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H.182

Introduced by Representatives Morrissey of Bennington, Bancroft of
Westford, Batchelor of Derby, Beck of St. Johnsbury, Beyor of
Highgate, Branagan of Georgia, Brennan of Colchester,
Browning of Arlington, Burditt of West Rutland, Canfield of
Fair Haven, Condon of Colchester, Corcoran of Bennington,
Cupoli of Rutland City, Dame of Essex, Devereux of Mount
Holly, Donahue of Northfield, Eastman of Orwell, Fagan of
Rutland City, Fiske of Enosburgh, Gage of Rutland City,
Gamache of Swanton, Graham of Williamstown, Hebert of
Vernon, Helm of Fair Haven, Higley of Lowell, Hubert of
Milton, Juskiewicz of Cambridge, LaClair of Barre Town,
Lawrence of Lyndon, Lefebvre of Newark, Lewis of Berlin,
Martel of Waterford, McFaun of Barre Town, Myers of Essex,
Parent of St. Albans City, Pearce of Richford, Purvis of
Colchester, Quimby of Concord, Savage of Swanton, Shaw of
Pittsford, Shaw of Derby, Smith of New Haven, Strong of
Albany, Tate of Mendon, Van Wyck of Ferrisburgh, Viens of
Newport City, and Willhoit of St. Johnsbury

Referred to Committee on
Date:

1 Subject: Crimes and criminal procedure; frauds: submission of a false claim to
2 the State

3 Statement of purpose of bill as introduced: This bill proposes to prohibit
4 submitting a false claim to the State for payment for goods or services.

5 An act relating to submitting a false claim to the State

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

7 Sec. 1. 13 V.S.A. § 2033 is added to read:

8 § 2033. FALSE CLAIMS

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

10 (1) knowingly presents, or causes to be presented, to an officer or
11 employee of the State of Vermont a false or fraudulent claim for payment or
12 approval;

13 (2) knowingly makes, uses, or causes to be made or used a false record
14 or statement to obtain a false or fraudulent claim paid or approved by the State
15 of Vermont;

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

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

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

8 (6) knowingly makes, uses, or causes to be made or used a false record
9 or statement to conceal, avoid, or decrease an obligation to pay or transmit
10 money or property to the State.

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

13 (c) A person who makes a false claim under this section is liable to the
14 State for a civil penalty of not less than \$5,000.00 and not more than
15 \$10,000.00, plus:

16 (1) three times the amount of damages which the State sustains because
17 of the act of the person; or

18 (2) two times the amount of damages which the State sustains because
19 of the act of the person if the court finds the following:

20 (A) the person committing the violation of this section furnished
21 officials of the State responsible for investigating false claims violations with

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

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

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

10 (d) A person violating this section shall also be liable to the State for the
11 costs of a civil action brought to recover any penalty or damages under this
12 section.

13 (e) As used in this section, “knowing” or “knowingly” means that a person:

14 (1) has actual knowledge;

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

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

17 (f) As used in this section, “claim” means any request or demand, whether
18 under a contract or otherwise, for money or property which is made to a
19 contractor, grantee, or other recipient if the State provides any portion of the
20 money or property which is requested or demanded, or if the State will
21 reimburse such contractor, grantee, or other recipient for any portion of the

1 money or property which is requested or demanded.

2 (g) If the Attorney General finds that a person has violated or is violating
3 this section, the Attorney General may bring a civil action under this section
4 against the person.

5 (h) An individual may bring a civil action for a violation of this section for
6 the person and for the State. The action shall be brought in the name of the
7 State. The action may be dismissed only if the court and the Attorney General
8 give written consent to the dismissal and their reasons for consenting.

9 (i) If the State proceeds with the action, it shall have the primary
10 responsibility for prosecuting the action, and shall not be bound by an act of
11 the person bringing the action. Such person shall have the right to continue as
12 a party to the action, subject to the limitations set forth in this section.

13 (j) The State may dismiss the action notwithstanding the objections of the
14 person initiating the action if the person has been notified by the State of the
15 filing of the motion, and the court has provided the person with an opportunity
16 for a hearing on the motion.

17 (k) The State may settle the action with the defendant notwithstanding the
18 objections of the person initiating the action if the court determines, after a
19 hearing, that the proposed settlement is fair, adequate, and reasonable under all
20 the circumstances. Upon a showing of good cause, such hearing may be held
21 in camera.

1 (l) Upon a showing by the State that unrestricted participation during the
2 course of the litigation by the person initiating the action would interfere with
3 or unduly delay the State's prosecution of the case, or would be repetitious,
4 irrelevant, or for purposes of harassment, the court may, in its discretion,
5 impose limitations on the person's participation.

6 (m) If the State proceeds with an action brought by a person under this
7 section, then except as otherwise provided in this section, such person shall
8 receive at least 15 percent but not more than 25 percent of the proceeds of the
9 action or settlement of the claim, depending upon the extent to which the
10 person substantially contributed to the prosecution of the action. Where the
11 action is one that the court finds to be based primarily on disclosures of
12 specific information (other than information provided by the person bringing
13 the action) relating to allegations or transactions in a criminal, civil, or
14 administrative hearing, in a government report, hearing, audit, or investigation,
15 or from the news media, the court shall award such sums as it considers
16 appropriate, but in no case more than 10 percent of the proceeds, taking into
17 account the significance of the information and the role of the person bringing
18 the action in advancing the case to litigation. Any payment to a person under
19 this section shall be made from the proceeds. Any such person shall also
20 receive an amount for reasonable expenses that the court finds to have been

1 necessarily incurred, plus reasonable attorney's fees and costs. All such
2 expenses, fees, and costs shall be awarded against the defendant.

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

12 (o) Whether or not the State proceeds with the action, if the court finds that
13 the action was brought by a person who planned and initiated the violation of
14 this section upon which the action was brought, then the court shall, to the
15 extent the court considers appropriate, reduce the share of the proceeds of the
16 action that the person would otherwise receive under this section, taking into
17 account the role of that person in advancing the case to litigation and any
18 relevant circumstances pertaining to the violation. If the person bringing the
19 action is convicted of criminal conduct arising from his or her role in the
20 violation of this section, that person shall be dismissed from the civil action

1 and shall not receive any share of the proceeds of the action. The dismissal
2 shall not prejudice the right of the State to continue the action.

3 (p) If the State does not proceed with the action and the person bringing the
4 action conducts the action, the court shall award to the defendant its reasonable
5 attorney's fees and expenses if the defendant prevails in the action and the
6 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 Sec. 2. EFFECTIVE DATE

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