

reports that an estimated 1 million cancer survivors are not allowed to resume their careers, begin new ones, or obtain jobs commensurate with their professional abilities. That is 1 million Americans who are denied their right to contribute to our economy and society, a grave injustice to both the individuals in question and society at large.

Let us not forget the most recent passing of our beloved colleague, Congressman George O'Brien who continued to serve in this body throughout his cancer treatment and, might I add, served it well. It would never have occurred to any one of us, nor his constituents, to deny George his seat in Congress. His illness in no way impaired his expertise or interest in his work. George is but one example. There are millions of others who survive their cancer, and are robbed of their chance to continue to work and contribute. Due to improved medical research and techniques for early detection, the survival rate of cancer victims has grown rapidly.

By adopting this legislation, House Concurrent Resolution 321, we will be strongly enunciating our opposition to employment discrimination against persons who have or who have had cancer. I am additionally hopeful that this measure will pave the way for further work in this area, by our Federal and State Departments of Labor and other relevant agencies. Accordingly, I urge my colleagues to join in adopting House Concurrent Resolution 321.

Mr. BIAGGI. Mr. Speaker, I yield back the balance of my time.

Mr. HENRY. Mr. Speaker, I yield back the balance of my time

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The Speaker pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from New York [Mr. BIAGGI] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 321.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

FALSE CLAIMS AMENDMENTS ACT OF 1986

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4827) to amend title 31, United States Code, with respect to the fraudulent use of public property or money, as amended.

The Clerk read as follows:

H.R. 4827

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 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the armed forces";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the armed forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection 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,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, for an amount equal to consequential damages as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) which the Government sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

"(b) CALCULATION OF DAMAGES.—(1) For purposes of this section, consequential damages include damages which the United States would not have sustained but for—

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

"(B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim.

"(2) Any credits to which the defendant establishes entitlement may be deducted from the amount payable under subsection (a) only after the damages sustained by the United States have been doubled as set forth in subsection (a).

"(3) If any portion of the damages sustained by the United States under paragraph (1) is considered reasonably unforeseeable by the court, the court may reduce the total amount of damages payable under paragraph (1).

"(c) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

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

"(3) acts in reckless disregard of the truth or falsity of the information.

"(d) CLAIM DEFINED.—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 United States Government provides any portion of the money or property which is requested or demanded, or if the Govern-

ment will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954."

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. 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) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. Subject to paragraph (5), an action may be dismissed only if the court and the Attorney General give written consent to the dismissal 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 pursuant to 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 and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). 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 the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Subject to paragraph (5), before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

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

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5)(A) If the court finds that an action brought by a person under this subsection—

"(i) is based on specific evidence or specific information which the Government disclosed as a basis for allegations made in a prior administrative, civil, or criminal proceeding; or

"(ii) is based on specific information disclosed during the course of a congressional investigation or based on specific public information disseminated by any news media, the court shall dismiss the action, unless subparagraph (B) applies.

"(B) The court shall not dismiss an action under subparagraph (A)—

"(i) if the Government proceeds with the action before the expiration of the 60-day period described in paragraph (2) or any extensions obtained under paragraph (3); or

"(ii) if the Government was aware of the evidence or information described in clause (i) or (ii) of subparagraph (A) for a period of at least 6 months before the person initiated

the action, and the Government did not initiate a civil action on the matter involved within that 6-month period, or within such additional times as the court allows upon a showing of good cause.

"(C) The defendant must prove the facts warranting dismissal of a case to which this paragraph applies.

"(6) When 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) RIGHTS OF PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action. The person bringing the action shall have a right to continue in the action with the same rights as those of a person permitted to intervene in an action under Rule 24(b) of the Federal Rules of Civil Procedure. The Government is not bound by an act of the person bringing the action. A motion by the Government to dismiss the action may not be granted unless the person bringing the action has been notified by the Government of the filing of the motion and unless the court has provided the person with the opportunity for a hearing on the motion.

"(2) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines after a hearing, including the opportunity for presentation of evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

"(3) Upon a showing of the Government that certain actions of discovery by the person initiating the action would significantly interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(4) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct 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 the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with re-

spect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action under this section, and the person bringing the action discloses relevant evidence, or relevant information, which the Government did not have at the time the action was brought, such person shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds, under subsection (b)(5)(A), to be based solely on evidence or information described in clause (i) or (ii) of that subsection, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph shall be made from the proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought solely for purposes of harassment.

"(e) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section."

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(f) Any employee who 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 in whole or in part because of lawful acts done by the employee on behalf of the employee or 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 shall include reinstatement with the same seniority status such employee 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 in the ap-

propriate district court of the United States for the relief provided in this subsection."

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 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, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, 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 other 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 which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730."

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant 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 shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the 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 law 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 specificity 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 law 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; and

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until 20 days after the date on which a copy of such demand has been served upon the person from whom the discovery was obtained.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not 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.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—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 the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of 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 any 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 any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent 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 of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

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

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) 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.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, 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 false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. 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 information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative 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 the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be 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) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person being examined, the person's counsel, the officer before whom the testimony

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

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative 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 law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, 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 law 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 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law 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.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law 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 the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) 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 made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(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 accord-

ance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(1) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law 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 law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(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 false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress.

"(D) Notwithstanding subparagraph (C), documentary material, answers to interrogatories, or transcripts of oral testimony obtained under a civil investigative demand issued under this section shall be disclosed to an agency of the United States if—

"(i) that agency files, in a district court of the United States in which petitions under subsection (j) may be filed, and serves upon the person named in the civil investigative demand and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, a petition requesting such disclosure;

"(ii) any person so served has an opportunity to be heard on the petition;

"(iii) the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.

The provisions of paragraphs (5) and (6) of subsection (j) (relating to jurisdiction and applicability of the Federal Rules of Civil Procedure) apply to petitions under this subparagraph.

"(E) 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 a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case 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 introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative 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 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 furnished to the false claims law investigator under subsection (f)(2) or made by the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—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 pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law 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 testimo-

ny notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(J) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General 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 the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) 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 the false claims law investigator identified in such demand a petition for an order of the court to modify or set 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. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

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

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is 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 in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at

any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought 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 the 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) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), 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 to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, 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 out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(7) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(k) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of 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 against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law 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 law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

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

"(5) the term '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 of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A)."

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.

"3733. Civil investigative demands."

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "five" and inserting "ten".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROWN of Colorado. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes and the gentleman from Colorado [Mr. BROWN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a very important bill, the False Claims Amendments Act, because it increases significantly the penalties for filing false claims against the Government of the United States; claims that could involve the Medicare system, claims to the Defense Department, the veterans' system, welfare; you name it. It deals with the issue of civil and criminal penalties for those who try to take advantage of taxpayers in this country by filing false claims against the Government.

This bill increases, rather substantially, the rights of citizens to challenge that and the penalties incurred thereby.

Before I begin my statement, I would like to especially thank those

Members that have helped with this piece of legislation. They are Mr. KINDNESS, Mr. FISH, and Mr. BROWN of Colorado from the Republican side, who has been so cooperative in helping with this area, as well as Mr. BROOKS, Mr. FRANK, Mr. BRYANT, Mr. STARK, Mr. BEDELL, and Mr. IRELAND.

I also want to particularly give reference to Mr. BERMAN of California because it was largely through his efforts on the citizens' suit or the qui tam provisions that we were able to work this deal together. Again, to our colleague from Texas, Mr. BROOKS, for his help as well.

Mr. Speaker, in 1863, during the Civil War, the False Claims Act became law. This act, sometimes referred to as the "Abraham Lincoln Law", was enacted amid reports of widespread corruption and fraud in the sale of supplies and provisions to the union government during the war. As originally enacted, the statute imposed civil and criminal liability for false claims against the Government.

Unfortunately, fraud against the U.S. Government did not end with the conclusion of the Civil War in 1865. However, the act has only been amended twice in 123 years: Amendments to the qui tam provisions were enacted in 1943, and in 1982, technical amendments were made during the recodification of title 31, where the civil false claims provisions are set forth in the United States Code. With this brief background of the False Claims Act, it is easy to understand why the current law is quite outdated. During hearings before the Subcommittee on Administrative Law and Governmental Relations, several witnesses pointed out that a large part of the problem in prosecuting civil fraud cases is because of the ambiguities and lack of clarity in the current statute, and also because the monetary penalties are no longer a serious deterrent to the filing of false claims.

H.R. 4827, the False Claims Amendments Act of 1986, is a very important piece of legislation. The False Claims Act is the primary vehicle by which the Government prosecutes civil fraud. In 1986, with a deficit in the range of \$200 billion, I think it is critically important that we modernize this statute so that the Government has a workable law through which to prosecute fraud and recoup the losses suffered by the Government.

One of the major provisions of H.R. 4827 increases the amount of damages recoverable to not less than \$5,000 and not more than \$10,000. The bill also provides for recovery of consequential damages. Under the current statute, the penalty is \$2,000 and makes no provision for the recovery of consequential damages. As an example of how out of date this statute has become, the Congressional Research Service has informed me that the equivalent of \$2,000 in 1863 would today be close to \$18,000.

Other provisions of the bill include expanding the qui tam, or citizen suit, provisions of the law, as well as providing the Government with the power to issue civil investigative demands.

Civil investigative demands [CID's] are a pre-lawsuit discovery mechanism which allows the Department of Justice to conduct discovery in civil false claims cases, without the expense of first filing a civil fraud case in Federal district court. This CID provision, however, can only be utilized by the Department of Justice if the Attorney General himself approves the issuance of such.

The bill which we are considering today and which is at the desk, is not exactly like the bill which was reported by the full committee on June 10, 1986. Although H.R. 4827, as amended, was reported by the full committee by a unanimous (35-0) rollcall vote, several Members still had reservations about a few provisions contained in the bill. In order to satisfy these reservations, a compromise was reached which includes the following changes to the bill:

First, there is a change to section 3, the qui tam provisions of the bill. In the bill as reported by the committee, the qui tam plaintiffs rights when the Government enters the lawsuit, were based on the rights of mandatory intervention, pursuant to rule 24(a) of the Federal rules of civil procedure. The bill at the desk adopts the standard of intervention to be that of permissive intervention pursuant to rule 24(b) of the Federal rules. The compromise bill also includes language which provides the qui tam plaintiff with the right to notice of any motion to dismiss filed by the Government and a right to a hearing on any such motion.

Second, the administrative remedy (section 7) was deleted in its entirety. The administrative remedy contained in the bill as reported by the committee applied governmentwide and there were numerous concerns with this provision by several Members. Therefore, this provision has been deleted.

Third, in section 3 of the bill, the Contract Disputes Act language is deleted. With the deletion of the administrative remedy, this bill amends only the current False Claims Act. Since the False Claims Act and the Contract Disputes Act of 1978 have coexisted since 1978, it was decided as part of the compromise, to delete this portion of the bill.

As I said earlier, the False Claims Amendments Act of 1986 is a very important piece of legislation. It is important because it is the primary mechanism through which the Government recoups losses suffered through fraud. It is especially important today given the enormous deficit the Government faces today. Perhaps, if the False Claims Act had been clarified and updated 30 years ago, we might not face quite the same deficit we do today. In any event, the mod-

ernization of this statute can and should enable the Government to recoup potentially thousands of dollars lost through fraud each year.

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I would note for the record that the administration supports this bill, and, in addition, the Congressional Budget Office indicates that the bill would have a positive impact on our deficit.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. BROOKS. Mr. Speaker, I support H.R. 4827 as it is presented today and hope that my colleagues will also. This legislation makes important improvements to the False Claims Act of 1863. That act was enacted during the Civil War to stem the massive corruption and abuse occurring in the procurement of union war supplies. Today, it serves as the Government's chief statutory weapon to combat fraud. Except for two relatively minor amendments, however, the False Claims Act has not been revised since its enactment 123 years ago.

Today's bill would make changes to update the False Claims Act in several significant ways. First, it will increase the civil penalties authorized under the current law. The 1863 act provided for a doubling of actual damages, a \$2,000 fine and recovery of the cost of the lawsuit. H.R. 4827 will increase these penalties to double actual damages plus consequential damages, a fine from \$5,000 to \$10,000, and the costs of suit. These increases in the penalties fixed in 1863 are needed to keep the deterrent value of the False Claims Act current and effective in our modern world.

H.R. 4827 also makes changes to the act's original qui tam, or citizen suits, provisions. The False Claims Act contains provisions which allow citizens to bring suits for false claims on behalf of the Government. These "Lincoln" provisions, named after the President, will be strengthened by H.R. 4827. The incentives for citizens to file such suits are increased, the ability of the citizen who brings such a suit to follow through with the litigation is enhanced, and "whistle-blower" protections are provided employees who report fraud and abuse in conjunction with false claims prosecutions.

Further, the Justice Department is given greater investigative powers and tools to ferret out false claims and fraud under provisions of the bill.

Together, these changes will add new force and vigor to the Nation's efforts to stop fraud in Government services and procurements. They are urgently needed in light of the recent indications of massive procurement abuses occurring in the recent military buildup. Along with the changes this bill makes, there are other reforms and ideas pertinent to this problem which merit serious consideration. Today's bill is not a cure-all, but rather an important first step in revising current out-of-date statutory provisions. I hope my colleagues will pass this measure, and I look forward to working with them on further efforts to address the problem of procurement and services fraud which has plagued our Nation to a greater or lesser extent throughout our history.

Mr. BROWN of Colorado. Mr. Speaker, I yield such time as he may

consume to the ranking Republican on the Judiciary Committee, the gentleman from New York [Mr. FISH], who is the original sponsor of the administration's initiative in this area.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, I thank my colleague, the gentleman from Colorado [Mr. BROWN].

Mr. Speaker, I rise in support of the False Claims Amendments Act of 1986. This legislation will greatly enhance the ability of the Federal Government to deal with fraud and waste in Government grant and loan programs and procurement contracts. As the principal sponsor of the administration's original proposals (H.R. 3334; H.R. 3335) on this subject, I believe that we have fashioned a workable, effective compromise and want to express my sincere appreciation to the administration, in particular the Department of Justice, for its expert assistance in this effort.

Mr. Speaker, the False Claims Act is one of the oldest and potentially most effective remedies available to the United States to discourage and respond to the fraudulent misuse of Federal resources. It is the principal statute upon which the Government relies to seek monetary recovery in fraud cases. The statute was first enacted in 1863, at the height of the Civil War. It permits the Federal Government to recover two times the amount of any false or fraudulent claim submitted, plus a \$2,000 civil fine. Closely patterned after bills I originally introduced, the amendments contained in H.R. 4827 would make several statutory changes so as to resolve inconsistencies and ambiguities in current case law and strengthen the Government's ability to investigate, litigate, and otherwise resolve fraud cases.

It should be stressed, Mr. Speaker, that we are dealing here with a civil—not a criminal—statute. The False Claims Act is remedial in nature. The reason for my emphasis on this point is that considerable confusion has been prompted by judicial decisions that have treated the False Claims Act as if it were a criminal statute. These decisions have severely hampered the Justice Department and other Federal agencies in their efforts to effectively recover losses incurred as a result of fraud, waste, and abuse. These cases, in part, are the reason why I introduced the administration's package.

Second, while the False Claims Act is not a penal statute, it does have an important deterrent effect. The False Claims Act allows the Government, on behalf of the taxpayer, to recover losses suffered through the submission of fraudulent claims. The double damages remedy has been a part of this law since 1863 and it implicitly contains a significant deterrence element. The double damages recovery, with the accompanying civil fine, is intended to be a substantial penalty—to

forcefully discourage individuals and companies that do business with the United States from engaging in fraudulent practices. Indeed, Mr. Speaker, the dual purpose of any such law should always be to deter as well as punish fraudulent conduct.

Under current law, the Federal Government is limited to actual damages, which are then doubled under the statutory formula. Section 2 of H.R. 4827 would make consequential damages the measurement standard—thus allowing a recovery for indirect losses that are the result of the fraud as well as actual, direct losses. This is a realistic, fair change which ensures the recovery will reflect actual replacement cost in every instance.

Last, but not least, I feel I must stress that I do not view these legislative proposals as anticontractor in nature. Rather, I view these legislative proposals as protaxpayer. There is no question in my mind but that the responsible representatives of the private sector share our common goals. Specifically, those goals are: First, an efficient Federal procurement process that results in the purchase of quality products and services at fair prices; and second, an effective mechanism for the Government to employ in recovering its losses when victimized by fraud.

Mr. Speaker, allow me to turn to those provisions in the bill that are deserving of special note. To my mind, one of the most important amendments contained in H.R. 4827 deals with the intent standard and the burden of proof in the False Claims Act. The language of the False Claims Act currently provides that the Federal Government need only prove that the defendant knowingly submitted a false claim. However, this statutory standard has been misconstrued by some courts so as to require that the Government prove the defendant had actual knowledge of the fraud and, even, establish specific intent to submit a false claim. See *United States v. Mead*, 426 F.2d 118 (9th Cir., 1970). A specific intent standard, Mr. Speaker, is inappropriate in a civil statute and H.R. 4827 would remove the ambiguity created by this case law by defining knowingly as: First, actual knowledge of the information; second, deliberate ignorance of the truth or falsity of the information; or third, acts in reckless disregard of the truth or falsity of the information.

The burden of proof in civil false claims cases is another area where legislative clarification is necessary to resolve ambiguities which have developed in the case law. Some courts have required that the United States prove a violation by clear and convincing, even unequivocal, evidence. *United States v. Ueber*, 299 F.2d 310 (6th Cir., 1962). Because the False Claims Act is a civil statute, the traditional "preponderance of the evidence" burden of proof is more appropriate. Consequently, H.R. 4827 specifically pro-

vides that the Government must prove its case by a preponderance of the evidence, the ordinary standard in civil litigation.

H.R. 4827 also contains numerous other amendments, which are designed to resolve specific problems which have arisen under the act:

Section 2(a) raises the fixed statutory penalty for submitting a false claim from \$2,000 to not less than \$5,000 and not more than \$10,000. The \$2,000 figure has remained unchanged since the initial enactment of the False Claims Act in 1863.

Section 2(a) also amends the act to permit the United States to bring an action against a member of the Armed Forces, as well as against civilian employees. When the act was first enacted in 1863, the military was excluded because the Government then had available more severe military remedies.

Also, as I mentioned earlier, section 2(a) would permit the Government to recover consequential damages it suffers from the submission of a false claim.

Section 2(a) also provides that an individual who makes a material misrepresentation to avoid paying money owed the Government would be equally liable under the act as if he had submitted a false claim for money or property. This is better known as a reverse false claim. For instance, the manager of HUD-owned property may falsely understate income and/or overstate expenses in order to reduce the rental receipts which must be paid to HUD at the end of each month. The existing failure to cover these reverse false claims is a serious loophole in the present law. The requirement that there must be a strict demand for money or property before an actual claim can exist under the False Claims Act should be broadened. Instead, the concept of claim should cover all those circumstances where the Government suffers a real financial loss, through a fraudulent misrepresentation or statement.

Section 5 amends the statute of limitations to permit the Government to bring an action within 6 years of when the false claim is submitted, the current standard, or within 3 years after the Government learns of the violations, whichever is later.

Section 6 of the bill modernizes the jurisdiction and venue provisions of the False Claims Act to permit the Government to bring suit, not only in the district where the defendant is found, the current standard, but also where a violation occurred. Currently, when multiple defendants live in different districts, the Government may be required to bring multiple suits, a time-consuming process that is wasteful of judicial and litigation resources.

Another important amendment—contained in section 6—is the grant of civil investigative demand (CID) authority to the Department of Justice

to aid in the investigation of False Claims Act cases. The CID provisions are patterned after and analogous to the authority already exercised by the Antitrust Division under the Hart-Scott-Rodino Act, 15 U.S.C. 1311-1314. If the Attorney General of the Civil Division believes that a person has access to information relating to a False Claims Act investigation, he may, prior to filing a complaint, require the production of documents, answers to interrogatories, and oral testimony. The standards governing subpoenas and ordinary civil discovery would apply so as to protect against the disclosure of privileged information. The CID could be enforced in district court, like any other subpoena. The use of CID authority in the anti-trust context has been upheld as constitutional. *Hyster Company v. United States*, 338 F.2d 183 (9th Cir., 1964); *Petition of Gold Bond Stamp Co.*, 221 F. Supp. 391 (D. Minn. 1963), aff'd., 325 F.2d 1018 (8th Cir., 1964).

In conclusion, Mr. Speaker, I want to commend subcommittee Chairman DAN GLICKMAN, the ranking Republican TOM KINDNESS, and the other subcommittee members for their hard work in bringing this legislation to the floor. There is no question that Congress must seek out appropriate legislative mechanisms to insure that the taxpayers' money is well spent and protected from fraud and waste. This bill, Mr. Speaker, will accomplish just that.

Mr. BROWN of Colorado. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROWN of Colorado asked and was given permission to revise an extend his remarks.)

Mr. BROWN of Colorado. Mr. Speaker, the bill we have before us today reflects the work of several Members and reflects major improvements in existing Federal law governing false claims submitted to the United States. Indeed, a 1981 report by the General Accounting Office identified over 77,000 fraud cases in 21 Federal agencies during a 2½ year period, with estimated losses of \$150 to \$220 million.

With this background in mind, the Judiciary Committee voted in favor of reporting H.R. 4827, the False Claims Act Amendments of 1986. The bill before us today is preferable to the earlier versions in several respects, such as providing somewhat more realistic and constitutionally defensible penalties. Nonetheless, there remain some areas in which further improvements are sorely needed to insure that due process rights are fully honored. In supporting this legislation today, it is my hope that some of these concerns will be addressed in conference.

Among the primary areas of concern generated by H.R. 4827, which we hope will be corrected in conference, are the following: First, consequential damages should be limited to those which were reasonably foreseeable and

proximately caused by prohibited acts; and second, civil investigative demands, if authorized at all, should certainly not extend to written interrogatories.

CONSEQUENTIAL DAMAGES

H.R. 4827, as reported by the Judiciary Committee, amends the False Claims Act, 31 U.S.C. 3729 et seq., to include civil penalties for persons who submit false claims in an amount equal to the consequential damages sustained. In the committee bill, such damages are defined to include those "which the United States would not have sustained but for (A) the commission of any of the [prohibited] acts . . . or (B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim." Current law, by contrast, has not authorized the imposition of civil penalties based on consequential damages, such as those attributable to the prohibited act. *United States v. Aerodex, Inc.*, 469 F. 2d 1003, 1011 (5th Cir. 1972).

As reported by the committee, the definition of consequential damages is far too sweeping. From a fairness standpoint, assessments of damages should be limited to those which were proximately caused by a prohibited act, and which were reasonable foreseeable. Both of these concepts are well defined in the common law and, consequently, can be readily applied by the courts. In the absence of such limitations, persons may be subject to penalties based on highly speculative, attenuated and subjective considerations.

CIVIL INVESTIGATIVE DEMANDS

H.R. 4827, as reported by the committee, grants to the Justice Department, for the first time, authority to issue civil investigative demands (CID) to persons who may be in possession of information relevant to a false claims law investigation, before any civil proceeding is commenced. Demands could extend to documentary material, written interrogatories, and oral testimony. While the need for such authority has not been demonstrated conclusively, the bill reported by the committee as improved by an amendment confining the issuance of CID's to cases personally approved by the Attorney General. However, the committee's failure to adopt an amendment deleting authority for the issuance of written interrogatories was a serious omission.

Written interrogatories may be subject to great abuse and encourage fishing expeditions. The authority to obtain documents pursuant to a civil investigative demand will give the prosecution access to enough information to determine whether a civil action should be brought. At that point, written interrogatories, oral testimony, and the full array of discovery procedures are already available.

Mr. Speaker, we strongly support the goal of cracking down on fraud against the Government. H.R. 4827

can be further improved in conference in order to preserve due process rights and achieve its ultimate goals. Accordingly, I hope House conferees will support efforts to modify the definition of consequential damages, and restrict the scope of civil investigative demands.

With these changes, Mr. Speaker, we will have a bill that can work fairly and efficiently.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I, too, join in what seems to be unanimous support for the fast clearance of this legislation and for its final adoption by the Congress of the United States.

I suppose there is nothing more vital to the taxpayer, if we heed the daily conversations of the average American citizen, than the horror stories that they hear on a daily basis—and most of them are justified—as to what goes on in several sectors, in fact, in almost all sectors of the Government at one time or another relating to fraud and waste. If there is anything that galls the taxpayer more, I would like to know what it is, than to learn that their taxpayer dollars are wasted in one form or another.

I do not consider this to be a small thing but, rather, a major thrust, and every little bit that we can do, first of all, to eliminate or reduce fraud and waste, and second, to allay the worries of our taxpayers that indeed there might be an attitude in the Congress that pooh-poohs fraud and waste would be a step in the right direction. So these kinds of bills ought to be adopted on a regular basis.

Mr. Speaker, I support the measure, and I commend all those who made it possible for us to have a quick resolution of this issue.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. GEKAS] for his leadership in this area.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of our Committee on the Judiciary, the gentleman from New Jersey [Mr. RODINO].

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, on June 10, 1986, the Judiciary Committee favorably reported H.R. 4827, the False Claims Amendments Act of 1986 to the floor by a unanimous (35-0) roll-call vote. The purpose of this legislation is to amend the existing civil false claims statute in order to strengthen and clarify the Government's ability to detect and prosecute fraud, as well as to recoup damages suffered by the

Government as the result of such fraud.

The False Claims Act was originally enacted in 1863 because of reports of widespread corruption and fraud in the sale of supplies and provisions to the Union Government during the Civil War. Unfortunately, fraud is still prevalent today. While fraud has become more sophisticated, the law through which the Government prosecutes fraud and recoups its losses has not followed the same pattern. This law has remained largely unchanged since it was enacted in 1863.

H.R. 4827 updates and clarifies the current law, by defining terms which previously were not defined in the False Claims Act. For example, this statute has never defined the term "claim." Because of this lack of a definition, court interpretations of what constitutes a claim under this statute have varied.

This bill increases the civil penalties for filing a false claim, expands the qui tam or citizen suit provisions of the law and provides the Government with the power to issue civil investigative demands [CID's].

These amendments to the False Claims Act are long overdue. This statute has existed for 123 years but is out of date and no longer an effective tool for prosecution of civil fraud cases. Passage of H.R. 4827, as amended, will make this 123-year-old statute a more effective tool for prosecution of these cases. It will also provide the Government with a more effective tool for the recovery of the dollar losses suffered through fraud.

I particularly wish to commend the gentleman from Kansas and the other members of the Judiciary Committee for accomplishing the task of reaching a compromise acceptable to everyone while maintaining the goal of this legislation.

I urge my colleagues to pass this important legislation.

Mr. GLICKMAN. Mr. Speaker, I thank the chairman of our committee.

Mr. Speaker, before I yield time to the gentleman from California [Mr. BERMAN], I would like to pay a special tribute to the gentleman from Florida [Mr. IRELAND], who has been intimately involved with the qui tam provisions, and that is the part that the gentleman from California [Mr. BERMAN] has been most responsible for. I want to point out that there has been a genuine bipartisan effort in this bill to try to root out and effectively enhance the enforcement of fraud against the Government, and so I think the record ought to reflect that at least with respect to this particular issue we have had genuine bipartisan support.

So now, Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from California [Mr. BERMAN], who basically spearheaded the qui tam provisions of this bill.

Mr. BERMAN. Mr. Speaker, I rise in support of H.R. 4827, the False Claims Amendments Act of 1986.

I want in particular to thank the chairman of our subcommittee, the gentleman from Kansas [Mr. GLICKMAN] for his kind words, and, more importantly, for his leadership in bringing before this body the outstanding bill we are considering today. In a few short months, he has established himself as the House leader on this issue, and has brought this important legislation to the point where it now has an excellent chance of enactment.

Mr. Speaker, I also want to second the gentleman's comments with respect to our friend and colleague, the gentleman from Florida [Mr. IRELAND], as well as our colleague, the gentleman from Iowa [Mr. BEDELL]. Long before this speaker had ever heard of this legislation and this issue, these gentlemen were legislating and pushing in this area, and without their help I am sure we would not be where we are today.

I do not know if it is comforting or not to realize that many of our contemporary problems were shared by our forebearers over a century ago. But it is indeed the case that in the 1860's, President Abraham Lincoln felt obliged to call upon Congress to pass the False Claims Act, in order to crack down on defense contractor fraud.

Instances were uncovered of defense contractors who resold the same horses two and three times to the Union cavalry, and who were paid for muskets but provided boxes of sawdust. There is billions of dollars difference between that fraud and the defense contractor fraud found in our headlines today, but the principle is the same: The U.S. taxpayers are being bilked, and we need all the resources we can obtain to address the problem.

Unfortunately, over the years changes were made in the Abraham Lincoln law which undermined its effectiveness. That is why I joined my colleagues BERKLEY BEDELL and ANDY IRELAND in introducing a false claims amendments bill last year, and why I am so pleased to support the bill before the House today.

I am particularly pleased with the qui tam or citizens suit provisions in the bill. These provisions improve the incentives for citizens with knowledge of fraudulent claims against the Federal Government to go public with the information, and afford such whistleblowers protection against retaliation by their employers.

In particular, H.R. 4827:

Protects plaintiffs and witnesses from being fired, harassed, suspended or demoted.

Allows the plaintiff in a qui tam suit to maintain his or her involvement in the suit even if the United States enters the case, to ensure that the case is effectively prosecuted on its merits.

Prevents a suit from being dismissed on the Government's assertion that it already had the information brought forward by the plaintiff, to ensure that the Government is indeed acting on the information; and

Provides guarantees of adequate monetary awards and attorneys fees for plaintiffs.

Except where an action is based completely on information already known to the Government, the qui tam plaintiff is entitled to at least 15 percent, but not more than 25 percent of the proceeds of the action or settlement, depending on his or her contribution to the prosecution of the action. This guaranteed minimum is a critical incentive and reward for persons who come forward with information, putting themselves at risk on behalf of the Federal Treasury and American taxpayers.

Mr. Speaker, I want to point out that under H.R. 4827, liability for false claims attaches to a person who has actual knowledge of the falsity of a claim, acts in deliberate ignorance of its truth or falsity, or acts in reckless disregard of its truth or falsity. Given the sorry record of hundreds of millions of dollars in fraudulent claims by Federal contractors, persons and entities doing business with the Government must be made to understand that they have an affirmative obligation to ascertain the truthfulness of the claims they submit. No longer will Federal contractors be able to bury their heads in the sand to insulate themselves from the knowledge a prudent person should have before submitting a claim to the Government. Contractors who ignore or fail to inquire about red flags that should alert them to the fact that false claims are being submitted will be liable for those false claims.

H.R. 4827 contains provisions strengthening the Government's hand in prosecuting false claims cases. And in light of Gramm-Rudman and a newfound reliance on private citizens to help right wrongs, the qui tam provisions of the bill are a critically needed supplement—and prod—to Government prosecution. Frankly, whether as a result of a lack of resources or worse, the Department of Justice has not done an acceptable job of prosecuting defense contractor fraud. I look to H.R. 4827 as a critical incentive to self-policing by Government contractors and, barring that, to effective prosecution of false claims.

I note the support for this bill of thousands of business executives and entrepreneurs from large and small businesses across America who belong to Business Executives for National Security [BENS].

And I am particularly delighted to cite the substantial contribution of John Phillips, director of the Center for Law in the Public Interest, based in Los Angeles. John is one of the most knowledgeable people in the

country about how the present False Claims Act works—or fails to work. His interest in this issue arose when his office received anonymous calls from potential whistleblowers in defense plants who were aware of illegal practices, but were not sure what they should do with the information. They were fearful that if they went to the Government or their employers with the information, at best nothing would be done, and at worst, they would be fired. The center's research has been instrumental in pointing out the weaknesses of present law, and the need for the bill we have before us today.

Mr. Speaker, I am convinced that only those who cheat the U.S. Government have anything to fear from H.R. 4827. As members of BENS have noted, "the size of our deficit warrants all reasonable congressional actions to recoup the billions of dollars leaking out of the system through fraud." H.R. 4827 is sound, urgently needed legislation, and I urge its adoption.

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Mr. GLICKMAN. Mr. Speaker, I would just conclude by saying that the other body has passed a comparable bill under the leadership of the senior Senator from Iowa. It is indeed possible that this could become law this year.

Mr. BEDELL. Mr. Speaker, I rise in support of H.R. 4827, the False Claims Act Amendments of 1986. As an original cosponsor of legislation sponsored by Congressman ANDY IRELAND to restore the qui tam, or informer, provisions of the civil False Claims Act to their original strength, I am pleased that the bill before us today embodies much of our original bill.

Congressman ANDY IRELAND first introduced legislation in 1983 to restore the Lincoln qui tam law to its original strength. In the 99th Congress, Congressman HOWARD BERMAN of the Judiciary Committee assisted in drafting a superior version of the 1983 bill that contained several new elements. Finally, Congressman DAN GLICKMAN provided the leadership as chairman of the House Judiciary Subcommittee on Administrative Law by holding hearings and bringing a compromise version to the attention of the full House today.

The world's second oldest profession, some say, is stealing from the public purse. More than 100 years ago, during the Civil War, President Abraham Lincoln became so frustrated with Government fraud and the failure of his Justice Department to deal with the problem that he pushed Congress to enact the qui tam, or informer, provisions in the False Claims Act. Lincoln fought fraud against the Government by offering persons who knew of fraud a portion of damages recovered by the Government when those persons provided their evidence to the Government or when they brought suit themselves for the Government.

Lincoln's original qui tam law remained in force until 1943, when defense contractors became concerned that it may be used more frequently, and persuaded the Attorney General to push through Congress a qui tam revision that vested almost all discretion with the Justice Department. The one legitimate objec-

tion raised at the time was that the qui tam law might encourage parasitic suits by people who really had no original information to share.

What is wrong with current law as enacted in 1943? First, when a citizen files a suit alleging fraud, the Government can decide to take over the case and then sit on it or seek to have it dismissed. Testimony before the House Judiciary Committee this year demonstrates that the current administration may have done exactly that in the Gravitt case. H.R. 4827 prevents this by establishing that the citizen who originally brought the suit may intervene to ensure diligent prosecution even after the Government has taken over the case.

Another problem with current law is that, if the Government decides not to proceed with an action, the court can still dismiss an action brought by a private citizen if the case is based upon "evidence or information the Government had when the action was brought." Clearly, there may be many cases where evidence is somewhere in the hands of some Government official, even if the Government does not have the evidence in organized form or even knows it has the information. H.R. 4827 allows the court to dismiss a citizen's action brought upon evidence previously disclosed under certain circumstances, but also provides that the court shall permit the suit if the Government was aware of the information for 6 months and took no action. This addresses the legitimate concern about parasitic suits.

Third, under current law a citizen who risks bringing suit cannot be sure of receiving any portion of damages recovered, and has few legal protections against the crudest forms of reprisals through loss of employment, et cetera. H.R. 4827 establishes specific minimum and maximum percentages of damages that citizens shall receive depending on their contribution to a successful case. In addition, the bill provides "whistleblower protections" to qui tam plaintiffs who suffer reprisals.

At a more fundamental level, some people may question whether it is right for the Government to encourage informers and to give them standing to bring suit in court on behalf of the Government. But during my years in Congress, people have told me that they have reported fraud to the proper authorities but that no one seemed interested and nothing was done. Even if the authorities are interested, they are overwhelmed by work already. Also, in many cases, the authorities will not prosecute for political reasons. In my opinion, citizen informer suits will bring more fraud to light, recover more damages for the taxpayers, and ultimately prevent much fraud by creating a far less cavalier attitude toward stealing from the public purse.

I think that my experiences cause me to have a generally balanced approach to this issue. During the last Congress, my Small Business Subcommittee was very involved in the passage of two Federal procurement reform laws, the Procurement Reform Act of 1984 (Public Law 98-525) and the Small Business and Federal Procurement Competition Enhancement Act of the 1984 (Public Law 98-577). I believe that these and more recent laws go a long way toward improving the procurement process. However, my experience tells me that we cannot legislate common sense or integrity, and that, as in Abe Lin-

coln's time, the Justice Department has neither the political will nor the resources to always enforce the all of the laws. We need some mechanism that uses informer suits.

However, I am also a small businessman, and I understand the dangers involved. We must be careful not to add to the legal burdens of the vast majority of honest business persons who give the Government the best product they can at the best price. I am pleased to note that H.R. 4827 provides that a defendant can receive expenses and lawyers' fees from the plaintiff if the court finds that a suit is clearly vexacious, frivolous or brought solely for purposes for harassment. Second, H.R. 4827 provides that a civil False Claims Act suit may not be brought by the Government in order to intimidate a small business out of filing a good faith action against the Government under the Contract Disputes Act of 1978.

While I believe that the bill is as balanced as possible, it will be important for Congress to oversee its implementation closely to ensure that this balanced congressional intent is respected.

I urge the House to pass this bill today and the Congress to quickly agree on legislation for the President's signature.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 4827, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 1562) to amend the False Claims Act, and title 18 of the United State Code regarding penalties for false claims, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. BROWN of Colorado. Reserving the right to object, Mr. Speaker, I would reserve the right to object for the purpose of asking the gentleman from Kansas to explain the measure, and I yield to the gentleman for that purpose.

Mr. GLICKMAN. Mr. Speaker, it is my intention to take up the Senate companion bill and engage in the normal legislative action, which is to strike the language of S. 1562 and insert the House-passed text which we just passed today and send it back to the other body.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The Clerk read the Senate bill, 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 (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 com-

plaint 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 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 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 ob-

tained 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 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 circumstance 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 Procedures 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 read-

ing 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 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 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.

MOTION OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. GLICKMAN. moves to strike out all after the enacting clause of the Senate bill, S. 1562, and to insert in lieu thereof the text of H.R. 4827, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: “An Act to amend title 31, United States Code, with respect to the fraudulent use of public property or money.”

A motion to reconsider was laid on the table.

A similar House bill (H.R. 4827) was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just concluded.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE A RULE ON H.R. 5484, OMNIBUS DRUG BILL OF 1986

Mr. WRIGHT. Mr. Speaker, I have a unanimous consent request. I have discussed this request with the minority leader.

I ask unanimous consent that the Committee on Rules may have until midnight tonight to file a rule to accompany the bill, H.R. 5484, the Omnibus Drug Bill of 1986.

The SPEAKER pro tempore. (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5316, BANKRUPTCY JUDGES AND UNITED STATES TRUSTEES ACT OF 1986

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States trustees in such cases, and for other purposes; with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas? The Chair hears none and, without objection, appoints the following conferees: Messrs. RODINO, EDWARDS of California, HUGHES, SYNAR, GLICKMAN, FEIGHAN, FISH, SHAW, MOORHEAD, and HYDE.

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 4787

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 4787.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.