LD6554443

HOUSE BILL NO. 1201

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Chapter 12 of Title 18.2 an article numbered 1.2, consisting of sections numbered 18.2-498.6 through 18.2-498.14, relating to the Virginia False Claims Act.

Patron—Scott

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 12 of Title 18.2 an article numbered 1.2, consisting of sections numbered 18.2-498.6 through 18.2-498.14, as follows:

Article 1.2.

Virginia False Claims Act.

§ 18.2-498.6. False claims.

A. Any person who:

1. Knowingly presents, or causes to be presented, to an officer or employee of the Commonwealth 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 to get a false or fraudulent claim paid or approved by the Commonwealth;

3. Conspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid;

4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

5. 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 to conceal, avoid, or decrease 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 $5,000 and not more than $10,000, plus three times the amount of damages which the Commonwealth sustains because of the act of that person. Exceptions to the aforementioned provisions occur when the court finds that:

a. The person committing the violation of this section furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

b. Such person fully cooperated with any investigation of such violation; and

c. At the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this Code with respect to such violation, and 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 which the Commonwealth sustains because of the act of the person. A person violating this subsection shall also be liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or damages.

B. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

1. Has actual knowledge of the information;

2. Acts in deliberate ignorance of the truth or falsity of the information; or

3. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

C. For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the Commonwealth provides any portion of the money or property which is requested or demanded, or if the Commonwealth will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

D. This section does not apply to claims, records, or statements made under the Internal Revenue

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Code of 1954.

§ 18.2-498.7. Civil actions for false claims.

A. The Attorney General diligently shall investigate all violations under § 18.2-498.6. If the Attorney General finds that a person has violated or is violating § 18.2-498.6, the Attorney General may bring a civil action under this section against the person.

B. Any person may bring a civil action for a violation of § 18.2-498.6 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.

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 sixty 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 sixty days after it receives both the complaint and the material evidence and information.

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 complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant.

Before the expiration of the sixty-day period or any extensions, the Commonwealth shall (i) proceed with the action, in which case the action shall be conducted by the Commonwealth or (ii) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

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

C. 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 set forth in this section.

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 motion and the court has provided the person with an opportunity for a hearing on the motion.

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.

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; or (iv) otherwise limiting the participation by the person in the litigation.

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.

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.

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.

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 section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the Commonwealth, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

If the Commonwealth proceeds with an action brought by a person, such person shall, subject to the second sentence of this paragraph, 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 which 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 or administrative 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 the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which 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.

If the Commonwealth does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which 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 action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which 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.

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 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation, 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, represented by the Office of the Attorney General.

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.

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

No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative 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 the above paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Commonwealth before filing an action under this section which is based on the information.

The Commonwealth is not liable for expenses which a person incurs in bringing an action under this section.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee 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 attorneys' fees. An employee may bring an action in the appropriate court of the Commonwealth for the relief provided in this subsection.

§ 18.2-498.8. False claims procedure; limitations periods.

A civil action under § 18.2-498.6 may not be brought more than six years after the date on which the violation is committed, or 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 no event more than ten years after the date on which the violation is committed, whichever occurs last.

In any action brought under § 18.2-498.7, 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 stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under § 18.2-498.7

§ 18.2-498.9. False claims jurisdiction.

Any action under § 18.2-498.7 may be brought in any judicial circuit in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by § 18.2-498.6 occurred. A summons shall be issued by the appropriate circuit court and served at any place within or outside the Commonwealth.

§ 18.2-498.10. Civil investigative demands.

Whenever the Attorney General 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 may, before commencing a civil proceeding under § 18.2-498.7 or other false claims law, 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. The Attorney General may not delegate the authority to issue civil investigative demands under this section. 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.

Each civil investigative demand issued 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.

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.

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, which will be taken pursuant to the demand.

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 twenty 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 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.

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. The Attorney General may not authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this section.

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

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.

Service of any civil investigative demand or of any petition 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 mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office of 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 mails 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 or any petition 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.

§ 18.2-498.11. Documentary material; interrogatories; oral examinations.

The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by (i) the person to whom the demand is directed, in the case of a natural person, or (ii) a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person, in the case of a person other than a natural 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 Commonwealth.

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 Commonwealth as the court may direct. Such material shall be made so available on the return date specified in such demand, or on such later date as the court may prescribe in writing. Such person may, upon written agreement between the person and the Commonwealth, substitute copies for originals of all or any part of such material.

Each interrogatory in a civil investigative demand 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 interrogatory. 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.

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. 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 custodian.

The Attorney General, deputy attorney general or assistant attorney general 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, any person who may be agreed upon by the Attorney General, deputy attorney general or assistant attorney general and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

The oral testimony of any person taken pursuant to a civil investigative demand served under this section 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 Attorney General, deputy attorney general or assistant attorney general conducting the examination and such person.

When the testimony is fully transcribed, 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 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 shall sign it and state on the record the fact of the waiver, illness or absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

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 shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the court.

Upon payment of reasonable charges therefor, the officer 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.

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, 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 for an order compelling such person to answer such question.

Any person appearing for oral testimony under a civil investigative demand shall be entitled to the same fees and allowances which are paid to witnesses in the circuit courts of the Commonwealth.

§ 18.2-498.12. Custodian of papers.

The Attorney General shall designate an assistant attorney general to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional assistants as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

The Attorney General, Deputy Attorney General or any assistant attorney general who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the appropriate assistant attorney general. The Assistant 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.

The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by the Attorney General's Office, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized assistant attorney general in connection with the taking of oral testimony under this section.

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 appropriate assistant attorney general, shall be available for examination by any individual other than the Attorney General, deputy attorney general or any assistant attorney general or employee of the Attorney General's Office. The prohibition in the preceding sentence 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 paragraph is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other agency of the Commonwealth for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a circuit court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

While in the possession of the custodian 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.

Whenever any attorney of the Attorney General's office has been designated to appear before any court, grand jury, or agency in any case or proceeding, the appropriate assistant attorney general holding of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use 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 appropriate assistant attorney general any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and (i) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any 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 custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

In the event of the death, disability, or separation from service in the Attorney General's Office of the assistant attorney general holding any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly (i) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts and (ii) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated. Any person who is designated to be a successor shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

§ 18.2-498.13. Judicial proceedings.

Whenever any person fails to comply with any civil investigative demand or whenever a satisfactory copy or reproduction of any material requested in such demand cannot be made and such person refuses to surrender such 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 an order of such court for the enforcement of the civil investigative demand.

Any person who has received a civil investigative demand may file, in the appropriate circuit court for the county or city within which such person resides, is found, or transacts business, and serve upon the appropriate assistant attorney general identified in such demand 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 circuit court in which the proceeding for such discovery was obtained, or is or was last pending. Any petition under this subparagraph must be filed (i) within twenty 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.

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 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.

In the case of any civil investigative demand which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the appropriate circuit court for the county or city in which the proceeding for such discovery was obtained, or is or was last pending, and serve upon the appropriate assistant attorney general 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 paragraph must be filed (i) within twenty 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.

The petition shall specify each ground upon which the petitioner relies in seeking relief 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, in compliance with the demand and the running of the time allowed for compliance with the demand.

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, 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 assistant attorney general is situated and serve upon such assistant attorney general, a petition for an order of such court to require the performance by the assistant attorney general of any duty imposed upon the assistant attorney general by this article.

Whenever any petition is filed in any circuit court, 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 article. Any final order so entered shall be subject to appeal. Any disobedience of any final order by any court shall be punished as a contempt of the court.

§ 18.2-498.14. Definitions.

For purposes of this article, the following definitions apply:

"False claims law" means this article and any act of the General Assembly which prohibits, or makes available to the Commonwealth in any court of the Commonwealth any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the Commonwealth.

"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.

"False claims law investigator" means any attorney or investigator employed by the Office of the Attorney General who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the Commonwealth acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

"Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state.

"Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilation 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.

"Product of discovery" includes (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 this definition.