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

IN THE SENATE OF THE UNITED STATES

Mr. Grassley (for himself, Mr. Leahy, Mr. Kennedy, Mr. Durbin, and Mr. Wicker) introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FALSE CLAIMS PROCEDURE.

(a) Proving Materiality.—Section 3729 of title 31, United States Code, is amended by adding at the end the following:

“(e) Proving Materiality.—
“(1) IN GENERAL.—In an action under this section, the Government or relator may establish materiality by a preponderance of the evidence.

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

(b) 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, proportionate to the needs of the case, and not unduly burdensome on the Government.”.

SEC. 3. 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. 4. POST-EMPLOYMENT WHISTLEBLOWER RETALIATION.

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

SEC. 5. 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. 6. APPLICABILITY.

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

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