

Purpose: In the nature of a substitute.

S. 2428

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY _____

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “False Claims Amendments Act of 2021”.

SEC. 2. FALSE CLAIMS PROCEDURE.

Section 3729 of title 31, United States Code, is amended by adding at the end the following:

“(e) Proving Materiality.—In determining materiality, the decision of the Government to forego a refund or to pay a claim despite actual knowledge of fraud or falsity shall not be considered dispositive if other reasons exist for the decision of the Government with respect to such refund or payment.”.

SEC. 3. COSTS.

Section 3731 of title 31, United States Code, is amended by adding at the end the following:

“(f) If the Government elects not to intervene in an action brought under section 3730(b), the court shall, upon a motion by the Government, order the requesting party to pay the Government’s expenses, including costs and attorneys’ fees, for responding to the party’s discovery requests, unless the party can demonstrate that the information sought is relevant and proportionate to the needs of the case.”.

SEC. 4. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.

Section 3730(c)(2)(A) of title 31, United States Code, is amended by inserting before the period at the end the following: “, at which the Government shall have the burden of demonstrating reasons for dismissal, and the qui tam plaintiff shall have the opportunity to show

that the reasons are fraudulent, arbitrary and capricious, or contrary to law”.

SEC. 5. POST-EMPLOYMENT WHISTLEBLOWER RETALIATION.

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

SEC. 6. GAO REPORT.

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

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

(2) information on the amounts recovered by the Government under the False Claims Act since the date of enactment of the False Claims Amendments Act of 1986 (Public Law 99–562; 100 Stat. 3153).

SEC. 7. APPLICABILITY.

The amendments made by sections 2, 3, 4, and 5 of this Act shall apply to any case under the False Claims Act (31 U.S.C. 3729 et seq.) that is filed on or after the date of enactment of this Act.