
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 898 Session of
2003

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YOUNGBLOOD, BEBKO-JONES AND COLEMAN, MARCH 18, 2003

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JUNE 17, 2003

AN ACT

1 Prohibiting false claims; imposing duties on the Attorney
2 General and on district attorneys; and providing for
3 procedures and for penalties.

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1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 CHAPTER 1

4 PRELIMINARY PROVISIONS

5 Section 101. Short title.

6 This act shall be known and may be cited as the Fraud Against
7 Taxpayers Act.

8 Section 102. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Claim." Any request or demand for money, property or
13 services made to any employee, officer or agent of the
14 Commonwealth or of any political subdivision thereof or to any
15 contractor, subcontractor, grantee or other recipient of the
16 Commonwealth or any political subdivision thereof, if any
17 portion of the money, property or services requested or demanded
18 issued from, was provided or will be reimbursed by the
19 Commonwealth, referred to as Commonwealth funds, or by any
20 political subdivision thereof, referred to as political
21 subdivision funds. Provided, however, that a filing with an
22 agency of the Commonwealth shall not constitute a claim under
23 this act to the extent it is not connected to any request or
24 demand for reimbursement from the Commonwealth or any political
25 subdivision thereof, or to any request or demand for a contract
26 or grant with the Commonwealth or any political subdivision
27 thereof. Services shall not include a review of a filing by an
28 agency of the Commonwealth.

29 "False." In addition to its ordinary meaning, this term also
30 means fraudulent.

1 ~~"Interest."~~ ~~Four percentage points greater than the prime~~ <—
2 ~~lending rate at its highest point during the period commencing~~
3 ~~with the commission of the first act defined in section 301 and~~
4 ~~ending with entry of judgment for all such violations. Interest~~
5 ~~shall be compounded daily commencing from the commission of the~~
6 ~~first act defined in section 301.~~

7 "INTEREST." TWO PERCENTAGE POINTS GREATER THAN THE PRIME <—
8 LENDING RATE IN EFFECT AT THE TIME OF CALCULATION OF AN
9 OUTSTANDING AMOUNT REQUIRED UNDER THIS ACT. INTEREST SHALL BE
10 COMPOUNDED DAILY COMMENCING FROM THE COMMISSION OF THE FIRST ACT
11 DEFINED IN SECTION 301 AND ENDING WITH EITHER AN ENTRY OF A
12 JUDGMENT IN A MATTER PURSUED UNDER SECTION 301(A) OR THE
13 DISCLOSURE BY A PERSON OF INFORMATION LEADING TO A RESOLUTION OF
14 AN ACTION UNDER THIS ACT PURSUANT TO SECTION 301(B).

15 "Knowing" or "knowingly." A person who, with respect to
16 information, does any of the following:

- 17 (1) has actual knowledge of the information;
18 (2) acts in deliberate ignorance of the truth or falsity
19 of the information; or
20 (3) acts in reckless disregard of the truth or falsity
21 of the information. Proof of specific intent to defraud shall
22 not be required. A PERSON SHALL NOT BE DEEMED TO HAVE ACTED <—
23 IN RECKLESS DISREGARD WHERE THE PERSON FILED AN ERRONEOUS
24 CLAIM BASED ON GOOD FAITH RELIANCE ON GUIDANCE OR ADVICE
25 PROVIDED BY THE GOVERNMENTAL ENTITY TO WHICH IT SUBMITTED THE
26 CLAIM OR BY AN EMPLOYEE OR AGENT OF THE ENTITY. THE
27 SUBMISSION OF A SERIES OR BODY OF CLAIMS CONTAINING THE SAME
28 TYPE OF ERROR MAY CONSTITUTE RECKLESS DISREGARD, BUT THE FACT
29 THAT A NUMBER OR VOLUME OF ERRONEOUS CLAIMS MAY HAVE BEEN
30 SUBMITTED DOES NOT DEMONSTRATE, PER SE, THAT THE CLAIMS WERE

1 INTENTIONALLY FALSE.

2 "Person." Any natural person, corporation, political
3 subdivision, firm, association, organization, partnership,
4 business, trust or other legal entity.

5 "Political subdivision." Any city, county, tax or assessment
6 district, township, municipal or government authority or other
7 legally authorized local governmental entity in this
8 Commonwealth.

9 "Proceeds." The term includes civil penalties as well as
10 double or treble damages as provided in Chapter 3.

11 "Prosecuting authority." The Attorney General and where
12 appropriate the district attorney of any county in which the
13 political subdivision, including the county itself, lies.

14 Section 103. Construction.

15 This act shall be liberally and broadly construed to
16 effectuate its purposes. It shall be applied and interpreted to
17 promote the public interest to eliminate fraud, waste and abuse
18 through the submission of false or fraudulent claims in this
19 Commonwealth or in any of its political subdivisions.

20 CHAPTER 3

21 FALSE CLAIMS

22 Section 301. Offenses defined.

23 (a) Liability.--

24 (1) A person shall be liable to the Commonwealth or to
25 the political subdivision for each false claim in the amount
26 specified in paragraph (2) if that person commits any of the
27 following acts:

28 (i) Knowingly presents or causes to be presented to
29 an officer or employee of the Commonwealth or any
30 political subdivision a false claim for payment or

1 approval.

2 (ii) Knowingly makes, uses or causes to be made or
3 used a false record or statement to get a false claim
4 paid or approved by the Commonwealth or by any political
5 subdivision.

6 (iii) Has possession, custody or control of public
7 property or money used or to be used by the Commonwealth
8 or by any political subdivision and knowingly delivers or
9 causes to be delivered property of lesser quality,
10 quantity or value than for which the person receives a
11 certificate or receipt.

12 (iv) Is authorized to make or deliver a document
13 certifying receipt of property used or to be used by the
14 Commonwealth or by any political subdivision and
15 knowingly makes or delivers a receipt that falsely
16 represents the quality, quantity or value of the property
17 used or to be used.

18 (v) Knowingly buys or receives as a pledge of an
19 obligation or debt public property from any person who
20 lawfully may not sell or pledge the property.

21 (vi) Knowingly makes, uses or causes to be made or
22 used a false record or statement to conceal, avoid or
23 decrease an obligation to pay or transmit money or
24 property to the Commonwealth or any political
25 subdivision.

26 (vii) Conspires to commit any of the acts specified
27 in subparagraphs (i) through (vi).

28 (2) The liability imposed under paragraph (1) shall be:

29 (i) The greater of:

30 (A) three times the amount of damages which the

Commonwealth or political subdivision sustains
because of the act of that person; or

(B) three times the amount of the interest
accumulated on such damages.

(ii) The costs of an action brought to recover any
of those penalties or damages.

(iii) A civil penalty of not less than \$5,000 nor
more than \$10,000 for each false claim.

~~(b) Reduced assessment.~~

<—

~~(1) Notwithstanding subsection (a), the court shall
assess the amount of damages which the Commonwealth or the
political subdivision sustains because of the act of the
person described in subsection (a) and the interest
accumulated on such damages, and no civil penalty, if the
court finds all of the following:~~

~~(i) The violation was committed by a corporation,
firm, association, organization, partnership, business,
trust or other legal entity and promulgated by an
employee or other agent of the entity who did not act in
a managerial role within the entity.~~

~~(ii) The person committing the violation furnished
the appropriate prosecuting authority with such
information known to that person about the violation
within 90 days after the date on which the person first
obtained the information.~~

~~(iii) The person fully cooperated with any
investigation by the prosecuting authority of the
violation.~~

~~(iv) At the time the person furnished the
appropriate prosecuting authority with such information~~

1 ~~about the violation, no investigation, criminal~~
2 ~~prosecution, civil action or administrative action had~~
3 ~~commenced with respect to the violation.~~

4 ~~(v) The person has a compliance program that could~~
5 ~~reasonably be expected to prevent and detect violations~~
6 ~~of law, even if the program did not detect the instant~~
7 ~~offense.~~

8 ~~(2) Notwithstanding subsection (a), the court shall~~
9 ~~assess for each false claim two times the amount of damages~~
10 ~~which the Commonwealth or the political subdivision sustains~~
11 ~~because of the act of the person described in subsection (a),~~
12 ~~if the court finds all of the following:~~

13 ~~(i) The person committing the violation furnished~~
14 ~~the prosecuting authority with such information known to~~
15 ~~the person about the violation within 90 days after the~~
16 ~~date on which the person first obtained the information.~~

17 ~~(ii) The person fully cooperated with any~~
18 ~~investigation by the prosecuting authority of the~~
19 ~~violation.~~

20 ~~(iii) At the time the person furnished the~~
21 ~~appropriate prosecuting authority with such information~~
22 ~~about the violation, no criminal prosecution, civil~~
23 ~~action or administrative action had commenced, and the~~
24 ~~person did not have knowledge or notice that an~~
25 ~~investigation had commenced with regard to the violation.~~

26 ~~(iv) The person had a compliance program that could~~
27 ~~reasonably be expected to prevent and detect violations~~
28 ~~of law, even if the program did not detect the instant~~
29 ~~violation.~~

30 ~~(c) Costs. If it is determined that a person is eligible~~

1 ~~for a reduced assessment pursuant to subsection (b)(1) or (2),~~
2 ~~the person shall also be liable to the prosecuting authority for~~
3 ~~the cost of a civil action brought to recover any penalty or~~
4 ~~damages. The costs shall be awarded against the defendant.~~

5 (B) REDUCED ASSESSMENT.--NOTWITHSTANDING SUBSECTION (A), THE <—
6 COURT SHALL ASSESS NO MORE THAN TWO TIMES THE AMOUNT OF DAMAGES
7 WHICH THE COMMONWEALTH OR THE POLITICAL SUBDIVISION SUSTAINS
8 BECAUSE OF THE ACT OF THE PERSON DESCRIBED IN SUBSECTION (A)
9 PLUS THE COSTS OF PROSECUTION AND THE INTEREST ACCUMULATED ON
10 SUCH DAMAGES, IF THE COURT FINDS ALL OF THE FOLLOWING:

11 (1) THE PERSON COMMITTING THE VIOLATION OR THE PERSON
12 RESPONSIBLE FOR THE VIOLATION OF THIS SECTION FURNISHED
13 OFFICIALS OF THE COMMONWEALTH OR THE POLITICAL SUBDIVISION
14 RESPONSIBLE FOR INVESTIGATING FALSE CLAIMS VIOLATIONS WITH
15 ALL INFORMATION KNOWN TO SUCH PERSON ABOUT THE VIOLATION
16 WITHIN 60 DAYS AFTER THE DATE ON WHICH THE DEFENDANT FIRST
17 OBTAINED THE INFORMATION.

18 (2) THE PERSON FULLY COOPERATED WITH ANY COMMONWEALTH OR
19 POLITICAL SUBDIVISION INVESTIGATION OF SUCH VIOLATION.

20 (3) AT THE TIME THE PERSON FURNISHED THE COMMONWEALTH OR
21 POLITICAL SUBDIVISION INFORMATION ABOUT THE VIOLATION, THE
22 PERSON DID NOT HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF AN
23 INVESTIGATION INTO SUCH VIOLATION.

24 (4) THE PERSON HAD A COMPLIANCE PROGRAM THAT COULD
25 REASONABLY BE EXPECTED TO PREVENT AND DETECT VIOLATIONS OF
26 LAW, EVEN IF THE PROGRAM DID NOT DETECT THE INSTANT OFFENSE.

27 ~~(d)~~ (C) Joint and several liability.--Notwithstanding the <—
28 provisions of 42 Pa.C.S. § 7102 (relating to comparative
29 negligence), liability under this section shall be joint and
30 several for any act committed by two or more persons.

1 ~~(e)~~ (D) Limitation.--

<—

2 (1) This section does not apply to any controversy
3 involving an aggregate amount of less than \$2,500 in value or
4 where the claim was filed by the individual recipient of
5 benefits or compensation conferred under the act of June 2,
6 1915 (P.L.736, No.338), known as the Workers' Compensation
7 Act, or the act of December 5, 1936 (2nd Sp.Sess., 1937
8 P.L.2897, No.1), known as the Unemployment Compensation Law,
9 or the act of June 13, 1967 (P.L.31, No.21), known as the
10 Public Welfare Code.

11 (2) As used in this subsection, the term "controversy"
12 means any one or more false claims submitted or caused to be
13 submitted by either a person or persons who act pursuant to a
14 common plan, scheme or design in violation of this act.

15 (3) THIS SECTION SHALL NOT APPLY TO A CLAIM THAT A <—
16 PERSON HAS FAILED TO SATISFY STATUTORY OR REGULATORY
17 STANDARDS SUCH AS THE GENERAL CONDITIONS OF PARTICIPATION
18 WITH A GOVERNMENTAL PROGRAM UNLESS THE SUBMISSION OF A CLAIM
19 FOR PAYMENT IS CONDITIONED UPON AN EXPRESS CERTIFICATION OF
20 COMPLIANCE WITH SUCH STANDARDS OR PROVISIONS AND THE PERSON
21 HAS THEREBY FALSELY CERTIFIED SUCH COMPLIANCE TO OBTAIN
22 PAYMENT. THE FOREGOING LIMITATION SHALL NOT PRECLUDE THE
23 APPLICATION OF THIS SECTION IN CASES WHERE A PERSON INVOICES
24 THE COMMONWEALTH OR A POLITICAL SUBDIVISION FOR SERVICES
25 RENDERED UNDER A GRANT OR REGULATORY PROGRAM FOR SERVICES THE
26 PERSON HAS FAILED TO PROVIDE OR WHICH ARE WHOLLY WORTHLESS.

27 Section 302. False claims jurisdiction.

28 If any defendant can be found, resides or transacts business
29 in this Commonwealth or if an act proscribed by this act
30 occurred within this Commonwealth, an action under this act

1 shall be brought in the Commonwealth Court exclusively.

2 Section 303. Procedure.

3 (a) Commonwealth prosecution.--

4 (1) The Attorney General shall diligently investigate
5 violations under section 301 involving Commonwealth funds. If
6 the Attorney General finds that a person has violated or is
7 violating section 301, the Attorney General may bring an
8 action under this act against that person.

9 (2) If the Attorney General brings an action under this
10 act on a claim involving political subdivision funds as well
11 as Commonwealth funds, the Attorney General shall, on the
12 same date that the complaint is filed in this action, serve
13 by mail, return receipt requested, a copy of the complaint on
14 the appropriate district attorney.

15 (3) The district attorney shall have the right to
16 intervene in an action brought by the Attorney General under
17 this act within 90 days after receipt of the complaint
18 pursuant to paragraph (2).

19 (b) Political subdivision prosecution.--

20 (1) The district attorney shall diligently investigate
21 violations under section 301 involving political subdivision
22 funds. If the district attorney finds that a person has
23 violated or is violating section 301, the district attorney
24 may bring an action under this act against that person.

25 (2) The district attorney may refer a matter involving
26 political subdivision funds to the Attorney General at any
27 time. The Attorney General may decline or accept the
28 referral.

29 (3) If the district attorney brings an action on a claim
30 involving Commonwealth funds as well as political subdivision

1 funds, the district attorney shall, on the same date that the
2 complaint is filed in this action, serve by mail, return
3 receipt requested, a copy of the complaint on the Attorney
4 General.

5 (4) Within 90 days after receiving the complaint
6 pursuant to paragraph (2), the Attorney General shall do one
7 of the following:

8 (i) Notify the court that the Attorney General
9 intends to proceed with the action, in which case the
10 Attorney General shall assume primary responsibility for
11 conducting the action and the district attorney shall
12 have the right to continue as a party.

13 (ii) Notify the court that the Attorney General
14 declines to prosecute the action, in which case the
15 district attorney shall have the right to conduct the
16 action on its own.

17 (iii) Proceed jointly with the district attorney,
18 assuming coequal responsibility for prosecution of the
19 action.

20 CHAPTER 5

21 QUI TAM ACTIONS

22 Section 501. General provisions.

23 (a) When action may be brought and dismissed.--

24 (1) A person may bring a qui tam action for a violation
25 of this act for the person and either for the Commonwealth in
26 the name of the Commonwealth if any Commonwealth funds are
27 involved or for a political subdivision in the name of the
28 political subdivision if political subdivision funds are
29 exclusively involved. A qui tam action may be brought
30 alleging fraud involving both Commonwealth and political

subdivision funds. The person bringing the qui tam action shall be referred to as the qui tam plaintiff.

(2) The prosecuting authority may seek dismissal of the qui tam action notwithstanding the objection of the qui tam plaintiff if the qui tam plaintiff has been notified by the prosecuting authority of the filing of the motion to dismiss and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(b) Filing and service on defendant.--A complaint filed by a qui tam plaintiff under this 434 act shall be filed ex parte under seal with the Clerk of the Commonwealth Court or ex parte under seal in the appropriate Federal district court if Federal funds are also involved, and the complaint and all related pleadings shall remain under seal for 90 days from the date of service. No service shall be made on the defendant until after the complaint is unsealed by order of the court.

Section 502. Commonwealth funds.

Within 90 days after receiving a complaint alleging violations which involve Commonwealth funds, but not political subdivision funds, the Attorney General shall do either of the following:

(1) Notify the court that it intends to proceed with the action and petition the court to have the case unsealed. If the court grants the Attorney General's request, the seal may be lifted. The court may, upon motion by the Attorney General, order a partial unsealing where appropriate.

(2) Notify the court that it declines to prosecute the action, in which case the complaint may be unsealed by the court within 20 days after written notification is made by the Attorney General to the qui tam plaintiff and counsel

1 that the Attorney General does not wish to intervene. Upon
2 such notification, the qui tam plaintiff shall have the right
3 to conduct the action.

4 Section 503. Political subdivision funds.

5 (a) Procedure.--Within 30 days after receiving a complaint
6 alleging violations which exclusively involve political
7 subdivision funds, the Attorney General shall promptly forward
8 the complaint and written disclosure to the appropriate district
9 attorney for review and disposition and shall notify in writing
10 the qui tam plaintiff and counsel of the transfer.

11 (b) Duty of district attorney.--Within 60 days after the
12 Attorney General forwards the complaint and written disclosure
13 under subsection (a), the district attorney shall do either of
14 the following:

15 (1) Notify the court that the district attorney intends
16 to proceed with the action and petition the court to have the
17 case unsealed. If the court grants the district attorney's
18 request, the seal shall be lifted.

19 (2) Notify the court that the district attorney declines
20 to take over the action, in which case the seal may be lifted
21 within 20 days after such notification has been made and the
22 qui tam plaintiff shall have the right to conduct the action.

23 Section 504. Complaints relating to Commonwealth and political
24 subdivision funds.

25 (a) Complaints.--Within 30 days after receiving a complaint
26 alleging violations which involve or allege both Commonwealth
27 and political subdivision funds, the Attorney General shall
28 forward copies of the complaint and written disclosure to the
29 appropriate district attorney and shall coordinate the review
30 and investigation with those of the district attorney.

(b) Procedure.--Within 90 days after receiving a complaint alleging violations which involve or allege both Commonwealth and political subdivision funds, the Attorney General shall do one of the following:

(1) Notify the court in writing that the Attorney General intends to proceed with the action, in which case the seal shall be lifted and service effected on the defendant.

(2) Notify the court in writing that the Attorney General declines to take over the action but that the district attorney involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the district attorney.

(3) Notify the court that both the Attorney General and the district attorney decline to take over the action, in which case the seal may be lifted within 20 days after notification has been made and the qui tam plaintiff shall have the right to conduct the action.

Section 505. Intervention by political subdivision.

If the Attorney General proceeds with the action under section 503, the district attorney shall be permitted to intervene in the action within 60 days after the Attorney General notifies the court of his intentions.

Section 506. Extension of time.

Upon a showing of good cause and reasonable diligence in his investigation, the prosecuting authority may move the court for reasonable extensions of time during which the complaint will remain under seal. The qui tam plaintiff shall be notified of any extensions requested under this section. Any such motions may be supported by affidavits or other submissions in camera.

Section 507. Other actions prohibited.

1 When a qui tam plaintiff brings an action under this act, no
2 other person shall be permitted to bring a related action under
3 this act based on the same or similar facts underlying the
4 pending action.

5 Section 508. Exclusions.

6 (a) General rule.--No court shall have jurisdiction over an
7 action brought under this chapter:

8 (1) Against the Commonwealth, any county or municipality
9 or a prosecuting authority.

10 (2) Against an official or employee of the Commonwealth
11 or a political subdivision if the official or employee did
12 not act with actual knowledge.

13 (3) Which relies upon the public disclosure of specific
14 allegations or transactions in a criminal, civil or
15 administrative hearing, in a governmental report, hearing,
16 audit or investigation or from the news media, unless the
17 action is brought by or intervened in by a prosecuting
18 authority or the qui tam plaintiff is an original source of
19 the information.

20 (4) By a prisoner.

21 (5) By a former prisoner against any official or
22 employee of the Commonwealth or a political subdivision for
23 acts relating to the operations and expenditures of a
24 correctional agency or facility.

25 (b) Definition.--As used in this section, the term "original
26 source" means an individual who has voluntarily provided the
27 information to the prosecuting authority before filing an action
28 based on that information and either has direct and independent
29 knowledge of the information on which the allegations are based
30 or directly or indirectly provided the impetus, basis or

1 catalyst for the investigation, hearing, audit or report which
2 led to the public disclosure.

3 Section 509. Employment-related discovery of information.

4 No court shall have jurisdiction over an action brought under
5 this act by a present or former employee of the Commonwealth, of
6 a political subdivision or of the person if that employee's
7 ~~exclusive~~ PRIMARY responsibility is the investigation or <—
8 prosecution of fraud, unless such employee first makes a good
9 faith attempt to use existing internal procedures for reporting,
10 auditing and seeking recovery of the falsely claimed funds
11 before filing an action. The Commonwealth, political subdivision
12 or the person shall have promulgated internal procedures for
13 reporting, auditing and seeking recovery of falsely claimed
14 funds and must act on the information reported by the employee
15 within 60 days of receipt of the information.

16 Section 510. Responsibility for prosecution.

17 If the prosecuting authority proceeds with the action, it
18 shall have the primary responsibility for prosecuting the
19 action. The qui tam plaintiff shall have the right to continue
20 with all rights and obligations as a full party to the action.

21 Section 511. Dismissal of action.

22 The Commonwealth or political subdivision may seek to dismiss
23 the action at any time notwithstanding the objections of the qui
24 tam plaintiff if the qui tam plaintiff has been notified by the
25 prosecuting authority of the filing of the motion and the court
26 has provided the qui tam plaintiff with an opportunity for a
27 hearing on the motion.

28 Section 512. Settlement.

29 The prosecuting authority may settle the action with the
30 defendant notwithstanding the objections of the ~~qui tam~~ <—

~~plaintiff if the court determines, after a hearing, that the
proposed settlement is fair, adequate and reasonable under all
circumstances. Upon a showing of good cause, the hearing may be
held in camera.~~ QUI TAM PLAINTIFF. <—

Section 513. Election not to proceed.

If the prosecuting authority elects not to proceed, the qui tam plaintiff shall have the right to conduct the action and shall apprise the prosecuting authority of all developments during the course of the action. If the prosecuting authority so requests, it shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

Section 514. Intervention.

Upon application, the court shall permit the prosecuting authority to intervene in an action with which it had initially declined to proceed.

Section 515. Proceeds.

(a) Attorney General.--If the Attorney General initiates an action under section 303(a) or assumes control of an action initiated by the district attorney pursuant to section 303(b)(4)(i), the Attorney General shall receive a fixed 33% of the proceeds of the action or settlement of the claim, which funds shall be used to support and expand its ongoing investigation and prosecution of false claims violations.

(b) District attorney.--If a district attorney initiates and conducts an action pursuant to section 303(b), the office of the district attorney shall receive a fixed 33% of the proceeds of the action or settlement of the claim, which funds shall be used to support and expand its ongoing investigation and prosecution of false claims violations.

1 (c) Award of portion of recovery.--If a district attorney
2 intervenes in an action initiated by the Attorney General
3 pursuant to section 303(a)(3) or remains a party to an action
4 assumed by the Attorney General pursuant to section 303(b)(4)(i)
5 and (iii), the court may award the office of the district
6 attorney a portion of the Attorney General's fixed 33% of the
7 recovery under subsection (a), taking into account the district
8 attorney's role in investigating and conducting the action and
9 the resources of the office expended on the prosecution.

10 (d) Qui tam recovery.--

11 (1) If the prosecuting authority proceeds with an action
12 brought by a qui tam plaintiff under this act, the qui tam
13 plaintiff shall, subject to subsections (h) and (i), receive
14 not less than 20% nor more than 33% of the full proceeds of
15 the action or settlement of the claim, depending upon the
16 extent to which the qui tam plaintiff substantially
17 contributed to the overall prosecution of the action. If the
18 prosecuting authority and the qui tam plaintiff cannot reach
19 an agreement concerning the percentage of proceeds to be
20 distributed to the qui tam plaintiff, the determination shall
21 be made by the court.

22 (2) When it conducts the action, the Attorney General or
23 the district attorney shall receive a fixed 33% of the
24 proceeds of the action or settlement of the claim, which
25 funds shall be used to support and expand its ongoing
26 investigation and prosecution of false claims.

27 (3) When both the Attorney General and the district
28 attorney are involved as coparties in a qui tam action
29 pursuant to section 504, the court in its discretion may
30 award the district attorney a portion of the Attorney

1 General's fixed 33% of the recovery, taking into account the
2 district attorney's cooperation and contribution to
3 investigating and conducting the action.

4 (e) Decline to proceed.--If the prosecuting authority
5 declines to proceed with an action, the qui tam plaintiff shall,
6 subject to subsections (h) and (i), receive an amount which the
7 court decides is reasonable for collecting the civil penalty and
8 damages on behalf of the Commonwealth or political subdivision.
9 The amount awarded by the court shall be not less than 30% nor
10 more than 50% of the full proceeds of the action or settlement
11 and shall be paid out of the proceeds.

12 (f) Attorney fees and expenses.--If the prosecuting
13 authority does not proceed with the action and the person
14 bringing the action conducts the action, the court may award to
15 the defendant its reasonable attorney fees and expenses if the
16 defendant prevails in the action and the court finds that the
17 claim of the person bringing the action was clearly frivolous,
18 clearly vexatious or brought primarily for purposes of
19 harassment.

20 (g) Allocation of proceeds for costs of annual audit.--The
21 controller, board of auditors or other government auditor
22 performing the annual audit of recoveries as provided under
23 subsection (l) shall receive a fixed 1% of the proceeds of the
24 action or settlement of the claim, which funds shall be used to
25 defray the costs of the annual audit.

26 (h) Present or former employee.--If a qui tam action is
27 brought by a present or former employee of the Commonwealth or
28 political subdivision, the qui tam plaintiff shall not be
29 entitled to any minimum guaranteed recovery from the proceeds.
30 If the prosecuting authority and the qui tam plaintiff cannot

1 reach an agreement concerning the percentage of proceeds to be
2 distributed to the qui tam plaintiff, the determination shall be
3 made by the court. The court may award the qui tam plaintiff
4 those sums from the proceeds as it considers appropriate, but in
5 no case more than 33% of the proceeds if the prosecuting
6 authority goes forth with the action or 50% if it declines to go
7 forth, taking into account the significance of the information,
8 the role of the qui tam plaintiff in advancing the case to
9 litigation and the scope of and response to the qui tam
10 plaintiff's attempts to report and gain recovery of the falsely
11 claimed funds through official channels.

12 (i) Fraudulent activity.--

13 (1) Where the action is one ~~which the court finds to be~~ <—
14 ~~based primarily on information from a qui tam plaintiff who~~
15 IN WHICH A QUI TAM PLAINTIFF substantially participated in <—
16 the fraudulent activity, the qui tam plaintiff shall not be
17 entitled to any ~~minimum guaranteed recovery from the~~ <—
18 ~~proceeds. If the prosecuting authority and the qui tam~~
19 ~~plaintiff cannot reach an agreement concerning the percentage~~
20 ~~of proceeds to be distributed to the qui tam plaintiff, the~~
21 ~~determination shall be made by the court. The court, in its~~
22 ~~sole discretion after a full review of all the facts and~~
23 ~~circumstances, may award the qui tam plaintiff such sums from~~
24 ~~the proceeds as it considers appropriate under the~~
25 ~~circumstances, but in no case more than 33% of the proceeds~~
26 ~~if the prosecuting authority goes forth with the action or~~
27 ~~50% if it declines to go forth, taking into account the~~
28 ~~significance of the information, the role of the qui tam~~
29 ~~plaintiff in advancing the case to litigation, the scope of~~
30 ~~the qui tam plaintiff's involvement in the fraudulent~~

1 ~~activity, the qui tam plaintiff's attempts to avoid or resist~~
2 ~~such activity and all other circumstances surrounding the~~
3 ~~activity.~~ RECOVERY FROM THE PROCEEDS. <—

4 (2) A person who has been convicted of a crime based on
5 participation in the fraudulent activity at issue in the
6 action under this act shall under no circumstances be
7 permitted to participate in any action under this act as a
8 qui tam plaintiff. Such dismissal shall not prejudice the
9 right of the prosecuting authority to continue the action.

10 (j) Use of recoveries.--

11 (1) Proceeds recovered under this act by the prosecuting
12 authority or awarded to the government auditor pursuant to
13 subsection (g) shall be placed in the General Fund of the
14 Commonwealth, the operating fund of the county of the
15 district attorney or the operating fund of the county of the
16 government auditor, as appropriate.

17 (2) Notwithstanding any other provision of law to the
18 contrary, the Commonwealth, county of the district attorney
19 or the county of the government auditor, as appropriate,
20 shall immediately make such funds available for expenditure,
21 without restriction, by the prosecuting authority or
22 government auditor for the purposes specified elsewhere in
23 this act. The entity having budgetary control over such funds
24 may not anticipate future recoveries in the adoption or
25 approval of the budget for the prosecuting authority.

26 (k) Annual audit of recoveries.--It shall be the
27 responsibility of the Commonwealth, the county of the district
28 attorney, or both, as appropriate, to provide, through the
29 controller, board of auditors or other appropriate auditor, an
30 annual audit of all recoveries under this act. The audit shall

1 be made public, subject to the right of the prosecuting
2 authority to redact portions of the audit which it reasonably
3 believes will compromise investigations or criminal proceedings,
4 and shall be submitted to the Attorney General's office by
5 September 30 of each year.

6 (l) Annual report.--The Attorney General shall annually
7 submit a report to the Appropriations Committee and the
8 Judiciary Committee of the Senate and the Appropriations
9 Committee and Judiciary Committee of the House of
10 Representatives, specifying the recoveries obtained under this
11 act. The report shall give an accounting of all moneys recovered
12 through the sale of any property seized in satisfaction of any
13 judgment arising from an action under this act.

14 (m) Recoveries and appropriations.--Recoveries or future
15 recoveries under this act shall be in addition to any
16 appropriation made to the office of the prosecuting authority.
17 Section 516. Reversion to General Fund.

18 (a) General rule.--The portion of the proceeds not
19 distributed under section 515 shall revert to the General Fund
20 when the underlying false claims involved Commonwealth funds
21 exclusively and to the political subdivision when the underlying
22 false claims involved political subdivision funds exclusively.
23 When petitioned to do so, the court shall make an apportionment
24 of the recovered proceeds between the Commonwealth and political
25 subdivision based on their relative share of the funds falsely
26 claimed.

27 (b) Reimbursement.--When an insurer, guarantor or surety has
28 suffered a loss on an underlying false claim through either:

29 (1) reimbursing the Commonwealth or political
30 subdivision; or

1 (2) directly paying a claimant;
2 the insurer, guarantor or surety shall be reimbursed for its
3 losses to the extent that proceeds reverting to the General Fund
4 or to the political subdivision under this section exceed any
5 uninsured loss to the Commonwealth or the political subdivision.
6 Section 517. Expenses.

7 If the Commonwealth, political subdivision or qui tam
8 plaintiff prevails in or settles any action under this act, the
9 qui tam plaintiff shall receive an amount for all reasonable
10 expenses incurred in the prosecution of the claim, including
11 expert witness fees plus reasonable litigation costs and
12 attorney fees; all expenses, costs and attorney fees shall be
13 awarded against the defendant, and under no circumstances shall
14 they be the responsibility of the prosecuting authority.

15 CHAPTER 7

16 MISCELLANEOUS PROVISIONS

17 Section 701. Rules of civil procedure.

18 Except where this act provides otherwise, actions under this
19 act shall be governed by the Pennsylvania Rules of Civil
20 Procedure.

21 Section 702. Stay of discovery.

22 (a) General rule.--The court may stay discovery for a period
23 of not more than 90 days if the prosecuting authority or the
24 General Counsel shows that discovery would interfere with an
25 investigation or a prosecution of a criminal or civil matter
26 arising out of the same or similar facts, regardless of whether
27 the prosecuting authority proceeds with the action. Such a
28 showing shall be conducted in camera. The court may extend the
29 90-day period upon a further showing in camera that the
30 prosecuting authority or the General Counsel has pursued the

1 criminal or civil investigation or proceedings with reasonable
2 diligence and that any proposed discovery in the action under
3 this act would interfere with the ongoing criminal or civil
4 investigation or proceedings.

5 (b) Criminal action.--When a criminal action has commenced
6 based upon the same or similar facts underlying the pending
7 action under this act, discovery by the defendant in the pending
8 action under this act shall be confined to that available to a
9 criminal defendant under the Rules of Criminal Procedure and the
10 Constitutions of the United States and of the Commonwealth of
11 Pennsylvania. The defendant in the pending action under this act
12 may petition the court for a stay of proceedings pending the
13 conclusion of the criminal action.

14 Section 703. Control over prosecution.

15 When the prosecuting authority has intervened in an action
16 brought under section 501, the prosecuting authority shall have
17 full authority as to the manner in which the prosecution is
18 conducted.

19 Section 704. Employee protection.

20 (a) Disclosing information.--No employer shall solicit,
21 attempt or conspire to prevent, make, adopt or enforce any rule,
22 regulation or policy preventing an employee from disclosing
23 information to a Federal, State or local law enforcement agency
24 or from acting in furtherance of the investigation of,
25 initiation of, testimony in or assistance in filing an action
26 under this act.

27 (b) Discrimination.--No employer shall discharge, demote,
28 suspend, threaten, harass, deny promotion to or in any other
29 manner discriminate, or solicit, attempt or conspire to
30 discriminate against an employee in the terms of and conditions

1 of employment because of lawful acts done by the employee on
2 behalf of the employee or others in disclosing information to a
3 Federal, State or local government or law enforcement agency or
4 in furthering false claims action, including investigation for,
5 initiation of, testimony for or assistance in an action filed or
6 to be filed under this act.

7 (c) Good faith reporting to employer.--No employer may
8 discharge, threaten or otherwise discriminate or retaliate
9 against an employee regarding the employee's compensation,
10 terms, conditions, location or privileges of employment because
11 the employee made or is about to make a good faith report to the
12 employer regarding a false claim under this act, regardless of
13 whether the report is made or to be made orally or in writing.

14 (d) Penalty.--

15 (1) An employer who violates subsection (a), (b) or (c)
16 shall be liable for all relief necessary to make the employee
17 whole, including reinstatement with the same seniority status
18 that the employee would have had but for the discrimination.
19 ~~three times the amount of back pay, prevailing interest on~~ <—
20 ~~the back pay, compensation for any special damage sustained~~
21 ~~as a result of the discrimination and, where appropriate,~~
22 ~~punitive damages. Except in cases alleging intentional~~
23 ~~misconduct, punitive damages against a person shall not~~
24 ~~exceed 200% of the compensatory damages awarded. In addition,~~
25 ~~the employer shall be required to pay all litigation costs~~
26 ~~and attorney fees.~~

27 (2) An employee may bring an action in the Commonwealth
28 Court for the relief provided in this subsection.

29 Section 705. Limitations.

30 (a) Time of filing.--An action under this act may not be

1 filed more than six years after the date on which the violation
2 of this act is completed or more than three years after the date
3 of discovery by the prosecuting authority, but in any event no
4 more than ten years after the date on which the violation of
5 section 301 is completed.

6 (b) Prior acts.--An action under this act may be brought
7 regarding false claims made prior to the effective date of this
8 act if the limitations period set forth in subsection (a) has
9 not elapsed.

10 (c) Proof.--In any action brought under this act, the
11 Commonwealth, the political subdivision or the qui tam plaintiff
12 shall be required to prove all essential elements of the cause
13 of action, including damages, by a preponderance of the
14 evidence.

15 (d) Estoppel.--Notwithstanding any other provision of law, a
16 guilty verdict, guilty plea or nolo contendere plea rendered in
17 a criminal proceeding which alleged a scheme to obtain funds
18 fraudulently from the Commonwealth or a political subdivision
19 shall estop the defendant from denying the essential elements of
20 the offense in any action which involves the same transaction as
21 in the criminal proceeding and which is brought under this act.

22 Section 706. Remedies.

23 ~~(a) Civil remedies. The Commonwealth Court shall have the~~ <—
24 ~~jurisdiction to issue any order to prevent and restrain~~
25 ~~violations of this chapter.~~

26 ~~(b) Remedies cumulative.~~

27 REMEDIES CUMULATIVE: <—

28 (1) The provisions of this act are not exclusive and
29 shall be in addition to any other remedies provided for in
30 any other law or available under common law.

1 (2) Election by the prosecuting authority or a qui tam
2 plaintiff to bring an action under this act shall neither
3 preclude the Commonwealth or political subdivision from
4 bringing any other appropriate action nor moot any such
5 action filed prior to commencement of an action under this
6 act.

7 (3) Election by the prosecuting authority or a qui tam
8 plaintiff to bring an action under this act shall not
9 preclude the Commonwealth or prosecuting authority from
10 bringing criminal charges against the defendant, nor shall it
11 moot any pending criminal charges.

12 (4) Judgment for a defendant in any action brought under
13 this act shall have no res judicata effect in any other
14 action brought by the Commonwealth or political subdivision.
15 Section 707. Enforcement.

16 (a) Prosecuting authority.--The prosecuting authority shall
17 have the power and duty to enforce this act, including the
18 authority to issue civil investigative demands pursuant to this
19 act, to institute proceedings under this act and to take such
20 actions as may be necessary to ascertain and investigate alleged
21 violations of this act. The prosecuting authority may delegate
22 its powers to investigate and prosecute actions under this act
23 to appropriate Deputy Attorneys General or deputy or assistant
24 district attorneys.

25 (b) Construction.--Nothing contained in this act shall be
26 construed to limit the regulatory or investigative authority of
27 any department or agency of the Commonwealth or political
28 subdivision whose functions might relate to persons, enterprises
29 or matters falling within the scope of this act.

30 Section 708. Civil investigative demand.

1 (a) General rule.--Whenever the prosecuting authority has
2 reason to believe that any person may be in possession, custody
3 or control of any documentary material or information relevant
4 to a false claim investigation, the prosecuting authority may
5 issue in writing and cause to be served upon the person a civil
6 investigative demand requiring such person to:

7 (1) produce such documentary material for inspection and
8 copying;

9 (2) answer in written interrogatories with respect to
10 such documentary material or information;

11 (3) give oral testimony concerning such documentary
12 material or information; or

13 (4) furnish any combination of such material, answers
14 and testimony.

15 (b) Content.--Each demand under this section shall:

16 (1) State the nature of the conduct constituting the
17 alleged false claim violation which is under investigation
18 and the provision of law applicable thereto.

19 (2) If the demand is for the production of documentary
20 material:

21 (i) describe the class or classes of documentary
22 material to be produced thereunder with such definiteness
23 and certainty as to permit the material to be fairly
24 identified;

25 (ii) state that the demand is returnable forthwith
26 or prescribe a return date which will provide a
27 reasonable period of time within which the material so
28 demanded may be assembled and made available for
29 inspection and copying or reproduction; and

30 (iii) identify an investigator to whom the material

1 shall be made available.

2 (3) If the demand is for written interrogatories:

3 (i) set forth with specificity the written
4 interrogatories to be answered;

5 (ii) prescribe dates at which time answers to
6 written interrogatories shall be submitted; and

7 (iii) identify the investigator to whom such answers
8 shall be submitted.

9 (4) If such demand is for the giving of oral testimony:

10 (i) prescribe a date, time and place at which oral
11 testimony should be commenced;

12 (ii) identify the investigator who shall conduct the
13 examination and the person to whom the transcript of such
14 investigation shall be submitted;

15 (iii) specify that such attendance and testimony are
16 necessary to the conduct of the investigation; and

17 (iv) describe the general purpose for which the
18 demand is being issued and the general nature of the
19 testimony, including the primary areas of inquiry, which
20 will be taken pursuant to the demand.

21 (5) Contain the following statement printed
22 conspicuously at the top of the demand:

23 You have the right to seek the assistance of any
24 attorney, and he may represent you in all phases of
25 the false claim investigation of which this civil
26 investigative demand is a part.

27 (c) Limitation.--No demand under this section shall:

28 (1) contain any requirement which would be held to be
29 unreasonable if contained in a subpoena duces tecum issued by
30 any court in connection with a grand jury investigation of

1 the alleged violation; or

2 (2) require the production of any documentary evidence
3 which would be privileged from disclosure if demanded by a
4 subpoena duces tecum issued by any court in connection with a
5 grand jury investigation of the alleged violation.

6 (d) Service.--Service of any demand or any petition filed
7 under this section shall be made in the manner prescribed by the
8 Pennsylvania Rules of Civil Procedure for service of writs and
9 complaints unless otherwise agreed to by the prosecuting
10 authority and the person.

11 (e) Return.--A verified return by the individual serving any
12 demand or petition under this section setting forth the manner
13 of service shall be prima facie proof of such service. In the
14 case of service by registered or certified mail, the return
15 shall be accompanied by the return post office receipt of
16 delivery of the demand.

17 (f) Procedure.--

18 (1) A person upon whom a demand issued under this
19 section has been duly served shall make the demanded material
20 available for inspection and copying or reproduction to an
21 investigator designated in the demand at the principal place
22 of business of the person or at such other place as the
23 investigator and the person thereafter may agree or as the
24 court may direct pursuant to this section on the return date
25 specified in the demand. The person may, upon agreement of
26 the investigator, substitute copies of all or any part of the
27 demanded material for the originals of the demanded material.

28 (2) The investigator to whom any documentary material is
29 so delivered shall take physical possession of the material
30 and shall be responsible for the use made of the material and

1 for its return pursuant to this section. The investigator may
2 cause the preparation of the copies of the documentary
3 material as may be required for official use. While in the
4 possession of the investigator, no material so produced shall
5 be available for examination by any individual other than the
6 prosecuting authority or any investigator without the consent
7 of the person who produced the material. Under such
8 reasonable terms and conditions as the prosecuting authority
9 shall prescribe, documentary material while in the possession
10 of the investigator shall be available for examination by the
11 person who produced the material or any duly authorized
12 representatives of that person.

13 (3) The production of documentary material in response
14 to a civil investigative demand served under this section
15 shall be made under a sworn certificate, in such form as the
16 demand designates, by:

17 (i) in the case of a natural person, the person to
18 whom the demand is directed; or

19 (ii) in the case of a person other than a natural
20 person, a person having knowledge of the facts and
21 circumstances relating to such production and authorized
22 to act on behalf of such person.

23 The certificate shall state that all of the documentary
24 material required by the demand and in the possession,
25 custody or control of the person to whom the demand is
26 directed has been produced and made available to the
27 investigator identified in the demand.

28 (4) Each interrogatory in a civil demand served under
29 this section shall be answered separately and fully in
30 writing under oath and shall be submitted under a sworn

1 certificate, in such form as the demand designates, by:

2 (i) in the case of a natural person, the person to
3 whom the demand is directed; or

4 (ii) in the case of a person other than a natural
5 person, a person or persons responsible for answering
6 each interrogatory.

7 (5) If any interrogatory is objected to, the reasons for
8 the objection shall be stated in the certificate instead of
9 an answer. The certificate shall state that all information
10 required by the demand and in the possession, custody,
11 control or knowledge of the person to whom the demand is
12 directed has been submitted. To the extent that any
13 information is not furnished, the information shall be
14 identified and reasons set forth with particularity regarding
15 the reasons why the information was not furnished.

16 (6) (i) The examination of any person pursuant to a
17 civil investigative demand for oral testimony served
18 under this section shall be deemed an "official
19 proceeding" within the meaning of 18 Pa.C.S. § 4902(a)
20 (relating to perjury). The examination shall be taken
21 before an officer authorized to administer oaths and
22 affirmations by the laws of this Commonwealth. The
23 officer before whom the testimony is to be taken shall
24 put the witness on oath or affirmation and shall,
25 personally or by someone acting under the direction of
26 the officer and in the officer's presence, record the
27 testimony of the witness. The testimony shall be taken
28 accurately and shall be transcribed. When the testimony
29 is fully transcribed, a copy of the transcript shall be
30 promptly forwarded to the designated person. This

1 subsection shall not preclude the taking of testimony by
2 any means authorized by, and in a manner consistent with,
3 the Pennsylvania Rules of Civil Procedure.

4 (ii) The investigator conducting the examination
5 shall exclude from the place where the examination is
6 held all persons except the person giving the testimony,
7 the attorney for and any other representative of the
8 person giving the testimony, the prosecuting authority,
9 any person who may be agreed upon by the prosecuting
10 authority and the person giving the testimony, and any
11 stenographer taking such testimony.

12 (iii) The oral testimony of any person taken
13 pursuant to a civil investigative demand served under
14 this section shall be taken in the county where the
15 office of the investigator conducting the examination is
16 situated, or in such other place as may be agreed upon by
17 the investigator and such person.

18 (iv) When the testimony is fully transcribed, the
19 investigator shall afford the witness, who may be
20 accompanied by counsel, a reasonable opportunity to
21 examine and read the transcript, unless such examination
22 and reading are waived by the witness. Any changes in
23 form or substance which the witness desires to make shall
24 be entered and identified upon the transcript by the
25 officer or the investigator, with a statement of the
26 reasons given by the witness for making such changes. The
27 transcript shall then be signed by the witness, unless
28 the witness in writing waives the signing, is ill, cannot
29 be found or refuses to sign. If the transcript is not
30 signed by the witness within 30 days after being afforded

1 a reasonable opportunity to examine it, the officer or
2 the investigator shall sign it and state on the record
3 the fact of the waiver, illness, absence of the witness
4 or the refusal to sign, together with the reasons, if
5 any, given therefor.

6 (v) Upon payment of reasonable charges therefor, the
7 investigator shall furnish a copy of the transcript to
8 the witness only, except that the prosecuting authority
9 may, for good cause, limit such witness to inspection of
10 the official transcript of the witness' testimony.

11 (vi) Any person compelled to appear for oral
12 testimony under a civil investigative demand may be
13 accompanied, represented and advised by counsel. Counsel
14 may advise the person, in confidence, with respect to any
15 question asked of that person. The person or counsel may
16 object on the record to any question, in whole or in
17 part, and shall briefly state for the record the reason
18 for the objection. An objection may be made, received and
19 entered upon the record when it is claimed that such
20 person is entitled to refuse to answer the question on
21 the grounds of any constitutional or other legal right or
22 privilege, including the privilege against self-
23 incrimination. The person may not otherwise object to or
24 refuse to answer any question, and may not directly or
25 through counsel otherwise interrupt the oral examination.
26 If the person refuses to answer any question, a petition
27 may be filed in the Commonwealth Court under section
28 708(g) for an order compelling the person to answer the
29 question.

30 (7) Upon completion of:

1 (i) the false claims investigation for which any
2 documentary material was produced under this section; and

3 (ii) any case or proceeding arising from such
4 investigation;

5 the investigator shall return to the person who produced the
6 material all of the material other than copies of the
7 material made pursuant to this section which have not passed
8 into the control of any court or grand jury through
9 introduction into the record of such case or proceeding.

10 (8) When documentary material has been produced by a
11 person under this section for use in a false claims
12 investigation and no case or proceeding arising from the
13 investigation has been instituted within a reasonable time
14 after completion of the examination and analysis of all
15 evidence assembled in the course of the investigation, the
16 person shall be entitled, upon written demand made upon the
17 prosecuting authority, to the return of all documentary
18 material, other than copies of the material made pursuant to
19 this section, so produced by that person.

20 (g) Failure to comply.--Whenever a person fails to comply
21 with a civil investigative demand that is served upon him under
22 this section or whenever satisfactory copying or reproduction of
23 any of the material cannot be done and the person refuses to
24 surrender the material, the prosecuting authority may file in
25 the Commonwealth Court and serve upon the person a petition for
26 an order of the court for the enforcement of this section.

27 (h) Petition for relief.--

28 (1) Within 20 days after the service of any demand under
29 this section upon any person or at any time before the return
30 date specified in the demand, whichever period is shorter,

1 the person may file in the Commonwealth Court and serve upon
2 the prosecuting authority a petition for an order of the
3 court modifying or setting aside this demand. The time
4 allowed for compliance with the demand, in whole or in part,
5 as deemed proper and ordered by the court shall not run
6 during the pendency of the petition in the court. The
7 petition shall specify each ground upon which the petitioner
8 relies in seeking the relief and may be based on any failure
9 of the demand to comply with the provisions of this section
10 or on any constitutional or other legal right or privilege of
11 the person.

12 (2) At any time during which the prosecuting authority
13 is in custody or control of documentary material delivered by
14 a person in compliance with a demand under this section, the
15 person may file in the Commonwealth Court and serve upon the
16 prosecuting authority a petition for an order of the court
17 requiring the performance of any duty imposed by this
18 section.

19 (3) Whenever a petition is filed in the Commonwealth
20 Court, the court shall have jurisdiction to hear and
21 determine the matter so presented and, after a hearing at
22 which all parties are represented, to enter such order or
23 orders as may be required to carry into effect the provisions
24 of this section.

25 (i) Definition.--As used in this section, the term
26 "documentary material" includes, but is not limited to, any
27 book, paper, record, recording, tape, report, memorandum, data,
28 written or electronic communication or other document relating
29 to the business affairs of any person, enterprise or matter
30 falling within the purview of this act.

1 Section 709. Immunity.

2 Whenever any individual refuses on the basis of his privilege
3 against self-incrimination to comply with a civil investigative
4 demand issued pursuant to this act or to testify or produce
5 other information in a proceeding under this act, the
6 prosecuting authority may invoke the provisions of 42 Pa.C.S. §
7 5947 (relating to immunity of witnesses).

8 Section 710. Regulations.

9 (a) General rule.--The Attorney General shall have the power
10 and authority to promulgate rules and regulations which may be
11 necessary to carry out the purposes set forth in this act.

12 (b) Guidelines.--In order to facilitate the speedy
13 implementation of this act, the Attorney General shall have the
14 power and authority to promulgate, adopt and use guidelines
15 which shall be published in the Pennsylvania Bulletin. The
16 guidelines shall not be subject to review pursuant to section
17 205 of the act of July 31, 1968 (P.L.769, No.240), referred to
18 as the Commonwealth Documents Law, sections 204(b) and 301(10)
19 of the act of October 15, 1980 (P.L.950, No.164), known as the
20 Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633,
21 No.181), known as the Regulatory Review Act, and shall be
22 effective for a period of not more than two years from the
23 effective date of this act. After the expiration of the two-year
24 period, the guidelines shall expire and be replaced by
25 regulations which shall be promulgated, adopted and published as
26 provided by law.

27 Section 711. Severability.

28 The provisions of this act are severable. If any provision of
29 this act or its application to any person or circumstance is
30 held invalid, the invalidity shall not affect other provisions

1 or applications of this act which can be given effect without
2 the invalid provision or application.

3 Section 712. Effective date.

4 This act shall take effect in 60 days.