

117TH CONGRESS  
1ST SESSION

# S. 2428

To amend title 31, United States Code, to modify False Claims Act procedures, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

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

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## A BILL

To amend title 31, United States Code, to modify False Claims Act procedures, 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 2021”.

6 **SEC. 2. FALSE CLAIMS PROCEDURE.**

7 (a) PROVING MATERIALITY.—Section 3729 of title  
8 31, United States Code, is amended by adding at the end  
9 the following:

10 “(e) PROVING MATERIALITY.—

1           “(1) IN GENERAL.—In an action under this sec-  
2           tion, the Government or relator may establish mate-  
3           riality by a preponderance of the evidence.

4           “(2) REBUTTAL.—A defendant may rebut an  
5           argument of materiality under paragraph (1) by  
6           clear and convincing evidence.”.

7           (b) COSTS.—Section 3731 of title 31, United States  
8           Code, is amended by adding at the end the following:

9           “(f) If the Government elects not to intervene in an  
10          action brought under section 3730(b), the court shall,  
11          upon a motion by the Government, order the requesting  
12          party to pay the Government’s expenses, including costs  
13          and attorneys’ fees, for responding to the party’s discovery  
14          requests, unless the party can demonstrate that the infor-  
15          mation sought is relevant, proportionate to the needs of  
16          the case, and not unduly burdensome on the Govern-  
17          ment.”.

18       **SEC. 3. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.**

19          Section 3730(c)(2)(A) of title 31, United States  
20          Code, is amended by inserting before the period at the  
21          end the following: “, at which the Government shall have  
22          the burden of demonstrating reasons for dismissal, and  
23          the qui tam plaintiff shall have the opportunity to show  
24          that the reasons are fraudulent, arbitrary and capricious,  
25          or contrary to law”.

1 **SEC. 4. POST-EMPLOYMENT WHISTLEBLOWER RETALIA-**  
2 **TION.**

3 Section 3730(h)(1) of title 31, United States Code,  
4 is amended by inserting “current or former” after “Any”.

5 **SEC. 5. GAO REPORT.**

6 Not later than 18 months after the date of enactment  
7 of this Act, the Comptroller General of the United States  
8 shall submit a report to Congress on the effectiveness of  
9 the False Claims Act (31 U.S.C. 3729 et seq.) during the  
10 time period beginning on the date of enactment of the  
11 False Claims Amendments Act of 1986 (Public Law 99–  
12 562; 100 Stat. 3153) and ending on the date of enactment  
13 of this Act, which shall include—

14 (1) a description of the benefits and challenges  
15 of enforcement efforts under the False Claims Act  
16 (31 U.S.C. 3729 et seq.); and

17 (2) information on the amounts recovered by  
18 the Government under the False Claims Act since  
19 the date of enactment of the False Claims Amend-  
20 ments Act of 1986 (Public Law 99–562; 100 Stat.  
21 3153).

22 **SEC. 6. APPLICABILITY.**

23 The amendments made by sections 2, 3, and 4 of this  
24 Act shall apply to any case under the False Claims Act  
25 (31 U.S.C. 3729 et seq.) that is—

1           (1) filed on or after the date of enactment of  
2           this Act; or

3           (2) pending on the date of enactment of this  
4           Act.

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