

1 S.140

2 Introduced by Senators Ashe and Sears

3 Referred to Committee on

4 Date:

5 Subject: Tax and finance; public monies; Vermont false claims act

6 Statement of purpose of bill as introduced: This bill proposes to create a

7 Vermont false claims act.

8 An act relating to a Vermont false claims act

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

10 Sec. 1. 32 V.S.A. chapter 7, subchapter 8 is added to read:

11 Subchapter 8. Vermont False Claims Act

12 § 630. DEFINITIONS

13 As used in this chapter:

14 (1) "Claim" means any request or demand, whether under a contract or
15 otherwise, for money or property, and whether or not the State has title to the
16 money or property, that:

17 (A) Is presented to an officer, employee, or agent of the State.

18 (B) Is made to a contractor, grantee, or other recipient, if the money
19 or property is to be spent or used on the State's behalf or to advance a State
20 program or interest, and if the State:

1 (i) Provides or has provided any portion of the money or property
2 that is requested or demanded.

3 (ii) Will reimburse directly or indirectly such contractor, grantee,
4 or other recipient for any portion of the money or property that is requested or
5 demanded. A claim shall not include a request or demand for money or
6 property that the State has paid to an individual as compensation for State
7 employment or as an income subsidy with no restrictions on that individual's
8 use of the money or property.

9 (2) "Knowing" and "knowingly":

10 (A) means that a person, with respect to information:

11 (i) has actual knowledge of the information;

12 (ii) acts in deliberate ignorance of the truth or falsity of the
13 information; or

14 (iii) acts in reckless disregard of the truth or falsity of the
15 information; and

16 (B) requires no proof of specific intent to defraud.

17 (3) "Material" means having a natural tendency to influence, or be
18 capable of influencing, the payment or receipt of money or property.

19 (4) "Obligation" means an established duty, whether or not fixed,
20 arising from an express or implied contractual, grantor-grantee, or
21 licensor-licensee relationship, from a fee-based or similar relationship, from

1 statute or regulation, or from the retention of any overpayment after the
2 deadline for reporting and returning the overpayment under subdivision
3 631(a)(10) of this chapter.

4 (5) “Original source” means an individual who:

5 (A) prior to a public disclosure under subsection 636(c) of this
6 chapter, has voluntarily disclosed to the State the information on which
7 allegations or transactions in a claim are based; or

8 (B) has knowledge that is independent of and materially adds to the
9 publicly disclosed allegations or transactions, and who has voluntarily
10 provided the information to the State before filing a false claims action.

11 (6) “Overpayment” means any State or federal funds that a person
12 receives or retains to which the person, after applicable reconciliation, is not
13 entitled.

14 (7) “Relator” or “qui tam plaintiff” means an individual who brings an
15 action under subsection 632(b) of this chapter.

16 (8) “State” means the State of Vermont, a county, a municipality or
17 other subdivision thereof and commission, board, department, or agency
18 thereof or any other governmental entity authorized or created by State law,
19 including public corporations and authorities.

1 § 631. PROHIBITION; PENALTIES

2 (a) No person shall:

3 (1) knowingly present, or cause to be presented, a false or fraudulent
4 claim for payment or approval;

5 (2) knowingly make, use, or cause to be made or used, a false record or
6 statement material to a false or fraudulent claim;

7 (3) knowingly present, or cause to be presented, a claim that includes
8 items or services resulting from a violation of 13 V.S.A. chapter 21 or section
9 1128B of the Social Security Act, 42 U.S.C. §§ 1320a–7b;

10 (4) knowingly present, or cause to be presented, a claim that includes
11 items or services for which the State could not receive payment from the
12 federal government due to the operation of 42 U.S.C. § 1396b(s) because the
13 claim includes designated health services (as defined in 42 U.S.C.
14 § 1395nn(h)(6)) furnished to an individual on the basis of a referral that would
15 result in the denial of payment under 42 U.S.C. chapter 7, subchapter XVIII
16 (the “Medicare program”), due to a violation of 42 U.S.C. § 1395nn;

17 (5) having possession, custody, or control of property or money used, or
18 to be used, by the State, knowingly deliver, or cause to be delivered to the
19 State or its agent, less than all of that property or money for which the person
20 receives a certificate or receipt;

1 (6) being authorized to make or deliver a document certifying receipt of
2 property used, or to be used, by the State or its agent and, intending to defraud
3 the State, make or deliver the receipt without completely knowing that the
4 information on the receipt is true;

5 (7) knowingly buy, or receive as a pledge of an obligation or debt,
6 public property from an officer or employee of the State, who lawfully may not
7 sell or pledge the property;

8 (8) enter into a written agreement or contract with an official of the
9 State or its agent knowing the information contained therein is false;

10 (9) knowingly make, use or cause to be made or used, a false record or
11 statement material to an obligation to pay or transmit money or property to the
12 State;

13 (10) knowingly conceal or knowingly and improperly avoid or decrease
14 an obligation to pay or transmit money or property to the State;

15 (11) as a beneficiary of an inadvertent submission of a false claim to the
16 State, or as a beneficiary of an overpayment from the State, and who
17 subsequently discovers the falsity of the claim or the receipt of overpayment,
18 fail to disclose the false claim or receipt of overpayment to the State by the
19 later of:

20 (A) a date which is 120 days after the date on which the false claim
21 or receipt of overpayment was identified; or

1 (B) the date any corresponding cost report is due, if applicable; or
2 (12) conspire to commit a violation of this subsection.

3 (b) Any person who violates a provision of subsection (a) of this section
4 shall be liable to the State for:

5 (1) a civil penalty of not less than \$5,500.00 and not more than
6 \$11,000.00 for each act constituting a violation of subsection (a) of this
7 section, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of
8 1990 (28 U.S.C. § 2461);

9 (2) three times the amount of damages that the State sustains because of
10 the act of that person; and

11 (3) the costs of the investigation and prosecution of such violation.

12 (c) Notwithstanding subdivisions (b)(1) and (b)(2) of this section, the Court
13 may enter judgment for not less than two times the amount of damages that the
14 State sustains because of the act of that person, and assessing no civil penalties,
15 if the Court finds that:

16 (1) the person committing the violation of subsection (a) of this section
17 furnished officials of the State responsible for investigating false claims
18 violations with all information known to that person about the violation within
19 30 days after the date on which the person first obtained the information;

20 (2) the person fully cooperated with any investigation by the State of
21 such violation; and

1 (3) at the time the person furnished the State with the information about
2 the violation, no criminal prosecution, civil action or administrative action had
3 commenced under the false claims law with respect to such violation, and the
4 person did not have actual knowledge of the existence of an investigation into
5 the violation.

6 (d) This chapter shall not apply to claims, records, or statements made or
7 presented to establish, limit, reduce, or evade liability for the payment of tax to
8 the State or other governmental authority.

9 § 632. CIVIL ACTIONS FOR FALSE CLAIMS

10 (a) The Attorney General shall investigate violations of subsection 631(a)
11 of this chapter. If the Attorney General finds that a person has violated or is
12 violating subsection 631(a), the Attorney General may bring a civil action in
13 the Civil Division of the Superior Court under this section against the person.
14 The action may be brought in Washington County or in any county where an
15 act prohibited by section 631 occurred.

16 (b)(1) A relator may bring a civil action in the Civil Division of the
17 Superior Court in Washington County or in any county where an act prohibited
18 by section 631 of this chapter occurred for a violation of this chapter on behalf
19 of the relator and the State. The action shall be brought in the name of the
20 State. The relator must file the complaint in camera. The complaint must

1 remain under seal for at least 60 days after being served on the Attorney
2 General and must not be served on the defendant until the Court so orders.

3 (2) Once filed, the action may be dismissed only if the Attorney General
4 gives written reasons for consenting to the dismissal and the Court approves
5 the dismissal. Notwithstanding any law to the contrary, it shall not be a cause
6 for dismissal or a basis for a defense that the relator could have brought
7 another action based on the same or similar facts under any other law.

8 (3) A relator filing an action under this chapter must serve a copy of the
9 complaint and written disclosure of substantially all material evidence and
10 information the relator possesses on the Attorney General in an electronic
11 format determined by the Attorney General. The Attorney General may elect
12 to intervene and proceed with the action within 60 days after the later of the
13 date the Attorney General is served with:

14 (A) the complaint; and

15 (B) the material evidence and information.

16 (4) The Attorney General may, for good cause shown, move the Court
17 for extensions of the time during which the complaint remains under seal under
18 subdivision (b)(1) of this section. Any such motions may be supported by
19 affidavits or other submissions in camera.

20 (5) Before the expiration of the 60-day period or any extensions
21 obtained under subdivision (4) of this subsection, the State shall:

1 (A) proceed with the action, in which case the action shall be
2 conducted by the Attorney General; or

3 (B) notify the Court that it declines to take over the action, in which
4 case the relator shall have the right to conduct the action.

5 (6) When a relator brings an action under this subsection, no person
6 other than the Attorney General may intervene or bring a related action based
7 on the facts underlying the pending action.

8 § 633. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS

9 (a) If the State proceeds with the action, the Attorney General shall have
10 the primary responsibility for prosecuting the action, and shall not be bound by
11 any act of the relator. The relator shall have the right to continue as a party to
12 the action, subject to the limitations in subsection (b) of this section.

13 (b)(1) The Attorney General may move to dismiss the action if the relator
14 has been notified by the Attorney General of the filing of the motion and the
15 Court has provided the relator with an opportunity for a hearing on the motion.

16 (2) Notwithstanding any objection of a relator, the Attorney General
17 may settle the action with the defendant if after a hearing the Court determines
18 that the proposed settlement is fair, adequate, and reasonable under all the
19 circumstances.

20 (3) Upon a showing by the Attorney General that unrestricted
21 participation during the course of the litigation by the relator would interfere

1 with or unduly delay the prosecution of the case or would be repetitious,
2 irrelevant, or for purposes of harassment, the Court may, in its discretion,
3 impose limitations on the relator's participation, such as:

4 (A) limiting the number of witnesses the relator may call;

5 (B) limiting the length of the testimony of such witnesses;

6 (C) limiting the relator's cross-examination of witnesses; or

7 (D) otherwise limiting the participation by the relator in the litigation.

8 (4) Upon a showing by the defendant that unrestricted participation
9 during the course of the litigation by the relator would be for purposes of
10 harassment or would cause the defendant undue burden or unnecessary
11 expense, the Court may limit the participation by the relator in the litigation.

12 (c) If the Attorney General elects not to proceed with the action, the relator
13 who initiated the action shall have the right to conduct the action. If the
14 Attorney General so requests, it shall be served with copies of all pleadings
15 filed in the action in an electronic format determined by the Attorney General
16 and shall be supplied with copies of all deposition transcripts at the State's
17 expense. When a relator proceeds with the action, the Court, without limiting
18 the status and rights of the relator, may nevertheless permit the Attorney
19 General to intervene at a later date upon a showing of good cause.

20 (d) Whether or not the Attorney General proceeds with the action, upon a
21 showing by the Attorney General that discovery by the relator would interfere

1 with the State's investigation or prosecution of a criminal or civil matter
2 arising out of the same or similar facts, the Court may stay such discovery for a
3 period of not more than 60 days. The Court may extend the 60-day period
4 upon a further showing that the Attorney General has pursued the criminal or
5 civil investigation or proceedings with reasonable diligence and may stay any
6 proposed discovery in the civil action that will interfere with the ongoing
7 criminal or civil investigation or proceedings.

8 § 634. ALTERNATE REMEDIES AVAILABLE TO DETERMINE CIVIL
9 PENALTY

10 Notwithstanding sections 632 and 633 of this chapter, the Attorney General
11 may elect to pursue its claim through any alternate remedy available to the
12 State under any other law or regulation, including any administrative
13 proceeding to determine a civil monetary penalty. If any such alternate remedy
14 is pursued in another proceeding, a relator shall have the same rights in such
15 proceeding as said relator would have had if the action had continued under
16 this section.

17 § 635. PAYMENTS TO RELATORS; LIMITATIONS

18 (a) If the Attorney General proceeds with an action brought by a relator
19 under subsection (b) of this section, the relator shall, subject to subsection (b)
20 of this section, receive at least 15 percent but not more than 25 percent of the
21 proceeds recovered and collected in the action or in settlement of the claim,

1 depending upon the extent to which the relator substantially contributed to the
2 prosecution of the action.

3 (b) Where the action is one which the Court finds to be based primarily on
4 disclosures of specific information, other than information provided by the
5 relator, relating to allegations or transactions in a criminal, civil, or
6 administrative hearing; in a legislative, administrative, or State auditor hearing,
7 audit, investigation, or report; or from the news media, the Court may award
8 such sums as it considers appropriate, but in no case more than 10 percent of
9 the proceeds, taking into account the significance of the information and the
10 role of the relator in advancing the case to litigation.

11 (c) Any payment to a relator under the subsection (a) or (b) of this section
12 shall be made only from the proceeds recovered and collected in the action or
13 in settlement of the claims. Any such relator shall also receive an amount for
14 reasonable expenses which the appropriate court finds to have been necessarily
15 incurred, plus reasonable attorney's fees and costs. All such expenses, fees,
16 and costs shall be awarded against the defendant, and paid directly by the
17 defendant to the relator.

18 (d) If the Attorney General does not proceed with an action under this
19 chapter, the relator bringing the action or settling the claim shall receive an
20 amount which the Court decides is reasonable for collecting the civil penalty
21 and damages on behalf of the State. The amount shall be not less than

1 25 percent and not more than 30 percent of the proceeds recovered and
2 collected in the action or in settlement of the claim, and shall be paid out of
3 such proceeds. In such circumstances, the relator shall also receive an amount
4 for reasonable expenses which the Court finds to have been necessarily
5 incurred, including reasonable attorney's fees and costs. All such expenses,
6 fees, and costs shall be awarded against the defendant and paid directly by the
7 defendant to the relator.

8 (e) Whether or not the Attorney General proceeds with the action, if the
9 Court finds that the action was brought by a relator who planned and initiated
10 the violation of section 631 of this chapter upon which the action was brought,
11 then the Court may, to the extent the Court considers appropriate, reduce or
12 eliminate the share of the proceeds of the action which the relator would
13 otherwise receive pursuant to this section, taking into account the role of the
14 relator in advancing the case to litigation and any relevant circumstances
15 pertaining to the violation. If the relator bringing the action is convicted of
16 criminal conduct arising from his or her role in the violation of section 631 of
17 this chapter, that relator shall be dismissed from the civil action and shall not
18 receive any share of the proceeds of the action. Such dismissal shall not
19 prejudice the right of the State to continue the action.

1 § 636. CERTAIN ACTIONS BARRED

2 (a) An individual may not bring an action under subsection 632(b) of this
3 chapter against a member of the State Legislative Branch, the Attorney
4 General, a member of the Judiciary, or a senior Executive Branch official if the
5 action is based on evidence or information known to the State when the action
6 was brought.

7 (b) An individual may not bring an action under subsection 632(b) of this
8 chapter that is based upon allegations or transactions that are the subject of a
9 civil suit or an administrative proceeding in which the State is already a party.

10 (c) Unless opposed by the Attorney General, the Court shall dismiss an
11 action or claim under subsection 632(b) of this chapter if substantially the
12 same allegations or transactions as alleged in the action or claim were publicly
13 disclosed:

14 (1) in a criminal, civil, or administrative hearing in which the State or its
15 agent is a party;

16 (2) in a State legislative, administrative, or State Auditor's report,
17 hearing, audit, or investigation; or

18 (3) from the news media, unless the action is brought by the Attorney
19 General or the person bringing the action is an original source of the
20 information.

1 § 637. AWARDS OF COSTS AND ATTORNEY'S FEES AGAINST

2 RELATORS; LIABILITY

3 (a) If the Attorney General does not proceed with the action and the person
4 bringing the action conducts the action, the Court may award to the defendant
5 reasonable attorney's fees and expenses if the defendant prevails in the action
6 and the Court finds that the claim of the person bringing the action was clearly
7 frivolous, clearly vexatious, or brought primarily for purposes of harassment.

8 (b) No liability shall be incurred by the State for any expenses, attorney's
9 fees, or other costs incurred by any person bringing or defending an action
10 under this chapter.

11 § 638. RELIEF FROM RETALIATORY ACTIONS

12 (a) Any employee, contractor, or agent shall be entitled to all relief
13 necessary to make that employee, contractor, or agent whole, if that employee,
14 contractor, or agent is discharged, demoted, suspended, threatened, harassed,
15 or in any other manner discriminated against in the terms and conditions of
16 employment because of lawful acts done by the employee, contractor, agent, or
17 a person associated with the employee, contractor, or agent in furtherance of an
18 action under section 632 of this chapter, or other efforts to stop one or more
19 violations of this chapter.

20 (b) Notwithstanding any law to the contrary, relief under subsection (a) of
21 this section shall include reinstatement with the same seniority status that

1 employee, contractor, or agent would have had but for the discrimination, two
2 times the amount of back pay, interest on the back pay, and compensation for
3 any special damages sustained as a result of the discrimination, including
4 litigation costs and reasonable attorney's fees. An employee, contractor, or
5 agent may bring an action in the Civil Division of the Superior Court or any
6 other appropriate court for the relief provided in this section.

7 (c) No employer shall make, adopt, or enforce any rule, regulation, or
8 policy preventing an employee, contractor, or agent from disclosing
9 information to a government or law enforcement agency or from acting to
10 further efforts to stop one or more violations of this chapter. No employer
11 shall require as a condition of employment, during the term of employment or
12 at the termination of employment that any employee, contractor, or agent agree
13 to, accept, or sign an agreement that limits or denies the rights of such
14 employee, contractor, or agent to bring an action or provide information to a
15 government or law enforcement agency pursuant to this chapter. Any such
16 agreement shall be void.

17 (d) A civil action under this section may not be brought more than three
18 years after the date when the retaliation occurred and became known to the
19 employee, contractor, or agent.

1 § 639. LIMITATION OF ACTIONS; FINAL JUDGMENTS IN CRIMINAL
2 PROCEEDINGS

3 (a) A civil action under section 632 of this chapter for a violation of
4 subsection 631(a) of this chapter may not be brought:

5 (1) more than six years after the date on which the violation was
6 committed; or

7 (2) more than three years after the date when facts material to the right
8 of action are known or reasonably should have been known by the official
9 within the Attorney General's office with responsibility to act in the
10 circumstances, but in no event more than 10 years after the date on which the
11 violation is committed; whichever occurs last.

12 (b) A civil action under this act may be brought for activity prior to
13 enactment, if the limitations period set in subsection (a) of this section has not
14 lapsed.

15 (c) If the State elects to intervene and proceed with an action brought under
16 subsection 632(b) of this chapter, the State may file its own complaint or
17 amend the complaint of a person who has brought an action pursuant to
18 subsection 632(b). For statute of limitations purposes, any such pleading shall
19 relate back to the filing date of the complaint of the person who originally
20 brought the action, to the extent that the claim of the State arises out of the

1 conduct, transactions or occurrences set forth, or attempted to be set forth, in
2 the prior complaint of that person.

3 § 640. PREPONDERANCE OF THE EVIDENCE STANDARD

4 In any action brought under section 632 of this chapter, the party bringing
5 the action shall be required to prove all essential elements of the cause of
6 action, including damages, by a preponderance of the evidence.

7 § 641. REMEDIES UNDER OTHER LAWS; LEGISLATIVE

8 CONSTRUCTION

9 (a) The provisions of this chapter are not exclusive, and the remedies
10 provided for in this chapter shall be in addition to any other remedies provided
11 for in any other law or available under common law.

12 (b) It is the intent of the Legislature that in construing this chapter, the
13 courts of this State will be guided by the construction of similar terms
14 contained in the Federal False Claims Act, 31 U.S.C. §§ 3729–3733, as from
15 time to time amended by the U.S. Congress and the courts of the United States.

16 § 642. CIVIL INVESTIGATIVE DEMANDS

17 (a) In general.

18 (1) Issuance and service. Whenever the Attorney General or a designee
19 has reason to believe that any person may be in possession, custody, or control
20 of any documentary material or information relevant to a false claims law
21 investigation, the Attorney General or a designee may, before commencing a

1 civil proceeding under subsection 632(a) or making an election under
2 subsection 633(b) of this title, issue in writing and cause to be served upon
3 such person a civil investigative demand requiring such person:

4 (A) to produce such documentary material for inspection and
5 copying;

6 (B) to answer in writing written interrogatories with respect to such
7 documentary material or information;

8 (C) to give oral testimony concerning such documentary material or
9 information; or

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

12 (2) The Attorney General may delegate the authority to issue civil
13 investigative demands under this subsection. Whenever a civil investigative
14 demand is an express demand for any product of discovery, the Attorney
15 General, the Deputy Attorney General, or an Assistant Attorney General shall
16 cause to be served, in any manner authorized by this section, a copy of such
17 demand upon the person from whom the discovery was obtained and shall
18 notify the person to whom such demand is issued of the date on which such
19 copy was served. Any information obtained by the Attorney General or a
20 designee of the Attorney General under this section may be shared with any

1 qui tam relator if the Attorney General or designee determines it is necessary
2 as part of any false claims act investigation.

3 (3) Contents and deadlines.

4 (A) Each civil investigative demand issued under subdivision (1) of
5 this subsection (a) shall state the nature of the conduct constituting the alleged
6 violation of a false claims law which is under investigation, and the applicable
7 provision of law alleged to be violated.

8 (B) If such demand is for the production of documentary material, the
9 demand shall:

10 (i) describe each class of documentary material to be produced
11 with such definiteness and certainty as to permit such material to be fairly
12 identified;

13 (ii) prescribe a return date for each such class which will provide a
14 reasonable period of time within which the material so demanded may be
15 assembled and made available for inspection and copying; and

16 (iii) identify the false claims law investigator to whom such
17 material shall be made available.

18 (C) If such demand is for answers to written interrogatories, the
19 demand shall:

20 (i) set forth with specificity the written interrogatories to be
21 answered;

1 (ii) prescribe dates at which time answers to written
2 interrogatories shall be submitted; and

3 (iii) identify the false claims law investigator to whom such
4 answers shall be submitted.

5 (D) If such demand is for the giving of oral testimony, the demand
6 shall:

7 (i) prescribe a date, time, and place at which oral testimony shall
8 be commenced;

9 (ii) identify a false claims law investigator who shall conduct the
10 examination;

11 (iii) specify that such attendance and testimony are necessary to
12 the conduct of the investigation;

13 (iv) notify the person receiving the demand of the right to be
14 accompanied by an attorney and any other representative; and

15 (v) describe the general purpose for which the demand is being
16 issued and the general nature of the testimony, including the primary areas of
17 inquiry, which will be taken pursuant to the demand.

18 (E) Any civil investigative demand issued under this section which is
19 an express demand for any product of discovery shall not be returned or
20 returnable until 20 days after a copy of such demand has been served upon the
21 person from whom the discovery was obtained.

1 (F) The date prescribed for the commencement of oral testimony
2 pursuant to a civil investigative demand issued under this section shall be a
3 date which is not less than seven days after the date on which demand is
4 received, unless the Attorney General or an Assistant Attorney General
5 designated by the Attorney General determines that exceptional circumstances
6 are present which warrant the commencement of such testimony within a lesser
7 period of time.

8 (G) The Attorney General shall not authorize the issuance under this
9 section of more than one civil investigative demand for oral testimony by the
10 same person unless the person requests otherwise or unless the Attorney
11 General, after investigation, notifies that person in writing that an additional
12 demand for oral testimony is necessary.

13 (b) Protected material or information.

14 (1) In general. A civil investigative demand issued under subsection (a)
15 of this section may not require the production of any documentary material, the
16 submission of any answers to written interrogatories, or the giving of any oral
17 testimony if such material, answers, or testimony would be protected from
18 disclosure under:

19 (A) the standards applicable to subpoenas or subpoenas duces tecum
20 issued by a court of the State of Vermont to aid in a grand jury investigation or
21 conduct an inquest; or

1 (B) the standards applicable to discovery requests under the Vermont
2 Rules of Civil Procedure, to the extent that the application of such standards to
3 any such demand is appropriate and consistent with the provisions and
4 purposes of this section.

5 (2) Effect on other orders, rules, and laws. Any such demand which is
6 an express demand for any product of discovery supersedes any inconsistent
7 order, rule, or provision of law (other than this section) preventing or
8 restraining disclosure of such product of discovery to any person. Disclosure
9 of any product of discovery pursuant to any such express demand does not
10 constitute a waiver of any right or privilege which the person making such
11 disclosure may be entitled to invoke to resist discovery of trial preparation
12 materials.

13 (c) Service; jurisdiction.

14 (1) By whom served. Any civil investigative demand issued under this
15 section may be served by a false claims law investigator, by a law enforcement
16 officer, or by any other individual authorized by law to serve legal process in
17 the jurisdiction in which the demand is served.

18 (2) Service outside Vermont. Any demand issued under this section or
19 any petition filed under subsection (i) of this section may be served upon any
20 person or entity who is not found in Vermont, consistent with 12 V.S.A.
21 chapter 25 and in any such manner as provided in the Vermont Rules of Civil

1 Procedure for personal service outside the State. To the extent that the courts
2 of Vermont can assert jurisdiction over any person consistent with due process,
3 the Civil Division of the Superior Court of Washington County shall have the
4 same jurisdiction to take any action respecting compliance with this section by
5 any such person that such court would have if such person were personally
6 within the jurisdiction of such court.

7 (d) Service upon legal entities and natural persons.

8 (1) Legal entities. Service of any civil investigative demand issued
9 under subsection (a) of this section or of any petition filed under subsection (i)
10 may be made upon a partnership, corporation, association, or other legal
11 entity by:

12 (A) delivering an executed copy of such demand or petition to any
13 partner, executive officer, managing agent, or general agent of the partnership,
14 corporation, association, or entity, or to any agent authorized by appointment
15 or by law to receive service of process on behalf of such partnership,
16 corporation, association, or entity;

17 (B) delivering an executed copy of such demand or petition to the
18 principal office or place of business of the partnership, corporation,
19 association, or entity;

20 (C) depositing an executed copy of such demand or petition in the
21 U.S. mail by registered or certified mail, return receipt requested, addressed to

1 such partnership, corporation, association, or entity at its principal office or
2 place of business; or

3 (D) by any other method provided by 12 V.S.A. chapter 25 or the
4 Vermont Rules of Civil Procedure.

5 (2) Natural persons. Service of any such demand or petition may be
6 made upon any natural person by:

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

9 (B) depositing an executed copy of such demand or petition in the
10 U.S. mail by registered or certified mail, return receipt requested, addressed to
11 the person at the person's residence or principal office or place of business; or

12 (C) by any other method provided by 12 V.S.A. chapter 25 or the
13 Vermont Rules of Civil Procedure.

14 (e) Proof of service. A verified return by the individual serving any civil
15 investigative demand issued under subsection (a) of this section or any petition
16 filed under subsection (i) setting forth the manner of such service shall be
17 proof of such service. In the case of service by registered or certified mail,
18 such return shall be accompanied by the return post office receipt of delivery
19 of such demand.

20 (f) Documentary material.

1 (1) Sworn certificates. The production of documentary material in
2 response to a civil investigative demand served under this section shall be
3 made under a sworn certificate, in such form as the demand designates, by:

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

6 (B) in the case of a person other than a natural person, a person
7 having knowledge of the facts and circumstances relating to such production
8 and authorized to act on behalf of such person.

9 (2) Contents of certificate. The certificate shall state that all of the
10 documentary material required by the demand and in the possession, custody,
11 or control of the person to whom the demand is directed has been produced
12 and made available to the false claims law investigator identified in the
13 demand. To the extent that any information is not furnished, the information
14 shall be identified and reasons set forth with particularity regarding the reasons
15 why the information was not furnished.

16 (3) Production of materials. Any person upon whom any civil
17 investigative demand for the production of documentary material has been
18 served under this section shall make such material available for inspection and
19 copying to the false claims law investigator identified in such demand at the
20 principal place of business of such person, or at such other place as the false
21 claims law investigator and the person thereafter may agree and prescribe in

1 writing, or as the court may direct under subdivision (i)(1) of this section.

2 Such material shall be made so available on the return date specified in such

3 demand, or on such later date as the false claims law investigator may

4 prescribe in writing. Such person may, upon written agreement between the

5 person and the false claims law investigator, substitute copies for originals of

6 all or any part of such material.

7 (g) Interrogatories.

8 (1) Each interrogatory in a civil investigative demand served under this

9 section shall be answered separately and fully in writing under oath and shall

10 be submitted under a sworn certificate, in such form as the demand

11 designates, by:

12 (A) in the case of a natural person, the person to whom the demand is

13 directed; or

14 (B) in the case of a person other than a natural person, the person or

15 persons responsible for answering each interrogatory.

16 (2) If any interrogatory is objected to, the reasons for the objection shall

17 be stated in the certificate instead of an answer. The certificate shall state that

18 all information required by the demand and in the possession, custody, control,

19 or knowledge of the person to whom the demand is directed has been

20 submitted. To the extent that any information is not furnished, the information

1 shall be identified and reasons set forth with particularity regarding the reasons
2 why the information was not furnished.

3 (h) Oral examinations.

4 (1) Procedures. The examination of any person pursuant to a civil
5 investigative demand for oral testimony served under this section shall be
6 taken before an officer authorized to administer oaths and affirmations by the
7 laws of Vermont or of the place where the examination is held. The officer
8 before whom the testimony is to be taken shall put the witness on oath or
9 affirmation and shall, personally or by someone acting under the direction of
10 the officer and in the officer's presence, record the testimony of the witness.
11 The testimony shall be taken stenographically and shall be transcribed. When
12 the testimony is fully transcribed, the officer before whom the testimony is
13 taken shall promptly transmit a copy of the transcript of the testimony to the
14 Attorney General or a designee. This subsection shall not preclude the taking
15 of testimony by any means authorized by, and in a manner consistent with, the
16 Vermont Rules of Civil Procedure.

17 (2) Persons present. The false claims law investigator conducting the
18 examination shall exclude from the place where the examination is held all
19 persons except the person giving the testimony, the attorney for and any other
20 representative of the person giving the testimony, the attorney for the
21 government, any person who may be agreed upon by the attorney for the

1 government and the person giving the testimony, the officer before whom the
2 testimony is to be taken, and any stenographer taking such testimony.

3 (3) Where testimony taken. The oral testimony of any person taken
4 pursuant to a civil investigative demand served under this section shall be
5 taken not more than 50 miles from where such person resides, is found, or
6 transacts business, or in such other place as may be agreed upon by the false
7 claims law investigator conducting the examination and such person.

8 (4) Transcript of testimony. When the testimony is fully transcribed, the
9 false claims law investigator or the officer before whom the testimony is taken
10 shall afford the witness, who may be accompanied by counsel, a reasonable
11 opportunity to examine and read the transcript, unless such examination and
12 reading are waived by the witness. Any changes in form or substance which
13 the witness desires to make shall be entered and identified upon the transcript
14 by the officer or the false claims law investigator, with a statement of the
15 reasons given by the witness for making such changes. The transcript shall
16 then be signed by the witness, unless the witness in writing waives the signing,
17 is ill, cannot be found, or refuses to sign. If the transcript is not signed by the
18 witness within 30 days after being afforded a reasonable opportunity to
19 examine it, the officer or the false claims law investigator shall sign it and state
20 on the record the fact of the waiver, illness, absence of the witness, or the
21 refusal to sign, together with the reasons, if any, given therefor.

1 (5) Certification and delivery to Attorney General. The officer before
2 whom the testimony is taken shall certify on the transcript that the witness was
3 sworn by the officer and that the transcript is a true record of the testimony
4 given by the witness, and the officer or false claims law investigator shall
5 promptly deliver the transcript or send the transcript by registered or certified
6 mail to the Attorney General or a designee.

7 (6) Furnishing or inspection of transcript by witness. Upon payment of
8 reasonable charges therefor, the false claims law investigator shall furnish a
9 copy of the transcript to the witness only, except that the Attorney General, the
10 Deputy Attorney General, or an Assistant Attorney General may, for good
11 cause, limit such witness to inspection of the official transcript of the witness'
12 testimony.

13 (7) Conduct of oral testimony.

14 (A) Any person compelled to appear for oral testimony under a civil
15 investigative demand issued under subsection (a) of this section may be
16 accompanied, represented, and advised by counsel. Counsel may advise such
17 person, in confidence, with respect to any question asked of such person. Such
18 person or counsel may object on the record to any question, in whole or in part,
19 and shall briefly state for the record the reason for the objection. An objection
20 may be made, received, and entered upon the record when it is claimed that
21 such person is entitled to refuse to answer the question on the grounds of any

1 constitutional or other legal right or privilege, including the privilege against
2 self-incrimination. Such person may not otherwise object to or refuse to
3 answer any question, and may not directly or through counsel otherwise
4 interrupt the oral examination. If such person refuses to answer any question, a
5 petition may be filed in the Civil Division of Washington County Superior
6 Court under subdivision (i)(1) of this section for an order compelling such
7 person to answer such question.

8 (B) If such person refuses to answer any question on the grounds of
9 the privilege against self-incrimination, the testimony of such person may be
10 compelled in accordance with the provisions of 12 V.S.A. § 1664.

11 (8) Witness fees and allowances. Any person appearing for oral
12 testimony under a civil investigative demand issued under subsection (a) of
13 this section shall be entitled to the same fees and allowances which are paid to
14 witnesses in the courts of the State of Vermont.

15 (i) Judicial proceedings.

16 (1) Petition for enforcement. Whenever any person fails to comply with
17 any civil investigative demand issued under subsection (a) of this section, or
18 whenever satisfactory copying or reproduction of any material requested in
19 such demand cannot be done and such person refuses to surrender such
20 material, the Attorney General may file, in the Civil Division of Washington
21 County Superior Court or the Civil Division in any county in which such

1 person resides, is found, or transacts business, and serve upon such person a
2 petition for an order of such court for the enforcement of the civil investigative
3 demand.

4 (2) Petition to modify or set aside demand.

5 (A) Any person who has received a civil investigative demand issued
6 under subsection (a) of this section may file, in the Civil Division of
7 Washington County Superior Court or the Civil Division in any county in
8 which such person resides, is found, or transacts business, and serve upon the
9 Attorney General's Office a petition for an order of the court to modify or set
10 aside such demand. In the case of a petition addressed to an express demand
11 for any product of discovery, a petition to modify or set aside such demand
12 may be brought only in the Civil Division in which the proceeding in which
13 such discovery was obtained is or was last pending. Any petition under this
14 subdivision (2) must be filed:

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

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

20 (B) The petition shall specify each ground upon which the petitioner
21 relies in seeking relief under subdivision (A) of this subdivision (2), and may

1 be based upon any failure of the demand to comply with the provisions of this
2 section or upon any constitutional or other legal right or privilege of such
3 person. During the pendency of the petition in the court, the court may stay, as
4 it deems proper, the running of the time allowed for compliance with the
5 demand, in whole or in part, except that the person filing the petition shall
6 comply with any portions of the demand not sought to be modified or set aside.

7 (3) Petition to modify or set aside demand for product of discovery.

8 (A) In the case of any civil investigative demand issued under
9 subsection (a) of this section which is an express demand for any product of
10 discovery, the person from whom such discovery was obtained may file, in the
11 Civil Division in which the proceeding in which such discovery was obtained
12 is or was last pending, and serve upon any false claims law investigator
13 identified in the demand and upon the recipient of the demand, a petition for an
14 order of such court to modify or set aside those portions of the demand
15 requiring production of any such product of discovery. Any petition under this
16 subdivision (3) must be filed:

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

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

1 (B) The petition shall specify each ground upon which the petitioner
2 relies in seeking relief under subdivision (A) of this subdivision (3), and may
3 be based upon any failure of the portions of the demand from which relief is
4 sought to comply with the provisions of this section or upon any constitutional
5 or other legal right or privilege of the petitioner. During the pendency of the
6 petition, the court may stay, as it deems proper, compliance with the demand
7 and the running of the time allowed for compliance with the demand.

8 (4) Jurisdiction. Whenever any petition is filed under this subsection,
9 such court shall have jurisdiction to hear and determine the matter so
10 presented, and to enter such order or orders as may be required to carry out the
11 provisions of this section. Any final order so entered may be appealed to the
12 Vermont Supreme Court. Any disobedience of any final order entered under
13 this section by any court shall be punished as a contempt of the court.

14 (5) Applicability of Rules of Civil Procedure. The Rules of Civil
15 Procedure shall apply to any petition under this subsection, to the extent that
16 such rules are not inconsistent with the provisions of this section.

17 (j) Use and disclosure of material, answers, or transcripts. The Office of
18 the Attorney General may use the material, answers to interrogatories, or
19 transcripts for any lawful purpose in conducting its investigation under the
20 false claims law, including sharing the materials with the relator as provided in
21 subdivision (a)(1) of this section. Further, whenever any attorney from the

1 Office of the Attorney General has been designated to appear before any court,
2 grand jury, or agency in any case or proceeding, such attorney may obtain,
3 possess, and use any documentary material, answers to interrogatories, or
4 transcripts of oral testimony received under this section for official use in
5 connection with any such case or proceeding as such attorney determines to be
6 required. Any documentary material, answers to written interrogatories, or
7 oral testimony provided under any civil investigative demand issued under
8 subsection (a) of this section shall not be used or disclosed in any other manner
9 than set forth in this subsection without a Court order. No order authorizing
10 such further use or disclosure shall issue without notice to the Attorney
11 General and the person from whom such discovery was obtained, and, if
12 requested by either of those parties, an opportunity to present arguments or
13 evidence, or both, on the issue of disclosure.

14 (k) Definitions. As used in this section:

15 (1) "False claims law investigation" means any inquiry conducted by
16 any false claims law investigator for the purpose of ascertaining whether any
17 person is or has been engaged in any violation of a false claims law.

18 (2) "False claims law investigator" means any attorney or investigator
19 employed by the Attorney General's Office who is charged with the duty of
20 enforcing or carrying into effect any false claims law, or any officer or

1 employee of Vermont acting under the direction and supervision of such
2 attorney or investigator in connection with a false claims law investigation.

3 (3) "Documentary material" includes the original or any copy of any
4 book, record, report, memorandum, paper, communication, tabulation, chart, or
5 other document, or data compilations stored in or accessible through computer
6 or other information retrieval systems, together with instructions and all other
7 materials necessary to use or interpret such data compilations, and any product
8 of discovery.

9 (4) "Product of discovery" includes:

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

14 (B) any digest, analysis, selection, compilation, or derivation of any
15 item listed in subdivision (A) of this subdivision (4); and

16 (C) any index or other manner of access to any item listed in
17 subdivision (A) of this subdivision (4); and

18 (5) "Official use" means any use that is consistent with the law, and the
19 regulations and policies of the Office of the Attorney General, including use in
20 connection with internal office memoranda and reports; communications
21 between the office and a federal, State, or local government agency, or a

1 contractor of a federal, State, or local government agency, undertaken in
2 furtherance of an office investigation or prosecution of a case; interviews of
3 any qui tam relator or other witness; oral examinations; depositions;
4 preparation for and response to civil discovery requests; introduction into the
5 record of a case or proceeding; applications, motions, memoranda, and briefs
6 submitted to a court or other tribunal; and communications with government
7 investigators, auditors, consultants, experts, the counsel of other parties,
8 arbitrators, and mediators, concerning an investigation, case, or proceeding.

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on passage.