

1 S.185

2 Introduced by Senators Brock and Carris

3 Referred to Committee on

4 Date:

5 Subject: Government operations; submission of fraudulent claim to the state
6 for payment; penalty for fraudulent claim

7 Statement of purpose: This bill proposes to create a penalty for submitting a
8 fraudulent claim to the state for payments for goods, services, etc.

9 An act relating to fraudulent government claims

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 13 V.S.A. § 2032 is added to read:

12 § 2032. FALSE CLAIMS

13 (a) A person makes a “false claim” who:

14 (1) knowingly presents, or causes to be presented, to an officer or
15 employee of the state of Vermont a false or fraudulent claim for payment or
16 approval;

17 (2) knowingly makes, uses, or causes to be made or used a false record
18 or statement to obtain a false or fraudulent claim paid or approved by the state
19 of Vermont;

1 (3) has possession, custody, or control of property or money used, or to
2 be used, by the state and, intending to defraud the state or willfully to conceal
3 the property, delivers or causes to be delivered, less property than the amount
4 for which the person receives a certificate or receipt;

5 (4) is authorized to make or deliver a document certifying receipt of
6 property used or to be used by the state and, intending to defraud the state,
7 makes or delivers the receipt without completely knowing that the information
8 on the receipt is true;

9 (5) knowingly buys, or receives as a pledge of an obligation or debt,
10 public property from an officer or employee of the state, who may not lawfully
11 sell or pledge the property; or

12 (6) knowingly makes, uses, or causes to be made or used a false record
13 or statement to conceal, avoid, or decrease an obligation to pay or transmit
14 money or property to the state.

15 (b) Proof of violation under this section does not require proof of specific
16 intent to defraud.

17 (c) A person who makes a false claim under this section is liable to the
18 state for a civil penalty of not less than \$5,000.00 and not more than
19 \$10,000.00, plus:

20 (1) three times the amount of damages which the state sustains because
21 of the act of the person; or

1 (2) two times the amount of damages which the state sustains because of
2 the act of the person if the court finds the following:

3 (A) The person committing the violation of this section furnished
4 officials of the state responsible for investigating false claims violations with
5 all information known to the person about the violation within 30 days after the
6 date on which the person first obtained the information;

7 (B) The person fully cooperated with any state investigation of the
8 violation; and

9 (C) At the time the person furnished the state with the information
10 about the violation, no criminal prosecution, civil action, or administrative
11 action had commenced under this title with respect to the violation, and the
12 person did not have actual knowledge of the existence of an investigation into
13 the violation.

14 (d) A person violating this section shall also be liable to the state for the
15 costs of a civil action brought to recover any penalty or damages under this
16 section.

17 (e) For purposes of this section, “knowing” and “knowingly” mean that a
18 person:

19 (1) has actual knowledge;

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

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

1 (f) For purposes of this section, "claim" means any request or demand,
2 whether under a contract or otherwise, for money or property which is made to
3 a contractor, grantee, or other recipient if the state provides any portion of the
4 money or property which is requested or demanded, or if the state will
5 reimburse such contractor, grantee, or other recipient for any portion of the
6 money or property which is requested or demanded.

7 (g) If the attorney general finds that a person has violated or is violating
8 this section, the attorney general may bring a civil action under this section
9 against the person.

10 (h) An individual may bring a civil action for a violation of this section for
11 the person and for the state. The action shall be brought in the name of the
12 state. The action may be dismissed only if the court and the attorney general
13 give written consent to the dismissal and their reasons for consenting.

14 (i) Rights of the parties to qui tam actions. If the state proceeds with the
15 action, it shall have the primary responsibility for prosecuting the action, and
16 shall not be bound by an act of the person bringing the action. Such person
17 shall have the right to continue as a party to the action, subject to the
18 limitations set forth in this section.

19 (j) The state may dismiss the action notwithstanding the objections of the
20 person initiating the action if the person has been notified by the state of the

1 filing of the motion, and the court has provided the person with an opportunity
2 for a hearing on the motion.

3 (k) The state may settle the action with the defendant notwithstanding the
4 objections of the person initiating the action if the court determines, after a
5 hearing, that the proposed settlement is fair, adequate, and reasonable under all
6 the circumstances. Upon a showing of good cause, such hearing may be held
7 in camera.

8 (l) Upon a showing by the state that unrestricted participation during the
9 course of the litigation by the person initiating the action would interfere with
10 or unduly delay the state's prosecution of the case, or would be repetitious,
11 irrelevant, or for purposes of harassment, the court may, in its discretion,
12 impose limitations on the person's participation.

13 (m) Award to qui tam plaintiff. If the state proceeds with an action brought
14 by a person under this section, then except as otherwise provided in this
15 section, such person shall receive at least 15 percent but not more than 25
16 percent of the proceeds of the action or settlement of the claim, depending
17 upon the extent to which the person substantially contributed to the prosecution
18 of the action. Where the action is one that the court finds to be based primarily
19 on disclosures of specific information (other than information provided by the
20 person bringing the action) relating to allegations or transactions in a criminal,
21 civil, or administrative hearing, in a government report, hearing, audit, or

1 investigation, or from the news media, the court shall award such sums as it
2 considers appropriate, but in no case more than 10 percent of the proceeds,
3 taking into account the significance of the information and the role of the
4 person bringing the action in advancing the case to litigation. Any payment to
5 a person under this section shall be made from the proceeds. Any such person
6 shall also receive an amount for reasonable expenses that the court finds to
7 have been necessarily incurred, plus reasonable attorneys' fees and costs. All
8 such expenses, fees, and costs shall be awarded against the defendant.

9 (n) If the state does not proceed with an action under this section, the
10 person bringing the action or settling the claim shall receive an amount that the
11 court decides is reasonable for collecting the civil penalty and damages. The
12 amount shall be not less than 25 percent and not more than 30 percent of the
13 proceeds of the action or settlement and shall be paid out of such proceeds.
14 Such person shall receive an amount for reasonable expenses that the court
15 finds to have been necessarily incurred, plus reasonable attorneys' fees and
16 costs. All such expenses, fees, and costs shall be awarded against the
17 defendant.

18 (o) Whether or not the state proceeds with the action, if the court finds that
19 the action was brought by a person who planned and initiated the violation of
20 this section upon which the action was brought, then the court shall, to the
21 extent the court considers appropriate, reduce the share of the proceeds of the

1 action that the person would otherwise receive under this section, taking into
2 account the role of that person in advancing the case to litigation and any
3 relevant circumstances pertaining to the violation. If the person bringing the
4 action is convicted of criminal conduct arising from his or her role in the
5 violation of this section, that person shall be dismissed from the civil action
6 and shall not receive any share of the proceeds of the action. The dismissal
7 shall not prejudice the right of the state to continue the action.

8 (p) If the state does not proceed with the action and the person bringing the
9 action conducts the action, the court shall award to the defendant its reasonable
10 attorneys' fees and expenses if the defendant prevails in the action and the
11 court finds that the claim of the person bringing the action was clearly
12 frivolous, clearly vexatious, or brought primarily for purposes of harassment.

13 Sec. 2. EFFECTIVE DATE

14 This act shall take effect on July 1, 2010.