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SENATE BILL 5310

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators Kline, Pflug, and Keiser

Read first time 01/20/11. Referred to Committee on Judiciary.

1            AN ACT Relating to false claims against the government; adding a  
2 new chapter to Title 4 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** This chapter may be known and cited as the  
5 Washington state false claims act.

6            NEW SECTION.    **Sec. 2.** Unless the context clearly requires  
7 otherwise, the definitions in this section apply throughout this  
8 chapter:

9            (1)(a) "Claim" means any request or demand, whether under a  
10 contract or otherwise, for money or property and whether or not a  
11 government entity has title to the money or property, that:

12            (i) Is presented to an officer, employee, or agent of a government  
13 entity; or

14            (ii) Is made to a contractor, grantee, or other recipient, if the  
15 money or property is to be spent or used on the government entity's  
16 behalf or to advance a government entity program or interest, and the  
17 government entity:

1 (A) Provides or has provided any portion of the money or property  
2 requested or demanded; or

3 (B) Will reimburse such contractor, grantee, or other recipient for  
4 any portion of the money or property which is requested or demanded.

5 (b) A "claim" does not include requests or demands for money or  
6 property that the government entity has paid to an individual as  
7 compensation for employment or as an income subsidy with no  
8 restrictions on that individual's use of the money or property.

9 (2) "Custodian" means the custodian, or any deputy custodian,  
10 designated by the attorney general.

11 (3) "Documentary material" includes the original or any copy of any  
12 book, record, report, memorandum, paper, communication, tabulation,  
13 chart, or other document, or data compilations stored in or accessible  
14 through computer or other information retrieval systems, together with  
15 instructions and all other materials necessary to use or interpret the  
16 data compilations, and any product of discovery.

17 (4) "False claims act investigation" means any inquiry conducted by  
18 any false claims act investigator for the purpose of ascertaining  
19 whether any person is or has been engaged in any violation of this  
20 chapter.

21 (5) "False claims act investigator" means any attorney or  
22 investigator employed by the state attorney general who is charged with  
23 the duty of enforcing or carrying into effect any provision of this  
24 chapter, or any officer or employee of the state of Washington acting  
25 under the direction and supervision of the attorney or investigator in  
26 connection with an investigation pursuant to this chapter.

27 (6) "Government entity" means all state government entities and all  
28 local government entities. A "state government entity" includes every  
29 state office, department, division, bureau, board, commission, or other  
30 state agency. A "local government entity" includes every county,  
31 city, town, municipal corporation, quasi-municipal corporation, or  
32 special purpose district, or any office, department, division, bureau,  
33 board, commission, or agency thereof, or other local public agency.

34 (7)(a) "Knowing" and "knowingly" mean that a person, with respect  
35 to information:

36 (i) Has actual knowledge of the information;

37 (ii) Acts in deliberate ignorance of the truth or falsity of the  
38 information; or

1 (iii) Acts in reckless disregard of the truth or falsity of the  
2 information.

3 (b) "Knowing" and "knowingly" do not require proof of specific  
4 intent to defraud.

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

7 (9) "Obligation" means an established duty, whether or not fixed,  
8 arising from an express or implied contractual, grantor-grantee, or  
9 licensor-licensee relationship, from a fee-based or similar  
10 relationship, from statute or rule, or from the retention of any  
11 overpayment.

12 (10) "Official use" means any use that is consistent with the law,  
13 and the rules and policies of the attorney general, including use in  
14 connection with: Internal attorney general memoranda and reports;  
15 communications between the attorney general and a federal, state, or  
16 local government agency, or a contractor of a federal, state, or local  
17 government agency, undertaken in furtherance of an investigation or  
18 prosecution of a case; interviews of any qui tam relator or other  
19 witness; oral examinations; depositions; preparation for and response  
20 to civil discovery requests; introduction into the record of a case or  
21 proceeding; applications, motions, memoranda, and briefs submitted to  
22 a court or other tribunal; and communications with attorney general  
23 investigators, auditors, consultants and experts, the counsel of other  
24 parties, and arbitrators or mediators, concerning an investigation,  
25 case, or proceeding.

26 (11) "Person" means any natural person, partnership, corporation,  
27 association, or other legal entity, including any local or political  
28 subdivision of a state.

29 (12) "Product of discovery" includes:

30 (a) The original or duplicate of any deposition, interrogatory,  
31 document, thing, result of the inspection of land or other property,  
32 examination, or admission, which is obtained by any method of discovery  
33 in any judicial or administrative proceeding of an adversarial nature;

34 (b) Any digest, analysis, selection, compilation, or derivation of  
35 any item listed in (a) of this subsection; and

36 (c) Any index or other manner of access to any item listed in (a)  
37 of this subsection.

1 (13) "Qui tam action" is an action brought by a person under  
2 section 6 of this act.

3 (14) "Qui tam relator" or "relator" is a person who brings an  
4 action under section 6 of this act.

5 NEW SECTION. **Sec. 3.** (1) Subject to subsection (2) of this  
6 section, a person is liable to the government entity for a civil  
7 penalty of not less than five thousand dollars and not more than ten  
8 thousand dollars, plus three times the amount of damages which the  
9 government entity sustains because of the act of that person, if the  
10 person:

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

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

15 (c) Conspires to commit one or more of the violations in this  
16 subsection (1);

17 (d) Has possession, custody, or control of property or money used,  
18 or to be used, by the government entity and knowingly delivers, or  
19 causes to be delivered, less than all of that money or property;

20 (e) Is authorized to make or deliver a document certifying receipt  
21 of property used, or to be used, by the government entity and,  
22 intending to defraud the government entity, makes or delivers the  
23 receipt without completely knowing that the information on the receipt  
24 is true;

25 (f) Knowingly buys, or receives as a pledge of an obligation or  
26 debt, public property from an officer or employee of the government  
27 entity who lawfully may not sell or pledge property; or

28 (g) Knowingly makes, uses, or causes to be made or used, a false  
29 record or statement material to an obligation to pay or transmit money  
30 or property to the government entity, or knowingly conceals or  
31 knowingly and improperly avoids or decreases an obligation to pay or  
32 transmit money or property to the government entity.

33 (2) The court may assess not less than two times the amount of  
34 damages which the government entity sustains because of the act of a  
35 person, if the court finds that:

36 (a) The person committing the violation of subsection (1) of this

1 section furnished the Washington state attorney general with all  
2 information known to him or her about the violation within thirty days  
3 after the date on which he or she first obtained the information;

4 (b) The person fully cooperated with any investigation by the  
5 attorney general of the violation; and

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

11 NEW SECTION. **Sec. 4.** Any information furnished pursuant to this  
12 chapter is exempt from disclosure under the public records act, chapter  
13 42.56 RCW, until final disposition and all court ordered seals are  
14 lifted.

15 NEW SECTION. **Sec. 5.** Subject to funds appropriated for this  
16 purpose, the attorney general must make a good faith effort to  
17 investigate a violation under section 3 of this act. If the attorney  
18 general finds that a person has violated or is violating section 3 of  
19 this act, the attorney general may bring a civil action under this  
20 section against the person.

21 NEW SECTION. **Sec. 6.** (1) A person may bring a civil action for a  
22 violation of section 3 of this act for the person and for the  
23 government entity. The action may be known as a qui tam action and the  
24 person bringing the action as a qui tam relator. The action must be  
25 brought in the name of the government entity.

26 (2) A relator filing an action under this chapter must serve a copy  
27 of the complaint and written disclosure of substantially all material  
28 evidence and information the person possesses on the attorney general  
29 in electronic format. The relator must file the complaint in camera.  
30 The complaint must remain under seal for at least sixty days, and may  
31 not be served on the defendant until the court so orders. The attorney  
32 general may elect to intervene and proceed with the action within sixty  
33 days after it receives both the complaint and the material evidence and  
34 information.

1 (3) The qui tam action may be dismissed by the court, however the  
2 attorney general must be given notice and an opportunity to participate  
3 in the hearing on the motion to dismiss.

4 (4) The attorney general may, for good cause shown, move the court  
5 for extensions of the time during which the complaint remains under  
6 seal under subsection (2) of this section. The motions may be  
7 supported by affidavits or other submissions in camera. The defendant  
8 may not be required to respond to any complaint filed under this  
9 section until twenty days after the complaint is unsealed and served  
10 upon the defendant.

11 (5) If the attorney general does not proceed with the action prior  
12 to the expiration of the sixty-day period or any extensions obtained  
13 under subsection (4) of this section, then the relator has the right to  
14 conduct the action.

15 (6) When a person brings an action under this section, no person  
16 other than the attorney general may intervene or bring a related action  
17 based on the facts underlying the pending action.

18 NEW SECTION. **Sec. 7.** (1) If the attorney general proceeds with  
19 the qui tam action, the attorney general shall have the primary  
20 responsibility for prosecuting the action, and is not bound by an act  
21 of the relator. The relator has the right to continue as a party to  
22 the action, subject to the limitations set forth in subsection (2) of  
23 this section.

24 (2)(a) The attorney general may move to dismiss the qui tam action  
25 notwithstanding the objections of the relator if the relator has been  
26 notified by the attorney general of the filing of the motion and the  
27 court has provided the relator with an opportunity for a hearing on the  
28 motion.

29 (b) The attorney general may settle the action with the defendant  
30 notwithstanding the objections of the relator if the court determines,  
31 after a hearing, that the proposed settlement is fair, adequate, and  
32 reasonable under all the circumstances. Upon a showing of good cause,  
33 the hearing may be held in camera.

34 (c) Upon a showing by the attorney general that unrestricted  
35 participation during the course of the litigation by the relator would  
36 interfere with or unduly delay the attorney general's prosecution of

1 the case, or would be repetitious, irrelevant, or for purposes of  
2 harassment, the court may, in its discretion, impose limitations on the  
3 relator's participation, such as:

- 4 (i) Limiting the number of witnesses the relator may call;
- 5 (ii) Limiting the length of the testimony of the witnesses;
- 6 (iii) Limiting the relator's cross-examination of witnesses; or
- 7 (iv) Otherwise limiting the participation by the relator in the  
8 litigation.

9 (d) Upon a showing by the defendant that unrestricted participation  
10 during the course of the litigation by the relator would be for  
11 purposes of harassment or would cause the defendant undue burden or  
12 unnecessary expense, the court may limit the participation by the  
13 relator in the litigation.

14 (3) If the attorney general elects not to proceed with the qui tam  
15 action, the relator has the right to conduct the action. If the  
16 attorney general so requests, the relator must serve on the attorney  
17 general copies of all pleadings filed in the action and shall supply  
18 copies of all deposition transcripts, at the relator's expense.  
19 Additionally, the relator shall provide the attorney general with  
20 notice and the details of all offers of settlement. When the relator  
21 proceeds with the action, the court, without limiting the status and  
22 rights of the relator, may nevertheless permit the attorney general to  
23 intervene at a later date upon a showing of good cause.

24 (4) Whether or not the attorney general proceeds with the qui tam  
25 action, upon a showing by the attorney general that certain actions of  
26 discovery by the relator would interfere with the attorney general's  
27 investigation or prosecution of a criminal or civil matter arising out  
28 of the same facts, the court may stay such discovery for a period of  
29 not more than sixty days. The showing must be conducted in camera.  
30 The court may extend the sixty-day period upon a further showing in  
31 camera that the attorney general has pursued the criminal or civil  
32 investigation or proceedings with reasonable diligence and any proposed  
33 discovery in the civil action will interfere with the ongoing criminal  
34 or civil investigation or proceedings.

35 (5) Notwithstanding section 6 of this act, the attorney general may  
36 elect to pursue its claim through any alternate remedy available to the  
37 attorney general, including any administrative proceeding to determine  
38 a civil money penalty. If any alternate remedy is pursued in another

1 proceeding, the relator has the same rights in the proceeding as the  
2 relator would have had if the action had continued under this section.  
3 Any finding of fact or conclusion of law made in the other proceeding  
4 that has become final is conclusive on all parties to an action under  
5 this section. For purposes of this subsection, a finding or conclusion  
6 is final if it has been finally determined on appeal to the appropriate  
7 court of the United States, if all time for filing the appeal with  
8 respect to the finding or conclusion has expired, or if the finding or  
9 conclusion is not subject to judicial review.

10 NEW SECTION. **Sec. 8.** (1)(a) Subject to (b) of this subsection, if  
11 the attorney general proceeds with a qui tam action, the relator must  
12 receive at least fifteen percent but not more than twenty-five percent  
13 of the proceeds of the action or settlement of the claim, depending  
14 upon the extent to which the relator substantially contributed to the  
15 prosecution of the action.

16 (b) Where the action is one which the court finds to be based  
17 primarily on disclosures of specific information, other than  
18 information provided by the relator, relating to allegations or  
19 transactions in a criminal, civil, or administrative hearing, in a  
20 congressional, administrative, or general accounting office report,  
21 hearing, audit, or investigation, or from the news media, the court may  
22 award an amount it considers appropriate, but in no case more than ten  
23 percent of the proceeds, taking into account the significance of the  
24 information and the role of the relator in advancing the case to  
25 litigation.

26 (c) Any payment to a relator under (a) or (b) of this subsection  
27 must be made from the proceeds. The relator must also receive an  
28 amount for reasonable expenses which the court finds to have been  
29 necessarily incurred, plus reasonable attorneys' fees and costs.  
30 Additionally, the attorney general must receive reasonable attorneys'  
31 fees and costs. All expenses, fees, and costs must be awarded against  
32 the defendant.

33 (2) If the attorney general does not proceed with a qui tam action,  
34 the relator shall receive an amount which the court decides is  
35 reasonable for collecting the civil penalty and damages. The amount  
36 may not be less than twenty-five percent and not more than thirty  
37 percent of the proceeds of the action or settlement and must be paid

1 out of the proceeds. The relator must also receive an amount for  
2 reasonable expenses, which the court finds to have been necessarily  
3 incurred, plus reasonable attorneys' fees and costs. All expenses,  
4 fees, and costs must be awarded against the defendant.

5 (3) Whether or not the attorney general proceeds with the qui tam  
6 action, if the court finds that the action was brought by a person who  
7 planned and initiated the violation of section 1 of this act upon which  
8 the action was brought, then the court may, to the extent the court  
9 considers appropriate, reduce the share of the proceeds of the action  
10 which the person would otherwise receive under subsection (1) or (2) of  
11 this section, taking into account the role of that person in advancing  
12 the case to litigation and any relevant circumstances pertaining to the  
13 violation. If the person bringing the action is convicted of criminal  
14 conduct arising from his or her role in the violation of section 1 of  
15 this act, that person must be dismissed from the civil action and may  
16 not receive any share of the proceeds of the action. The dismissal may  
17 not prejudice the right of the United States to continue the action,  
18 represented by the department of justice.

19 (4) If the attorney general does not proceed with the qui tam  
20 action and the relator conducts the action, the court may award to the  
21 defendant reasonable attorneys' fees and expenses if the defendant  
22 prevails in the action and the court finds that the claim of the  
23 relator was clearly frivolous, vexatious, or brought primarily for  
24 purposes of harassment.

25 (5) The attorney general and a government entity are not liable for  
26 expenses which a relator incurs in bringing an action under this  
27 chapter.

28 (6) Any funds recovered that remain after calculation and  
29 distribution under subsections (1) through (3) of this section must be  
30 distributed and deposited as follows: Actual damages must be returned  
31 to the government entity to which the false claim or claims were  
32 submitted and the remainder to the general fund of the state of  
33 Washington.

34 NEW SECTION. **Sec. 9.** (1) In no event may a person bring a qui tam  
35 action which is based upon allegations or transactions which are the  
36 subject of a civil suit or an administrative civil money penalty  
37 proceeding in which the attorney general is already a party.

1 (2)(a) The court must dismiss an action or claim under this  
2 section, unless opposed by the attorney general, if substantially the  
3 same allegations or transactions as alleged in the action or claim were  
4 publicly disclosed:

5 (i) In a federal criminal, civil, or administrative hearing in  
6 which the attorney general or other governmental entity is a party;

7 (ii) In a congressional, general accounting office report, or other  
8 federal report, hearing, audit, or investigation; or

9 (iii) By the news media, unless the action is brought by the  
10 attorney general or the relator is an original source of the  
11 information.

12 (b) For purposes of this section, "original source" means an  
13 individual who either (i) prior to a public disclosure under (a) of  
14 this subsection, has voluntarily disclosed to the attorney general the  
15 information on which allegations or transactions in a claim are based,  
16 or (ii) has knowledge that is independent of, and materially adds to,  
17 the publicly disclosed allegations or transactions, and who has  
18 voluntarily provided the information to the attorney general before  
19 filing an action under this section.

20 NEW SECTION. **Sec. 10.** (1) Any employee, contractor, or agent is  
21 entitled to all relief necessary to make that employee, contractor, or  
22 agent whole, if that employee, contractor, or agent is discharged,  
23 demoted, suspended, threatened, harassed, or in any other manner  
24 discriminated against in the terms and conditions of employment because  
25 of lawful acts done by the employee, contractor, or agent or associated  
26 others in furtherance of an action under this section or other efforts  
27 to stop one or more violations of this chapter.

28 (2) Relief under subsection (1) of this section must include  
29 reinstatement with the same seniority status that employee, contractor,  
30 or agent would have had but for the discrimination, two times the  
31 amount of back pay, interest on the back pay, and compensation for any  
32 special damages sustained as a result of the discrimination, including  
33 litigation costs and reasonable attorneys' fees, and any and all relief  
34 available under RCW 49.60.030(2). An action under this subsection may  
35 be brought in the appropriate superior court of the state of Washington  
36 for the relief provided in this subsection.

1 (3) A civil action under this section may not be brought more than  
2 three years after the date when the retaliation occurred.

3 NEW SECTION. **Sec. 11.** (1) A subpoena requiring the attendance of  
4 a witness at a trial or hearing conducted under section 6 of this act  
5 may be served at any place in the state of Washington.

6 (2) A civil action under section 6 of this act may be brought at  
7 any time, without limitation after the date on which the violation of  
8 section 3 of this act is committed.

9 (3) If the attorney general elects to intervene and proceed with a  
10 qui tam action, the attorney general may file its own complaint or  
11 amend the complaint of a relator to clarify or add detail to the claims  
12 in which the attorney general is intervening and to add any additional  
13 claims with respect to which the attorney general contends it is  
14 entitled to relief.

15 (4) In any qui tam action brought under section 6 of this act, the  
16 attorney general is required to prove all essential elements of the  
17 cause of action, including damages, by a preponderance of the evidence.

18 (5) Notwithstanding any other provision of law or the rules for  
19 superior court, a final judgment rendered in favor of the government  
20 entity in any criminal proceeding charging fraud or false statements,  
21 whether upon a verdict after trial or upon a plea of guilty or nolo  
22 contendere, estops the defendant from denying the essential elements of  
23 the offense in any action which involves the same transaction as in the  
24 criminal proceeding and which is brought under section 5 or 6(1) of  
25 this act.

26 NEW SECTION. **Sec. 12.** (1) Any action under section 5 or 6 of this  
27 act may be brought in the superior court in any county in which the  
28 defendant or, in the case of multiple defendants, any one defendant can  
29 be found, resides, transacts business, or in which any act proscribed  
30 by section 3 of this act occurred. The appropriate court must issue a  
31 summons as required by the superior court civil rules and service must  
32 occur at any place within the state of Washington.

33 (2) The superior courts have jurisdiction over any action brought  
34 under the laws of any city or county for the recovery of funds paid by  
35 a government entity if the action arises from the same transaction or  
36 occurrence as an action brought under section 5 or 6 of this act.

1 (3) With respect to any local government that is named as a  
2 coplaintiff with the state in an action brought under section 6 of this  
3 act, a seal on the action ordered by the court under section 6 of this  
4 act does not preclude the attorney general or the person bringing the  
5 action from serving the complaint, any other pleadings, or the written  
6 disclosure of substantially all material evidence and information  
7 possessed by the person bringing the action on the law enforcement  
8 authorities that are authorized under the law of the local government  
9 to investigate and prosecute the action on behalf of the local  
10 government, except that the seal applies to the law enforcement  
11 authorities so served to the same extent as the seal applies to other  
12 parties in the action.

13 NEW SECTION. **Sec. 13.** (1) Whenever the attorney general, or a  
14 designee, for purposes of this section, has reason to believe that any  
15 person may be in possession, custody, or control of any documentary  
16 material or information relevant to a false claims act investigation,  
17 the attorney general, or a designee, may, before commencing a civil  
18 proceeding under section 6(1) of this act or making an election under  
19 section 6(2) of this act, issue in writing and serve upon the person,  
20 a civil investigative demand requiring the person:

21 (a) To produce the documentary material for inspection and copying;

22 (b) To answer in writing written interrogatories with respect to  
23 the documentary material or information;

24 (c) To give oral testimony concerning the documentary material or  
25 information; or

26 (d) To furnish any combination of such material, answers, or  
27 testimony. The attorney general may delegate the authority to issue  
28 civil investigative demands under this subsection (1). Whenever a  
29 civil investigative demand is an express demand for any product of  
30 discovery, the attorney general, the deputy attorney general, or an  
31 assistant attorney general must serve, in any manner authorized by this  
32 section, a copy of the demand upon the person from whom the discovery  
33 was obtained and must notify the person to whom the demand is issued of  
34 the date on which the copy was served. Any information obtained by the  
35 attorney general or a designee of the attorney general under this  
36 section may be shared with any qui tam relator if the attorney general

1 or designee determine it is necessary as part of any false claims act  
2 investigation.

3 (2)(a) Each civil investigative demand issued under subsection (1)  
4 of this section state the nature of the conduct constituting the  
5 alleged violation of this chapter which is under investigation, and the  
6 applicable provision of law alleged to be violated.

7 (b) If the demand is for the production of documentary material,  
8 the demand must:

9 (i) Describe each class of documentary material to be produced with  
10 such definiteness and certainty as to permit the material to be fairly  
11 identified;

12 (ii) Prescribe a return date for each class which will provide a  
13 reasonable period of time within which the material so demanded may be  
14 assembled and made available for inspection and copying; and

15 (iii) Identify the false claims act investigator to whom such  
16 material must be made available.

17 (c) If the demand is for answers to written interrogatories, the  
18 demand must:

19 (i) Set forth with specificity the written interrogatories to be  
20 answered;

21 (ii) Prescribe dates at which time answers to written  
22 interrogatories must be submitted; and

23 (iii) Identify the false claims law investigator to whom such  
24 answers must be submitted.

25 (d) If the demand is for the giving of oral testimony, the demand  
26 must:

27 (i) Prescribe a date, time, and place at which oral testimony must  
28 be commenced;

29 (ii) Identify a false claims act investigator who must conduct the  
30 examination and the custodian to whom the transcript of the examination  
31 must be submitted;

32 (iii) Specify that the attendance and testimony are necessary to  
33 the conduct of the investigation;

34 (iv) Notify the person receiving the demand of the right to be  
35 accompanied by an attorney and any other representative; and

36 (v) Describe the general purpose for which the demand is being  
37 issued and the general nature of the testimony, including the primary  
38 areas of inquiry, which will be taken pursuant to the demand.

1 (e) Any civil investigative demand issued under this section which  
2 is an express demand for any product of discovery may not be returned  
3 or is not returnable until twenty days after a copy of the demand has  
4 been served upon the person from whom the discovery was obtained.

5 (f) The date prescribed for the commencement of oral testimony  
6 pursuant to a civil investigative demand issued under this section may  
7 not be sooner than seven days after the date on which demand is  
8 received, unless the attorney general or an assistant attorney general  
9 designated by the attorney general determines that exceptional  
10 circumstances are present which warrant the commencement of the  
11 testimony sooner.

12 (g) The attorney general may not authorize the issuance under this  
13 section of more than one civil investigative demand for oral testimony  
14 by the same person unless the person requests otherwise or unless the  
15 attorney general, after investigation, notifies that person in writing  
16 that an additional demand for oral testimony is necessary.

17 (3) A civil investigative demand issued under subsection (1) or (2)  
18 of this section may not require the production of any documentary  
19 material, the submission of any answers to written interrogatories, or  
20 the giving of any oral testimony if the material, answers, or testimony  
21 would be protected from disclosure under:

22 (a) The standards applicable to subpoenas or subpoenas duces tecum  
23 issued by a court of the United States to aid in a special inquiry  
24 investigation; or

25 (b) The standards applicable to discovery requests under the  
26 superior court civil rules, to the extent that the application of these  
27 standards to any demand is appropriate and consistent with the  
28 provisions and purposes of this section.

29 (4) Any demand which is an express demand for any product of  
30 discovery supersedes any inconsistent order, rule, or provision of law,  
31 other than this section, preventing or restraining disclosure of the  
32 product of discovery to any person. Disclosure of any product of  
33 discovery pursuant to any express demand does not constitute a waiver  
34 of any right or privilege which the person making such disclosure may  
35 be entitled to invoke to resist discovery of trial preparation  
36 materials.

37 (5) Any civil investigative demand issued under this section may be

1 served by a false claims act investigator, or by a commissioned law  
2 enforcement official, at any place within the state of Washington.

3 (6) Service of any civil investigative demand issued under (a) of  
4 this subsection or of any petition filed under subsection (25) of this  
5 section may be made upon a partnership, corporation, association, or  
6 other legal entity by:

7 (a) Delivering an executed copy of the demand or petition to any  
8 partner, executive officer, managing agent, or general agent of the  
9 partnership, corporation, association, or entity, or to any agent  
10 authorized by appointment or by law to receive service of process on  
11 behalf of such partnership, corporation, association, or entity;

12 (b) Delivering an executed copy of the demand or petition to the  
13 principal office or place of business of the partnership, corporation,  
14 association, or entity; or

15 (c) Depositing an executed copy of the demand or petition in the  
16 United States mail by registered or certified mail, with a return  
17 receipt requested, addressed to such partnership, corporation,  
18 association, or entity at its principal office or place of business.

19 (7) Service of any demand or petition may be made upon any natural  
20 person by:

21 (a) Delivering an executed copy of the demand or petition to the  
22 person; or

23 (b) Depositing an executed copy of the demand or petition in the  
24 United States mail by registered or certified mail, with a return  
25 receipt requested, addressed to the person at the person's residence or  
26 principal office or place of business.

27 (8) A verified return by the individual serving any civil  
28 investigative demand issued under subsection (1) or (2) of this section  
29 or any petition filed under subsection (25) of this section setting  
30 forth the manner of the service constitutes proof of the service. In  
31 the case of service by registered or certified mail, the return must be  
32 accompanied by the return post office receipt of delivery of the  
33 demand.

34 (9) The production of documentary material in response to a civil  
35 investigative demand served under this section must be made under a  
36 sworn certificate, in the form as the demand designates, by:

37 (a) In the case of a natural person, the person to whom the demand  
38 is directed; or

1 (b) In the case of a person other than a natural person, a person  
2 having knowledge of the facts and circumstances relating to the  
3 production and authorized to act on behalf of the person. The  
4 certificate must state that all of the documentary material required by  
5 the demand and in the possession, custody, or control of the person to  
6 whom the demand is directed has been produced and made available to the  
7 false claims act investigator identified in the demand.

8 (10) Any person upon whom any civil investigative demand for the  
9 production of documentary material has been served under this section  
10 shall make such material available for inspection and copying to the  
11 false claims act investigator identified in the demand at the principal  
12 place of business of the person, or at another place as the false  
13 claims act investigator and the person thereafter may agree and  
14 prescribe in writing, or as the court may direct under subsection (25)  
15 of this section. The material must be made available on the return  
16 date specified in the demand, or on a later date as the false claims  
17 act investigator may prescribe in writing. The person may, upon  
18 written agreement between the person and the false claims act  
19 investigator, substitute copies for originals of all or any part of the  
20 material.

21 (11) Each interrogatory in a civil investigative demand served  
22 under this section must be answered separately and fully in writing  
23 under oath and must be submitted under a sworn certificate, in the form  
24 as the demand designates, by:

25 (a) In the case of a natural person, the person to whom the demand  
26 is directed; or

27 (b) In the case of a person other than a natural person, the person  
28 or persons responsible for answering each interrogatory. If any  
29 interrogatory is objected to, the reasons for the objection must be  
30 stated in the certificate instead of an answer. The certificate must  
31 state that all information required by the demand and in the  
32 possession, custody, control, or knowledge of the person to whom the  
33 demand is directed has been submitted. To the extent that any  
34 information is not furnished, the information must be identified and  
35 reasons set forth with particularity regarding the reasons why the  
36 information was not furnished.

37 (12) The examination of any person pursuant to a civil  
38 investigative demand for oral testimony served under this section must

1 be taken before an officer authorized to administer oaths and  
2 affirmations by the laws of the state of Washington or of the place  
3 where the examination is held. The officer before whom the testimony  
4 is to be taken must put the witness on oath or affirmation and must,  
5 personally or by someone acting under the direction of the officer and  
6 in the officer's presence, record the testimony of the witness. The  
7 testimony must be taken stenographically and must be transcribed. When  
8 the testimony is fully transcribed, the officer before whom the  
9 testimony is taken shall promptly transmit a copy of the transcript of  
10 the testimony to the custodian. This subsection does not preclude the  
11 taking of testimony by any means authorized by, and in a manner  
12 consistent with, the superior court civil rules.

13 (13) The false claims act investigator conducting the examination  
14 shall exclude from the place where the examination is held all persons  
15 except the person giving the testimony, the attorney for and any other  
16 representative of the person giving the testimony, the attorney  
17 general, any person who may be agreed upon by the attorney for the  
18 government and the person giving the testimony, the officer before whom  
19 the testimony is to be taken, and any stenographer taking the  
20 testimony.

21 (14) The oral testimony of any person taken pursuant to a civil  
22 investigative demand served under this section must be taken in the  
23 county within which such person resides, is found, or transacts  
24 business, or in another place as may be agreed upon by the false claims  
25 act investigator conducting the examination and the person.

26 (15) When the testimony is fully transcribed, the false claims act  
27 investigator or the officer before whom the testimony is taken must  
28 afford the witness, who may be accompanied by counsel, a reasonable  
29 opportunity to examine and read the transcript, unless the examination  
30 and reading are waived by the witness. Any changes in form or  
31 substance which the witness desires to make must be entered and  
32 identified upon the transcript by the officer or the false claims act  
33 investigator, with a statement of the reasons given by the witness for  
34 making the changes. The transcript must then be signed by the witness,  
35 unless the witness in writing waives the signing, is ill, cannot be  
36 found, or refuses to sign. If the transcript is not signed by the  
37 witness within thirty days after being afforded a reasonable  
38 opportunity to examine it, the officer or the false claims act

1 investigator must sign it and state on the record the fact of the  
2 waiver, illness, absence of the witness, or the refusal to sign,  
3 together with the reasons given.

4 (16) The officer before whom the testimony is taken must certify on  
5 the transcript that the witness was sworn by the officer and that the  
6 transcript is a true record of the testimony given by the witness, and  
7 the officer or false claims act investigator must promptly deliver the  
8 transcript, or send the transcript by registered or certified mail, to  
9 the custodian.

10 (17) Upon payment of reasonable charges therefor, the false claims  
11 act investigator must furnish a copy of the transcript to the witness  
12 only, except that the attorney general, the deputy attorney general, or  
13 an assistant attorney general may, for good cause, limit the witness to  
14 inspection of the official transcript of the witness' testimony.

15 (18)(a) Any person compelled to appear for oral testimony under a  
16 civil investigative demand issued under subsection (1) or (2) of this  
17 section may be accompanied, represented, and advised by counsel.  
18 Counsel may advise the person, in confidence, with respect to any  
19 question asked of the person. The person or counsel may object on the  
20 record to any question, in whole or in part, and must briefly state for  
21 the record the reason for the objection. An objection may be made,  
22 received, and entered upon the record when it is claimed that the  
23 person is entitled to refuse to answer the question on the grounds of  
24 any constitutional or other legal right or privilege, including the  
25 privilege against self-incrimination. The person may not otherwise  
26 object to or refuse to answer any question, and may not directly or  
27 through counsel otherwise interrupt the oral examination. If the  
28 person refuses to answer any question, a special injury proceeding  
29 petition may be filed in the superior court under subsection (25) of  
30 this section for an order compelling the person to answer the  
31 question.

32 (b) If the person refuses to answer any question on the grounds of  
33 the privilege against self-incrimination, the testimony of the person  
34 may be compelled in accordance with the provisions of the superior  
35 court civil rules.

36 (19) Any person appearing for oral testimony under a civil  
37 investigative demand issued under subsection (1) or (2) of this section

1 is entitled to the same fees and allowances which are paid to witnesses  
2 in the superior courts.

3 (20) The attorney general must designate a false claims act  
4 investigator to serve as custodian of documentary material, answers to  
5 interrogatories, and transcripts of oral testimony received under this  
6 section, and must designate such additional false claims act  
7 investigators as the attorney general determines from time to time to  
8 be necessary to serve as deputies to the custodian.

9 (21)(a) A false claims act investigator who receives any  
10 documentary material, answers to interrogatories, or transcripts of  
11 oral testimony under this section must transmit them to the custodian.  
12 The custodian shall take physical possession of the material, answers,  
13 or transcripts and is responsible for the use made of them and for the  
14 return of documentary material under subsection (23) of this section.

15 (b) The custodian may cause the preparation of the copies of the  
16 documentary material, answers to interrogatories, or transcripts of  
17 oral testimony as may be required for official use by any false claims  
18 act investigator, or employee of the attorney general. The material,  
19 answers, and transcripts may be used by any authorized false claims act  
20 investigator or other officer or employee in connection with the taking  
21 of oral testimony under this section.

22 (c)(i) Except as otherwise provided in this subsection (21), no  
23 documentary material, answers to interrogatories, or transcripts of  
24 oral testimony, or copies thereof, while in the possession of the  
25 custodian, may be available for examination by any individual other  
26 than a false claims act investigator or other officer or employee of  
27 the attorney general authorized under (b) of this subsection.

28 (ii) The prohibition in (c)(i) of this subsection on the  
29 availability of material, answers, or transcripts does not apply if  
30 consent is given by the person who produced the material, answers, or  
31 transcripts, or, in the case of any product of discovery produced  
32 pursuant to an express demand for the material, consent is given by the  
33 person from whom the discovery was obtained. Nothing in this  
34 subsection (c)(ii) is intended to prevent disclosure to the  
35 legislature, including any committee or subcommittee for use by such an  
36 agency in furtherance of its statutory responsibilities.

37 (d) While in the possession of the custodian and under the

1 reasonable terms and conditions as the attorney general shall  
2 prescribe:

3 (i) Documentary material and answers to interrogatories must be  
4 available for examination by the person who produced the material or  
5 answers, or by a representative of that person authorized by that  
6 person to examine the material and answers; and

7 (ii) Transcripts of oral testimony must be available for  
8 examination by the person who produced the testimony, or by a  
9 representative of that person authorized by that person to examine the  
10 transcripts.

11 (22) Whenever any official has been designated to appear before any  
12 court, special inquiry judge, or state administrative judge in any case  
13 or proceeding, the custodian of any documentary material, answers to  
14 interrogatories, or transcripts of oral testimony received under this  
15 section may deliver to the official the material, answers, or  
16 transcripts for official use in connection with any case or proceeding  
17 as the official determines to be required. Upon the completion of  
18 such a case or proceeding, the official must return to the custodian  
19 any material, answers, or transcripts so delivered which have not  
20 passed into the control of any court, grand jury, or agency through  
21 introduction into the record of such a case or proceeding.

22 (23) If any documentary material has been produced by any person in  
23 the course of any false claims act investigation pursuant to a civil  
24 investigative demand under this section, and:

25 (a) Any case or proceeding before the court or special inquiry  
26 judge arising out of the investigation, or any proceeding before any  
27 administrative judge involving the material, has been completed; or

28 (b) No case or proceeding in which the material may be used has  
29 been commenced within a reasonable time after completion of the  
30 examination and analysis of all documentary material and other  
31 information assembled in the course of the investigation, the custodian  
32 shall, upon written request of the person who produced the material,  
33 return to the person the material, other than copies furnished to the  
34 false claims act investigator under subsection (10) of this section or  
35 made for the attorney general under subsection (21)(b) of this section  
36 which has not passed into the control of any court, grand jury, or  
37 agency through introduction into the record of the case or proceeding.

1 (24) In the event of the death, disability, or separation from  
2 service of the attorney general or the custodian of any documentary  
3 material, answers to interrogatories, or transcripts of oral testimony  
4 produced pursuant to civil investigative demand under this section, or  
5 in the event of the official relief of the custodian from  
6 responsibility for the custody and control of the material, answers, or  
7 transcripts, the attorney general must promptly:

8 (a) Designate another false claims act investigator to serve as  
9 custodian of the material, answers, or transcripts; and

10 (b) Transmit in writing to the person who produced the material,  
11 answers, or testimony notice of the identity and address of the  
12 successor so designated. Any person who is designated to be a  
13 successor under this subsection (24) has, with regard to the material,  
14 answers, or transcripts, the same duties and responsibilities as were  
15 imposed by this section upon that person's predecessor in office,  
16 except that the successor may not be held responsible for any default  
17 or dereliction which occurred before that designation.

18 (25) Whenever any person fails to comply with any civil  
19 investigative demand issued under subsection (1) or (2) of this  
20 section, or whenever satisfactory copying or reproduction of any  
21 material requested in the demand cannot be done and the person refuses  
22 to surrender the material, the attorney general may file, in any  
23 superior court of the state of Washington for any county in which the  
24 person resides, is found, or transacts business, and serve upon the  
25 person a petition for an order of the court for the enforcement of the  
26 civil investigative demand.

27 (26)(a) Any person who has received a civil investigative demand  
28 issued under subsection (1) or (2) of this section may file, in the  
29 superior court of the state of Washington for the county within which  
30 the person resides, is found, or transacts business, and serve upon the  
31 false claims act investigator identified in the demand a petition for  
32 an order of the court to modify or set aside the demand. In the case  
33 of a petition addressed to an express demand for any product of  
34 discovery, a petition to modify or set aside the demand may be brought  
35 only in the district court of the United States for the judicial  
36 district in which the proceeding in which the discovery was obtained is  
37 or was last pending. Any petition filed under this subsection (26)(a)  
38 must be filed:

1 (i) Within twenty days after the date of service of the civil  
2 investigative demand, or at any time before the return date specified  
3 in the demand, whichever date is earlier; or

4 (ii) Within a longer period as may be prescribed in writing by any  
5 false claims act investigator identified in the demand.

6 (b) The petition must specify each ground upon which the petitioner  
7 relies in seeking relief under (a) of this subsection, and may be based  
8 upon any failure of the demand to comply with the provisions of this  
9 section or upon any constitutional or other legal right or privilege of  
10 the person. During the pendency of the petition in the court, the  
11 court may stay, as it deems proper, the running of the time allowed for  
12 compliance with the demand, in whole or in part, except that the person  
13 filing the petition shall comply with any portions of the demand not  
14 sought to be modified or set aside.

15 (27)(a) In the case of any civil investigative demand issued under  
16 subsection (1) or (2) of this section which is an express demand for  
17 any product of discovery, the person from whom the discovery was  
18 obtained may file, in the superior court of the state of Washington for  
19 the county in which the proceeding in which the discovery was obtained  
20 is or was last pending, and serve upon any false claims act  
21 investigator identified in the demand and upon the recipient of the  
22 demand, a petition for an order of the court to modify or set aside  
23 those portions of the demand requiring production of any product of  
24 discovery. Any petition under this subsection (27)(a) must be filed:

25 (i) Within twenty days after the date of service of the civil  
26 investigative demand, or at any time before the return date specified  
27 in the demand, whichever date is earlier; or

28 (ii) Within a longer period as may be prescribed in writing by any  
29 false claims act investigator identified in the demand.

30 (b) The petition must specify each ground upon which the petitioner  
31 relies in seeking relief under (a) of this subsection, and may be based  
32 upon any failure of the portions of the demand from which relief is  
33 sought to comply with the provisions of this section, or upon any  
34 constitutional or other legal right or privilege of the petitioner.  
35 During the pendency of the petition, the court may stay, as it deems  
36 proper, compliance with the demand and the running of the time allowed  
37 for compliance with the demand.

1 (28) At any time during which any custodian is in custody or  
2 control of any documentary material or answers to interrogatories  
3 produced, or transcripts of oral testimony given, by any person in  
4 compliance with any civil investigative demand issued under subsection  
5 (1) or (2) of this section, the person, and in the case of an express  
6 demand for any product of discovery, the person from whom the discovery  
7 was obtained, may file, in the superior court of the state of  
8 Washington for the county within which the office of the custodian is  
9 situated, and serve upon the custodian, a petition for an order of the  
10 court to require the performance by the custodian of any duty imposed  
11 upon the custodian by this section.

12 (29) Whenever any petition is filed in any superior court of the  
13 state of Washington under this section, the court has jurisdiction to  
14 hear and determine the matter so presented, and to enter an order or  
15 orders as may be required to carry out the provisions of this section.  
16 Any final order so entered is subject to appeal under the rules of  
17 appellate procedure. Any disobedience of any final order entered under  
18 this section by any court must be punished as a contempt of the court.

19 (30) The superior court civil rules apply to any petition under  
20 this section, to the extent that the rules are not inconsistent with  
21 the provisions of this section.

22 (31) Any documentary material, answers to written interrogatories,  
23 or oral testimony provided under any civil investigative demand issued  
24 under subsection (1) or (2) of this section are exempt from disclosure  
25 under the public records act, chapter 42.56 RCW.

26 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
27 constitute a new chapter in Title 4 RCW.

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