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H.120

Introduced by Representatives Grad of Moretown and Pugh of South

Burlington

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; Vermont false claims act

Statement of purpose of bill as introduced: This bill proposes to create a
Vermont false claims act.

An act relating to creating a Vermont false claims act

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

Sec. 1. 13 V.S.A. chapter 95 is added to read:

CHAPTER 95. VERMONT FALSE CLAIMS ACT

§ 4301. DEFINITIONS

As used in this chapter:

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

(A) is presented to an officer, employee, or agent of the State; or

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

4 (i) provides or has provided any portion of the money or property
5 that is requested or demanded, or

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

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

13 (A) mean that a person, with respect to information,

14 (i) has actual knowledge of the information,

15 (ii) acts in deliberate ignorance of the truth or falsity of the
16 information, or

17 (iii) acts in reckless disregard of the truth or falsity of the
18 information; and

19 (B) require no proof of specific intent to defraud.

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

1 (4) “Obligation” means an established duty, whether or not fixed,
2 arising from an express or implied contractual, grantor-grantee, or
3 licensor-licensee relationship, from a fee-based or similar relationship, from
4 statute or regulation, or from the retention of any overpayment after the
5 deadline for reporting and returning the overpayment under subdivision
6 4302(a)(10) of this chapter.

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

8 (A) prior to a public disclosure under subsection 4307(c) of this
9 chapter, has voluntarily disclosed to the State the information on which
10 allegations or transactions in a claim are based; or

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

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

17 (7) “Relator” or “qui tam plaintiff” means an individual who brings an
18 action under subsection 4303(b) of this chapter.

19 (8) “State” means the State of Vermont, a county, a municipality or
20 other subdivision thereof and commission, board, department, or agency

1 thereof or any other governmental entity authorized or created by State law,
2 including public corporations and authorities.

3 § 4302. PROHIBITION; PENALTIES

4 (a) No person shall:

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

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

9 (3) knowingly present, or cause to be presented, a claim that includes
10 items or services resulting from a violation of 13 V.S.A. chapter 21 or section
11 1128B of the Social Security Act, 42 U.S.C. 1320a-7b;

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

19 (5) having possession, custody, or control of property or money used, or
20 to be used, by the State, knowingly deliver, or cause to be delivered to the

1 State or its agent, less than all of that property or money for which the person
2 receives a certificate or receipt;

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

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

10 (8) enter into an agreement, contract, or understanding with an official
11 of the State or its agent knowing the information contained therein is false;

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

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

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

1 (A) a date which is 60 days after the date on which the false claim or
2 receipt of overpayment was identified, or

3 (B) the date any corresponding cost report is due, if applicable; or

4 (12) conspire to commit a violation of this subsection.

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

7 (1) a civil penalty of not less than \$5,500.00 and not more than
8 \$11,000.00 for each act constituting a violation of subsection (a) of this
9 section, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of
10 1990 (28 U.S.C. 2461);

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

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

14 (c) Liability shall be joint and several for any violation of subsection (a) of
15 this section committed by two or more persons.

16 (d) Notwithstanding subdivision (b)(2) of this section, the Court may assess
17 not less than two times the amount of damages that the State sustains because
18 of the act of that person if the Court finds that:

19 (1) the person committing the violation of subsection (a) of this section
20 furnished officials of the State responsible for investigating false claims

1 violations with all information known to that person about the violation within
2 30 days after the date on which the person first obtained the information;

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

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

10 (e) This chapter shall not apply to claims, records, or statements made or
11 presented to establish, limit, reduce, or evade liability for the payment of tax to
12 the State or other governmental authority.

13 § 4303. CIVIL ACTIONS FOR FALSE CLAIMS

14 (a) The Attorney General shall investigate violations of subsection 4302(a)
15 of this chapter. If the Attorney General finds that a person has violated or is
16 violating subsection 4302(a), the Attorney General may bring a civil action in
17 the Civil Division of the Superior Court under this section against the person.
18 The action may be brought in Washington County or in any county where an
19 act prohibited by section 4302 occurred.

20 (b)(1) A relator may bring a civil action in the Civil Division of the
21 Superior Court in Washington County or in any county where an act prohibited

1 by section 4302 of this chapter occurred for a violation of this chapter on
2 behalf of the relator and the State. The action shall be brought in the name of
3 the State. The relator must file the complaint in camera. The complaint must
4 remain under seal for at least 60 days after being served on the Attorney
5 General and must not be served on the defendant until the Court so orders.

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

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

17 (A) the complaint; and

18 (B) the material evidence and information.

19 (4) The Attorney General may, for good cause shown, move the Court
20 for extensions of the time during which the complaint remains under seal under

1 subdivision (b)(1) of this section. Any such motions may be supported by
2 affidavits or other submissions in camera.

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

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

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

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

12 § 4304. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS

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

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

20 (2) Notwithstanding any objection of a relator, the Attorney General
21 may settle the action with the defendant if after a hearing the Court determines

1 that the proposed settlement is fair, adequate, and reasonable under all the
2 circumstances.

3 (3) Upon a showing by the Attorney General that unrestricted
4 participation during the course of the litigation by the relator would interfere
5 with or unduly delay the prosecution of the case or would be repetitious,
6 irrelevant, or for purposes of harassment, the Court may, in its discretion,
7 impose limitations on the relator's participation, such as:

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

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

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

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

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

16 (c) If the Attorney General elects not to proceed with the action, the relator
17 who initiated the action shall have the right to conduct the action. If the
18 Attorney General so requests, it shall be served with copies of all pleadings
19 filed in the action in an electronic format determined by the Attorney General
20 and shall be supplied with copies of all deposition transcripts at the State's
21 expense. When a relator proceeds with the action, the Court, without limiting

1 the status and rights of the relator, may nevertheless permit the Attorney
2 General to intervene at a later date upon a showing of good cause.

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

12 § 4305. ALTERNATE REMEDIES AVAILABLE TO DETERMINE CIVIL
13 PENALTY

14 (a) Notwithstanding sections 4303 and 4304 of this chapter, the Attorney
15 General may elect to pursue its claim through any alternate remedy available to
16 the State, including any administrative proceeding to determine a civil
17 monetary penalty. If any such alternate remedy is pursued in another
18 proceeding, a relator shall have the same rights in such proceeding as said
19 relator would have had if the action had continued under this section.

1 § 4306. PAYMENTS TO RELATORS; LIMITATIONS

2 (a) If the Attorney General proceeds with an action brought by a relator
3 under subsection (b) of this section, the relator shall, subject to subsection (b)
4 of this section, receive at least 15 percent but not more than 25 percent of the
5 proceeds recovered and collected in the action or in settlement of the claim,
6 depending upon the extent to which the relator substantially contributed to the
7 prosecution of the action.

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

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

1 and costs shall be awarded against the defendant, and paid directly by the
2 defendant to the relator.

3 (d) If the Attorney General does not proceed with an action under this
4 chapter, the relator bringing the action or settling the claim shall receive an
5 amount which the Court decides is reasonable for collecting the civil penalty
6 and damages on behalf of the State. The amount shall be not less than
7 25 percent and not more than 30 percent of the proceeds recovered and
8 collected in the action or in settlement of the claim, and shall be paid out of
9 such proceeds. In such circumstances, the relator shall also receive an amount
10 for reasonable expenses which the Court finds to have been necessarily
11 incurred, including reasonable attorney's fees and costs. All such expenses,
12 fees, and costs shall be awarded against the defendant and paid directly by the
13 defendant to the relator.

14 (e) Whether or not the Attorney General proceeds with the action, if the
15 Court finds that the action was brought by a relator who planned and initiated
16 the violation of section 4302 of this chapter upon which the action was
17 brought, then the Court may, to the extent the Court considers appropriate,
18 reduce or eliminate the share of the proceeds of the action which the relator
19 would otherwise receive pursuant to this section, taking into account the role of
20 the relator in advancing the case to litigation and any relevant circumstances
21 pertaining to the violation. If the relator bringing the action is convicted of

1 criminal conduct arising from his or her role in the violation of section 4302 of
2 this chapter, that relator shall be dismissed from the civil action and shall not
3 receive any share of the proceeds of the action. Such dismissal shall not
4 prejudice the right of the State to continue the action.

5 § 4307. CERTAIN ACTIONS BARRED

6 (a) An individual may not bring an action under subsection 4303(b) of this
7 chapter against a member of the State Legislative Branch, the Attorney
8 General, a member of the Judiciary, or a senior Executive Branch official if the
9 action is based on evidence or information known to the State when the action
10 was brought.

11 (b) An individual may not bring an action under subsection 4303(b) of this
12 chapter that is based upon allegations or transactions that are the subject of a
13 civil suit or an administrative proceeding in which the State is already a party.

14 (c) Unless opposed by the Attorney General, the Court shall dismiss an
15 action or claim under subsection 4303(b) of this chapter if substantially the
16 same allegations or transactions as alleged in the action or claim were publicly
17 disclosed:

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

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

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

4 § 4308. AWARDS OF COSTS AND ATTORNEY'S FEES AGAINST
5 RELATORS; LIABILITY

6 (a) If the Attorney General does not proceed with the action pursuant to
7 this chapter and the defendant is the prevailing party, the Court may award the
8 defendant reasonable attorney's fees and expenses against the relator upon a
9 written finding that such action was pursued in bad faith or was wholly
10 insubstantial, clearly frivolous, and advanced for the purpose of causing the
11 defendant undue burden, unnecessary expense or harassment.

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

15 § 4309. RELIEF FROM RETALIATORY ACTIONS

16 (a) Any employee, contractor, or agent shall be entitled to all relief
17 necessary to make that employee, contractor, or agent whole, if that employee,
18 contractor, or agent is discharged, demoted, suspended, threatened, harassed,
19 or in any other manner discriminated against in the terms and conditions of
20 employment because of lawful acts done by the employee, contractor, agent or
21 a person associated with the employee, contractor, or agent in furtherance of an

1 action under section 4303 of this chapter, or other efforts to stop one or more
2 violations of this chapter.

3 (b) Notwithstanding any law to the contrary, relief under subsection (a) of
4 this section shall include reinstatement with the same seniority status that
5 employee, contractor, or agent would have had but for the discrimination, two
6 times the amount of back pay, interest on the back pay, and compensation for
7 any special damages sustained as a result of the discrimination, including
8 litigation costs and reasonable attorney's fees. An employee, contractor, or
9 agent may bring an action in the Civil Division of the Superior Court or any
10 other appropriate court for the relief provided in this section.

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

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

4 § 4310. LIMITATION OF ACTIONS; FINAL JUDGMENTS IN CRIMINAL
5 PROCEEDINGS

6 (a) A civil action under section 4303 of this chapter for a violation of
7 subsection 4302(a) of this chapter may not be brought:

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

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

15 (b) If the State elects to intervene and proceed with an action brought under
16 subsection 4303(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 4303(b). For statute of limitations purposes, any such pleading
19 shall 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 § 4311. PREPONDERANCE OF THE EVIDENCE STANDARD

4 In any action brought under section 4303 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 § 4312. REMEDIES UNDER OTHER LAWS; LIBERALITY OF

8 LEGISLATIVE 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) This chapter shall be liberally construed and applied to promote the
13 public interest. Furthermore, it is the intent of the Legislature that in
14 construing this chapter, the courts of this State will be guided by the
15 construction of similar terms contained in the Federal False Claims Act, 31
16 U.S.C. §§ 3729-3733, as from time to time amended by the U.S. Congress and
17 the courts of the United States.

18 § 4313. CIVIL INVESTIGATIVE DEMANDS

19 (a)(1) The Attorney General, whenever he or she has reason to believe any
20 person to be or to have been in violation of this chapter, may examine or cause
21 to be examined by any agent or representative designated by him or her for that

1 purpose, any books, records, papers, memoranda, and physical objects of
2 whatever nature bearing upon each alleged violation, and may demand written
3 responses under oath from any person to questions bearing upon each alleged
4 violation.

5 (2) The Attorney General may require the attendance of such person or
6 of any other person having knowledge in the premises in the county where the
7 person resides or has a place of business or in Washington County if the person
8 is a nonresident or has no place of business within the State, and may take
9 testimony and require proof material for his or her information, and may
10 administer oaths or take acknowledgment in respect of any book, record,
11 paper, or memorandum.

12 (3) The Attorney General shall serve notice of the time, place, and cause
13 of the examination or attendance, or notice of the cause of the demand for
14 written responses, at least ten days prior to the date of the examination,
15 personally or by certified mail, upon the person at his or her principal place of
16 business, or, if the place is not known, to his or her last known address.

17 (4) Any book, record, paper, memorandum, or other information
18 produced by any person pursuant to this section shall not, unless otherwise
19 ordered by a court of appropriate jurisdiction for good cause shown, be
20 disclosed to any person other than the authorized agent or representative of the
21 Attorney General, other State agency personnel, agents, or employees, relators,

1 or law enforcement officers engaged in legitimate law enforcement activities,
2 unless with the consent of the person producing the same.

3 (5) This subsection shall not be applicable to any criminal investigation
4 or prosecution brought under the laws of this or any other state.

5 (b)(1) A person upon whom a notice is served pursuant to the provisions of
6 this section shall comply with the terms thereof unless otherwise provided by
7 the order of a court of this State.

8 (2) Any person who, with intent to avoid, evade, or prevent compliance,
9 in whole or in part, with any civil investigation under this section, removes
10 from any place, conceals, withholds, or destroys, mutilates, alters, or by any
11 other means falsifies any documentary material in the possession, custody, or
12 control of any person subject to any such notice, or mistakes or conceals any
13 information, shall be subject to a civil penalty of not more than \$5,000.00 for
14 each such act and to recovery by the Attorney General's office the reasonable
15 value of its services and expenses in enforcing compliance with this section.

16 (c)(1) Whenever any person fails to comply with any notice served upon
17 him or her under this section or whenever satisfactory copying or reproduction
18 of material pursuant to this section cannot be done and the person refuses to
19 surrender the material, the Attorney General may file, in the Civil Division of
20 the Superior Court in which the person resides or has his or her principal place
21 of business, or in Washington County if the person is a nonresident or has no

1 principal place of business in this State, and serve upon the person, a petition
2 for an order of the court for the enforcement of this section.

3 (2) Whenever a petition is filed under this section, the Court shall have
4 jurisdiction to hear and determine the matter presented, and to enter one or
5 more orders as may be required to carry into effect the provisions of this
6 section.

7 (3) A person who violates an order entered under this section by a court
8 shall be punished for contempt of court and shall be subject to a civil penalty
9 of not more than \$5,000.00 for each act or instance of noncompliance and to
10 recovery by the Attorney General's office of the reasonable value of its
11 services and expenses in enforcing compliance with this section.

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on July 1, 2015.