

Changes to 31 U.S.C. §§ 3729 and 3730(h) after S. 386, the Fraud Enforcement and Recovery Act of 2009 <sup>1</sup>

§ 3729. False claims

(a) LIABILITY FOR CERTAIN ACTS.—~~Any~~

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

- (~~1~~A) knowingly presents, or causes to be presented, ~~to an officer or employee of the United States Government or a member of the Armed Forces of the United States~~ a false or fraudulent claim for payment or approval;
- (~~2~~B) knowingly makes, uses, or causes to be made or used, a false record or statement material to ~~get~~ a false or fraudulent claim ~~paid or approved by the Government~~;
- (~~3~~C) conspires to ~~defraud the Government by getting a false or fraudulent claim allowed or paid~~ commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (~~4~~D) has possession, custody, or control of property or money used, or to be used, by the Government and, ~~intending to defraud the Government or willfully to conceal the property~~, knowingly delivers, or causes to be delivered, less ~~property than the amount for which the person receives a certificate or receipt~~ than all of that money or property;
- (~~5~~E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (~~6~~F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge ~~the~~ property; or
- (~~7~~G) knowingly makes, uses, or causes to be made or used, a false record or statement material to ~~conceal, avoid, or decrease~~ an obligation to pay or transmit money or property to the Government, ~~or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,~~

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, ~~as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410),~~

---

<sup>1</sup> Deletions are indicated by ~~red, italicized strikethrough~~ text; additions are indicated by blue text.

plus 3 times the amount of damages which the Government sustains because of the act of that person, ~~except that if.~~

(2) **REDUCED DAMAGES.**—If the court finds that—

- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
- (B) such person fully cooperated with any Government investigation of such violation; and
- (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of ~~the~~ that person.

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

(b) **DEFINITIONS.**— ~~KNOWING AND KNOWINGLY DEFINED~~—For purposes of this section,—

(1) the terms “knowing” and “knowingly”—

(A) mean that a person, with respect to information—

~~(i)~~ has actual knowledge of the information;

~~(2ii)~~ acts in deliberate ignorance of the truth or falsity of the information;  
or

~~(3iii)~~ acts in reckless disregard of the truth or falsity of the information,;  
and

(B) require no proof of specific intent to defraud ~~is required~~;

(2) the term “claim”—~~(c) CLAIM DEFINED. —For purposes of this section, “claim” includes~~

(A) means any request or demand, whether under a contract or otherwise, for money or property ~~which and whether or not the United States has title to the money or property, that—~~

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property ~~which is~~ requested or demanded; or ~~if the Government~~

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(dc) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to ~~subparagraphs (A) through (C) of~~ subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(ed) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

### § 3730. Civil actions for false claims

(h) ~~Any employee who~~ RELIEF FROM RETALIATORY ACTIONS.—

(1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment ~~by his or her employer~~ because of lawful acts done by the employee, contractor, or agent on behalf of the employee ~~or, contractor, or agent~~ or associated others in furtherance of ~~an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief~~ other efforts to stop 1 or more violations of this subchapter.

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