

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 8.01-216.2, 8.01-216.3, 8.01-216.8, 8.01-216.9, 8.01-216.10, and*
 3 *8.01-216.17 of the Code of Virginia, relating to the Virginia Fraud Against Taxpayers Act.*

4 [S 1262]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 8.01-216.2, 8.01-216.3, 8.01-216.8, 8.01-216.9, 8.01-216.10, and 8.01-216.17 of the Code of**
 8 **Virginia are amended and reenacted as follows:**

9 § 8.01-216.2. Definitions.

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

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

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

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

30 "Documentary material" means the original or any copy of any book, record, report, memorandum,
 31 paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible
 32 through computer or other information retrieval systems, together with instructions and all other
 33 materials necessary to use or interpret such data compilations, and any product of discovery.

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

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

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

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

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

53 "Product of discovery" means (i) the original or duplicate of any deposition, interrogatory, document,
 54 thing, result of the inspection of land or other property, examination, or admission, which is obtained by
 55 any method of discovery in any judicial or administrative proceeding of an adversarial nature; (ii) any
 56 digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index

57 or other manner of access to any item listed in clause (i).

58 § 8.01-216.3. False claims; civil penalty.

59 A. Any person who:

60 1. Knowingly presents, or causes to be presented, to an officer or employee of the Commonwealth a
61 false or fraudulent claim for payment or approval;

62 2. Knowingly makes, uses, or causes to be made or used, a false record or statement *material to get*
63 a false or fraudulent claim paid or approved by the Commonwealth;

64 3. Conspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid
65 *commit a violation of subdivision 1, 2, 4, 5, 6, or 7;*

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

70 5. ~~Authorizes~~ *Is authorized* to make or deliver a document certifying receipt of property used, or to
71 be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the
72 receipt without completely knowing that the information on the receipt is true;

73 6. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer
74 or employee of the Commonwealth who lawfully may not sell or pledge the property; or

75 7. Knowingly makes, uses, or causes to be made or used, a false record or statement *material to*
76 ~~conceal, avoid, or decrease~~ an obligation to pay or transmit money or property to the Commonwealth *or*
77 *knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit*
78 *money or property to the Commonwealth;*

79 shall be liable to the Commonwealth for a civil penalty of not less than \$5,500 and not more than
80 \$11,000, plus three times the amount of damages sustained by the Commonwealth.

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

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

96 C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with
97 respect to information, (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of
98 the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the
99 information; and *require* no proof of specific intent to defraud ~~is required~~.

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

101 § 8.01-216.8. Certain actions barred; relief from employment discrimination.

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

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

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

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

118 Commonwealth is already a party.

119 ~~No~~ The court shall have jurisdiction ~~over~~ dismiss an action or claim under this article based upon the
120 public disclosure of § 8.01-216.5 unless opposed by the Commonwealth if substantially the same
121 allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil
122 or administrative hearing in which the Commonwealth or its agent is a party, in a legislative,
123 administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news
124 media, unless the action is brought by the Attorney General or the person bringing the action is an
125 original source of the information. For purposes of this section, "original source" means an individual (i)
126 who has direct and independent knowledge of either prior to a public disclosure has voluntarily
127 disclosed to the Commonwealth the information on which the allegations or transactions in a claim are
128 based and or (ii) who has knowledge that is independent of and materially adds to the publicly disclosed
129 allegations or transactions and who has voluntarily provided the information to the Commonwealth
130 before filing an action under this article that is based on the information.

131 The Commonwealth shall not be liable for expenses a person incurs in bringing an action under this
132 article.

133 Any employee ~~who~~, contractor, or agent shall be entitled to all relief necessary to make that
134 employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted,
135 suspended, threatened, harassed, or in any other manner discriminated against in the terms and
136 conditions of employment by his employer because he has opposed any practice referenced in
137 § 8.01-216.3 or because he has initiated, testified, assisted, or participated in any manner in any
138 investigation, action or hearing under this article, shall be entitled to all relief necessary to make the
139 employee whole. Such relief of lawful acts done by the employee, contractor, or agent on behalf of the
140 employee, contractor, or agent or associated others in furtherance of others' efforts to stop one or more
141 violations of this article. Relief shall include reinstatement with the same seniority status such that
142 employee, contractor, or agent would have had but for the discrimination, two times the amount of back
143 pay, interest on the back pay, and compensation for any special damages sustained as a result of the
144 discrimination, including litigation costs and reasonable attorneys' attorney fees. An employee may bring
145 an action under this section may be brought in a court of competent jurisdiction for the relief provided
146 in this section.

147 § 8.01-216.9. Procedure; statute of limitations.

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

150 A civil action under § 8.01-216.4 or 8.01-216.5 may not be brought (i) more than six years after the
151 date on which the violation is committed or (ii) more than three years after the date when facts material
152 to the right of action are known or reasonably should have been known by the official of the
153 Commonwealth charged with responsibility to act in the circumstances, but in that event no more than
154 ten years after the date on which the violation is committed, whichever occurs last.

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

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

166 Notwithstanding any other provision of law, a final judgment rendered in favor of the
167 Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict
168 after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the
169 essential elements of the offense in any action that involves the same transaction as in the criminal
170 proceeding and which is brought under § 8.01-216.4 or 8.01-216.5.

171 § 8.01-216.10. Civil investigative demands; issuance; sharing information.

172 A. Whenever the Attorney General or his designee has reason to believe that any person may be in
173 possession, custody, or control of any documentary material or information relevant to a false claims law
174 investigation, the Attorney General or his designee may, before commencing a civil proceeding or
175 making an election under this article, issue in writing and cause to be served upon such person, a civil
176 investigative demand requiring such person (i) to produce such documentary material for inspection and
177 copying, (ii) to answer in writing written interrogatories with respect to such documentary material or
178 information, (iii) to give oral testimony concerning such documentary material or information, or (iv) to

179 furnish any combination of such material, answers, or testimony.

180 B. Whenever a civil investigative demand is an express demand for any product of discovery, the
181 Attorney General shall cause to be served, in any manner authorized by this article, a copy of such
182 demand upon the person from whom the discovery was obtained and shall notify the person to whom
183 such demand is issued of the date on which such copy was served.

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

187 § 8.01-216.17. Civil investigative demands; custodian of documents; answers.

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

190 B. An investigator who receives any documentary material, answers to interrogatories, or transcripts
191 of oral testimony under this section shall transmit them to the Attorney General. The Attorney General
192 shall take physical possession of such material, answers, or transcripts and shall be responsible for the
193 use made of them and for the return of documentary material.

194 C. The Attorney General may cause the preparation of such copies of documentary material, answers
195 to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator,
196 or other officer or employee of the Attorney General or employee of the Department of State Police,
197 ~~who is authorized for such use by the Attorney General.~~ Such material, answers, and transcripts may be
198 used by any authorized investigator or other officer or employee in connection with the taking of oral
199 testimony under this article.

200 D. Except as otherwise provided in this section, no documentary material, answers to interrogatories,
201 or transcripts of oral testimony, or copies thereof, while in the possession of the Attorney General, shall
202 be available for examination by any individual other than an investigator or other officer or employee of
203 the Attorney General or employee of the Department of State Police authorized by the Attorney General.
204 The prohibition on the availability of material, answers, or transcripts shall not apply if consent is given
205 by the person who produced such material, answers, or transcripts, or, in the case of any product of
206 discovery produced pursuant to an express demand for such material, consent is given by the person
207 from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to
208 the General Assembly, including any committee or subcommittee of the General Assembly, or to any
209 other state agency for use by such agency in furtherance of its statutory responsibilities. ~~Disclosure of~~
210 ~~information to any such other agency shall be allowed only upon application, made by the Attorney~~
211 ~~General to a circuit court, showing substantial need for the use of the information by such agency in~~
212 ~~furtherance of its statutory responsibilities.~~

213 E. While in the possession of the Attorney General and under such reasonable terms and conditions
214 as the Attorney General shall prescribe, (i) documentary material and answers to interrogatories shall be
215 available for examination by the person who produced such material or answers, or by a representative
216 of that person authorized by that person to examine such material and answers, and (ii) transcripts of
217 oral testimony shall be available for examination by the person who produced such testimony or by a
218 representative of that person authorized by that person to examine such transcripts.

219 F. Any attorney employed by the Office of the Attorney General designated to appear before any
220 court, grand jury, or state agency in any case or proceeding may use any documentary material, answers
221 to interrogatories, or transcripts of oral testimony in connection with any such case or proceeding as
222 such attorney determines to be required. Upon the completion of any such case or proceeding, such
223 attorney shall return to the custodian any such material, answers, or transcripts so delivered that have
224 not passed into the control of the court, grand jury, or agency through introduction into the record of
225 such case or proceeding.

226 G. If any documentary material has been produced by any person in the course of any investigation
227 pursuant to a civil investigative demand under this article, and (i) any case or proceeding before the
228 court or grand jury arising out of such investigation, or any proceeding before any state agency
229 involving such material, has been completed, or (ii) no case or proceeding in which such material may
230 be used has been commenced within a reasonable time after completion of the examination and analysis
231 of all documentary material and other information assembled in the course of such investigation, the
232 Attorney General shall, upon written request of the person who produced such material, return to such
233 person any material, other than copies furnished to the investigator, or made for the Attorney General
234 that has not passed into the control of any court, grand jury, or agency through introduction into the
235 record of such case or proceeding.