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110TH CONGRESS
1ST SESSION

S. 2041

To amend the False Claims Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

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

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A BILL

To amend the False Claims Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''False Claims Act Correction Act of 2007''.

SEC. 2. FALSE CLAIMS GENERALLY.

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

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

''(a) LIABILITY FOR CERTAIN ACTS.—

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

"(A) knowingly presents, or causes to be presented a false or fraudulent claim for Government money or property for payment or approval;

"(B) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim for Government money or property paid or approved;

"(C) conspires to commit any substantive violation set forth in this section or otherwise to defraud the Government by getting a false or fraudulent claim for Government money or property paid or approved;

"(D) has possession, custody, or control of Government money or property and, intending to defraud the Government, to retain overpayment, or knowingly to convert the money or property, permanently or temporarily, to an unauthorized use, fails to deliver or return, or fails to cause the return or delivery of the money or property, or delivers, returns, or causes to be delivered, or returned less money or property than the amount due or owed;

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

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

"(G) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000 plus 3 times the amount of damages which the Government, its grantee, or administrative beneficiary sustains because of the act of that person.

"(2) LESSER PENALTY.—If the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the

United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government, its grantee or administrative beneficiary sustains because of the act of the person.

"(3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.".

(2) by striking subsections (b) and (c) and inserting the following:

"(b) DEFINITIONS.—For purposes of this section—

"(1) the terms 'known', 'knowing', and 'knowingly' mean that a person, with respect to information—

"(A) has actual knowledge of the information;

"(B) acts in deliberate ignorance of the truth or falsity of the information; or

"(C) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required;

"(2) the term 'Government money or property' means—

"(A) money or property belonging to the United States Government;

"(B) money or property the United States Government provides, has provided, or will reimburse to a contractor, grantee, agent or other recipient to be spent or used on the Government's behalf or to advance Government programs;

"(C) money or property belonging to any administrative beneficiary, as defined herein;

"(3) the term 'claim' includes any request or demand, whether under a contract or otherwise, for Government money or property; and

"(4) the term 'administrative beneficiary' means any natural person or entity, including any governmental or quasi-governmental entity, on whose behalf the United States Government, alone or with others, collects, possesses, transmits, administers, manages, or acts as custodian of money or property.";

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

(4) in subsection (c), as redesignated, by striking "subparagraphs (A) through (C) of subsection (a)" and inserting "subsection (a)(2)".

SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN ACTIONS.

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

"(6)(A) Not later than 60 days after the date of service under paragraph (2), the Government may move to dismiss from the action the qui tam relator that is an employee of the Federal Government if—

"(i) all the necessary and specific material allegations contained in such action were de-

rived from an open and active fraud investigation by the Government; or

"(ii) the person bringing the action learned of the information that underlies the alleged violation of section 3729 that is the basis of the action in the course of the person's employment by the United States, and none of the following has occurred:

"(I) In a case in which the employing agency has an inspector general, such person, before bringing the action—

"(aa) disclosed in writing substantially all material evidence and information that relates to the alleged violation that the person possessed to such inspector general; and

"(bb) notified in writing the person's supervisor and the Attorney General of the disclosure under division (aa).

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

"(aa) disclosed in writing substantially all material evidence and in-

formation that relates to the alleged violation that the person possessed, to the Attorney General; and

"(bb) notified in writing the person's supervisor of the disclosure under division (aa).

"(III) Not less than 12 months (and any period of extension as provided for under subparagraph (B)) have elapsed since the disclosure of information and notification under either subclause (I) or (II) were made and the Attorney General has not filed an action based on such information.

"(B) Prior to the expiration of the 12-month period described under subparagraph (A)(ii)(III) and upon notice to the person who has disclosed information and provided notice under subparagraph (A)(ii) (I) or (II), the Attorney General may file a motion seeking an extension of such 12-month period. Such 12-month period may be extended by a court for not more than an additional 12-month period upon a showing by the Government that the additional period is necessary for the Government to decide whether or not to file such action. Any such

motion may be filed in camera and may be supported by affidavits or other submissions in camera.

"(C) For purposes of subparagraph (A), a person's supervisor is the officer or employee who—

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

"(ii) has supervisory authority over such person; and

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

"(D) A motion to dismiss under this paragraph shall set forth documentation of the allegations, evidence, and information in support of the motion.

"(E) Any person bringing a civil action under paragraph (1) shall be provided an opportunity to contest a motion to dismiss under this paragraph. The court may restrict access to the evidentiary materials filed in support of the motion to dismiss, as the interests of justice require. A motion to dismiss and papers filed in support or opposition of such motion shall not be—

"(i) made public without the prior written consent of the person bringing the civil action; and

"(ii) subject to discovery by the defendant.

"(F) If the motion to dismiss under this paragraph is granted, the matter shall remain under seal.

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

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

"(ii) the outcome of such motions; and

"(iii) the status of false claims civil actions in which such motions were filed.".

SEC. 4. BARRED ACTIONS.

(a) PROVISIONS RELATING TO ACTIONS BARRED.—Section 3730(b)(1) of title 31, United States Code, is amended by adding at the end the following: "No claim for a violation of section 3729 may be waived or released by any action of any person, except insofar as such action is part of a court approved settlement of a false claim civil action brought under this section. Nothing in this section shall be construed to limit the ability of the United States

to decline to pursue any claim brought under this subchapter.''.

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

''(4)(A) Upon timely motion of the Attorney General, a court shall dismiss an action or claim brought under section 3730(b) if the allegations relating to all essential elements of liability of the action or claim are based exclusively on the public disclosure of allegations or transactions in a Federal criminal, civil, or administrative hearing, in a congressional, Federal administrative, or Government Accountability Office report, hearing, audit or investigation, or from the news media.

''(B) In this paragraph:

''(i) The term 'public disclosure' includes only disclosures made on the public record or that have otherwise been disseminated broadly to the general public.

''(ii) The person bringing the action does not create a public disclosure by obtaining information from a Freedom of Information Act request or from information exchanges with law enforcement and other Government employees if such information does not otherwise qualify as publicly disclosed.

"(iii) An action or claim is based on a public disclosure only if the person bringing the action derived his knowledge of all essential elements of liability of the action or claim alleged in his complaint from the public disclosure.".

(c) QUI TAM AWARDS.—Section 3730(d)(3) of title 31, United States Code, is amended to read as follows:

"(3)(A) Whether or not the Government proceeds with the action, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which a person would otherwise receive under paragraph (1) or (2) of this subsection (taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation), if the court finds that person—

"(i) planned and initiated the violation of section 3729 upon which the action was brought; or

"(ii) derived the knowledge of the claims in the action primarily from specific information relating to allegations or transactions (other than information provided by the person bringing the action) that the Government publicly disclosed, as that term is defined in subsection (e)(4)(A), or that the Government disclosed privately to the person bringing the

action in the course of its investigation into potential violations of this subchapter.

"(B) If the person bringing the action is convicted of criminal conduct arising from the role of that person in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.".

SEC. 5. RELIEF FROM RETALIATORY ACTIONS.

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

"(h) RELIEF FROM RETALIATORY ACTIONS.—

"(1) IN GENERAL.—Any employee, government contractor, or agent shall be entitled to all relief necessary to make that employee, government contractor whole, if that employee, government contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, government contractor, or agent on behalf of the employee, government contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

"(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, government contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 6. STATUTE OF LIMITATIONS.

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

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

"(2) Upon intervention, the Government may file its own complaint in intervention or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date

of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.''.

SEC. 7. CIVIL INVESTIGATIVE DEMANDS.

Section 3733(a)(1) of title 31, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting '', or a designee (for purposes of this section),'' after ''Whenever the Attorney General''; and

(2) in the matter following subparagraph (D), by—

(A) striking ''may not delegate'' and inserting ''may delegate''; and

(B) adding at the end the following: ''Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.''.

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