

House Calendar

Wednesday, March 11, 2015

64th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

TABLE OF CONTENTS

	Page No.
ACTION CALENDAR	
Third Reading	
H. 18 Public Records Act exemptions	441
Rep. Donahue amendment.....	441
Favorable with Amendment	
H. 120 Creating a Vermont false claims act.....	441
Rep. Jewett for Judiciary	
Favorable	
H. 270 Definitions for pretrial screenings and assessments.....	461
Rep. Martel for Judiciary	

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 18

An act relating to Public Records Act exemptions

Amendment to be offered by Rep. Donahue of Northfield to H. 18

In Sec. 20, in 9 V.S.A. § 4555(a)(2)(A), by striking the word “and” at the end of the subdivision and inserting in lieu thereof the word “or”

Favorable with Amendment

H. 120

An act relating to creating a Vermont false claims act

Rep. Jewett of Ripton, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

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

Subchapter 8. Vermont False Claims Act

§ 630. 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

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

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

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

(2) “Knowing” and “knowingly”:

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

(i) has actual knowledge of the information;

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

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

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

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

(4) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment after the deadline for reporting and returning the overpayment under subdivision 631(a)(10) of this chapter.

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

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

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

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

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

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

§ 631. PROHIBITION; PENALTIES

(a) No person shall:

(1) knowingly present, or cause to be presented, a false or fraudulent

claim for payment or approval;

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

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

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

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

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

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

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

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

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

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

(A) a date which is 120 days after the date on which the false claim

or receipt of overpayment was identified; or

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

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

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

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

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

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

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

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

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

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

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

§ 632. CIVIL ACTIONS FOR FALSE CLAIMS

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

act prohibited by section 631 occurred.

(b)(1) A relator may bring a civil action in the Civil Division of the Superior Court in Washington County or in any county where an act prohibited by section 631 of this chapter occurred for a violation of this chapter on behalf of the relator and the State. The action shall be brought in the name of the State. The relator must file the complaint in camera. The complaint must remain under seal for at least 60 days after being served on the Attorney General and must not be served on the defendant until the Court so orders.

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

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

(A) the complaint; and

(B) the material evidence and information.

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

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

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

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

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

§ 633. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS

(a) If the State proceeds with the action, the Attorney General shall have the primary responsibility for prosecuting the action, and shall not be bound by

any act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations in subsection (b) of this section.

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

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

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

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

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

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

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

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

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

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

criminal or civil investigation or proceedings.

§ 634. ALTERNATE REMEDIES AVAILABLE TO DETERMINE CIVIL
PENALTY

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

§ 635. PAYMENTS TO RELATORS; LIMITATIONS

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

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

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

(d) If the Attorney General does not proceed with an action under this chapter, the relator bringing the action or settling the claim shall receive an amount which the Court decides is reasonable for collecting the civil penalty and damages on behalf of the State. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds recovered and collected in the action or in settlement of the claim, and shall be paid out of

such proceeds. In such circumstances, the relator shall also receive an amount for reasonable expenses which the Court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant and paid directly by the defendant to the relator.

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

§ 636. CERTAIN ACTIONS BARRED

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

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

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

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

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

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

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

RELATORS; LIABILITY

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

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

§ 638. RELIEF FROM RETALIATORY ACTIONS

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

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

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

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

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

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

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

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

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

(c) If the State elects to intervene and proceed with an action brought under subsection 632(b) of this chapter, the State may file its own complaint or amend the complaint of a person who has brought an action pursuant to subsection 632(b). For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

§ 640. PREPONDERANCE OF THE EVIDENCE STANDARD

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

§ 641. REMEDIES UNDER OTHER LAWS; LEGISLATIVE

CONSTRUCTION

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

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

§ 642. CIVIL INVESTIGATIVE DEMANDS

(a) In general.

(1) Issuance and service. Whenever the Attorney General or a designee has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General or a designee may, before commencing a civil proceeding under subsection 632(a) or making an election under subsection 633(b) of this title, issue in writing and cause to be served upon such person a civil investigative demand requiring such person:

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

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

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

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

(2) The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determines it is necessary as part of any false claims act investigation.

(3) Contents and deadlines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

period of time.

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

(b) Protected material or information.

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

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

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

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

(c) Service; jurisdiction.

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

(2) Service outside Vermont. Any demand issued under this section or any petition filed under subsection (i) of this section may be served upon any person or entity who is not found in Vermont, consistent with 12 V.S.A. chapter 25 and in any such manner as provided in the Vermont Rules of Civil Procedure for personal service outside the State. To the extent that the courts of Vermont can assert jurisdiction over any person consistent with due process,

the Civil Division of the Superior Court of Washington County shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.

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

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

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

(C) depositing an executed copy of such demand or petition in the U.S. mail by registered or certified mail, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business; or

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

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

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

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

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

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

of such demand.

(f) Documentary material.

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

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

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

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

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

(g) Interrogatories.

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

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

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

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

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

(2) Persons present. The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the government, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

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

(4) Transcript of testimony. When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the

reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

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

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

(7) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) of this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Civil Division of Washington County Superior Court under subdivision (i)(1) of this section for an order compelling such person to answer such question.

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

(8) Witness fees and allowances. Any person appearing for oral testimony

under a civil investigative demand issued under subsection (a) of this section shall be entitled to the same fees and allowances which are paid to witnesses in the courts of the State of Vermont.

(i) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any civil investigative demand issued under subsection (a) of this section, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Civil Division of Washington County Superior Court or the Civil Division in any county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.

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

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

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

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subdivision (A) of this subdivision (2), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

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

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

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

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

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

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

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

(j) Use and disclosure of material, answers, or transcripts. The Office of the Attorney General may use the material, answers to interrogatories, or transcripts for any lawful purpose in conducting its investigation under the false claims law, including sharing the materials with the relator as provided in subdivision (a)(1) of this section. Further, whenever any attorney from the Office of the Attorney General has been designated to appear before any court, grand jury, or agency in any case or proceeding, such attorney may obtain, possess, and use any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section for official use in

connection with any such case or proceeding as such attorney determines to be required. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) of this section shall not be used or disclosed in any other manner than set forth in this subsection without a Court order. No order authorizing such further use or disclosure shall issue without notice to the Attorney General and the person from whom such discovery was obtained, and, if requested by either of those parties, an opportunity to present arguments or evidence, or both, on the issue of disclosure.

(k) Definitions. As used in this section:

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

(2) “False claims law investigator” means any attorney or investigator employed by the Attorney General’s Office who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of Vermont acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

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

(4) “Product of discovery” includes:

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

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subdivision (A) of this subdivision (5); and

(C) any index or other manner of access to any item listed in subdivision (A) of this subdivision (5); and

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

furtherance of an office investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants, experts, the counsel of other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

Favorable

H. 270

An act relating to definitions for pretrial screenings and assessments

Rep. Martel of Waterford, for the Committee on **Judiciary**, recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Public Hearings

March 12, 2015 - Room 11 - 1:00-3:00pm - Further Reductions to the Governor's Proposed FY 2016 Budget