

## Calendar No. 924

100TH CONGRESS  
2D SESSION**H.R. 3911**

[Report No. 100-503]

## IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, MAY 9), 1988

Received; read twice and referred to the Committee on the Judiciary

SEPTEMBER 12 (legislative day, SEPTEMBER 7), 1988

Reported by Mr. BYRD (for Mr. BIDEN), with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**AN ACT**

To amend title 18, United States Code, to provide increased penalties for certain major frauds against the United States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "~~Major Fraud Act of~~  
5 ~~1988~~".

6 **SEC. 2. CHAPTER 47 AMENDMENT.**

7 (a) ~~IN GENERAL.~~—Chapter 47 of title 18, United  
8 States Code, is amended by adding at the end the following:

1 **“§ 1031. Major fraud against the United States**

2 **“(a) Whoever knowingly executes, or attempts to exe-**  
3 **cute, any scheme or artifice—**

4 **“(1) to defraud the United States; or**

5 **“(2) to obtain money or property from the United**  
6 **States by means of false or fraudulent pretenses, repre-**  
7 **sentations, or promises;**

8 **in any procurement of property or services for the Govern-**  
9 **ment, if the value of the contract for such property or serv-**  
10 **ices is \$1,000,000 or more, shall be fined under this title or**  
11 **imprisoned not more than 10 years, or both.**

12 **“(b) If the offense involves a foreseeable and substantial**  
13 **risk of personal injury, the term of imprisonment imposed**  
14 **under subsection (a) of this section shall not be less than 2**  
15 **years. The fine imposed for an offense under this section may**  
16 **exceed the maximum otherwise provided by law, if such fine**  
17 **does not exceed \$10,000,000 and—**

18 **“(1) the amount of the fraud is substantial in rela-**  
19 **tion to the value of such contract and the gross loss to**  
20 **the Government or the gross gain to a defendant is**  
21 **\$250,000 or greater; or**

22 **“(2) the offense involves a foreseeable and sub-**  
23 **stantial risk of personal injury.**

24 **“(c) A prosecution of an offense under this section may**  
25 **be commenced any time not later than 7 years after the**  
26 **offense is committed.**

1       “(d)(1) Upon application by the Attorney General, the  
2 court may order a payment from a criminal fine under this  
3 section to an individual who furnished information leading to  
4 the conviction under this section. The amount of such pay-  
5 ment shall not exceed \$250,000.

6       “(9) An individual is not eligible for such a payment if—

7               “(A) that individual is an officer or employee of a  
8 government who furnishes information or renders serv-  
9 ice in the performance of official duties;

10              “(B) that individual failed to furnish the informa-  
11 tion in a timely manner to the individual's employer,  
12 unless the court determines the individual had justifi-  
13 able reasons for that failure; or

14              “(C) that individual participated in the violation of  
15 this section with respect to which such payment would  
16 be made.

17       “(e) Any individual who is discharged, demoted, sus-  
18 pended, threatened, harassed, or in any other manner dis-  
19 criminated against in the terms and conditions of employment  
20 by an employer because of lawful acts done by the employee  
21 on behalf of the employee or others in furtherance of a pros-  
22 ecution under this section (including investigation for, initi-  
23 ation of, testimony for, or assistance in such a prosecution)  
24 may, in a civil action, obtain all relief necessary to make such  
25 individual whole. Such relief shall include reinstatement with

1 the same seniority status such individual would have had but  
 2 for the discrimination, 2 times the amount of back pay, inter-  
 3 est on the back pay, and compensation for any special dam-  
 4 ages sustained as a result of the discrimination, including liti-  
 5 gation costs and reasonable attorneys' fees."

6 (b) **CLERICAL AMENDMENT.**—The table of sections at  
 7 the beginning of chapter 47 of title 18, United States Code,  
 8 is amended by adding at the end the following new item:  
 "1031. Major fraud against the United States."

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the "Major Fraud Act of*  
 11 *1988".*

12 **SEC. 2. CHAPTER 47 AMENDMENT.**

13 (a) **IN GENERAL.**—Chapter 47 of title 18, United  
 14 States Code, is amended by adding at the end the following:  
 15 "**§ 1031. Major fraud against the United States.**

16 "(a) *Whoever knowingly executes, or attempts to exe-*  
 17 *cute, any scheme or artifice with the intent—*

18 "*(1) to defraud the United States; or*

19 "*(2) to obtain money or property from the United*  
 20 *States by means of false or fraudulent pretenses, repre-*  
 21 *sentations, or promises,*

22 *in any procurement of property or services for the Govern-*  
 23 *ment, if the value of the contract, subcontract, or any constit-*  
 24 *uent part thereof, for such property or services is \$1,000,000*  
 25 *or more shall, subject to the applicability of subsection (c) of*

1 *this section, be fined not more than \$1,000,000, or impris-*  
2 *oned not more than 10 years, or both.*

3       “(b) *The fine imposed for an offense under this*  
4 *section may exceed the maximum otherwise provided*  
5 *by law, if such fine does not exceed \$5,000,000 and*

6       (1) *the gross loss to the Government or the gross*  
7 *gain to a defendant is \$500,000 or greater; or*

8       (2) *the offense involves a conscious or reckless*  
9 *risk of serious personal injury.*

10       “(c) *The maximum fine imposed upon a defend-*  
11 *ant for a prosecution including a prosecution with mul-*  
12 *tiple counts under this section shall not exceed \$10*  
13 *million.*

4       “(d) *Nothing in this section shall preclude a court*  
5 *from imposing any other sentences available under this*  
6 *title, including without limitation a fine up to twice the*  
7 *amount of the gross loss or gross gain involved in the*  
8 *offense pursuant to 18 U.S.C. section 3571(d).*

9       “(e) *The amount of any fine imposed under this section*  
10 *shall be proportional to the offense. In determining the*  
11 *amount of the fine, the court shall take into account—*

12       “(A) *the egregiousness of the conduct proven at*  
13 *trial;*

      “(B) *the amount of the loss or gain resulting*  
*therefrom;*

1           “(C) any past convictions or judgments for fraud-  
2           ulent or other illegal acts against the United States en-  
3           tered against the defendant; and

4           “(D) any other factors deemed by the court to be  
5           relevant to determining the amount of the fine to be  
6           imposed.

7           “(f) A prosecution of an offense under this section may  
8           be commenced any time not later than 7 years after the of-  
9           fense is committed, plus any additional time allowed under  
10          18 U.S.C. section 3292.

11          “(g)(1) Upon application by the Attorney General, the  
12          court may order a payment from a criminal fine under this  
13          section to an individual who furnished information leading to  
14          the conviction under this section. The amount of such pay-  
15          ment shall not exceed the lesser of \$250,000 or 10 percent of  
16          the criminal fine imposed under this section.

17          “(2) An individual is not eligible for such a payment  
18          if—

19                 “(A) that individual is an officer or employee of a  
20                 government who furnishes information or renders serv-  
21                 ice in the performance of official duties;

22                 “(B) that individual failed to furnish the informa-  
23                 tion to the individual's employer prior to furnishing it  
24                 to law enforcement authorities, unless the court deter-

1 mines the individual has justifiable reasons for that  
2 failure;

3 “(C) the furnished information is based upon  
4 public disclosure of allegations or transactions in a  
5 criminal, civil, or administrative hearing, in a congress-  
6 sional, administrative, or GAO report, hearing, audit  
7 or investigation, or from the news media unless the  
8 person is the original source of the information. For  
9 the purposes of this subsection, “original source”  
10 means an individual who has direct and independent  
11 knowledge of the information on which the allegations  
12 are based and has voluntarily provided the information  
13 to the Government; or

14 “(D) that individual participated in the violation  
15 of this section with respect to which such payment  
16 would be made.

17 “(h) Any individual who—

18 “(1) is discharged, demoted, suspended, threat-  
19 ened, harassed, or in any other manner discriminated  
20 against in the terms and conditions of employment by  
21 an employer because of lawful acts done by the em-  
22 ployee on behalf of the employee or others in further-  
23 ance of a prosecution under this section (including in-  
24 vestigation for, initiation of, testimony for, or assist-  
25 ance in such prosecution), and

1           “(2) was not a participant in the unlawful activi-  
2           ty that is the subject of said prosecution, may, in a  
3           civil action, obtain all relief necessary to make such  
4           individual whole. Such relief shall include reinstatement  
5           with the same seniority status such individual  
6           would have had but for the discrimination, 2 times the  
7           amount of back pay, interest on the back pay, and  
8           compensation for any special damages sustained as a  
9           result of the discrimination, including litigation costs  
10          and reasonable attorney’s fees.”.

11          (b) *SENTENCING GUIDELINES.*—Pursuant to its au-  
12          thority under section 994(p) of title 28, United States Code  
13          and section 21 of the Sentencing Act of 1987, the United  
14          States Sentencing Commission shall promulgate guidelines,  
15          or shall amend existing guidelines, to provide for appropriate  
16          penalty enhancements, including an additional incarceration  
17          of two years in cases under this section, where conscious or  
18          reckless risk of serious personal injury resulting from the  
19          fraud has occurred.

20          (c) *CLERICAL AMENDMENT.*—The table of sections at  
21          the beginning of chapter 47 of title 18, United States Code,  
22          is amended by adding at the end the following new item:  
            “1031. Major fraud against the United States.”.



1 **SEC. 3. LIMITATION ON ALLOWABILITY OF COSTS OF CONTRAC-**  
2 **TORS INCURRED IN CERTAIN PROCEEDINGS.**

3 (a) *IN GENERAL.*—Chapter 15 of title 18, United  
4 States Code, is amended by adding at the end thereof the  
5 following new section:

6 **“§ 293. Limitation on Government contract costs**

7 “(a) Any proceeding costs incurred in connection with  
8 any proceeding brought by the United States or a State gov-  
9 ernment that relates to a violation of, or failure to comply  
10 with, any Federal or State law or regulation on the part of  
11 the Contractor are not allowable costs in a covered contract if  
12 the proceeding results in any of the following:

13 “(1) an indictment by a Federal grand jury, or a  
14 conviction (including a conviction pursuant to a plea of  
15 nolo contendere) by reason of such violation or failure to  
16 comply;

17 “(2) the assessment of a monetary penalty by  
18 reason of a civil or administrative finding of such vio-  
19 lation or failure to comply;

20 “(3) a civil judgment containing a finding of li-  
21 ability, or an administrative finding of liability, by  
22 reason of such violation or failure to comply, if the  
23 charges which are the subject of the proceeding involve  
24 fraud or similar offenses;

1           “(4) a decision to debar or suspend the contractor  
2           or rescind, void, or terminate a contract for default, by  
3           reason of such violation or failure to comply; or

4           “(5) the resolution of the proceeding by consent or  
5           compromise, where the penalty or relief sought by the  
6           government included the actions described in para-  
7           graphs (1) through (5).

8           “(b) In any proceeding brought by the United States or  
9           a State government that does not result in any of the actions  
10          described in paragraphs (1) through (5) of subsection (a),  
11          costs for legal services incurred by a contractor in connection  
12          with such proceeding shall not be allowed in excess of the rate  
13          specified in the Equal Access to Justice Act (28 U.S.C.  
14          2412(d)(2)(A); 5 U.S.C. 504(a)) unless the responsible con-  
15          tracting officer finds that a special factor (such as the limited  
16          availability of qualified attorneys or agents) justifies an  
17          award of higher rates.

18          “(c) For purposes of this section—

19                 “(1) the term ‘covered contract’ means a contract  
20                 for an amount more than \$100,000 entered into by a  
21                 department or agency of the United States other than a  
22                 fixed-price contract without cost incentives;

23                 “(2) the term ‘proceeding’ means a civil, criminal,  
24                 or an administrative investigation, prosecution, or pro-  
25                 ceeding; and

1           “(3) the term ‘proceeding costs’ means all costs re-  
2 relating to a proceeding incurred before, during, or after  
3 the commencement of the proceeding, and such term in-  
4 cludes—

5                   “(A) administrative and clerical expenses;

6                   “(B) the cost of legal services (whether per-  
7 formed by an employee of the contractor or other-  
8 wise);

9                   “(C) the cost of the services of accountants  
10 and consultants retained by a contractor; and

11                   “(D) the salaries and wages of employees,  
12 including officers and directors.”.

13           **(b) AMENDMENT TO CHAPTER ANALYSIS.**—The chap-  
14 ter analysis for chapter 15 of title 18, United States Code,  
15 by adding at the end thereof the following:

“293. Limitation on Government contract costs.”.

16           **(c) APPLICABILITY.**—The amendments made by this  
17 section shall apply to contracts entered into after the date of  
18 the enactment of this Act.

19           **SEC. 4. ESTABLISHMENT OF ADDITIONAL ASSISTANT UNITED**  
20                                   **STATES ATTORNEY AND SUPPORT PROVISIONS.**

21           **(a) ESTABLISHMENT OF POSITIONS.**—Subject to the  
22 funding authorization limitations in section       (a), there  
23 are hereby established within the Department of Justice addi-  
24 tional Assistant United States Attorney positions and addi-

1 *tional support staff positions for prosecuting cases under both*  
2 *the criminal and civil statutes.*

3       **(b) FUNCTION OF PERSONNEL.**—*The primary func-*  
4 *tion of individuals selected for the positions specified in sub-*  
5 *section (a) shall be dedicated to the investigation and prosecu-*  
6 *tion of fraud against the Government.*

7       **(c) LOCATIONS.**—*The Attorney General shall deter-*  
8 *mine the locations for assignment of such personnel. In*  
9 *making such determination the Attorney General shall con-*  
10 *sider concentrations of government programs and procure-*  
11 *ments and concentrations of pending Government fraud in-*  
12 *vestigations and allegations.*

13 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

14       **(a) AUTHORIZATION.**—*Subject to the provisions of sub-*  
15 *section (b), for the purpose of carrying out the purposes of*  
16 *this Act there are authorized to be appropriated \$8,000,000*  
17 *for fiscal year 1989, and such sums as may be necessary for*  
18 *each of the four succeeding fiscal years, to be available until*  
19 *expended.*

20       **(b) LIMITATION.**—*Before expending funds appropri-*  
21 *ated pursuant to subsection (a) to carry out the purposes of*  
22 *this section, the Attorney General shall utilize available ex-*  
23 *isting resources within the Department of Justice for such*  
24 *purposes.*

1 **SEC. 6. CONGRESSIONAL OVERSIGHT.**

2 *Commencing with the first year after the date of enact-*  
3 *ment of this section, the Attorney General shall annually*  
4 *report to the Congress with respect to—*

5 *(1) the number of referrals of fraud cases by the*  
6 *Department of Defense of defense contractors (with spe-*  
7 *cific statistics with respect to the one hundred largest*  
8 *contractors), the number of open investigation of such*  
9 *contractors, and a breakdown of to which United*  
10 *States Attorney's Office or other component of the De-*  
11 *partment of Justice each such case was referred;*

12 *(2) the number of referrals of fraud cases from*  
13 *other agencies or sources;*

14 *(3) the number of attorneys and support staff as-*  
15 *signed pursuant to this Act;*

16 *(4) the number of investigative agents assigned to*  
17 *each investigation and the period of time each investi-*  
18 *gation has been opened;*

19 *(5) the number of convictions and acquittals*  
20 *achieved by individuals assigned to positions estab-*  
21 *lished by the Act; and*

