

EXCHANGE OF LAND FOR CAPE HENRY MEMORIAL SITE

The bill (H.R. 3558) to provide for the exchange of land for the Cape Henry Memorial site in Fort Story, VA, was considered, ordered to a third reading, read a third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NEZ PERCE (NEE-ME-POO) NATIONAL TRAIL

The Senate proceeded to consider the bill (S. 1542) to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 1542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Trails System Act (82 Stat. 919), as amended, is further amended as follows: Section 5(a) is amended to insert the following new paragraph:

"(16) (14) The Nez Perce National Historic Trail, a route of approximately eleven hundred and seventy miles extending from the vicinity of Wallows Lake, Oregon, to Bear Paw Mountain, Montana, as generally depicted in 'Nez Perce (Nee-Me-Poo) Trail Study Report' prepared by the Department of Agriculture and dated March 1982. The report shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. The trail shall be administered by the Secretary of [Agriculture.]" Agriculture. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Nez Perce National Historic Trail. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail upon application from the States or local governmental agencies involved if such segments meet the criteria established in the Act and are administered by such agencies without expense to the United States. So that significant route segments and sites recognized as associated with the Nez Perce Trail may be distinguished by suitable markers, the Secretary of Agriculture is authorized to accept the donation of suitable markers for placement at appropriate locations. Any such markers associated with the Nez Perce Trail which are to be located on lands administered by any other department or agency of the United States may be placed on such lands only with the concurrence of the head of such department or agency."

AUTHORIZATION OF APPROPRIATIONS

Sec. 2. There are authorized to be appropriated \$550,000 to carry out the purposes of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STRENGTHENING THE POSITION OF CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3622.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the amendments of the Senate to the bill (H.R. 3622) entitled "An Act to amend title 10 United States Code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed Forces, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Aspin, Mr. Nichols, Mr. Skelton, Mr. Mavroules, Mr. Dickinson, Mr. Hopkins, and Mr. Kasich be the managers of the conference on the part of the House.

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Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. LUGAR) appointed Mr. GOLDWATER, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, Mr. COHEN, Mr. QUAYLE, Mr. WILSON, Mr. DENTON, Mr. GRAMM, Mr. BROYHILL, Mr. NUNN, Mr. STENNIS, Mr. HART, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, and Mr. GLENN.

FALSE CLAIMS ACT AMENDMENTS

Mr. COLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 742, S. 1562, a bill to amend the False Claims Act.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, there is no objection on this side.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1562) to amend the False Claims Act and title 18 of the United States Code regarding penalties for false claims, and for other purposes, reported with an amendment.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

AMENDMENT NO. 3701

(Purpose: To make technical and clarifying amendments)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator GRASSLEY and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GRASSLEY, proposes an amendment numbered 3701:

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, beginning with line 21, strike out through line 18 on page 42, and insert in lieu thereof the following:

That section 3729 of title 31, United States Code, is amended by—

(1) inserting "(a)" before "A person";
 (2) striking out "\$2,000," and inserting in lieu thereof "\$10,000, unless the court finds:
 "(A) the defendant furnished officials of the United States responsible for investigating false claims violations with all information known to such defendant about such violation within 30 days after the date on which the defendant first obtained the information;

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

"(C) at the time the defendant 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 defendant did not have actual knowledge of the existence of an investigation into such violation;

in which case the court may assess not less than \$5,000, or unless the court finds that the defendant is a partnership, corporation, association, or organization, the annual gross receipts of which did not exceed \$1,000,000 at the time the action was brought, and which had not more than 80 employees at the time the action was brought, and the court finds the assessment of \$10,000 will result in substantial hardship under the circumstances for the defendant, in which case the court may assess not less than \$5,000;

(3) striking out "2 times the amount of damages" and inserting in lieu thereof "3 times the amount of damages unless the court finds the provisions of paragraphs (A) through (C), in which case the court may assess not less than 2 times the amount of damages, in addition to the amount of the consequential damages";

(4) striking out "not a member of the armed forces of the United States" the first place it appears;

(5) striking out "or" at the end of clause (5);

(6) striking out the period in clause (6) and inserting in lieu thereof "; or"; and

(7) adding at the end thereof the following:

"(7) 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.

"(b) Consequential damages as used in subsection (a) shall include damages which

the United States would not have sustained but for—

"(1) the doing or commission of any of the acts prohibited by subsection (a); or

"(2) having entered into or made any contract or grant as a result of any material part of any false statement, and which were reasonably foreseeable to the defendant at the time the alleged fraud was committed or at the time of the submission of the claim or statement.

"(c) For purposes of this section, the terms 'knowing' and 'knowingly' mean the defendant—

"(1) had actual knowledge;

"(2) acted in deliberate ignorance of the truth or falsity of the information; or

"(3) acted in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

"(d) For purposes of this section, 'claim' includes any request or demand whether under a contract or otherwise for money or property which is made to a contractor, grantee, or other recipient if the Government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e)(1) The Attorney General or his designee may apply for provisional relief to any district court having jurisdiction pursuant to section 3732 whenever he has reasonable cause to believe this section or section 3730, or 3731 may have been violated. If the court finds there is a reasonable likelihood that the United States will prevail after trial on the merits of its claims, the court shall enjoin the defendant from taking any action which the court, in the exercise of its discretion, finds reasonably likely to hinder or delay the United States in the collection of any judgment which may be obtained in such action.

"(2) In addition, the court may from time to time make such other orders as it deems appropriate, including requiring the defendant to post security for judgment, to seek the prior approval of the court before making any transfer without adequate and full consideration, paying an antecedent debt which has matured more than thirty days prior to the date of payment, or otherwise engaging in any transaction not in the usual and regular course of the defendant's business. Except as provided in this section, such application and proceedings by the Attorney General shall be governed by Rule 65 of the Federal Rules of Civil Procedure.

"(f) Any information furnished pursuant to clauses (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5."

Sec. 2. Section 3730 of title 31, United States Code, is amended to read as follows: "**§ 3730. Civil actions for false claims**

"(a) The Attorney General diligently shall investigate a violation under section 3729 of this title. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b)(1) Except as provided in subsection (e), a person may bring a civil action for a violation of section 3729 of this title for the person and for the United States Government. The action shall be brought in the name of the Government. An action may be dismissed only if the court and the Attorney General give written consent and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses

shall be served on the Government under Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence.

"(3) The Government may, for good cause shown, move the court for stays and for extensions of the time during which the complaint shall remain under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon him pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the initial 60-day period or any stays obtained, the Government shall—

"(A) proceed with the action, in which case the action shall be conducted only by the Government; or

"(B) notify the court that it declines to take over the action, in which case the action shall be conducted by the person bringing the action.

"(5) Where a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c)(1) If the Government proceeds with the action, the action is conducted solely by the Government and it shall not be bound by an act of the person who initiated the action. If he so requests, the person bringing the action shall be served with copies of all pleadings filed in the action, shall be supplied with copies of all deposition transcripts (at his expense), and shall be permitted to file objections with the court and petition for an evidentiary hearing to object to any proposed settlement or to any motion to dismiss filed by the Government. The court may grant such an evidentiary hearing only upon a showing of substantial and particularized need. The person bringing the action may move the court for leave to conduct the action in the name of the United States if, after making its election to take over the suit, the Government does not proceed with the action with reasonable diligence within six months or such reasonable additional time as the court may allow after notice.

"(2) If the Government elects not to proceed with the action, the action shall be conducted by the person who initiated the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at its expense). Where a person proceeds with the action in the name of the United States pursuant to subsection (b), the court may nevertheless permit the Government to intervene and proceed with the action by its own attorneys at a later date upon a showing of good cause.

"(3) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to it, including, but not limited to, any administrative civil money penalty proceeding.

"(d)(1) If the Government proceeds with the action, including any proceeding pursuant to subsection (c)(3), the person bringing the action may receive an amount the court decides is reasonable. The amount may not be less than 10 percent, nor more than 20 percent, of the proceeds of the action or settlement of a claim and shall be paid out of those proceeds.

"(2) If the Government does not proceed with an action, the person bringing the action or settling the claim may receive an amount the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than 20 percent, nor more than 30 percent, of the proceeds of the action or settlement and shall be paid out of those proceeds.

"(3) The amount awarded under this section shall be in the discretion of the court, taking into account—

"(A) the significance of the information provided to the Government;

"(B) the contribution of the person bringing the action to the result obtained; and

"(C) whether the information which formed the basis for the suit was known to the Government.

"(4) Where the persons brought an action based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, or administrative hearing, a congressional or Government Accounting Office report or hearing, or from the news media, the court may award such sums as it deems appropriate, not to exceed 10 percent of the recovery and taking into account the significance of the information and the role of the person in advancing the case to litigation.

"(5) In addition to any other amounts awarded by the court, the court may also award the person bringing the action reasonable attorney fees and other expenses. The Government shall not be liable for the expenses or legal fees a person incurs in bringing or defending an action under this section.

"(6) If the Government does not proceed with the action and it is litigated by the person bringing the action, the court shall award to the defendant its reasonable attorney fees and expenses if the defendant prevails in such action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought for purposes of harassment. In cases where it appears that the person is bringing an action which is frivolous, vexatious, or brought for purposes of harassment, the court shall require such assurances that payment of legal fees and expenses will be made, if such are awarded, as it deems appropriate before allowing the action to proceed.

"(7) After any final judgment is issued in any action brought under this section, or any alternate remedy available to the Government, any person who brought an action under subsection (b) shall have 60 days to petition the court for any award to which he is entitled under this section.

"(e)(1) No court shall have jurisdiction over an action brought by a former or present member of the armed services under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2) No court shall have jurisdiction over an action brought against a member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(3) For purposes of this subsection, 'senior executive branch official' means those officials listed in section 201(f) of Appendix IV of title 5.

"(4) In no event may a person bring an action under this section based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(5)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, a congressional, administrative, or Government Accounting Office report, hearing, audit or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily informed the Government or the news media prior to an action filed by the Government.

"(C) The district courts shall have jurisdiction over any action brought under State law for the recovery of funds paid by State or local governments where such action grows out of the same transaction or occurrence as an action brought under this section.

"(g) The Attorney General or his designee is authorized to make payments from Department of Justice appropriations for information or assistance leading to a civil or criminal recovery under this section, section 3729, or sections 3731 through 3734, known as the False Claims Act or under section 286, 287, or 1001 of title 18. Any such payment shall be at the discretion of the Attorney General or his designee.

"(h) In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

Sec. 3. Section 3731 of title 31, United States Code, is amended by—

(1) inserting before the period at the end of subsection (b) the following: "or within three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, whichever occurs last"; and

(2) inserting after subsection (b), the following new subsections:

"(c) In any action brought under this section or section 3729, 3730, 3732, or 3733, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any contrary provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall prevent the defendant from denying the essential elements of the offense in any action brought by the United States pursuant to this section or section 3729, 3730, 3732, or 3733."

Sec. 4. Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following:

"§ 3732. False claims jurisdiction

"(a) The district courts of the United States, including such courts for Puerto Rico, the Virgin Islands, Guam, and any territory or possession of the United States, shall have jurisdiction over any action commenced by the United States under this section, or under section 3729, 3730, 3731, 3733, or 3734. Venue of any such action shall be proper in any district in which any defendant, or in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act prescribed by such sections is alleged by the United States to have occurred. A summons

as required by the Federal Rules of Civil Procedure shall be issued by the district court and served at any place within the United States, Puerto Rico, the Virgin Islands, Guam, any territory or possession of the United States, or in any foreign country.

"(b) The United States Claims Court shall also have jurisdiction of any such action if the action is asserted by way of counterclaim by the United States. The United States may join as additional parties in such counterclaim all persons who may be jointly and severally liable with such party against whom a counterclaim is asserted by reason of having violated this section, or section 3729, 3730, 3731, or 3733, except that no cross-claims or third-party claims shall be asserted among such additional parties unless such claims are otherwise within the jurisdiction of the United States Claims Court."

Sec. 5. Subchapter III of chapter 37 of the title 31, United States Code is further amended by adding at the end thereof the following:

"§ 3733. Civil investigative demands

"(a) For purposes of this section, the term—

"(1) 'False Claims Act law' means—

"(A) this section and sections 3729 through 3731 of this title, commonly known as the False Claims Act; and

"(B) any Act of Congress enacted after this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any false claim, bribery, or corruption of any officer or employee of the United States;

"(2) 'False Claims Act investigation' means any inquiry conducted by any False Claims Act investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of any provision of the False Claims Act law;

"(3) 'False Claims Act investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any False Claims Act law or any officer or employee of the United States acting under direction and supervision of such attorney or investigator in connection with a False Claims Act investigation;

"(4) 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision;

"(5) 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product or discovery;

"(6) 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General; and

"(7) 'product of discovery' includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of an inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative litigation or action of an adversarial nature, any digest, analysis, selection, compilation, or any derivation thereof, and any index or manner of access thereto.

"(b)(1)(A) Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information relevant, and not otherwise rea-

sonably available, to a False Claims Act investigation, he may, prior to the institution of a civil proceeding, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and notify the person to whom such demand is issued of the date on which such copy was served.

"(B) Notwithstanding the provisions of section 510 of title 28, the Attorney General may not authorize the performance of any function of the Attorney General vested in him pursuant to this paragraph, by any other officer, employee, or agency.

"(2)(A) Each such demand shall state the nature of the conduct constituting the alleged violation of a False Claims Act law which is under investigation, and the applicable provision of law.

"(B) If such demand is for production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection, and copying; and

"(iii) identify the False Claims Act investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with definiteness and certainty the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the False Claims Act investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a False Claims Act investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the subpoena of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the subpoena is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the subpoena.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(E) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or

an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(F) Any official before whom oral testimony under this section is to be taken shall exclude from the place where the testimony is to be taken all persons except the person giving the testimony, the attorney and any other representative for the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government, and the person giving the testimony, and any stenographer taking such testimony.

"(G) The Attorney General shall not authorize a second demand for oral testimony to a person unless such person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not authorize the performance of any function vested in him under this subparagraph, by any other officer, employee, or agency, notwithstanding section 510 of title 28."

"(c)(1) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section and sections 3729 through 3731.

"(2) Any such demand which is an express demand for any product of discovery supercedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which may be invoked to resist discovery of trial preparation materials to which the person making such disclosure may be entitled.

"(d)(1) Any such demand may be served by any False Claims Act Investigator, or by any United States Marshal or Deputy Marshal, at any place within the United States.

"(2) Any such demand or any petition filed under subsection (k) may be served upon any person who is not found within the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

"(e)(1) Service of any such demand or of any petition filed under subsection (k) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy thereof to the principal office or place of business of the partnership, corporation, or entity to be served; or

"(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or of any petition filed under subsection (k) may be made upon any natural person by—

"(A) delivering an executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, addressed to such person at his residence or principal office or place of business.

"(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(g) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(h) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath unless it is objected to, in which event the reasons for the objection shall be stated in lieu of any answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any materials are not furnished, they shall be identified and reasons set forth with particularity for each.

"(i)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) The False Claims Act investigator conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer

before whom the testimony is to be taken, and any other stenographer taking such testimony.

"(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the False Claims Act investigator conducting the examination and such person.

"(4) When the testimony is fully transcribed, the False Claims Act investigator or the officer shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine the transcript and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the False Claims Act investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after his being afforded a reasonable opportunity to examine it, the officer or the False Claims Act investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor. A refusal to sign or an unreasonable absence shall be deemed to be an acknowledgment of its accuracy and an affirmation of its contents.

"(5) The officer shall certify on the transcript that the witness was sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or False Claims Act investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(6) Upon payment of reasonable charges therefor, the False Claims Act investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of his testimony.

"(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be properly made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the False Claims Act investigator conducting the examination may petition the district court of the United States pursuant to subsection (k)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

"(j)(1) The Attorney General, or his authorized designee shall designate a False Claims Act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional False Claims Act investigators as he determines from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand under subsection (b)(1) for the production of documentary material has been served shall make such material available for inspection and copying to the False Claims Act investigator designated therein at the principal place of business of such person, or at such other place as such False Claims Act investigator and such person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (k)(1) on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may, upon written agreement between such person and the custodian, substitute copies for originals of all or any part of such material.

"(3)(A) The False Claims Act investigator to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall transmit them to the custodian who shall be responsible for the use made thereof and for the return of documentary material pursuant to this section.

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any authorized official or employee of the Department of Justice or any authorized officer or employee of the United States acting under the direction and supervision of an attorney or investigator of the Department of Justice in connection with any False Claims Act investigation, under regulations promulgated by the Attorney General. Notwithstanding subparagraph (C) of this subsection, such material, answers, and transcripts may be used by any such person in connection with the taking of oral testimony pursuant to this section.

"(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained, by any individual other than an authorized official or employee of the Department of Justice, or an authorized officer or employee of the United States acting under the direction and supervision of an attorney or investigator of the Department of Justice in connection with any False Claims Act investigation. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure to any other agency of the United States shall be allowed only upon application, made by the custodian to a United

States district court, showing substantial need for use by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by an authorized representative of such person; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

"(4) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(5) If any documentary material has been produced in the course of any False Claims Act investigation by any person pursuant to a demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to paragraph (2) of this subsection or made by the Department of Justice pursuant to paragraph (3)(B) of this subsection) which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceedings.

"(6) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this section, or of the official relief of such custodian from responsibility for the custody and control of such material, answers or transcripts, the Attorney General or his authorized designee shall promptly (A) designate another False Claims Act investigator to serve as custodian of such material, answers, or transcripts, and (B) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have, with regard to such material, answers or transcripts, all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

"(k)(1) Whenever any person fails to comply with any civil investigative demand served upon him under subsection (b) or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

"(2)(A) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such False Claims Act investigator a petition for an order of such court, modifying or setting aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

"(B) The time allowed for compliance with the demand, in whole or in part, as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(3) Within twenty days after the service of any express demand for any product of discovery upon, or at any time before, the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any False Claims Act investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) At any time during which any custodian is in custody or control of any documentary material, answers to interrogatories delivered, or transcripts of oral testimony

ny given by any person in compliance with any such demand, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(5) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

"(6) To the extent that such rules may have application and are not inconsistent with the provisions of this section, the Federal Rules of Civil Procedure shall apply to any petition under this subsection.

"(7) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any demand issued under this section and sections 3729 through 3731 shall be exempt from disclosure under section 552 of title 5."

Sec. 6. (a) Subchapter III of chapter 37 of title 31, United States Code, is further amended by adding at the end thereof the following:

"§ 3734. Whistleblower protection

"Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of such employment by his employer because of the good faith exercise by such employee on behalf of himself or others of any option afforded by this Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Act, shall be entitled to all relief necessary to make him whole. Such relief shall include reinstatement with full seniority rights, backpay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. In addition, the employer shall be liable to such employee for twice the amount of backpay and special damages and, if appropriate under the circumstances, the court shall award punitive damages."

(b) The table of sections for chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new items:

"3732. False claims jurisdiction.

"3733. Civil investigative demands.

"3734. Whistleblower protection."

Sec. 7. (a) Section 286 of title 18, United States Code, is amended by striking out "\$10,000" and inserting in lieu thereof "\$1,000,000 notwithstanding the provisions of section 3623."

(b) Section 367 of title 18, United States Code, is amended by striking out "\$10,000, or imprisoned not more than five years" and inserting in lieu thereof "\$1,000,000, or imprisoned for not more than ten years, or both, notwithstanding the provisions of section 3623."

Sec. 8. This Act and the amendments made by this Act shall become effective upon the date of enactment.

Mr. GRASSLEY. Mr. President, the False Claims Act is the Government's

primary weapon against fraud, yet it is in need of substantial reform. A review of the current environment is sufficient proof that the Government needs help—lots of help—to adequately protect the Treasury against growing and increasingly sophisticated fraud.

We have spent a considerable amount of time in the Judiciary Subcommittee on Administrative Practice and Procedure examining different types of frauds which steal away much needed taxpayer funds. In the face of our current Federal debt crisis, it is more important than ever that we maintain an efficient, fair, and most of all, effective enforcement system to protect our Federal dollars from fraud and abuse.

No single piece of legislation can absolutely guarantee an efficient, fair, and effective enforcement system. We would be deluding ourselves to assume that security. However, to the extent we can strengthen weaknesses in the law which allow frauds to go undetected or unaddressed and fraudulently obtained funds uncollected—that is the type of legislative remedy we should enact without delay.

There is no question that the current state of affairs begs for reform. Fraud allegations are climbing at a steady rate while the Justice Department's own economic crime council last year termed the level of enforcement in defense procurement fraud inadequate.

No one knows, of course, exactly how much public money is lost to fraud. Estimates range from hundreds of millions of dollars to more than \$50 billion per year. Sadly, only a fraction of the fraud is reported and an even smaller fraction of the funds recovered.

Part of the solution—something I consider essential to any meaningful improvements in cutting down fraud—is the establishment of a solid partnership between public law enforcers and private taxpayers. The Federal Government has a big job on its hands as it attempts to ensure the integrity of the nearly \$1 trillion we spend each year on various programs and procurement. That job is simply too big if Government officials are working alone.

The concept of private citizen assistance is embodied in S. 1562, the False Claims Reform Act which was unanimously approved by the Senate Judiciary Committee last December.

This bill, which I sponsored along with bipartisan cosponsors including my colleagues Senators DeCONCINI, LEVIN, HATCH, COHEN, and METZENBAUM, is strongly supported by the administration and its amendments have received endorsements from both the Packard Commission and the Grace Commission's committee against Government waste.

S. 1562 will enhance the Government's litigative and investigative tools under the False Claims Act, as

well as increase the fines and penalties assessed against those who cheat the Government.

I have worked together with my colleagues Senators HATCH, THURMOND, and HAWKINS, as well as others, to arrive at a consensus on S. 1562, the False Claims Reform Act. This final language addresses various concerns raised by those Members as well as a broad-based business coalition led by the chamber of commerce and including the Aerospace Industries Association, the Electronic Industries Association, and the Professional Services Council. I am pleased that this group has produced a comprehensive anti-fraud bill that will enhance both the effectiveness and the fairness of our fraud law enforcement effort.

I would like to take this opportunity to thank my colleagues who have worked with me to produce this very important and comprehensive legislation. I would especially like to thank Senator HATCH as well as Senator HAWKINS for working in a cooperative manner to resolve the concerns that they raised.

The agreed-upon amendments which are incorporated in the committee modification are as follows:

KNOWLEDGE STANDARD

While throughout consideration of this bill there has been general agreement that liability should attach to one who "knows or has reason to know" of the falsity of his claim, debate has focused on the specific standard to be used to define "reason to know" or constructive knowledge.

The fundamental issue in designing a standard of knowledge is to reach not only defendants with actual knowledge of a false claim, but also defendants who insulate themselves from that knowledge which a prudent person should have before submitting a claim to the Government. It is this problem of defining constructive knowledge, or of dealing with the "ostrich"—the individual who ignores or fails to inquire about readily discoverable facts which would alert him that fraudulent claims are being submitted—that has led to various formulations of the standard of knowledge.

S. 1562 as considered by the Subcommittee on Administrative Practice and Procedure, contained a "reckless disregard" standard which the sponsors as well as the Department of Justice believed would cover those persons who insulate themselves by design from knowledge about the truth of falsity of a claim. The concern was raised, however, that some case law exists in which reckless disregard is construed as requiring an intentional, deliberate, or willful act—a considerable escalation of the scienter requirement. To avoid the risk of such a misconstruction, the full Judiciary Committee then adopted a "gross negligence" standard which would appear to be less susceptible to this misinterpretation. The committee was aware that

the two standards are very similar and in fact are often used to define each other; that is, reckless disregard often is defined as gross negligence and gross negligence frequently is said to require a reckless disregard.

While the committee expressed in its report accompanying S. 1562 that mistake, inadvertence or mere negligence in the submission of a false claim would not be actionable under the bill, concerns, stemming mainly from the Government contracting community, were raised that such examples of mere negligence might be construed as grossly negligent acts.

To address those concerns, I, along with the other sponsors of this bill, have agreed to return to a "reckless disregard" standard, but only with the express qualification that "no proof of specific intent is required." Our intent in returning to the reckless disregard standard is only to assure that mere negligence, mistake, and inadvertence are not actionable under the False Claims Act. In doing so, we reconfirm our belief that reckless disregard and gross negligence define essentially the same conduct and that under this act, reckless disregard does not require any proof of an intentional, deliberate, or willful act.

The constructive knowledge standard proposed by some has required a "conscious culpability." See, testimony of representatives of the Aerospace Industrial Association before the Committee on Government Affairs, Hearing on Program Fraud Civil Penalties Act of 1985, Senate Hearing 99-202, page 106. Under this formulation, "no duty to ascertain facts" may be imposed unless "deduced as inferences from facts already known." *Id.*, page 119. Such conceptualizations of the standard exceed the committee's intent and leave unaddressed the "ostich" problem which it is in agreement must be included.

QUI TAM

Several minor changes will be made in the qui tam section of S. 1562. Specifically, jurisdiction for qui tam actions based on information that has been publicly disclosed will be limited to those people who were "original sources" of the information. "Original source" is further defined as "an individual who has direct and independent knowledge of information on which the allegations are based and has voluntarily informed the Government or the news media prior to an action filed by the Government."

This amendment seeks to assure that a qui tam action based solely on public disclosures cannot be brought by an individual with no direct or independent knowledge of the information or who had not been an original source to the entity that disclosed the allegations.

In the definition of "original source," the requirement that the individual "voluntarily" informed the Government or news media is meant to preclude the ability of an individual

to sue under the qui tam section of the False Claims Act when his suit is based solely on public information and the individual was a source of the allegations only because the individual was subpoenaed to come forward. However, those persons who have been contacted or questioned by the Government or the news media and cooperated by providing information which later led to a public disclosure would be considered to have "voluntarily" informed the Government or media and therefore considered eligible qui tam relators.

The use of the term "Government" in the definition of original source is meant to include any Government source of disclosures cited in subsection (5)(A); that is, Government includes Congress, the General Accounting Office, any executive or independent agency as well as all other governmental bodies that may have publicly disclosed the allegations.

The amendments also limit the possible portion of the judgment recoverable by a qui tam plaintiff to 10 percent or less when the action is based primarily on public information. This limitation will affect those persons who have brought a qui tam action based almost entirely on information of which they did not have independent knowledge but had derived from a public source.

The bill as reported by the Judiciary Committee contains a provision for the award of attorneys fees to prevailing defendants if the court finds that the plaintiff's action was clearly frivolous, vexatious, or brought for purposes of harassment. Additionally, the bill provides that the court at any time, may make certain assurances the plaintiff will be able to pay such costs if it appears an action is being brought in bad faith or is clearly frivolous.

The committee amendment makes consistent the standards for both attorney's fees sanctions and the court-required assurances. While the standards are meant to be consistent, concern was raised that a court would find it impossible to rule any action "appeared" "clearly frivolous." Because the court could be making a judgment of apparent frivolity at an earlier stage of the case, as opposed to concluding the action's frivolity at the end of the proceedings, the conclusive term "clearly" was removed.

These amendments also make clear that no jurisdiction will lie for qui tam actions based on allegations upon which the Government has already initiated administrative civil money penalty proceedings.

CONSEQUENTIAL DAMAGES

The committee amendment limits consequential damages to those that are reasonably foreseeable to the defendant at the time the alleged fraud was committed or at the time of the submission of the claim or statement.

CIVIL INVESTIGATIVE DEMANDS

The committee amendment requires that only the Attorney General can authorize issuance of a Civil Investigative Demand. Second, these amendments make clear that prior to issuing a Civil Investigative Demand, the Justice Department must make reasonable efforts to obtain the same information through other, less burdensome sources. These other sources would include the material already in the possession of the agency investigative office which has made the referral of the fraud case as well as information which the Department could obtain through an informal request to the person who might otherwise be the target of the Civil Investigative Demand.

However, this amendment would not require the Department to seek a court order for access to grand jury material—under rule 6(e) of the Federal Rules of Criminal Procedure—in cases where such information might be available. Some circuits interpreting rule 6(e) have concluded that the Department should use other investigative techniques, including CID's, before seeking a 6(e) order. See, *In Re Grand Jury Investigation*, 774 F.2d 34 (2d Cir. 1985, cert. granted). This amendment would mirror the trend in that case law, by authorizing the Justice Department to issue a CID without requiring it to first attempt to obtain a 6(e) order.

In addition, this amendment would not require the Justice Department to justify why it had not prevailed upon agency investigators to utilize their subpoena powers, either under the Inspector General Act of 1978 or any investigative powers associated with any civil money penalty authority.

Finally, these amendments should not be construed to allow the recipient of a CID to argue that the Justice Department should be required to file suit and use ordinary civil discovery. The term "not otherwise reasonably available" refers to presuit investigative techniques only.

STATUTE OF LIMITATIONS

The committee has added a tolling provisions to the False Claims Act which is adopted directly from 28 U.S.C. 2416(c). While section 2416(c) is a provision of general applicability, the committee intends that the False Claims Act tolling provision be liberally construed because the conduct addressed here is so inherently deceptive and carefully concealed. Thus, courts should be leary of finding that the Government had knowledge of the existence of a possible cause of action based merely upon the discovery of irregularities that fall short of a concrete suspicion that fraud has occurred. Some corroborative information to support that suspicion should be required. Similarly, care should be taken to assure that the information has reached an official in a position both to recognize the existence of a

possible violation of this act and to take steps to address it.

SELF-POLICING INCENTIVE

The amendments add a provision intended to provide incentive for self-policing among those who conduct business with the Government. Under this new provision, the court in its discretion may limit damages to an amount between double and treble and the civil forfeiture between \$5,000 and \$10,000 if the defendant satisfies certain criteria. Given the deceitful nature of fraud, courts should construe narrowly the requirements defendants must satisfy in order to be eligible for liability limitations. Particularly, courts should guard against defendants attempting to take advantage of this provision once they realize Government or public discovery of violations are impending.

SMALL BUSINESS FINE LIMITATION

Under the committee amendment, defendant businesses or organizations meeting a certain size standard may be eligible for a reduction in fines if the court finds assessment of a \$10,000 fine to that particular defendant would result in substantial hardship for the defendant.

The applicable size standard—gross annual receipts of \$1 million or less and 800 employees or less—is adapted from statistics compiled by the National Federation of Independent Businesses. Based on its statistically representative sampling of the small business community, approximately 80 percent of such businesses would fall within this size standard.

EQUAL ACCESS TO JUSTICE ACT APPLICATION

The committee amendment clarifies that the Equal Access to Justice Act applies to actions brought by the Government under the False Claims Act.

Thank you, Mr. President.

Mr. President, I ask unanimous consent that Senator HAWKINS be added as a cosponsor to S. 1562.

Mr. President, I ask unanimous consent that the statements of Senators HAWKINS, THURMOND, and DeCONCINI, be inserted as if read.

Mr. President, I urge adoption of the committee amendment.

Mrs. HAWKINS. Mr. President, I would like to join with my colleagues to commend Senator GRASSLEY for his sponsorship of S. 1562 and national leadership in efforts to combat contract fraud.

As a cosponsor, I have had an opportunity to work closely with Senator GRASSLEY and his staff to assure that S. 1562 is as effective as possible in addressing this problem. I believe that it will increase the ability of our agencies to investigate and prosecute frauds without depriving individuals of the right to a jury trial.

I am also pleased with the assurances that I have received from the sponsor and proponents that S. 1562 will be defended in conference.

Senator HATCH and Senator THURMOND also deserve to be recognized and applauded for their vision and tireless

efforts to fight fraud while defending due process and individual rights. I call on my colleagues to join me in supporting and promoting the swift passage of S. 1562 in the Senate and urge that conferees fight for adoption of the Senate-passed version.

Mr. DeCONCINI. Mr. President, I want to state my strong support for these amendments to the False Claims Act and my admiration for Senator GRASSLEY for having so tenaciously and successfully pursued their adoption. These amendments will substantially enhance the Government's ability to recover losses sustained as a result of fraud and corruption.

Several years ago, I developed, introduced, and attempted to process legislation similar to today's amendments. I was only partially successful. Senator GRASSLEY has picked up this issue and done an outstanding job of making the necessary adjustments and compromises that have enabled us to bring this bill to the floor tonight. The essence of the bill remains: to tighten the Federal laws as they apply to persons who violate the False Claims Act. The Government will now have several new legal weapons in its arsenal with which to pursue and prosecute incidences of fraud against the Government. I applaud the changes increasing the penalties, modifying the standards of proof, and modernizing the jurisdiction and venue provisions. Numerous other provisions of the bill will also prove of benefit.

The country and its taxpayers are the beneficiaries of this bill. I am pleased to have been the lead Democratic cosponsor of this bill and to associate myself with the principles of law enforcement and responsible Government oversight for which this bill stands. I certainly urge our colleagues on the House side to process this legislation with the urgency it deserves.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2701) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 1562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That section 3729 of title 31, United States Code, is amended by—

(1) inserting "(a)" before "A person";
(2) striking out "\$2,000," and inserting in lieu thereof "\$10,000, unless the court finds:
"(A) the defendant furnished officials of the United States responsible for investigating false claims violations with all information known to such defendant about such violation within 30 days after the date on which the defendant first obtained the information;

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

"(C) at the time the defendant 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 defendant did not have actual knowledge of the existence of an investigation into such violation; in which case the court may assess not less than \$5,000, or unless the court finds that the defendant is a partnership, corporation, association, or organization, the annual gross receipts of which did not exceed \$1,000,000 at the time the action was brought, and which had not more than 80 employees at the time the action was brought, and the court finds the assessment of \$10,000 will result in substantial hardship under the circumstances for the defendant, in which case the court may assess not less than \$5,000;

(3) striking out "2 times the amount of damages" and inserting in lieu thereof "3 times the amount of damages unless the court finds the provisions of paragraphs (A) through (C), in which case the court may assess not less than 2 times the amount of damages, in addition to the amount of the consequential damages";

(4) striking out "not a member of the armed forces of the United States" the first place it appears;

(5) striking out "or" at the end of clause (3);

(6) striking out the period in clause (6) and inserting in lieu thereof "; or"; and

(7) adding at the end thereof the following:

"(7) 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.

"(b) Consequential damages as used in subsection (a) shall include damages which the United States would not have sustained but for—

"(1) the doing or commission of any of the acts prohibited by subsection (a); or

"(2) having entered into or made any contract or grant as a result of any material part of any false statement,

and which were reasonably foreseeable to the defendant at the time the alleged fraud was committed or at the time of the submission of the claim or statement.

"(c) For purposes of this section, the terms 'knowing' and 'knowingly' mean the defendant—

"(1) had actual knowledge;

"(2) acted in deliberate ignorance of the truth or falsity of the information; or

"(3) acted in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

"(d) For purposes of this section, 'claim' includes any request or demand whether under a contract or otherwise for money or property which is made to a contractor, grantee, or other recipient if the Government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e)(1) The Attorney General or his designee may apply for provisional relief to any district court having jurisdiction pursuant to section 3732 whenever he has reasonable cause to believe this section or section 3730, or 3731 may have been violated. If the court finds there is a reasonable likelihood that

the United States will prevail after trial on the merits of its claims, the court shall enjoin the defendant from taking any action which the court, in the exercise of its discretion, finds reasonably likely to hinder or delay the United States in the collection of any judgment which may be obtained in such action.

"(2) In addition, the court may from time to time make such other orders as it deems appropriate, including requiring the defendant to post security for judgment, to seek the prior approval of the court before making any transfer without adequate and full consideration, paying an antecedent debt which has matured more than thirty days prior to the date of payment, or otherwise engaging in any transaction not in the usual and regular course of the defendant's business. Except as provided in this section, such application and proceedings by the Attorney General shall be governed by Rule 65 of the Federal Rules of Civil Procedure.

"(f) Any information furnished pursuant to clauses (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5."

Sec. 2, Section 3730 of title 31, United States Code, is amended to read as follows: "§ 3730. Civil actions for false claims

"(a) The Attorney General diligently shall investigate a violation under section 3729 of this title. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b)(1) Except as provided in subsection (e), a person may bring a civil action for a violation of section 3729 of this title for the person and for the United States Government. The action shall be brought in the name of the Government. An action may be dismissed only if the court and the Attorney General give written consent and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government under Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence.

"(3) The Government may, for good cause shown, move the court for stays and for extensions of the time during which the complaint shall remain under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon him pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the initial 60-day period or any stays obtained, the Government shall—

"(A) proceed with the action, in which case the action shall be conducted only by the Government; or

"(B) notify the court that it declines to take over the action, in which case the action shall be conducted by the person bringing the action.

"(5) Where a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c)(1) If the Government proceeds with the action, the action is conducted solely by the Government and it shall not be bound

by an act of the person who initiated the action. If he so requests, the person bringing the action shall be served with copies of all pleadings filed in the action, shall be supplied with copies of all deposition transcripts (at his expense), and shall be permitted to file objections with the court and petition for an evidentiary hearing to object to any proposed settlement or to any motion to dismiss filed by the Government. The court may grant such an evidentiary hearing only upon a showing of substantial and particularized need. The person bringing the action may move the court for leave to conduct the action in the name of the United States if, after making its election to take over the suit, the Government does not proceed with the action with reasonable diligence within six months or such reasonable additional time as the court may allow after notice.

"(2) If the Government elects not to proceed with the action, the action shall be conducted by the person who initiated the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at its expense). Where a person proceeds with the action in the name of the United States pursuant to subsection (b), the court may nevertheless permit the Government to intervene and proceed with the action by its own attorneys at a later date upon a showing of good cause.

"(3) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to it, including, but not limited to, any administrative civil money penalty proceeding.

"(d)(1) If the Government proceeds with the action, including any proceeding pursuant to subsection (c)(3), the person bringing the action may receive an amount the court decides is reasonable. The amount may not be less than 10 percent, nor more than 20 percent, of the proceeds of the action or settlement of a claim and shall be paid out of those proceeds.

"(2) If the Government does not proceed with an action, the person bringing the action or settling the claim may receive an amount the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than 20 percent, nor more than 30 percent, of the proceeds of the action or settlement and shall be paid out of those proceeds.

"(3) The amount awarded under this section shall be in the discretion of the court, taking into account—

"(A) the significance of the information provided to the Government;

"(B) the contribution of the person bringing the action to the result obtained; and

"(C) whether the information which formed the basis for the suit was known to the Government.

"(4) Where the persons brought an action based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, or administrative hearing, a congressional or Government Accounting Office report or hearing, or from the news media, the court may award such sums as it deems appropriate, not to exceed 10 percent of the recovery and taking into account the significance of the information and the role of the person in advancing the case to litigation.

"(5) In addition to any other amounts awarded by the court, the court may also award the person bringing the action reasonable attorney fees and other expenses. The Government shall not be liable for the expenses or legal fees a person incurs in bringing or defending an action under this section.

"(6) If the Government does not proceed with the action and it is litigated by the person bringing the action, the court shall award to the defendant its reasonable attorney fees and expenses if the defendant prevails in such action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought for purposes of harassment. In cases where it appears that the person is bringing an action which is frivolous, vexatious, or brought for purposes of harassment, the court shall require such assurances that payment of legal fees and expenses will be made, if such are awarded, as it deems appropriate before allowing the action to proceed.

"(7) After any final judgment is issued in any action brought under this section, or any alternate remedy available to the Government, any person who brought an action under subsection (b) shall have 60 days to petition the court for any award to which he is entitled under this section.

"(e)(1) No court shall have jurisdiction over an action brought by a former or present member of the armed services under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2) No court shall have jurisdiction over an action brought against a member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(3) For purposes of this subsection, 'senior executive branch official' means those officials listed in section 201(f) of Appendix IV of title 5.

"(4) In no event may a person bring an action under this section based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(5)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, a congressional, administrative, or Government Accounting Office report, hearing, audit or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily informed the Government or the news media prior to an action filed by the Government.

"(f) The district courts shall have jurisdiction over any action brought under State law for the recovery of funds paid by State or local governments where such action grows out of the same transaction or occurrence as an action brought under this section.

"(g) The Attorney General or his designee is authorized to make payments from Department of Justice appropriations for information or assistance leading to a civil or criminal recovery under this section, section 3729, or sections 3731 through 3734, known as the False Claims Act or under section 286, 287, or 1091 of title 18. Any such payment shall be at the discretion of the Attorney General or his designee.

"(h) In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

Sec. 2, Section 3731 of title 31, United States Code, is amended by—

(1) inserting before the period at the end of subsection (b) the following: "or within three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, whichever occurs last"; and

(2) inserting after subsection (b), the following new subsections:

"(c) In any action brought under this section or section 3729, 3730, 3732, or 3733, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any contrary provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or *nolo contendere*, shall estop the defendant from denying the essential elements of the offense in any action brought by the United States pursuant to this section or section 3729, 3730, 3732, or 3733."

Sec. 4. Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following:

"§ 3732. False claims jurisdiction

"(a) The district courts of the United States, including such courts for Puerto Rico, the Virgin Islands, Guam, and any territory or possession of the United States, shall have jurisdiction over any action commenced by the United States under this section, or under section 3729, 3730, 3731, 3733, or 3734. Venue of any such action shall be proper in any district in which any defendant, or in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act prescribed by such sections is alleged by the United States to have occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the district court and served at any place within the United States, Puerto Rico, the Virgin Islands, Guam, any territory or possession of the United States, or in any foreign country.

"(b) The United States Claims Court shall also have jurisdiction of any such action if the action is asserted by way of counterclaim by the United States. The United States may join as additional parties in such counterclaim all persons who may be jointly and severally liable with such party against whom a counterclaim is asserted by reason of having violated this section, or section 3729, 3730, 3731, or 3733, except that no cross-claims or third-party claims shall be asserted among such additional parties unless such claims are otherwise within the jurisdiction of the United States Claims Court."

Sec. 5. Subchapter III of chapter 37 of the title 31, United States Code is further amended by adding at the end thereof the following:

"§ 3733. Civil investigative demands

"(a) For purposes of this section, the term—

"(1) 'False Claims Act law' means—

"(A) this section and sections 3729 through 3731 of this title, commonly known as the False Claims Act; and

"(B) any Act of Congress enacted after this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any false claim, bribery, or corruption of any officer or employee of the United States;

"(2) 'False Claims Act investigation' means any inquiry conducted by any False Claims Act investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of any provision of the False Claims Act law;

"(3) 'False Claims Act investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any False Claims Act law or any officer or employee of the United States acting under direction and supervision of such attorney or investigator in connection with a False Claims Act investigation;

"(4) 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision;

"(5) 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product or discovery;

"(6) 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General; and

"(7) 'product of discovery' includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of an inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative litigation or action of an adversarial nature, any digest, analysis, selection, compilation, or any derivation thereof, and any index or manner of access thereto.

"(b)(1)(A) Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information relevant, and not otherwise reasonably available, to a False Claims Act investigation, he may, prior to the institution of a civil proceeding, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and notify the person to whom such demand is issued of the date on which such copy was served.

"(B) Notwithstanding the provisions of section 510 of title 28, the Attorney General may not authorize the performance of any function of the Attorney General vested in him pursuant to this paragraph, by any other officer, employee, or agency.

"(2)(A) Each such demand shall state the nature of the conduct constituting the alleged violation of a False Claims Act law which is under investigation, and the applicable provision of law.

"(B) If such demand is for production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so de-

manded may be assembled and made available for inspection, and copying; and

"(iii) identify the False Claims Act investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with definiteness and certainty the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the False Claims Act investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a False Claims Act investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the subpoena of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the subpoena is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the subpoena.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(E) The date prescribed for the commencement of oral testimony pursuant to a civil investigation demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(F) Any official before whom oral testimony under this section is to be taken shall exclude from the place where the testimony is to be taken all persons except the person giving the testimony, the attorney and any other representative for the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government, and the person giving the testimony, and any stenographer taking such testimony.

"(G) The Attorney General shall not authorize a second demand for oral testimony to a person unless such person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not authorize the performance of any function vested in him under this subparagraph, by any other officer, employee, or agency, notwithstanding section 510 of title 28."

"(c)(1) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas *duces tecum* issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil

Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section and sections 3729 through 3731.

"(2) Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which may be invoked to resist discovery of trial preparation materials to which the person making such disclosure may be entitled.

"(d)(1) Any such demand may be served by any False Claims Act investigator, or by any United States Marshal or Deputy Marshal, at any place within the United States.

"(2) Any such demand or any petition filed under subsection (k) may be served upon any person who is not found within the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

"(e)(1) Service of any such demand or of any petition filed under subsection (k) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy thereof to the principal office or place of business of the partnership, corporation, or entity to be served; or

"(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or of any petition filed under subsection (k) may be made upon any natural person by—

"(A) delivering an executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, addressed to such person at his residence or principal office or place of business.

"(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(g) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand

is directed has been produced and made available to the custodian.

"(h) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath unless it is objected to, in which event the reasons for the objection shall be stated in lieu of any answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any materials are not furnished, they shall be identified and reasons set forth with particularity for each.

"(i)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) The False Claims Act investigator conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and any other stenographer taking such testimony.

"(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the False Claims Act investigator conducting the examination and such person.

"(4) When the testimony is fully transcribed, the False Claims Act investigator or the officer shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine the transcript and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the False Claims Act investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, in ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after his being afforded a reasonable opportunity to examine it, the officer or the False Claims Act investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor. A refusal to sign or an unreasonable absence shall be deemed to be an acknowledgment of its accuracy and an affirmation of its contents.

"(5) The officer shall certify on the transcript that the witness was sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or False Claims Act investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(6) Upon payment of reasonable charges therefor, the False Claims Act investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of his testimony.

"(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be properly made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the False Claims Act investigator conducting the examination may petition the district court of the United States pursuant to subsection (k)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

"(j)(1) The Attorney General, or his authorized designee shall designate a False Claims Act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional False Claims Act investigators as he determines from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand under subsection (b)(1) for the production of documentary material has been served shall make such material available for inspection and copying to the False Claims Act investigator designated therein at the principal place of business of such person, or at such other place as such False Claims Act investigator and such person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (k)(1) on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may, upon written agreement between such person and the custodian, substitute copies for originals of all or any part of such material.

"(3)(A) The False Claims Act investigator to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall transmit them to the custodian who shall be responsible for the use made thereof and for the

return of documentary material pursuant to this section.

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any authorized official or employee of the Department of Justice or any authorized officer or employee of the United States acting under the direction and supervision of an attorney or investigator of the Department of Justice in connection with any False Claims Act investigation, under regulations promulgated by the Attorney General. Notwithstanding subparagraph (C) of this subsection, such material, answers, and transcripts may be used by any such person in connection with the taking of oral testimony pursuant to this section.

"(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained, by any individual other than an authorized official or employee of the Department of Justice, or an authorized officer or employee of the United States acting under the direction and supervision of an attorney or investigator of the Department of Justice in connection with any False Claims Act investigation. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure to any other agency of the United States shall be allowed only upon application, made by the custodian to a United States district court, showing substantial need for use by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by an authorized representative of such person; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

"(4) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(5) If any documentary material has been produced in the course of any False Claims Act investigation by any person pursuant to a demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to paragraph (2) of this subsection or made by the Department of Justice pursuant to paragraph (3)(B) of this subsection) which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceedings.

"(6) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this section, or of the official relief of such custodian from responsibility for the custody and control of such material, answers or transcripts, the Attorney General or his authorized designee shall promptly (A) designate another False Claims Act investigator to serve as custodian of such material, answers, or transcripts, and (B) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have, with regard to such material, answers or transcripts, all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

"(k)(1) Whenever any person fails to comply with any civil investigative demand served upon him under subsection (b) or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

"(2)(A) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such False Claims Act investigator a petition for an order of such court, modifying or setting aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

"(B) The time allowed for compliance with the demand, in whole or in part, as

deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(3) Within twenty days after the service of any express demand for any product of discovery upon, or at any time before, the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any False Claims Act investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) At any time during which any custodian is in custody or control of any documentary material, answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(5) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1791 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

"(6) To the extent that such rules may have application and are not inconsistent with the provisions of this section, the Federal Rules of Civil Procedure shall apply to any petition under this subsection.

"(7) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any demand issued under this section and sections 3729 through 3731 shall be exempt from disclosure under section 552 of title 5."

SEC. 6. (a) Subchapter III of chapter 37 of title 31, United States Code, is further amended by adding at the end thereof the following:

"3734. Whistleblower protection

"Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of such employment by his employer because of the good faith exercise by such employee on behalf of himself or others of any option afforded by this Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Act, shall be entitled to all relief necessary to make him whole. Such relief shall include reinstatement with full seniority rights, backpay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. In addition, the employer shall be liable to such employee for twice the amount of backpay and special damages and, if appropriate under the circumstances, the court shall award punitive damages."

(b) The table of sections for chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new items:

"3732. False claims jurisdiction.

"3733. Civil investigative demands."

"3734. Whistleblower protection."

Sec. 7. (a) Section 286 of title 18, United States Code, is amended by striking out "\$10,000" and inserting in lieu thereof "\$1,000,000 notwithstanding the provisions of section 3623."

(b) Section 287 of title 18, United States Code, is amended by striking out "\$10,000, or imprisoned not more than five years" and inserting in lieu thereof "\$1,000,000, or imprisoned for not more than ten years, or both, notwithstanding the provisions of section 3623."

Sec. 8. This Act and the amendments made by this Act shall become effective upon the date of enactment.

□ 2130

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DIPLOMATIC SECURITY ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4151.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 4151) entitled "An Act to provide enhanced diplomatic security and combat international terrorism, and for other purposes", and ask for a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees for consideration of all matters: Mr. Paccell, Mr. Yatron, Mr. Mica, Mr. Kostmayer, Mr. Smith of Florida, Mr. Weiss, Mr. MacKay, Mr. Broomfield, Mr. Oilman, Ms. Snowe, Mr. Mack, and Mr. McCain.

Appointed as additional conferees, for consideration of title IX of the House bill and modifications thereof committed to conference: Mr. Jones of North Carolina, Mr.

Biaggi, Mr. Studds, Mr. Davis, and Mr. Snyder.

Appointed as additional conferees, for consideration of Titles III, VIII, XI, and section 603 of the House bill and modifications thereof committed to conference: Mr. Aspin, Mr. Price, and Mr. Dickinson.

Appointed as additional conferees, for consideration of sections 702 and 703, 711, 713, 714 of the Senate amendment, and modifications thereof committed to conference: Mr. Rodino, Mr. Hughes, Mr. Edwards of California, Mr. Conyers, Mr. McCollum, Mr. Lungren, and Mr. Gekas.

Appointed as additional conferees, for consideration of title III and title VIII of the House bill and modifications thereof committed to conference: Mr. Ford of Michigan, Mrs. Schroeder, Ms. Oakar, Mr. Horton, and Mr. Young of Alaska.

Mr. DOLE. Mr. President, I move that the Senate insist on its amendment and agree to the request for conference with the House, and ask that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed the following conferees on the part of the Senate:

Senators LUGAR, HELMS, MATHIAS, KASSEBAUM, PELL, BIDEN, and SARANES.

Additional conferees for consideration of sections 702, 703, 711, 713, and 714 of the Senate-passed measure: Senators GRASSLEY, DENTON, SPECTER, DeCONCINI, and LEAHY.

Additional conferees for the consideration of section 702 of the Senate-passed Measure: Senators MATHIAS and EAGLETON.

Additional conferees for the consideration of sections 706 and 707 of the Senate-passed measure: Senators DANFORTH and HOLLINGS.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TARIFF ON CHOCOLATE

Mr. DOLE. Mr. President, I send to the desk a resolution and ask for its immediate consideration. The resolution is submitted on behalf of myself and the following cosponsors: Senators PACKWOOD, LUGAR, HELMS, SIMPSON, GORTON, EVANS, HEINZ, D'AMATO, ROTH, MURKOWSKI, CHAFFE, MATSUNAGA, BENTSEN, LAUTENBERG, ZORINSKY, NUNN, BRADLEY, MOYNIHAN, HARKIN, PRYOR, HEPLIN, DIXON, WARNER, GRASSLEY, ABDNOR, and LEAHY.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows: A resolution (S. Res. 465) relating to a tariff on chocolate.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. BYRD. There is no objection.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, American confectionery manufacturers are

among this Nation's largest industrial consumers of sugar, milk, peanuts, and a variety of other agricultural products including wheat, corn, almonds, and raisins. They are not a subsidized industry and meet the challenge of strong import competition without a buffer of tariffs and quotas.

The confectionery industry is attempting to expand exports and is meeting a serious tariff obstacle in Japan. The administration, backed by members of both Houses of Congress, has pressed Japan to lower its 20-percent tariff on chocolate to the United States duty rate of 7 percent. Even though Japan has promised to open its markets to imported goods, it has refused to lift the tariff barrier to this competitive United States export.

This issue transcends the \$12 million in United States confectionery exports to Japan. The "chocolate issue" symbolizes the inequity of many of our bilateral trade relationships where U.S. exports are blocked by the very nations who benefit most from the openness of the U.S. markets.

I urge Members of the Senate to vote for this resolution, in the realization of fair and reciprocal confectionery trade between the United States and Japan.

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. LEAHY's name be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Resolved,
Whereas, the U.S. confectionery industry is a major industrial consumer of domestically grown sugar, milk, peanuts, and other U.S. agricultural commodities; and,

Whereas, the expansion of overseas markets for U.S. chocolate and confectionery exports will directly benefit supplier industries including sugar and milk producers, and growers of peanuts, almonds, raisins, corn and wheat; and,

Whereas, increased U.S. exports of chocolate enhances demand for cocoa beans and cocoa by products from developing nations whose economies depend on cocoa for export earnings; and

Whereas, the United States includes among its trade policy objectives reciprocity in confectionery trade with Japan and other nations; and,

Whereas, the U.S. confectionery market is open and tariffs are among the lowest in the world; and,

Whereas, Japan has restricted competitive U.S. exports of chocolate by maintaining tariffs that are among the highest of any industrialized nation;

It is therefore the sense of the Senate that:

The President should use all appropriate powers of his office to secure from Japan a reduction of that nation's tariff on chocolate to a level at parity with the United States by April 1987.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.