

111TH CONGRESS
1ST SESSION

H. R. 1788

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

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

1 **“§ 3729. False claims**

2 “(a) LIABILITY FOR CERTAIN ACTS.—

3 “(1) IN GENERAL.—Any person who—

4 “(A) knowingly presents, or causes to be
5 presented for payment or approval, a false or
6 fraudulent claim for Government money or
7 property,

8 “(B) knowingly makes, uses, or causes to
9 be made or used, a false record or statement to
10 get a false or fraudulent claim for Government
11 money or property paid or approved,

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

14 “(i) fails to comply with a statutory
15 or contractual obligation to disclose an
16 overpayment about which the person is on
17 actual notice, or

18 “(ii) intending to—

19 “(I) defraud the Government, or

20 “(II) knowingly convert the
21 money or property, permanently or
22 temporarily, to an unauthorized use,
23 fails to deliver or return, or fails to cause
24 the return or delivery of, the money or
25 property, or delivers, returns, or causes to

1 be delivered or returned less money or
2 property than the amount due or owed,

3 “(D) authorized to make or deliver a docu-
4 ment certifying receipt of property used, or to
5 be used, by the Government and, intending to
6 defraud the Government, makes or delivers the
7 receipt without completely knowing that the in-
8 formation on the receipt is true,

9 “(E) knowingly buys, or receives as a
10 pledge of an obligation or debt, Government
11 money or property from an officer or employee
12 of the Government, or a member of the Armed
13 Forces, who lawfully may not sell or pledge the
14 money or property,

15 “(F) knowingly makes, uses, or causes to
16 be made or used, a false record or statement to
17 conceal, avoid, or decrease an obligation to pay
18 or transmit money or property to the Govern-
19 ment, or

20 “(G) conspires to commit any violation set
21 forth in any of subparagraphs (A) through (F),
22 is liable to the United States Government for a civil
23 penalty of not less than \$5,000 and not more than
24 \$10,000, plus 3 times the amount of damages that
25 the Government or its administrative beneficiary

1 sustains because of the act of that person, subject
2 to paragraphs (2) and (3).

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

10 “(A) such person provided to those officials
11 of the United States who are responsible for in-
12 vestigating false claims violations, all informa-
13 tion known to the person about the violation
14 within 30 days after the date on which the per-
15 son first obtained the information;

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

18 “(C) at the time such person provided to
19 the United States the information about the
20 violation under subparagraph (A), no criminal
21 prosecution, civil action, or administrative ac-
22 tion had commenced with respect to such viola-
23 tion, and the person did not have actual knowl-
24 edge of the existence of an investigation into
25 such violation.

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

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

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

11 “(A) has actual knowledge of the informa-
12 tion,

13 “(B) acts in deliberate ignorance of the
14 truth or falsity of the information, or

15 “(C) acts in reckless disregard of the truth
16 or falsity of the information,

17 and no proof of specific intent to defraud is re-
18 quired;

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

21 “(A) money or property belonging to the
22 United States Government;

23 “(B) money or property that—

24 “(i) the United States Government
25 provides or has provided to a contractor,

1 grantee, agent, or other recipient, or for
2 which the United States Government will
3 reimburse a contractor, grantee, agent, or
4 other recipient; and

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

8 “(C) money or property that the United
9 States holds in trust or administers for any ad-
10 ministrative beneficiary;

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

14 “(4) the term ‘administrative beneficiary’
15 means any entity, including any governmental or
16 quasi-governmental entity, on whose behalf the
17 United States Government, alone or with others,
18 serves as custodian or trustee of money or property
19 owned by that entity.

20 “(c) STATUTORY CAUSE OF ACTION.—Liability
21 under this section is a statutory cause of action all ele-
22 ments of which are set forth in this section. No proof of
23 any additional element of common law fraud or other
24 cause of action is implied or required for liability to exist
25 for a violation of subsection (a).

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

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

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

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

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

16 (2) in paragraph (2), by inserting after the sec-
17 ond sentence the following: “In the absence of a
18 showing of extraordinary need, the written disclosure
19 of any material evidence and information, and any
20 other attorney work product, that the person bring-
21 ing the action provides to the Government shall not
22 be subject to discovery.”;

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

1 “(B) notify the court that it declines to take
2 over the action, in which case the person bringing
3 the action shall have the right to conduct the action,
4 and, within 45 days after the Government provides
5 such notice, shall either—

6 “(i) move to dismiss the action without
7 prejudice; or

8 “(ii) notify the court of the person’s inten-
9 tion to proceed with the action and move the
10 court to unseal the complaint, and any amend-
11 ments thereto, so as to permit service on the
12 defendant and litigation of the action in a pub-
13 lic forum.

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

18 (4) by amending paragraph (5) to read as fol-
19 lows:

20 “(5) When a person brings an action under this sub-
21 section, no person other than the Government may join
22 or intervene in the action, except with the consent of the
23 person who brought the action. In addition, when a person
24 brings an action that is pled in accordance with this sub-
25 section and section 3731(e), no other person may bring

1 a separate action under this subsection based on the facts
2 underlying a cause of action in the pending action.”.

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

7 “(A) anything of value received by the Govern-
8 ment from the defendant, whether funds, credits, or
9 in-kind goods or services, in exchange for an agree-
10 ment by the Government either to release claims
11 brought in, or to decline to intervene in or inves-
12 tigate, the action initiated under subsection (b); and

13 “(B) anything of value received by the Govern-
14 ment based on the claims alleged by the person initi-
15 ating the action, if that person subsequently prevails
16 on the claims.

17 If any such alternate remedy is pursued in another pro-
18 ceeding, the person initiating the action shall have the
19 same rights in such proceeding as such person would have
20 had if the action had continued under this section, except
21 that the person initiating the action may not obtain an
22 award calculated on more than the total amount of dam-
23 ages, plus any fines or penalties, that could be recovered
24 by the United States under section 3729(a).”.

1 (c) AWARD TO QUI TAM PLAINTIFF.—Section
2 3730(d) of title 31, United States Code, is amended—

3 (1) in paragraph (1)—

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

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

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

18 (2) in paragraph (2)—

19 (A) in the second sentence, by striking
20 “and shall be paid out of such proceeds”; and

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

23 (3) by amending paragraph (3) to read as fol-
24 lows:

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

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

6 “(ii) derived his or her knowledge of the action
7 primarily from specific information relating to alle-
8 gations or transactions (other than information pro-
9 vided by the person bringing the action) that the
10 Government publicly disclosed, within the meaning
11 of subsection (e)(4)(A), or that it disclosed privately
12 to the person bringing the action in the course of its
13 investigation into potential violations of section
14 3729,

15 then the court may, to the extent the court considers ap-
16 propriate, reduce the share of the proceeds of the action
17 that the person would otherwise receive under paragraph
18 (1) or (2) of this subsection, taking into account the role
19 of that person in advancing the case to litigation and any
20 relevant circumstances pertaining to the violation. The
21 court shall direct the defendant to pay any such person
22 an amount for reasonable expenses that the court finds
23 to have been incurred, plus reasonable attorneys’ fees and
24 costs.

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

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

11 “(4)(A) Upon timely motion of the Attorney General
12 of the United States, a court shall dismiss an action or
13 claim brought by a person under subsection (b) if the alle-
14 gations relating to all essential elements of liability of the
15 action or claim are based exclusively on the public dislo-
16 sure of allegations or transactions in a Federal criminal,
17 civil, or administrative hearing, in a congressional, Federal
18 administrative, or Government Accountability Office re-
19 port, hearing, audit, or investigation, or from the news
20 media.

21 “(B) For purposes of this paragraph, a ‘public dislo-
22 sure’ includes only disclosures that are made on the public
23 record or have otherwise been disseminated broadly to the
24 general public. An action or claim is ‘based on’ a public
25 disclosure only if the person bringing the action derived

1 the person’s knowledge of all essential elements of liability
2 of the action or claim alleged in the complaint from the
3 public disclosure. The person bringing the action does not
4 create a public disclosure by obtaining information from
5 a request for information made under section 552 of title
6 5 or from exchanges of information with law enforcement
7 and other Government employees if such information does
8 not otherwise qualify as publicly disclosed under this para-
9 graph.”.

10 (e) RELIEF FROM RETALIATORY ACTIONS.—Section
11 3730(h) of title 31, United States Code, is amended to
12 read as follows:

13 “(h) RELIEF FROM RETALIATORY ACTION.—Any
14 person who is discharged, demoted, suspended, threat-
15 ened, harassed, or in any other manner discriminated
16 against in the terms or conditions of employment, or is
17 materially hindered in obtaining new employment or other
18 business opportunities, by any other person because of
19 lawful acts done by the person discriminated against or
20 others associated with that person—

21 “(1) in furtherance of an actual or potential ac-
22 tion under this section, including investigation for,
23 initiation of, testimony for, or assistance in an ac-
24 tion filed or to be filed under this section, or

1 “(2) in furtherance of other efforts to stop one
2 or more violations of section 3729,
3 shall be entitled to all relief, from the person who has en-
4 gaged in the discrimination, that is necessary to make the
5 person whole. Such relief shall include reinstatement with
6 the same seniority status such person would have had but
7 for the discrimination, 2 times the amount of back pay
8 or business loss, interest on the back pay or business loss,
9 and compensation for any special damages sustained as
10 a result of the discrimination, including litigation costs
11 and reasonable attorneys’ fees. An action under this sub-
12 section may be brought in the appropriate district court
13 of the United States for the relief provided in this sub-
14 section.”.

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

18 “(i) DAMAGES COLLECTED FOR FINANCIAL LOSSES
19 SUFFERED BY ADMINISTRATIVE BENEFICIARIES.—

20 “(1) IN GENERAL.—After paying any awards
21 due one or more persons who brought an action
22 under subsection (b), the Government shall pay from
23 the proceeds of the action to any administrative ben-
24 eficiary, as defined in section 3729(b), all amounts
25 that the Government has collected in the action for

1 financial losses suffered by such administrative bene-
2 ficiary. Any remaining proceeds collected by the
3 Government shall be treated in the same manner as
4 proceeds collected by the Government for direct
5 losses the Government suffers because of violations
6 of section 3729.

7 “(2) ALTERNATIVE REMEDIES.—Nothing in
8 section 3729 or this section precludes administrative
9 beneficiaries from pursuing any alternate remedies
10 available to them for losses or other harm suffered
11 by them that are not pursued or recovered in an ac-
12 tion under this section, except that if proceedings for
13 such alternate remedies are initiated after a person
14 has initiated an action under subsection (b), such
15 person shall be entitled to have such alternative rem-
16 edies considered in determining any award in the ac-
17 tion under subsection (b) to the same extent that
18 such person would be entitled under subsection
19 (c)(5) with respect to any alternate remedy pursued
20 by the Government.”.

21 **SEC. 4. FALSE CLAIMS PROCEDURE.**

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

1 “(b) STATUTE OF LIMITATIONS; INTERVENTION BY
2 THE GOVERNMENT.—

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

8 “(2) INTERVENTION.—If the Government elects
9 to intervene and proceed with an action brought
10 under section 3730(b), the Government may file its
11 own complaint, or amend the complaint of the per-
12 son who brought the action under section 3730(b),
13 to clarify or add detail to the claims in which it is
14 intervening and to add any additional claims with
15 respect to which the Government contends it is enti-
16 tled to relief. For purposes of paragraph (1), any
17 such Government pleading shall relate back to the
18 filing date of the complaint of the person who origi-
19 nally brought the action to the extent that the Gov-
20 ernment’s claim arises out of the conduct, trans-
21 actions, or occurrences set forth, or attempted to be
22 set forth, in the person’s prior complaint.”.

23 (b) STANDARD OF PROOF.—Section 3731(c) of title
24 31, United States Code, is amended—

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

3 (2) by striking “United States” and inserting
4 “plaintiff”.

5 (c) NOTICE OF CLAIMS; VOID CONTRACTS, AGREE-
6 MENTS, AND CONDITIONS OF EMPLOYMENT.—Section
7 3731 of title 31, United States Code, is amended by add-
8 ing at the end the following new subsections:

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

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

22 “(1) IN GENERAL.—Any contract, private
23 agreement, or private term or condition of employ-
24 ment that has the purpose or effect of limiting or
25 circumventing the rights of a person to take other-

1 wise lawful steps to initiate, prosecute, or support an
2 action under section 3730, or to limit or circumvent
3 the rights or remedies provided to persons bringing
4 actions under section 3730(b) and other cooperating
5 persons under section 3729 shall be void to the full
6 extent of such purpose or effect.

7 “(2) EXCEPTION.—Paragraph (1) shall not pre-
8 clude a contract or private agreement that is entered
9 into—

10 “(A) with the United States and a person
11 bringing an action under section 3730(b) who
12 would be affected by such contract or agree-
13 ment specifically to settle claims of the United
14 States and the person under section 3730; or

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

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

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

23 (2) in subsection (d), by striking “(d) Notwith-
24 standing” and inserting “(d) ESTOPPEL.—Notwith-
25 standing”.

1 **SEC. 5. FALSE CLAIMS JURISDICTION.**

2 Section 3732 of title 31, United States Code, is
3 amended by adding at the end the following new sub-
4 section:

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

17 **SEC. 6. CIVIL INVESTIGATIVE DEMANDS.**

18 (a) CIVIL INVESTIGATIVE DEMANDS.—Section
19 3733(a) of title 31, United States Code, is amended—

20 (1) in paragraph (1)—

21 (A) in the matter following subparagraph

22 (D)—

23 (i) by striking “The Attorney General
24 may not delegate” and all that follows
25 through “subsection.”; and

1 (ii) by striking “, the Deputy Attorney
2 General, or an Assistant Attorney Gen-
3 eral”; and

4 (B) by adding at the end the following:
5 “Any information obtained by the Attorney
6 General under this section may be shared with
7 any a person bringing an action under section
8 3730(b) if the Attorney General determines
9 that it is necessary as part of any false claims
10 law investigation.”; and

11 (2) in paragraph (2)—

12 (A) in subparagraph (F), by striking “or
13 an Assistant Attorney General designated by
14 the Attorney General”; and

15 (B) in subparagraph (G), by striking the
16 second sentence.

17 (b) PROCEDURES.—

18 (1) ORAL EXAMINATIONS.—Section 3733(h)(6)
19 of title 31, United States Code, is amended by strik-
20 ing “, the Deputy Attorney General, or an Assistant
21 Attorney General”.

22 (2) CUSTODIANS.—Section 3733(i)(3) of title
23 31, United States Code, is amended to read as fol-
24 lows:

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

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

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

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

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

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

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

13 “(m) DELEGATION.—The Attorney General may del-
14 egate any authority that the Attorney General has under
15 this section.”.

16 **SEC. 7. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this
18 Act shall take effect on the date of the enactment of this
19 Act and, except as provided in subsection (b), shall apply
20 to any case pending on, or filed on or after, that date.

21 (b) EXCEPTIONS.—The following provisions of title
22 31, United States Code, as amended by this Act, shall
23 apply only to cases filed on or after the date of the enact-
24 ment of this Act:

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

4 (2) Section 3730(h), to the extent such section
5 applies to discrimination against a person because of
6 lawful acts done by others associated with that per-
7 son.

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

○