 (A)—

9 (i) by inserting “, or a designee (for
10 purposes of this section),” after “Whenever
11 the Attorney General”; and

12 (ii) by striking “the Attorney General
13 may, before commencing a civil proceeding
14 under section 3730 or other false claims
15 law,” and inserting “the Attorney General,
16 or a designee, may, before commencing a
17 civil proceeding under section 3730(a) or
18 other false claims law, or electing under
19 section 3730(b),”; and

20 (B) in the matter following subparagraph

21 (D),—

22 (i) by striking “may not delegate” and
23 inserting “may delegate”; and

24 (ii) by adding at the end the fol-
25 lowing: “Any information obtained by the

1 Attorney General or a designee of the At-
2 torney General under this section may be
3 shared with any qui tam relator if the At-
4 torney General or designee determine it is
5 necessary as part of any false claims act
6 investigation.”;

7 (2) in subsection(i)(2)—

8 (A) in subparagraph (B), by striking “,
9 who is authorized for such use under regula-
10 tions which the Attorney General shall issue”;
11 and

12 (B) in subparagraph (C), by striking “Dis-
13 closure of information to any such other agency
14 shall be allowed only upon application, made by
15 the Attorney General to a United States district
16 court, showing substantial need for the use of
17 the information by such agency in furtherance
18 of its statutory responsibilities.”; and

19 (3) in subsection (l)—

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

22 (B) in paragraph (7), by striking the pe-
23 riod and inserting “; and” ; and

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

1 “(8) the term ‘official use’ means any use that
2 is consistent with the law, and the regulations and
3 policies of the Department of Justice, including use
4 in connection with internal Department of Justice
5 memoranda and reports; communications between
6 the Department of Justice and a Federal, State, or
7 local government agency, or a contractor of a Fed-
8 eral, State, or local government agency, undertaken
9 in furtherance of a Department of Justice investiga-
10 tion or prosecution of a case; interviews of any qui
11 tam relator or other witness; oral examinations;
12 depositions; preparation for and response to civil dis-
13 covery requests; introduction into the record of a
14 case or proceeding; applications, motions, memo-
15 randa and briefs submitted to a court or other tri-
16 bunal; and communications with Government inves-
17 tigators, auditors, consultants and experts, the coun-
18 sel of other parties, arbitrators and mediators, con-
19 cerning an investigation, case or proceeding.”.

20 **SEC. 8. SEVERABILITY.**

21 If any provision or application of this Act is held in-
22 valid, the invalidity shall not affect other provisions or ap-
23 plications of this Act which can be given effect without
24 regard to the invalid provision or application, and to this
25 end the provisions or applications of this Act are severable.

1 SEC. 9. EFFECTIVE DATE AND APPLICATION.

2 The amendments made by this Act shall take effect
3 on the date of enactment of this Act and shall apply to
4 all civil actions filed before, on, or after that date.