

# VIRGINIA FALSE CLAIMS ACT

## VIRGINIA FRAUD AGAINST TAXPAYERS ACT

### § 8.01-216.1. Citation.

This article may be cited as the Virginia Fraud Against Taxpayers Act.

### § 8.01-216.2. Definitions.

As used in this article, unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this article.

"Claim" means any request or demand, whether under a contract or otherwise, for money or property, regardless of whether the Commonwealth has title to the money or property, that (i) is presented to an officer, employee, or agent of the Commonwealth or (ii) is made to a contractor, grantee, or other recipient (a) if the money or property is to be spent or used on the Commonwealth's behalf or to advance a governmental program or interest and (b) if the Commonwealth provides or has provided any portion of the money or property requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. For purposes of this article, "claim" does not include requests or demands for money or property that the Commonwealth has paid to an individual as compensation for employment with the Commonwealth or as income subsidy with no restriction on that individual's use of the money or property.

"Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

"Documentary material" means 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.

"Employee" includes an employee or officer of the Commonwealth.

"Employer" includes the Commonwealth.

"Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this article.

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

"Obligation" means an established duty, whether or not fixed, arising from (i) an express or implied contractual, grantor-grantee, or licensor-licensee relationship; (ii) a fee-based or similar relationship; (iii) a statute or regulation; or (iv) the retention of any overpayment.

"Official use" means any use that is consistent with the law, regulations, and policies of the Commonwealth, including use in connection with (i) internal memoranda and reports of the Office of the Attorney General; (ii) communications between the Office of the Attorney General 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 of the Attorney General investigation or prosecution of a case; (iii) interviews of any qui tam relator or other witness; (iv) oral examinations; (v) depositions; (vi) the preparation for and response to civil discovery requests; (vii) the introduction into the record of a case or proceeding; (viii) applications, motions, memoranda, and briefs submitted to a court or other tribunal; and (ix) communications with government investigators, auditors, consultants, experts, the counsel of other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust.

"Product of discovery" means (i) 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; (ii) any digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index or other manner of access to any item listed in clause (i).

### § 8.01-216.3. False claims; civil penalty.

A. Any person who:

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 subdivision 1, 2, 4, 5, 6, or 7;
4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and knowingly delivers, or causes to be delivered, less than all such money or property;
5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the receipt without completely knowing that the information on the receipt is true;
6. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property; or
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 Commonwealth or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Commonwealth;

shall be liable to the Commonwealth for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the Commonwealth.

A person violating this section shall be liable to the Commonwealth for reasonable attorney fees and costs of a civil action brought to recover any such penalties or damages. All such fees and costs shall be paid to the Attorney General's Office by the defendant and shall not be included in any damages or civil penalties recovered in a civil action based on a violation of this section.

B. If the court finds that (i) the person committing the violation of this section furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information; (ii) such person fully cooperated with any Commonwealth investigation of such violation; (iii) at the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation; and (iv) the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages that the Commonwealth sustains because of the act of that person. A person violating this section shall also be liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or damages.

C. For purposes of this section, the terms "knowing" and "knowingly" mean 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 require no proof of specific intent to defraud.

D. This section shall not apply to claims, records or statements relating to state or local taxes.

#### **§ 8.01-216.4. Attorney General; investigation, civil action.**

The Attorney General shall investigate any violation of § 8.01-216.3. If the Attorney General finds that a person has violated or is violating § 8.01-216.3, the Attorney General may bring a civil action under this section.

#### **§ 8.01-216.5. Civil actions filed by private persons; Commonwealth may intervene.**

A. A person may bring a civil action for a violation of § 8.01-216.3 for the person and for the Commonwealth. The action shall be brought in the name of the Commonwealth. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

B. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Commonwealth. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

C. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until twenty-one days after the complaint is unsealed and served upon the defendant.

D. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Commonwealth shall proceed with the action, in which

case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

E. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action.

**§ 8.01-216.6. Rights of private plaintiff and Commonwealth.**

A. If the Commonwealth proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The Commonwealth may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Commonwealth of the filing of the complaint and the court has provided the person with an opportunity for a hearing on the complaint.

C. The Commonwealth may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The Commonwealth may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

D. Upon a showing by the Commonwealth that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Commonwealth'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, such as (i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

E. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

F. If the Commonwealth elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Commonwealth so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the Commonwealth's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Commonwealth to intervene at a later date upon a showing of good cause.

G. Whether or not the Commonwealth proceeds with the action, upon a showing by the Commonwealth that certain actions of discovery by the person initiating the action would interfere with the Commonwealth's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the Commonwealth 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. Notwithstanding the provisions of subsection B of § 8.01-216.5, the Commonwealth may elect to pursue its claim through any alternate remedy available to the Commonwealth, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this article. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the Commonwealth, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

**§ 8.01-216.7. Award to private plaintiff.**

A. Except as hereinafter provided, if the Commonwealth proceeds with an action brought by a person under § 8.01-216.5, such person shall receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this section shall be made from the proceeds of the award. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

B. If the Commonwealth does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the award or settlement and shall be paid out of the proceeds. Such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

C. Whether or not the Commonwealth proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 8.01-216.3 upon which the action was brought, or if the person bringing the action is convicted of criminal conduct arising from his role in the violation of § 8.01-216.3, that person 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 Commonwealth to continue the action.

D. If the Commonwealth does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' 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.

#### **§ 8.01-216.8. Certain actions barred.**

No court shall have jurisdiction over an action brought under § 8.01-216.5 based on information discovered by a present or former employee of the Commonwealth during the course of his employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the Commonwealth failed to act on the information provided within a reasonable period of time.

No court shall have jurisdiction over any action brought under this article by an inmate incarcerated within a state or local correctional facility as defined in § 53.1-1.

No court shall have jurisdiction over an action brought under this article against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the Commonwealth when the action was brought. For purposes of this section, "exempt official" means the Governor, Lieutenant Governor, Attorney General and the directors or members of any department, authority, board, bureau, commission or agency of the Commonwealth or any political subdivision of the Commonwealth.

In no event may a person bring an action under this article that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

The court shall dismiss an action or claim under § 8.01-216.5 unless opposed by the Commonwealth if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil or administrative hearing in which the Commonwealth or its agent is a party, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or 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. For purposes of this section, "original source" means an individual (i) who either prior to a public disclosure has voluntarily disclosed to the Commonwealth the information on which the allegations or transactions in a claim are based or (ii) who 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 Commonwealth before filing an action under this article.

Except as otherwise provided in this section, the Commonwealth shall not be liable for expenses a person incurs in bringing an action under this article.

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, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of others' efforts to stop one or more violations of this article. Relief 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 fees. Any relief awarded to an employee under this section shall be reduced by any amount awarded to the employee through a state or local grievance process. An action under this section may be brought in a court of competent jurisdiction for the relief provided in this section. This paragraph shall constitute a waiver of sovereign immunity and creates a cause of action by an employee against the Commonwealth if the Commonwealth is the employer responsible for the adverse employment action that would entitle the employee to the relief set forth in this paragraph.

#### **§ 8.01-216.9. Procedure; statute of limitations.**

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this article may be served at any place in the Commonwealth.

A civil action under § 8.01-216.4 or 8.01-216.5 may not be brought (i) more than six years after the date on which the violation is committed or (ii) 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 of the Commonwealth charged with responsibility to act in the circumstances, but in that event no more than ten years after the date on which the violation is committed, whichever occurs last.

If the Commonwealth elects to intervene and proceed with an action brought under § 8.01-216.5, the Commonwealth may file its own complaint or amend the complaint of a person who has brought an action under § 8.01-216.5 to clarify or add detail to any claim in which the Commonwealth is intervening and to add any additional claim for which the Commonwealth contends it is entitled to relief. Any complaint filed by the Commonwealth pursuant to this paragraph 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 Commonwealth arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in such person's complaint.

In any action brought under § 8.01-216.4 or 8.01-216.5, the Commonwealth shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop 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 § 8.01-216.4 or 8.01-216.5.

#### **§ 8.01-216.10. Civil investigative demands; issuance.**

A. Whenever the Attorney General or his 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 his designee may, before commencing a civil proceeding or making an election under this article, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person (i) to produce such documentary material for inspection and copying, (ii) to answer in writing written interrogatories with respect to such documentary material or information, (iii) to give oral testimony concerning such documentary material or information, or (iv) to furnish any combination of such material, answers, or testimony.

B. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in any manner authorized by this article, 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.

C. Any information obtained by the Attorney General or his designee pursuant to this section may be shared with any qui tam relator if the Attorney General or his designee determines that such information is necessary as part of any false claims investigation.

#### **§ 8.01-216.11. Civil investigative demand; contents and deadlines.**

Each civil investigative demand issued under this article shall state the nature of the conduct constituting the alleged violation of a false claims law that is under investigation, and the applicable provision of law alleged to be violated.

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 that 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.

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.

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 and the custodian to whom the transcript of such examination shall be submitted; (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 that will be taken pursuant to the demand.

Any civil investigative demand that is an express demand for any product of discovery shall not be returned or returnable until twenty-one days after a copy of such demand has been served upon the person from whom the discovery was obtained.

The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this article shall be a date that is not less than seven days after the date on which the demand is received, unless the Attorney General determines that exceptional circumstances are present that warrant the commencement of such testimony within a lesser period of time.

The Attorney General shall not authorize the issuance 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.

**§ 8.01-216.12. Civil investigative demands; protected material or information.**

A civil investigative demand issued under this article shall 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 (i) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this Commonwealth to aid in a grand jury investigation or (ii) the standards applicable to discovery requests under the Rules of the Supreme Court of Virginia, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this article.

Any such demand that 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 that the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

**§ 8.01-216.13. Civil investigative demands; service and jurisdiction.**

Any civil investigative demand issued under this article may be served by an investigator, or by any person authorized to serve process on individuals in the Commonwealth.

Any such demand or any petition filed under this article may be served upon any person who is not found within Virginia in such manner as the Rules of the Supreme Court of Virginia or the Code of Virginia prescribe for service of process outside Virginia. To the extent that the courts of this Commonwealth can assert jurisdiction over any such person consistent with due process, the courts of this Commonwealth shall have the same jurisdiction to take any action respecting compliance with the provisions of this article by any such person that the court would have if such person were personally within the jurisdiction of the court.

Service of any civil investigative demand issued under this article or of any petition filed under this article may be made upon a partnership, corporation, association, or other legal entity by (i) 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; (ii) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or (iii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

Service of any such demand or petition may be made upon any natural person by (i) delivering an executed copy of such demand or petition to the person, or (ii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

A verified return by the individual serving any civil investigative demand issued under this article or any petition filed under this article setting forth the manner of such service shall be proof of 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.

**§ 8.01-216.14. Civil investigative demands; documentary material.**

The production of documentary material in response to a civil investigative demand served under this article shall be made under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is directed, or (ii) 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. 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 investigator identified in the demand.

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

**§ 8.01-216.15. Civil investigative demands; interrogatories.**

Each inquiry in a civil investigative demand served under this article 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 (i) in the case of a natural person, the person to whom the demand is directed, or (ii) in the case of a person other than a natural person, the person or persons responsible for answering each inquiry. If any inquiry 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.

**§ 8.01-216.16. Civil investigative demands; oral examinations.**

A. The examination of any person pursuant to a civil investigative demand for oral testimony served under this article shall be taken before an officer authorized to administer oaths under the laws of this Commonwealth 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 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. This section shall not preclude the taking of testimony by any means authorized by and in a manner consistent with the Rules of the Supreme Court of Virginia.

B. The 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 Commonwealth, any person who may be agreed upon by the attorney for the Commonwealth and the person giving the testimony, the officer before whom the testimony is to be taken, and any court reporter taking such testimony.

C. The oral testimony of any person taken pursuant to a civil investigative demand served under this article shall be taken in the county or city within which such person resides, is found, or transacts business or in such other place as may be agreed upon by the investigator conducting the examination and such person.

D. When the testimony is fully transcribed, the 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 that the witness desires to make shall be entered and identified upon the transcript by the officer or the 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 thirty days after being afforded a reasonable opportunity to examine it, the officer or the 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.

E. 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 investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the Attorney General.

F. Upon payment of reasonable charges therefor, the investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

G. Any person compelled to appear for oral testimony under a civil investigative demand 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. 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 circuit court for an order compelling such person to answer such question. 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 applicable law.

H. Any person appearing for oral testimony under a civil investigative demand issued under this article shall be entitled to the same fees and allowances paid to witnesses in the circuit court.

**§ 8.01-216.17. Civil investigative demands; custodian of documents; answers.**

A. The Attorney General shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this article.

- B. An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the Attorney General. The Attorney General shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material.
- C. The Attorney General may cause the preparation of such copies of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator, or other officer or employee of the Attorney General or employee of the Department of State Police. Such material, answers, and transcripts may be used by any authorized investigator or other officer or employee in connection with the taking of oral testimony under this article.
- D. Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the Attorney General, shall be available for examination by any individual other than an investigator or other officer or employee of the Attorney General or employee of the Department of State Police authorized by the Attorney General. The prohibition on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other state agency for use by such agency in furtherance of its statutory responsibilities.
- E. While in the possession of the Attorney General and under such reasonable terms and conditions as the Attorney General shall prescribe, (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers, and (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony or by a representative of that person authorized by that person to examine such transcripts.
- F. Any attorney employed by the Office of the Attorney General designated to appear before any court, grand jury, or state agency in any case or proceeding may use any documentary material, answers to interrogatories, or transcripts of oral testimony in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of the court, grand jury, or agency through introduction into the record of such case or proceeding.
- G. If any documentary material has been produced by any person in the course of any investigation pursuant to a civil investigative demand under this article, and (i) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or (ii) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the Attorney General shall, upon written request of the person who produced such material, return to such person any material, other than copies furnished to the investigator, or made for the Attorney General that has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

**§ 8.01-216.18. Civil investigative demands; judicial proceedings for noncompliance.**

- A. Whenever any person fails to comply with any civil investigative demand issued under this article, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender the material, the Attorney General may file in the appropriate circuit court for the county or city in which such person resides, is found, or transacts business, and serve upon such person a petition for a court order for the enforcement of the civil investigative demand.
- B. Any person who has received a civil investigative demand issued under this article may file, in the circuit court of any county or city within which such person resides, is found, or transacts business, and serve upon the investigator identified in such demand a petition for an order of the court to modify or set aside the 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 circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this section shall be filed (i) within twenty-one 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 investigator identified in the demand.
- C. The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this article 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.
- D. In the case of any civil investigative demand issued under this article that is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last



pending, and serve upon any investigator identified in the demand and upon the recipient of the demand a petition for a court order to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subsection shall be filed (i) within twenty-one 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 investigator identified in the demand.

E. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this article, 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.

F. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given by any person in compliance with any civil investigative demand issued under this article, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the circuit court of the county or city within which the office of such custodian is situated, and serve upon such custodian a petition for a court order to require the performance by the custodian of any duty imposed upon the custodian by this section. Whenever any petition is filed in any circuit court under this section, the 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 shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as contempt of the court.

G. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under this article shall be exempt from disclosure under the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

**§ 8.01-216.19. Application of the Rules of the Supreme Court.**

The Rules of the Supreme Court of Virginia shall apply to all proceedings under this article, except when those Rules are inconsistent with this article.