

Massachusetts False Claims Act

(Mass. Gen. Laws Ch. 12 § 5)ⁱ

Ch. 12 § 5. Civil actions to recover money for commonwealth

All civil actions to recover money for the commonwealth may be brought in the name of the commonwealth by the attorney general or by a district attorney.

Ch. 12 § 5A. False claims; definitions applicable to Secs. 5A to 5O

As used in sections 5A to 5O, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:— “Claim”, a request or demand, whether pursuant to a contract or otherwise, for money or property, whether or not the commonwealth or a political subdivision thereof has title to the money or property, that: (1) is presented to an officer, employee, agent or other representative of the commonwealth or a political subdivision thereof; or (2) is made to a contractor, subcontractor, grantee or other person, if the money or property is to be spent or used on behalf of or to advance a program or interest of the commonwealth or political subdivision thereof and if the commonwealth or any political subdivision thereof: (i) provides or has provided any portion of the money or property which is requested or demanded; or (ii) will reimburse directly or indirectly such contractor, subcontractor, grantee or other person for any portion of the money or property which is requested or demanded. A claim shall not include requests or demands for money or property that the commonwealth or a political subdivision thereof has paid to an individual as compensation for employment with the commonwealth or a political subdivision thereof or as an income subsidy with no restrictions on that individual’s use of the money or property.

“False claims action”, an action filed by the office of the attorney general or a relator under sections 5A to 5O, inclusive. “False claims law”, sections 5A to 5O, inclusive.

“Knowing” or “knowingly”, possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information; provided, however, that no proof of specific intent to defraud shall be required.

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

“Obligation”, an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation or from the retention of any overpayment after the deadline for reporting and returning the overpayment under paragraph (10) of section 5B.

“Original source”, an individual who:

(1) prior to a public disclosure under paragraph (3) of section 5G, has voluntarily disclosed to the commonwealth or any political subdivision thereof the information on which allegations or transactions in a claim are based; or

(2) has knowledge that is independent of and materially adds to the publicly-disclosed

allegations or transactions, and who has voluntarily provided the information to the commonwealth or any political subdivision thereof before filing a false claims action.

“Overpayment”, any funds that a person receives or retains, including funds received or retained under Title XVIII or XIX of the Social Security Act, to which the person, after applicable reconciliation, is not entitled.

“Person”, a natural person, corporation, partnership, association, trust or other business or legal entity.

“Political subdivision”, a city, town, county or other governmental entity authorized or created by law, including public corporations and authorities.

“Relator”, an individual who brings an action under paragraph (2) of section 5C.

Ch. 12 § 5B. False claims; liability

(a) Any person who:

- (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim;
- (3) conspires to commit a violation of this subsection;
- (4) knowingly presents, or causes to be presented, a claim that includes items or services resulting from a violation of section 1128B of the Social Security Act, 42 U.S.C. 1320a-7b, or section 41 of chapter 118E;
- (5) has possession, custody or control of property or money used, or to be used, by the commonwealth or a political subdivision thereof and knowingly delivers, or causes to be delivered, to the commonwealth or a political subdivision thereof less than all of that property or money;
- (6) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the commonwealth or a political subdivision thereof and, with the intent of defrauding the commonwealth or a political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (7) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the commonwealth or a political subdivision thereof, who may not lawfully sell or pledge such property;
- (8) enters into an agreement, contract or understanding with an official of the commonwealth or a political subdivision thereof knowing the information contained therein is false;
- (9) knowingly makes, uses or causes to be made or used a false record or statement material to an obligation to pay or to transmit money or property to the commonwealth or a political subdivision thereof, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the commonwealth or a political subdivision thereof; or
- (10) is a beneficiary of an inadvertent submission of a false claim to the commonwealth or a political subdivision thereof, or is a beneficiary of an overpayment from the

commonwealth or a political subdivision thereof, and who subsequently discovers the falsity of the claim or the receipt of overpayment and fails to disclose the false claim or receipt of overpayment to the commonwealth or a political subdivision by the later of:

- (i) the date which is 60 days after the date on which the false claim or receipt of overpayment was identified; or
- (ii) the date any corresponding cost report is due, if applicable, shall be liable to the commonwealth or political subdivision for a civil penalty of not less than \$5,500 and not more than \$11,000 per violation, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410 section 5, 104 Stat. 891, note following 28 U.S.C. section 2461, plus 3 times the amount of damages, including consequential damages, that the commonwealth or a political subdivision thereof sustains because of such violation.

A person violating sections 5B to 5O, inclusive, shall also be liable to the commonwealth or a political subdivision thereof for the expenses of the civil action brought to recover any such penalty or damages including, without limitation, reasonable attorneys' fees, reasonable expert fees and the costs of investigation, as set forth below. Costs recoverable under said sections 5B to 5O, inclusive, shall also include the costs of any review or investigation undertaken by the attorney general, or by the state auditor or the inspector general in cooperation with the attorney general.

(b) Notwithstanding subsection (a), if the court finds that:

- (1) the person committing the violation of subsection (a) furnished an official of the office of the attorney general responsible for investigating a false claims law violation with all the information known to such person about the violation within 30 days after the date on which the person first obtained the information;
- (2) such person fully cooperated with any commonwealth investigation of such violation; and
- (3) at the time such person furnished the commonwealth with the information about the violation, no civil action or administrative action had commenced under sections 5B to 5O, inclusive, or no criminal prosecution had commenced with respect to such violation, and such person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages, including consequential damages, that the commonwealth or a political subdivision thereof sustains because of the act of that person.

(c) A corporation, partnership or other person shall be liable to the commonwealth under sections 5B to 5O, inclusive, for the acts of its agent where the agent acted with apparent authority, regardless of whether the agent acted, in whole or in part, to benefit the principal and regardless of whether the principal adopted or ratified the agent's claims, representation, statement or other action or conduct.

(d) Sections 5B to 5O, inclusive, shall not apply to claims, records or statements made or presented to establish, limit, reduce or evade liability for the payment of tax to the commonwealth or other governmental authority.

(e) A person who has engaged in conduct described in subsection (a) prior to payment shall only be entitled to payment from the commonwealth of the actual amount due less the excess amount falsely or fraudulently claimed.

Ch. 12 § 5C. Violations under Secs. 5B to 5O; investigation by attorney general; relators; civil actions

(1) The attorney general shall investigate violations under sections 5B to 5O, inclusive, involving state funds or funds from any political subdivision. If the attorney general finds that a person has violated or is violating said sections 5B to 5O, inclusive, the attorney general may bring a civil action in superior court against the person.

(2) An individual, hereafter referred to as relator, may bring a civil action in superior court for a violation of said sections 5B to 5O, inclusive, on behalf of the relator and the commonwealth or any political subdivision thereof. The action shall be brought in the name of the commonwealth or the political subdivision thereof. The action may be dismissed only if the attorney general gives written reasons for consenting to the dismissal and the court approves the dismissal.

Notwithstanding any general or special law to the contrary, it shall not be a cause for dismissal or a basis for a defense that the relator could have brought another action based on the same or similar facts under any other law or administrative proceeding.

(3) When a relator brings an action under said sections 5B to 5O, inclusive, a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the attorney general pursuant to Rule 4(d) (3) of the Massachusetts Rules of Civil Procedure. The complaint shall be filed under seal and shall remain so for 120 days after service upon the attorney general. Notwithstanding any other general or special law or procedural rule to the contrary, service on the defendant shall not be required until the period provided in paragraph (5). The attorney general may, for good cause shown, ask the court for extensions during which the complaint shall remain under seal. Any such motions may be supported by affidavits or other submissions under seal. The attorney general may elect to intervene and proceed with the action on behalf of the commonwealth or political subdivision within the 120-day period or during any extension, after the attorney general receives both the complaint and the material evidence and information. Any information or documents furnished by the relator to the attorney general in connection with an action or investigation under said sections 5B to 5O, inclusive, shall be exempt from disclosure under section 10 of chapter 66.

(4) Before the expiration of the initial 120 day period or any extensions obtained under paragraph (3), the attorney general shall;

- (i) assume control of the action, in which case the action shall be conducted by the attorney general; or
- (ii) notify the court that he declines to take over the action, in which case the relator shall have the right to conduct the action.

(5) If the attorney general decides to proceed with the action, the complaint shall be unsealed and served promptly thereafter. The defendant shall not be required to respond to any complaint filed under said sections 5B to 5O, inclusive, until 20 days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Massachusetts rules of civil procedure.

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

(7) With respect to any federal, state or local government that is named as a co-plaintiff with the commonwealth in an action brought pursuant to sections 5B to 5O, inclusive, a seal on the action ordered by the court under paragraph (3) shall not preclude the commonwealth or the relator from serving the complaint, any other pleadings or the written disclosure of substantially all material evidence and information possessed by the relator on the law enforcement authorities that are authorized under the law of that federal, state or local government to investigate and prosecute such actions on behalf of such governments, except that such seal shall apply to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

Mass. Gen. Laws ch. 12 § 5D. Prosecution by attorney general; relator's right to continue as party to action

(1) If the attorney general proceeds with the action, he shall have primary responsibility for prosecuting the action, and shall not be bound by any act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations in sections 5B to 5O, inclusive.

(2) The attorney general may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the attorney general of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion. Upon a showing of good cause, such hearing may be held in camera.

(3) The attorney general may settle the action with the defendant notwithstanding the objections of the relator 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.

(4) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator initiating the action would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, including but not limited to:

- (i) limiting the number of witnesses the relator may call;
- (ii) limiting the length of the testimony of such witnesses;
- (iii) limiting the relator's cross examination of witnesses; or
- (iv) otherwise limiting the participation by the relator in the litigation.

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

(6) If the attorney general elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the attorney general 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 attorney general's expense. When a relator proceeds with the action, the court, without limiting the status and rights of the relator initiating the action, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

(7) Whether or not the attorney general proceeds with the action, upon a showing by the attorney general that certain acts of discovery by the relator initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the court may stay such discovery for a period of not more than 60 days. Such showing by the attorney general shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and may stay any proposed discovery in the civil action that will interfere with the ongoing criminal or civil investigations or proceedings.

Ch. 12 § 5E. Alternate remedies available to determine civil penalty

Notwithstanding the provisions of section 5C, the attorney general may elect to pursue its claim through any alternate remedy available to the attorney general, including any administrative proceeding, to determine a civil penalty. If any such alternate remedy is pursued in another proceeding, a relator shall have the same rights in such proceeding as said relator would have had if the action had continued under said section 5C. 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 sections 5B to 5O, inclusive. For purposes of this section, 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.

Ch. 12 § 5F. Payments to relators; limitations

(1) If the attorney general proceeds with an action brought by a relator pursuant to section 5C, the relator shall receive at least 15 per cent but not more than 25 per cent of the proceeds recovered and collected in the action or in settlement of the claim depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(2) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to

allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, auditor or inspector general 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 10 per cent of the proceeds, taking into account the significance of the information and the role of the relator bringing the action in advancing the case to litigation.

(3) Any payment to a relator pursuant to this section shall be made only from the proceeds recovered and collected in the action or in settlement of the claim. Any such relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

(4) If the attorney general does not proceed with an action pursuant to section 5C, the relator bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages on behalf of the commonwealth or any political subdivision thereof. The amount shall be not less than 25 per cent nor more than 30 per cent of the proceeds recovered and collected in the action or settlement of the claim, and shall be paid out of such proceeds. The relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

(5) Whether or not the attorney general proceeds with the action, if the court finds that the action was brought by a relator who planned and initiated the violation of sections 5B to 5O, inclusive, upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action which the relator would otherwise receive pursuant to this section, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from his role in the violation of this section, the relator 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 attorney general to continue the action.

Ch. 12 § 5G. Actions brought against governor, lieutenant governor, attorney general, treasurer, secretary of state, etc.; jurisdiction

(a) No court shall have jurisdiction over an action brought pursuant to section 5C against the governor, the lieutenant governor, the attorney general, the treasurer, the secretary of state, the auditor, a member of the general court, the inspector general or a member of the judiciary, if the action is based on evidence or information known to the commonwealth when the action was brought.

(b) An individual may not bring an action pursuant to paragraph (2) of said section 5C that is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the commonwealth or any political subdivision thereof is already a party.

(c) The court shall dismiss an action or claim pursuant to sections 5B to 5O, inclusive, unless opposed by the commonwealth or any political subdivision thereof, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

- (1) in a Massachusetts criminal, civil or administrative hearing in which the commonwealth is a party;
- (2) in a Massachusetts legislative, administrative, auditor's or inspector general's report, hearing, audit or investigation; or
- (3) from the news media, unless the action is brought by the attorney general, or the relator is an original source of the information.

Ch. 12 § 5H. Money recovered by commonwealth; false claims prosecution fund

- (1) All money recovered by the commonwealth, as a result of actions brought by the attorney general or a person pursuant to sections 5B to 5O, inclusive, other than costs and attorney's fees awarded pursuant to paragraph (2), shall be credited by the state treasurer to the False Claims Prosecution Fund, established by section 2YY of chapter 29.
- (2) Costs and attorney's fees awarded to a relator by final judicial order in an action under this section shall be paid directly by the defendant to the relator.

Ch. 12 § 5I. Awards of attorney general fees and expenses; awards of costs and attorney fees against relators; liability

- (1) If the attorney general initiates an action or assumes control of an action brought by a person pursuant to sections 5B to 5O, inclusive, the attorney general shall be awarded his reasonable attorney's fees and expenses incurred in the litigation, including costs, if he prevails in the action.
- (2) If the attorney general does not proceed with an action pursuant to sections 5B to 5O, inclusive, and the defendant is the prevailing party, the court may award the defendant reasonable attorneys' fees and costs against the relator upon a written finding that such action was pursued in bad faith or was wholly insubstantial, frivolous, and advanced for the purpose of causing the defendant undue burden, unnecessary expense or harassment.
- (3) No liability shall be incurred by the commonwealth, the affected agency or the attorney general for any expenses, attorney's fees or other costs incurred by any person in bringing or defending an action under said sections 5B to 5O, inclusive.

Ch. 12 § 5J. Employers preventing employees from acting to further false claim actions; liability

- (1) No employer shall make, adopt or enforce any rule, regulation or policy preventing an employee, contractor or agent from disclosing information to a government or law enforcement agency or from acting to further efforts to stop 1 or more violations of sections 5B to 5O, inclusive. No employer shall require as a condition of employment, during the term of employment or at the termination of employment that any employee,

contractor or agent agree to, accept or sign an agreement that limits or denies the rights of such employee, contractor or agent to bring an action or provide information to a government or law enforcement agency pursuant to said sections 5B to 5O, inclusive. Any such agreement shall be void.

(2) An employee, contractor or agent shall be entitled to all relief necessary to make that employee, contractor or agent whole if that employee, contractor or agent is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or a person associated with the employee, contractor or agent in furtherance of an action under sections 5B to 5O, inclusive, or other efforts to stop a violation of said sections 5B to 5O, inclusive.

(3) Notwithstanding any general or special law to the contrary, relief under paragraph (2) shall include reinstatement with the same seniority status the employee, contractor or agent would have had but for the discrimination, twice the amount of back pay, interest on the back pay and compensation for any special damages sustained as a result of the discrimination. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee, contractor or agent may bring an action in the appropriate superior court, the superior court of the county of Suffolk or any other appropriate court for the relief provided in this section.

(4) A civil action under this section may not be brought more than 3 years after the date when the violation of this section occurred.

Ch. 12 § 5K. Limitation of actions; intervention by attorney general; final judgments in criminal proceedings

(1) A civil action pursuant to sections 5B to 5O, inclusive, for a violation of section 5B may not be brought

(i) more than six years after the date on which the violation occurred; or

(ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official within the office of the attorney general 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.

A civil action pursuant to sections 5B to 5O, inclusive, may be brought for acts or omissions that occurred prior to the effective date of this section, subject to the limitations period set forth in this section.

(2) If the attorney general elects to intervene and proceed with an action brought pursuant to sections 5B to 5O, inclusive, for a violation of section 5B, the attorney general may file a complaint or amend the complaint of a person who has brought an action pursuant to said sections 5B to 5O, inclusive, to clarify or add detail to the claims in which the attorney general is intervening and to add any additional claims with respect to which the commonwealth or a political subdivision thereof contends it is entitled to relief. For

statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally-brought the action, to the extent that the claim of the attorney general arises out of the conduct, transactions or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(3) Notwithstanding any other general or special law, rule of procedure or rule of evidence to the contrary, a final judgment rendered in favor of the commonwealth in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same act, transaction or occurrence as in the criminal proceedings and which is brought under section 5B.

Ch. 12 § 5L. Preponderance of the evidence standard

In any action brought pursuant to sections 5B to 5O, inclusive, the party bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Ch. 12 § 5M. Rules, regulations or guidelines; attorney general

The attorney general may promulgate any rules, regulations or guidelines that, in the attorney general's judgment, are necessary and appropriate to the effective administration of this chapter.

Ch. 12 § 5N. Civil investigative demands; attorney general

(1) Notwithstanding any general or special law, procedural rule or regulation to the contrary, whenever the attorney general or a designee has reason to believe that a person may be in possession, custody or control of documentary material or information relevant to a false claims law investigation, the attorney general or a designee may, before commencing a civil action under paragraph (1) of section 5C or other false claims law, or making an election to intervene under paragraph (3) of said section 5C, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person to:

- (i) produce such documentary material for inspection and copying;
- (ii) answer written interrogatories, in writing and under oath;
- (iii) give oral testimony under oath; or
- (iv) furnish any combination of such material, answers or testimony.

The attorney general may delegate to an assistant attorney general the authority to issue civil investigative demands under this section.

(2) Service of a demand pursuant to paragraph (1) may be made by:

- (i) delivering a copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person;

- (ii) delivering a copy thereof to the principal place of business or the last and usual place of abode in the commonwealth of the person to be served; or
- (iii) mailing by registered or certified mail a copy thereof addressed to the person to be served at the person's last and usual place of abode, the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to the person's principal office or place of business.

- (3) Each such demand requesting documentary material or oral testimony shall
- (i) state the time and place of the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs;
 - (ii) 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;
 - (iii) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;
 - (iv) prescribe a return date within which the documentary material is to be produced;
 - (v) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying; and
 - (vi) if such demand is for the giving of oral testimony, notify the person receiving the demand of the right to be accompanied by an attorney and any other representative, prescribe a date, time and place at which oral testimony shall be commenced, identify the assistant attorney general who shall conduct the examination and to whom the transcript of such examination shall be submitted, specify that such attendance and testimony are necessary to the conduct of the investigation, and 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. Notice of the time and place of taking oral testimony shall be given by the attorney general at least ten days prior to the date of such taking of testimony or examination, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant such taking of testimony within a lesser period of time.
- (4) The oral examination of all persons pursuant to sections 5B to 5O, inclusive, shall be conducted before a person duly authorized to administer oaths by the law of the commonwealth. Rule 30(e) of the Massachusetts Rules of Civil Procedure shall be applicable to oral examinations conducted pursuant to said sections 5B to 5O, inclusive.
- (5) Any person compelled to appear for oral testimony under a civil investigative demand issued under said sections 5B to 5O 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 motion may be filed for an order compelling such person to answer such question.

(6) The production of documentary material in response to a civil investigative demand served under sections 5B to 5O, inclusive, shall be made under a sworn certificate, in such form as the demand designates, by

- (i) in the case of a natural person, the person to whom the demand is directed, or
- (ii) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody or control of the person to whom the demand is directed has been produced and made available to the members of the attorney general's staff identified in the demand.

(7) Each written interrogatory served under sections 5B to 5O, inclusive, shall be answered separately and fully in writing under the penalties of perjury. The person upon whom the interrogatories have been served shall serve the answers and objections, if any, upon the attorney general within 14 days after service of the interrogatories.

(8) Any documentary material or other information produced by a person pursuant to sections 5B to 5O, inclusive, shall not, unless otherwise ordered by a justice of the superior court for good cause shown, be disclosed to any other person other than the authorized agent or representative of the attorney general and any officer or employee of the commonwealth who is working under their direct supervision with respect to the false claims law investigation, unless with the consent of the person producing the same, except that any information obtained by the attorney general under this section may be shared with any qui tam relator if the attorney general determines it is necessary as part of a false claims act investigation. Such documentary material or information may be disclosed by the attorney general in court proceedings or in papers filed in court. Nothing in this section shall preclude the attorney general from disclosing information and evidence secured pursuant to said sections 5B to 5O, inclusive, to officials of the United States, other states, the commonwealth or any political subdivision thereof charged with the responsibility for enforcement of federal, state or local laws respecting fraud or false claims upon federal, state or local governments. Prior to any such disclosure, the attorney general shall obtain a written agreement from such officials to abide by the restrictions of this section.

(9) At any time prior to the date specified in the civil investigative demand, or within 21 days after the demand has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule

26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county.

(10) Whenever any person fails to comply with any civil investigative demand issued under sections 5B to 5O, inclusive, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, a motion for the enforcement of the civil investigative demand. The Massachusetts Rules of Civil Procedure shall apply to any such motion. Any final order entered pursuant to such petition may also include the assessment of a civil penalty of not more than \$5,000 for each act or instance of noncompliance.

(11) All such information and documentary materials as are obtained by the attorney general pursuant to sections 5B to 5O, inclusive, shall not be public records and are exempt from disclosure under section 10 of chapter 66 or any other law.

(12) For purposes of sections 5B to 5O, inclusive, “documentary material” shall include the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart or other document or graphic representation, or data stored in or accessible through a computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data.

(13) Nothing in sections 5B to 5O, inclusive, shall be construed to authorize the attorney general to compel the production of information or documents from the state auditor or from the inspector general, unless otherwise authorized by law. Nothing in this chapter shall bar the attorney general from referring matters or disclosing information or documents to the state auditor or to the inspector general for purposes or any review or investigation they may deem appropriate.

Ch. 12 § 5O. Agency reporting requirements

Nothing in sections 5B to 5M, inclusive, shall be construed to relieve an agency of its reporting requirements regarding matters within that agency under chapter 647 of the acts of 1989.

ⁱ Last updated August 2023.