

Virgin Islands False Claims Act

As amended by Sess. L. 2016, p.114

33 V.I.C. § 3501

§ 3501 Short title

This chapter may be cited as The Virgin Islands False Claims Act.

§ 3502 Definitions

For purposes of this chapter:

(1) 'Claim' means any request or demand, whether under a contract or otherwise, for money, property, or services, and whether or not the Government has title to the money, property, or services that meets either of the following conditions:

(A) Is presented to an officer, employee, or agent of the Government or of an instrumentality of the Government: or

(B) Is made to a contractor, grantee, or other recipient, and if the Government:

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

(ii) will reimburse the contractor, grantee, or other recipient for any portion of the money, property, or service that is requested or demanded.

(C) The term does not include requests or demands for money, property, or services that the Government has paid to an individual as compensation for employment with the Government or as an income subsidy with no restrictions on that individual's use of the money, property, or services.

(2) 'Government funds' means funds that are the subject of a claim presented to an officer, employee, or agent of the Government, or where the Government provides, has provided, or will reimburse any portion the money, property, or service requested or demanded.

(3) 'Government of the Virgin Islands' or 'Government' includes the executive, legislative, and judicial branches of the Government of the Virgin Islands, agencies, authorities and instrumentalities of the Government of the Virgin Islands, and governing boards and commissions of the Government of the Virgin Islands.

(4) 'Knowing' and 'knowingly' mean that a person, with respect to information, does any of the following:

- (A) Has actual knowledge of the information;
- (B) Acts in deliberate ignorance of the truth or falsity of the information; or
- (C) Acts in reckless disregard of the truth or falsity of the information.

(5) 'Material' means having a natural tendency to influence, or be capable of influencing the payment or receipt of money, property, or services.

(6) 'Person' includes any natural person, corporation, firm, association, organization; partnership, limited liability company, business, and trust.

§ 3503 Costs; civil penalty; minimum amount in controversy

(a) Except as provided in subsection (d), any person who commits any of the acts enumerated in paragraphs (1) through (9) of this subsection violates this chapter and is liable to the Government for three times the amount of damages that the Government sustains because of the act of that person, the costs of a civil action brought to recover any of those penalties or damages, and for a civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim for which the person:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to commit a violation of this section;

(4) Has possession, custody, or control of public property or money used or to be used by the Government and knowingly delivers, or causes to be delivered less than all of that property;

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by Government and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the Government;

(8) Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Government within a reasonable time after discovery of the false claim; or

(9) Is the beneficiary of an inadvertent payment or overpayment by the Government of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the Government.

- (b) Proof of specific intent to defraud is not required.
- (c) Except as provided in subsection (d), the court may assess three times the amount of damages which the Government sustains because of the act of the person described in subsection (a).
- (d) The court may assess not more than two times the amount of damages which the Government sustains because of the act of the person described in subsection (a), and no civil penalty if the court finds all of the following:
 - (1) The person committing the violation furnished officials of the Government responsible for investigating false claims violations with all information known to that person about the violation within 120 days after the date on which the person first obtained the information;
 - (2) The person fully cooperated with any investigation by the Government of the violation; and
 - (3) At the time the person furnished the Government with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.
- (e) Liability under this section is joint and several for any act committed by two or more persons.
- (f) This section does not apply to any controversy involving an amount of less than \$500 in value. For purposes of this subsection, 'controversy' means any one or more false claims submitted by the same person in violation of this chapter.
- (g) This section does not apply to claims, records, or statements made pursuant to Workers' Compensation claims or to the claims, records, or statements pursuant to unemployment claims under the Virgin Islands Code, title 24, chapter 11 and chapter 12, respectively.
- (h) This section does not apply to claims, records, or statements made pursuant to taxation laws under this title.

§ 3504 Investigations; civil actions

- (a) The Attorney General shall investigate diligently violations under section 3503 involving Government funds. If the Attorney General finds that a person has violated or is violating section 3503, the Attorney General may bring a civil action under this section against that person.
- (b)
 - (1) A person may bring a civil action for a violation of this chapter for the person and for the Government in the name of the Government if any Government funds are involved. The person bringing the action is referred to as the qui tam plaintiff. Once filed, the qui tam plaintiff's action may be dismissed only with the written consent of the court and the Attorney General, taking into account the best interests of the parties involved and the public purposes underlying this chapter. No claim for any violation of section 3503 may be waived or released by any

private person, unless the action is part of a court-approved settlement of a false claim civil action brought under this section. Nothing in this paragraph may be construed to limit the ability of the Government to decline to pursue any claim brought under this section.

(2) A complaint filed by a qui tam plaintiff under this subsection must be filed in the Superior Court in camera, and subject to paragraph (5), may remain under seal up to 60 days. No service may be made on the defendant until after the complaint is unsealed.

(3) On the same day the complaint is filed pursuant to paragraph (2), the qui tam plaintiff shall serve the Attorney General by certified mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the qui tam plaintiff possesses.

(4) No later than 120 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve Government funds, the Attorney General may elect to intervene and proceed with the action.

(5) The Attorney General may, for good cause shown, move the Court for extensions of the time during which the complaint must remain under seal pursuant to paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the 120-day period or any extensions obtained under paragraph (5), the Attorney General shall do either of the following:

(A) Notify the court that the Attorney General intends to proceed with the action, in which case the Attorney General shall conduct the action, and the court shall lift the seal; or

(B) Notify the court that the Attorney General declines to proceed with the action, in which case the court shall lift the seal, and the qui tam plaintiff shall have the right to conduct the action.

(7) If the Attorney General fails to notify the court within the time specified in paragraph (6) or any extension under paragraph (5), the court shall lift the seal, and the qui tam plaintiff shall have the right to conduct the action.

(8) The defendant is not required to respond to any complaint filed under this section until 21 days after the complaint is unsealed and served upon the defendant pursuant to the applicable Rules of the Superior Court.

(9) When a qui tam plaintiff brings an action under this subsection, no other person may bring a related action based on the facts underlying the pending action.

(c)

(1) A person may not bring an action under subsection (b) against a member of the Legislature of the Virgin Islands, a judge, justice or magistrate judge of the judiciary, an elected or appointed cabinet-level official in the executive branch of the Government of the Virgin Islands, or a member of the governing body of any agency, board, commission, authority or other instrumentality of the Government, if the action is based on evidence or information known to the Government when the action was brought.

(2) A person may not bring an action under subsection (b) which is based upon allegations or transactions that are the subject of a civil suit or an administrative, civil money, penalty proceeding in which the Government is already a party.

(3)

(A) Unless the action is brought by the Attorney General or the person bringing the action is an original source of the information, or unless opposed by the Government, the court shall dismiss an action or claim under this section, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed-

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

(ii) in a legislative, Virgin Islands Inspector General, or other government report, hearing, audit, or investigation; or

(iii) from the news media.

(B) For purposes of subparagraph (A), 'original source' means an individual who

(i) who has knowledge of the information on which the allegations are based which is direct and independent of the publicly disclosed allegations or transactions, and

(ii) who has voluntarily provided the information to the Government before filing an action under this section which based on the information provided.

(4) A court does not have jurisdiction over an action brought under subsection (b) based upon information discovered by a present or former employee of the Government during the course of the employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting of the falsely claimed sums through official channels and unless the Government failed to act on the information provided within a reasonable period of time.

(5) A person may not bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

(6) A person may not sell or otherwise transfer any cause of action or interest in any present or future benefit that is provided for in this chapter.

(d)

(1) if the Government proceeds with the action, the Government has the primary responsibility for prosecuting the action. The qui tam plaintiff has the right to continue as a full party to the action.

(2)

(A) The Government may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff, if the qui tam plaintiff has been notified by

the Government of the filing of the motion, and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The Government may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(e)

(1) If the Government elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General would have had if the Government had chosen to proceed under subsection (b). If the Government so requests, and at its expense, the Government must be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)

(A) Upon timely application, the court shall permit the Government to intervene in an action with which it had initially declined to proceed, if the interest of the Government in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the Government is allowed to intervene under subparagraph (A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties must be determined as if the Government had elected not to proceed.

(f)

(1) If the Attorney General initiates an action pursuant to subsection (a), the Office of the Attorney General shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which must be used to support its ongoing investigation and prosecution of false claims.

(2) If the Government proceeds with an action brought by a qui tam plaintiff under subsection (b), the qui tam plaintiff, subject to paragraphs (4) and (5), is entitled to receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the Attorney General's Office shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which must be used to support its ongoing investigation and prosecution of false claims made against the Government.

(3) If the Government does not proceed with an action under subsection (b), the qui tam plaintiff, subject to paragraphs (4) and (5), is entitled to receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the Government. The amount must be not less than 33 percent and not more than 50 percent of the proceeds of the action or settlement and must be paid out of the proceeds.

(4) If the action is one provided for under paragraph (4) of subsection (c), the present or former employee of the Government is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the Government employee qui tam plaintiff those

sums from the proceeds as it considers appropriate, but in no case more than 25 percent of the proceeds if the Government goes forth with the action or 30 percent if the Government declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the Government employee qui tam plaintiff any sums from the proceeds that it considers appropriate, but in no case more than 15 percent of the proceeds if the Government goes forth with the action or 25 percent if the Government declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to paragraphs (1) to (5), inclusive, reverts to the Treasury of the Virgin Islands if the underlying false claims involved Government funds.

(7) For purposes of this section, 'proceeds' include civil penalties, as well as double or treble damages as provided in section 3503.

(8) If the Government or the qui tam plaintiff prevails in or settles any action under subsection (b), the qui tam plaintiff is entitled to receive an amount for court costs and related expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees. All expenses, costs, and fees must be awarded against the defendant. The Government is not liable for any expenses, costs or fees that a person incurs in bringing an action under this section.

(9) If the Government, or the qui tam plaintiff proceeds with the action. the court may award to the defendant reasonable attorney's fees and expenses against the party that proceeded with the action, if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(g) The court may stay any proposed discovery of the person initiating the action for a period of not more than 60 days if the Attorney General shows that discovery would interfere with an investigation or a prosecution of a criminal or civil matter arising out of the same facts, regardless of whether the Attorney General proceeds with the action. This showing must be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

- (1) Limiting the number of witnesses the person may call;
- (2) Limiting the length of the testimony of the witnesses;
- (3) Limiting the person's cross-examination of witnesses; and
- (4) Otherwise limiting the participation by the person in the litigation.

§ 3505 Prohibited actions by employers; remedies

(a) An employer may not make, adopt, or enforce any rule, regulation, agreement or policy preventing an employee, contractor or agent from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under section 3504.

(b) An employer may not discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under section 3504.

(c) An employer, contractor or agent who violates subsection (b) is liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the employer shall pay litigation costs and reasonable attorneys' fees. An employee, contractor or agent may bring an action in the Superior Court for the relief provided in this subsection.

(d) An employee, contractor or agent who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by the employer because of participation in conduct that directly or indirectly resulted in a false claim being submitted to the Government is entitled to the remedies under subsection (c) only if the employee, contractor or agent disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed or made other lawful efforts to stop a violation of this subchapter.

§ 3506 Limitations period; burden of proof; estoppel of defendant by guilty verdict

- (a) A civil action under section 3504 may not be filed more than three years after the date of discovery by the Attorney General or, in any event, not more than 10 years after the date on which the violation of section 3503 was committed.
- (b) In any action brought under section 3504, the Government, or the qui tam plaintiff is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
- (c) Notwithstanding any other law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under section 3504.

§ 3507 Other remedies

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

§ 3508 False Claims Act Fund

- (a) The False Claims Act Fund is established in Treasury of the Virgin Islands as a separate and distinct fund administered by the Commissioner of the Department of Finance.
- (b) Proceeds from the action or settlement of the claim by the Attorney General pursuant to this chapter must be deposited into this fund.
- (c) Moneys in this fund, upon appropriation by the Legislature, may be used by the Attorney General exclusively to support the ongoing investigation and prosecution of false claims in furtherance of this chapter.
- (d) Monies in the Fund do not revert to the General Fund at the end of any fiscal year, but remain available for the purposes set forth in subsection (c), subject to authorization and appropriation by the Legislature.
- (e) Whenever the balance in the Fund equals or exceeds \$2,000,000, the Commissioner of Finance shall deposit the excess amounts into the General Fund.
- (f) The Inspector General shall audit the Fund annually.

§ 3509 Liberal construction; severability

(a) This chapter must be liberally construed and applied to promote its remedial and deterrent purposes.

If any provision of this chapter or the application of the provision to any person or circumstance is held to be invalid by a court of competent jurisdiction, the determination of invalidity does not affect, impair or invalidate other provisions of this chapter or the application of the other provisions which can be given effect without the invalid provision or application.