
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 42 Session of
2021

INTRODUCED BY GROVE, DUNBAR, PICKETT, KEEFER, RYAN, SAYLOR,
ROWE, JAMES, MENTZER, JOZWIAK AND STRUZZI, JANUARY 11, 2021

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 11, 2021

AN ACT

1 Providing for liability for false claims, for adoption of
2 congressional intent of the Federal False Claims Act, for
3 damages, costs and civil penalties, for powers of Attorney
4 General, for civil investigative demands and for COVID-19-
5 related liability.

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21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 CHAPTER 1

24 PRELIMINARY PROVISIONS

25 Section 101. Short title.

26 This act shall be known and may be cited as the Commonwealth
27 Fraud Prevention and COVID-19-Related Liability Act.

28 Section 102. Declaration of policy.

29 The General Assembly declares that this act adopts the intent
30 of the Congress of the United States in enacting the False

1 Claims Act (Public Law 97-258, 31 U.S.C. §§ 3729-3733) on
2 September 13, 1982, including the amendments enacted October 27,
3 1986 (Public Law 99-562, 100 Stat. 3153), and all subsequent
4 amendments.

5 Section 103. Definitions.

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

9 "Claim." As follows:

10 (1) From the effective date of this section through
11 December 31, 2021, a request or demand for money or property
12 utilizing Federal or State funds appropriated in response to
13 COVID-19.

14 (2) Beginning January 1, 2022, a request or demand for
15 money or property, whether under contract or otherwise and
16 regardless of whether the Commonwealth has title to the money
17 or property that is presented, submitted or otherwise made
18 to:

19 (i) An employee, officer or agent of the
20 Commonwealth.

21 (ii) A contractor, grantee or other recipient, and
22 any portion of the money or property will be spent or
23 used on the Commonwealth's behalf or to advance a program
24 or interest of the Commonwealth, and the Commonwealth:

25 (A) provides or has provided any portion of the
26 money or property requested or demanded; or

27 (B) will reimburse the contractor, grantee or
28 other recipient for any portion of the money or
29 property that is requested or demanded.

30 (3) The term does not include requests or demands for

1 money or property that the Commonwealth has paid to an
2 individual as compensation for employment or as an income
3 subsidy with no restrictions on the individual's use of the
4 money or property.

5 (4) To the extent it is not connected to a request or
6 demand for money or property, a filing with the Commonwealth
7 pursuant to the Commonwealth's insurance laws shall not
8 constitute a claim.

9 "COVID-19." The novel coronavirus as identified in the
10 Governor's proclamation of disaster emergency issued on March 6,
11 2020, published at 50 Pa.B. 1644 (March 21, 2020).

12 "Knowingly." As follows:

13 (1) Whenever a person, with respect to information, does
14 any of the following:

15 (i) Has actual knowledge of the information.

16 (ii) Acts in deliberate ignorance of the truth or
17 falsity of the information.

18 (iii) Acts in reckless disregard of the truth or
19 falsity of the information.

20 (2) Proof of specific intent to defraud is not required.

21 "Legal claim." A claim for relief at law or equity, whether
22 contemplated or asserted, including any claim, demand, account,
23 note or any other cause of action or liability.

24 "Material." A natural tendency to influence, or be capable
25 of influencing, the payment or receipt of money or property.

26 "Obligation." An established duty, whether or not fixed,
27 arising from any of the following:

28 (1) An express or implied contractual relationship.

29 (2) An express or implied grantor-grantee relationship.

30 (3) An express or implied licensor-licensee

1 relationship.

2 (4) A fee-based or similar relationship.

3 (5) A statute or regulation.

4 (6) The retention of an overpayment.

5 "Official use." A use that is consistent with the law and
6 the regulations and policies of the Office of Attorney General,
7 including the following:

8 (1) Use in connection with internal memoranda and
9 reports.

10 (2) Communications between the Office of Attorney
11 General and a Federal, State or local government agency or a
12 contractor of a Federal, State or local government agency,
13 undertaken in furtherance of an investigation or prosecution
14 of an action.

15 (3) Interviews of a qui tam plaintiff or other witness.

16 (4) Oral examinations.

17 (5) Depositions.

18 (6) Preparation for and response to civil discovery
19 requests.

20 (7) Introduction into the record of an action or
21 proceeding.

22 (8) Applications, motions, memoranda and briefs
23 submitted to a court or other tribunal.

24 (9) Communications with investigators, auditors,
25 consultants and experts, the counsel of other parties,
26 arbitrators and mediators, concerning an investigation,
27 action or proceeding.

28 "Original source." An individual who:

29 (1) prior to a public disclosure under section 302(f)

30 (2), has voluntarily disclosed to the Commonwealth the

1 information on which the allegations or transactions in a
2 claim are based; or

3 (2) has knowledge that is independent of and materially
4 adds to the publicly disclosed allegations or transactions
5 and who has voluntarily provided the information to the
6 Commonwealth before filing an action under section 302.

7 "Person." A natural person, corporation, firm, association,
8 organization, partnership, limited liability company, business,
9 trust, business trust, estate or foundation.

10 "Qui tam plaintiff." A person bringing a civil action under
11 section 302.

12 CHAPTER 3

13 FALSE CLAIMS

14 Section 301. Acts subjecting persons to liability and damages.

15 (a) Liability.--A person who commits an act prohibited under
16 subsection (b) shall be liable to the Commonwealth for three
17 times the amount of damages that the Commonwealth sustains
18 because of the act of that person.

19 (b) Prohibited acts.--A person who commits any of the
20 following acts shall also be liable to the Commonwealth, subject
21 to subsection (f), for a civil penalty of not less than \$5,500
22 and not more than \$11,000 for each violation:

23 (1) Knowingly presents or causes to be presented a false
24 or fraudulent claim for payment or approval.

25 (2) Knowingly makes, uses or causes to be made or used,
26 a false record or statement material to a false or fraudulent
27 claim.

28 (3) Has possession, custody or control of property or
29 money used or to be used by the Commonwealth and knowingly
30 delivers or causes to be delivered less than all of the money

1 or property.

2 (4) Is authorized to make or deliver a document
3 certifying receipt of property used or to be used by the
4 Commonwealth and, intending to defraud the Commonwealth,
5 makes or delivers a receipt without completely knowing that
6 the information on the receipt is true.

7 (5) Knowingly buys or receives as a pledge of an
8 obligation or debt, public property from an officer or
9 employee of the Commonwealth who lawfully may not sell or
10 pledge the property.

11 (6) Knowingly makes, uses or causes to be made or used,
12 a false record or statement material to an obligation to pay
13 or transmit money or property to the Commonwealth or
14 knowingly conceals, or knowingly and improperly avoids or
15 decreases, an obligation to pay or transmit money or property
16 to the Commonwealth.

17 (7) Knowingly fails to disclose a fact, event or
18 occurrence material to an obligation to pay or transmit money
19 or property to Commonwealth.

20 (8) Is a beneficiary of an inadvertent submission of a
21 false claim, subsequently discovers the falsity of the claim
22 and fails to disclose the false claim to the Commonwealth
23 within a reasonable time after discovery of the false claim.

24 (9) Conspires to commit a violation of paragraph (1),
25 (2), (3), (4), (5), (6), (7) or (8).

26 (c) Damage limitation.--Notwithstanding the provisions of
27 subsection (a), the court may assess not less than two times the
28 amount of damages that the Commonwealth sustains because of the
29 act of the person if the court finds all of the following:

30 (1) The person that commits the violation under this

1 section furnished to the Commonwealth officials who are
2 responsible for investigating false claims violations with
3 all information known to that person about the violation
4 within 45 days after the date on which the person first
5 obtained the information.

6 (2) The person fully cooperated with an investigation by
7 the Commonwealth.

8 (3) At the time when the person furnished the
9 Commonwealth with information about the violation under this
10 section or at the time when an administrative action is
11 commenced with respect to the violation, the person did not
12 have actual knowledge of the existence of an investigation
13 into the violation.

14 (d) Exclusion.--This section does not apply to claims,
15 records or statements made under the act of March 4, 1971
16 (P.L.6, No.2), known as the Tax Reform Code of 1971.

17 (e) Actions to recover damages.--A person who is liable for
18 damages or civil penalties under subsection (a) or (b) shall
19 also be liable to the Commonwealth for the reasonable costs of a
20 civil action brought to recover the damages or civil penalties
21 under subsection (a) or (b), including reasonable costs to the
22 Office of Attorney General.

23 (f) Adjustments.--The civil penalties payable under
24 subsection (b) shall be adjusted from time to time consistent
25 with the Federal Civil Penalties Inflation Adjustment Act of
26 1990 (Public Law 104-410, 28 U.S.C. § 2461).

27 (g) Exemption from disclosure.--Information furnished under
28 subsection (c) shall be exempt from disclosure under the act of
29 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

30 (h) Recipient liability restricted.--A person who is a

1 recipient of public support services shall not be liable under
2 this section unless the person intentionally violates subsection
3 (a) and benefits financially from the violation.

4 Section 302. Attorney General investigations, prosecutions and
5 civil actions.

6 (a) Responsibilities.--The following shall apply:

7 (1) The Attorney General shall investigate a violation
8 of section 301. If the Attorney General finds that a person
9 has violated or is violating section 301, the Attorney
10 General may bring a civil action under this section against
11 that person. Nothing under section 1407 of the act of June
12 13, 1967 (P.L.31, No.21), known as the Human Services Code,
13 shall be construed to limit the authority of the Attorney
14 General to investigate or prosecute violations under section
15 301.

16 (2) The Attorney General may designate a district
17 attorney to serve as the Attorney General's designee,
18 investigate a violation of section 301 and bring a civil
19 action under this section against a person that has violated
20 or is violating section 301. The Attorney General may rescind
21 the designation made under this paragraph.

22 (b) Actions by qui tam plaintiffs.--

23 (1) A qui tam plaintiff may bring a civil action for a
24 violation of section 301 for the qui tam plaintiff and for
25 the Commonwealth in the name of the Commonwealth. Once filed,
26 the action may be dismissed only if the court and the
27 Attorney General give written consent to the dismissal and
28 their reasons for consenting.

29 (2) A copy of the complaint and written disclosure of
30 substantially all material evidence and information the qui

1 tam plaintiff possesses shall be served promptly on the
2 Attorney General as provided for in the Pennsylvania Rules of
3 Civil Procedure or applicable court rules. The complaint
4 shall be filed in camera and shall remain under seal for at
5 least 120 days and shall not be served on the defendant until
6 the court orders the service. The Commonwealth may elect to
7 intervene and proceed with the action within 120 days after
8 the Commonwealth receives the complaint and the material
9 evidence and information.

10 (3) The Commonwealth may, for good cause shown, move the
11 court for extensions of the time during which the complaint
12 remains under seal under paragraph (2). The motions may be
13 supported by affidavits or other submissions in camera. The
14 defendant shall not be required to respond to a complaint
15 filed under this section until the complaint is unsealed and
16 served upon the defendant under the Pennsylvania Rules of
17 Civil Procedure or applicable court rule.

18 (4) Before the expiration of the 120-day period or any
19 extensions obtained under paragraph (3), the Commonwealth
20 shall:

21 (i) proceed with the action; or

22 (ii) notify the court that the Commonwealth declines
23 to take over the action, in which case the qui tam
24 plaintiff shall have the right to conduct the action.

25 (c) Intervention.--When a qui tam plaintiff brings an action
26 under subsection (b), no person other than the Commonwealth may
27 intervene or bring a related action based on the facts
28 underlying the pending action.

29 (d) Rights in qui tam actions.--

30 (1) If the Commonwealth proceeds with the action, the

1 Commonwealth shall have the primary responsibility for
2 prosecuting the action and shall not be bound by an act of
3 the qui tam plaintiff. The qui tam plaintiff shall have the
4 right to continue as a party to the action, subject to the
5 limitations set forth under paragraph (2).

6 (2) The following apply:

7 (i) Upon notice provided to the qui tam plaintiff,
8 the Commonwealth may move to dismiss the action despite
9 the objections of the qui tam plaintiff. The court may
10 dismiss the action upon a showing of good cause if the
11 qui tam plaintiff has been notified by the Commonwealth
12 of the filing of the motion and the court has provided
13 the qui tam plaintiff with an opportunity to oppose the
14 motion and present evidence at a hearing.

15 (ii) The Commonwealth may settle the action with the
16 defendant despite the objections of the qui tam plaintiff
17 if the court determines, after a hearing providing the
18 qui tam plaintiff an opportunity to present evidence,
19 that the proposed settlement is fair, adequate and
20 reasonable under the circumstances. Upon a showing of
21 good cause, the hearing may be held in camera. Upon
22 motion of the Commonwealth, the court shall for good
23 cause shown, order a partial lifting of the seal to
24 facilitate the investigative process or settlement.

25 (iii) Upon a showing by the Commonwealth that
26 unrestricted participation of the qui tam plaintiff
27 during the course of the action by the qui tam plaintiff
28 would interfere with or unduly delay the Commonwealth's
29 prosecution of the case or would be repetitious,
30 irrelevant or for purposes of harassment, the court may,

1 in its discretion, impose limitations on the qui tam
2 plaintiff's participation by:

3 (A) limiting the number of witnesses the qui tam
4 plaintiff may call;

5 (B) limiting the length of the testimony of the
6 witnesses;

7 (C) limiting the qui tam plaintiff's cross-
8 examination of witnesses; or

9 (D) otherwise limiting the participation by the
10 qui tam plaintiff in the action.

11 (iv) Upon a showing by the defendant that
12 unrestricted participation during the action by the qui
13 tam plaintiff would be for the purpose of harassment or
14 would cause the defendant undue burden or unnecessary
15 expense, the court may limit the participation by the qui
16 tam plaintiff in the action.

17 (3) If the Commonwealth elects not to proceed with the
18 action, the qui tam plaintiff shall have the right to conduct
19 the action. If the Commonwealth requests, the Commonwealth
20 shall be served with copies of all pleadings filed in the
21 action and shall be supplied, at the expense of the
22 Commonwealth, with copies of all deposition transcripts and
23 other discovery produced in the action. The court, without
24 limiting the status and rights of the qui tam plaintiff, may
25 permit the Commonwealth to intervene at a later date upon a
26 showing of good cause.

27 (4) Whether or not the Commonwealth proceeds with the
28 action, upon a showing by the Commonwealth that certain
29 actions of discovery by the qui tam plaintiff would interfere
30 with the Commonwealth's investigation or prosecution of a

1 criminal or civil matter arising out of the same facts, the
2 court may stay the discovery for a period of not more than 60
3 days. The showing shall be conducted in camera. The court may
4 extend the 60-day period upon a further showing in camera
5 that the Commonwealth has pursued the criminal or civil
6 investigation or proceedings with reasonable diligence and
7 that the discovery proposed in the civil action will
8 interfere with the ongoing criminal or civil investigations
9 or proceedings.

10 (5) Notwithstanding the provisions under subsection (b),
11 the Commonwealth may elect to pursue the Commonwealth's legal
12 claim through an alternate remedy available to the
13 Commonwealth, including an administrative proceeding to
14 determine a civil money penalty. If the alternate remedy is
15 pursued in another proceeding, the qui tam plaintiff shall
16 have the same rights in the proceeding as if the action had
17 continued under this section. A finding of fact or conclusion
18 of law made in the other proceeding that has become final
19 shall be conclusive on all parties to an action under this
20 section. A finding or conclusion is final if it has been
21 finally determined on appeal to the appropriate court of the
22 Commonwealth, if the time for filing the appeal regarding the
23 finding or conclusion has expired without an appeal having
24 been filed or if the finding or conclusion is not subject to
25 judicial review.

26 (e) Award to qui tam plaintiff.--

27 (1) If the Commonwealth proceeds with an action brought
28 by a qui tam plaintiff, the qui tam plaintiff shall, subject
29 to the provisions of this paragraph, receive at least 15% but
30 not more than 25% of the proceeds of the action or settlement

1 of the legal claim, depending upon the extent to which the
2 qui tam plaintiff and counsel for the qui tam plaintiff
3 substantially contributed to the prosecution of the action.
4 If the court finds that the action is based primarily on
5 disclosures of specific information, other than information
6 provided by the qui tam plaintiff, relating to allegations or
7 transactions in a criminal, civil or administrative hearing
8 or in a legislative or administrative report, hearing, audit
9 or investigation or from the news media, the court may award
10 a sum the court considers appropriate, but in no case more
11 than 10% of the proceeds, taking into account the
12 significance of the information and the role of the qui tam
13 plaintiff in advancing the action. A payment to a qui tam
14 plaintiff under this subsection shall be made from the
15 proceeds of the action or settlement of the legal claim. The
16 qui tam plaintiff shall also receive an amount for reasonable
17 expenses which the court finds were necessarily incurred,
18 plus reasonable attorney fees and costs. The expenses, fees
19 and costs shall be awarded against the defendant.

20 (2) If the Commonwealth does not proceed with an action
21 under this section, the qui tam plaintiff shall receive at
22 least 25% but not more than 30% of the proceeds of the action
23 or settlement of the legal claim, as the court deems
24 reasonable. The amount shall be paid from the proceeds of the
25 action or settlement of the legal claim. The qui tam
26 plaintiff shall also receive an amount for reasonable
27 expenses which the court finds to have been necessarily
28 incurred, plus reasonable attorney fees and costs. The
29 expenses, fees and costs shall be awarded against the
30 defendant.

1 (3) Whether or not the Commonwealth proceeds with an
2 action under this section, if the court finds the qui tam
3 plaintiff planned and initiated the violation of section 301
4 upon which the action was filed, then the court may, to the
5 extent the court considers appropriate, reduce the share of
6 the proceeds of the action which the qui tam plaintiff would
7 otherwise receive under paragraph (1) or (2), taking into
8 account the role of the qui tam plaintiff in advancing the
9 action and any relevant circumstances pertaining to the
10 violation. If the qui tam plaintiff is convicted of criminal
11 conduct arising from the qui tam plaintiff's role in the
12 violation, the qui tam plaintiff shall be dismissed from the
13 civil action and shall not receive a share of the proceeds of
14 the action. The dismissal shall not prejudice the right of
15 the Commonwealth to continue the action.

16 (4) If the Commonwealth does not proceed with the action
17 under this section and the qui tam plaintiff conducts the
18 action, the court may award to the defendant reasonable
19 attorney fees and expenses if the defendant prevails in the
20 action and the court finds the legal claim of the qui tam
21 plaintiff was clearly frivolous, clearly vexatious or brought
22 primarily for purposes of harassment.

23 (f) Certain actions barred.--

24 (1) A court does not have jurisdiction over an action
25 filed under this section against the Governor, the Lieutenant
26 Governor, the Attorney General, the Auditor General, the
27 Treasurer, a cabinet member, a deputy secretary, a member of
28 the General Assembly or a member of the judiciary if the
29 action is based on evidence or information known to the
30 Commonwealth when the action was brought.

1 (2) Subject to the provisions under paragraph (3), the
2 court shall dismiss an action or legal claim brought under
3 subsection (b) if substantially the same allegations or
4 transactions alleged in the action or legal claim were
5 publicly disclosed the news media.

6 (3) The court may not dismiss an action under paragraph
7 (2) if:

8 (i) the action was brought by the Attorney General;

9 (ii) the dismissal is opposed by the Attorney

10 General; or

11 (iii) the qui tam plaintiff is an original source of
12 the information.

13 (4) In no event may a person bring an action under this
14 section that is based upon allegations or transactions which
15 are the subject of a civil suit or an administrative civil
16 money penalty proceeding in which the Commonwealth is already
17 a party.

18 (g) Commonwealth not liable for expenses.--The Commonwealth
19 shall not be liable for expenses which a qui tam plaintiff
20 incurs in bringing an action under this section.

21 (h) (Reserved).

22 (i) Cooperation by agencies.--Commonwealth agencies shall
23 cooperate in the investigation and prosecution of false claims
24 under this act, whether the claims are brought by the Attorney
25 General or a qui tam plaintiff.

26 Section 303. Civil investigative demands.

27 (a) Issuance and service.--The following shall apply:

28 (1) For the purpose of this subsection, whenever the
29 Attorney General or the Attorney General's designee has
30 reason to believe that a person may be in possession, custody

1 or control of documentary material or information relevant to
2 a false claims investigation under this act, the Attorney
3 General or designee may, before commencing a civil action
4 under section 302(a) or making an election under section
5 302(b), issue in writing or cause to be served upon the
6 person a civil investigative demand requiring the person to:

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

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

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

13 (iv) furnish any combination of materials, answers
14 or testimony.

15 (2) Whenever a civil investigative demand is an express
16 demand for a product of discovery, the Attorney General or
17 the Attorney General's designee shall:

18 (i) cause to be served in any manner authorized by
19 this subsection a copy of the demand upon the person from
20 whom or which the discovery was obtained; and

21 (ii) notify the demand issuee of the date on which
22 the copy was served.

23 (3) Except as otherwise prohibited by the laws of this
24 Commonwealth, any information the Attorney General or the
25 Attorney General's designee obtains under this section may be
26 shared with a qui tam plaintiff, if the Attorney General or
27 designee determines it is necessary as part of a false claim
28 investigation conducted under this act.

29 (4) Notwithstanding the provisions of 18 Pa.C.S. Ch. 91
30 (relating to criminal history record information) or any

1 other law to the contrary, the Attorney General may access
2 and share data, records, documents or other information,
3 including criminal history record information, intelligence
4 information, investigative information and treatment
5 information obtained during the course of, and as necessary
6 to advance, an investigation or prosecution of a potential or
7 actual violation of section 301 with the following:

8 (i) A section, unit, subunit or individual employee
9 or agent of the Office of Attorney General authorized and
10 designated by the Attorney General to investigate or
11 prosecute a potential or actual violation of section 301.

12 (ii) The United States Department of Justice.

13 (iii) The appropriate civil prosecutorial authority
14 of another jurisdiction.

15 (5) The recipient described under paragraph (4)(i) shall
16 be subject to the provisions of 18 Pa.C.S. Ch. 91 relating to
17 further disclosure, dissemination and sharing of the
18 information with noncriminal justice agencies, departments
19 and individuals, except as may be permitted under paragraph
20 (4)(ii) and (iii).

21 (b) Contents and deadlines.--The following shall apply:

22 (1) A civil investigative demand shall state the nature
23 of the conduct constituting the alleged violation of this act
24 that is under investigation and the applicable provisions of
25 this act alleged to be violated.

26 (2) If the civil investigative demand is for the
27 production of documentary material, the demand shall:

28 (i) describe each class of documentary material to
29 be produced with definiteness and certainty as to permit
30 the material to be fairly identified;

1 (ii) prescribe a return date for each class that
2 will provide a reasonable time period within which the
3 material demanded may be assembled and made available for
4 inspection and copying; and

5 (iii) identify the false claims investigator to whom
6 the material shall be available.

7 (3) If the civil investigative demand is for answers to
8 written interrogatories, the demand shall:

9 (i) State with specificity the written
10 interrogatories to be answered.

11 (ii) Prescribe dates at which time the answers to
12 the written interrogatories shall be submitted.

13 (iii) Identify the false claims investigator to whom
14 the answers shall be submitted.

15 (4) If the civil investigative demand is for oral
16 testimony, the demand shall:

17 (i) Prescribe a date, time and place at which the
18 oral testimony shall be given.

19 (ii) Identify a false claims investigator who shall
20 conduct the examination and the custodian to whom the
21 transcript of the examination shall be submitted.

22 (iii) Specify that attendance and testimony are
23 necessary to the conduct of the false claims
24 investigation.

25 (iv) Describe the general purpose for which the
26 demand is being issued and general nature of the
27 testimony, including the primary areas of inquiry, which
28 will be taken under the demand.

29 (5) A civil investigative demand shall contain the
30 following statement printed at the beginning of the demand:

1 You have the right to seek the assistance of an attorney,
2 who may represent you in all phases of the investigation
3 of which this civil investigative demand is a part.

4 (6) A civil investigative demand that is an express
5 demand for a product of discovery shall not be returned or
6 returnable until 20 days after a copy of the demand has been
7 served upon the person from whom or which the discovery was
8 obtained.

9 (7) The date prescribed for commencement of oral
10 testimony under a civil investigative demand shall not be
11 less than seven days after the date on which the demand is
12 served, unless the Attorney General or a designee determines
13 that exceptional circumstances exist and warrant the
14 commencement of testimony within a lesser time period.

15 (8) The Attorney General, or a designee, may not
16 authorize the issuance of more than one civil investigative
17 demand for the same person's oral testimony unless:

18 (i) the person requests otherwise; or

19 (ii) the Attorney General or designee notifies the
20 person in writing that an additional demand for oral
21 testimony is necessary.

22 (c) Protected material or information.--The following shall
23 apply:

24 (1) A civil investigative demand may not require the
25 production of documentary material, the submission of answers
26 to written interrogatories or the giving of oral testimony if
27 the material, answers or testimony would be protected from
28 disclosure under:

29 (i) the standards applicable to subpoenas or
30 subpoenas duces tecum issued by a court of this

1 Commonwealth to aid in a grand jury investigation; or

2 (ii) the standards applicable to discovery under the
3 Pennsylvania Rules of Civil Procedure or other applicable
4 court rule, to the extent that the application of the
5 standards to a demand is appropriate and consistent with
6 the provisions and purposes of this section.

7 (2) With respect to the effect on other orders, rules
8 and laws:

9 (i) Except where a statute explicitly precludes the
10 superseding effect imposed by this paragraph, a civil
11 investigative demand that is an express demand for a
12 product of discovery supersedes an inconsistent order,
13 rule or provision of law, other than in this section,
14 that prevents or restrains disclosure of the product of
15 discovery to any person.

16 (ii) A person's disclosure of a product of discovery
17 under an express demand does not constitute a waiver of
18 any right or privilege to resist discovery of trial
19 preparation materials that the person may be entitled to
20 invoke.

21 (d) Service and jurisdiction.--Except as otherwise provided,
22 the following apply to civil investigative demands issued and
23 served under this section and petitions filed under subsection
24 (j):

25 (1) The following shall apply regarding by whom served:

26 (i) A civil investigative demand may be served by a
27 false claims investigator, a law enforcement officer or
28 another individual authorized by law to serve process in
29 the jurisdiction where the demand is served.

30 (ii) A petition may be served by any person

1 authorized to serve process under the Pennsylvania Rules
2 of Civil Procedure or other applicable court rule.

3 (2) The following shall apply regarding location of
4 service:

5 (i) A civil investigative demand or petition may be
6 served upon a person or entity consistent with and in the
7 manner prescribed by 42 Pa.C.S. Ch. 53 (relating to bases
8 of jurisdiction and interstate and international
9 procedure) and the Pennsylvania Rules of Civil Procedure
10 or other applicable court rule, for personal service
11 inside or outside this Commonwealth.

12 (ii) To the extent that the courts of the
13 Commonwealth can assert jurisdiction over a person
14 outside this Commonwealth, a court with jurisdiction over
15 an action filed under this act shall have the same
16 jurisdiction to take action respecting the person's
17 compliance with this section that it would have if the
18 person resided within the court's jurisdiction.

19 (3) The following shall apply regarding service upon
20 legal entities and natural persons:

21 (i) A civil investigative demand or petition may be
22 served upon a legal entity by:

23 (A) delivering an executed copy of the demand or
24 petition to any partner, executive officer, managing
25 agent or general agent of the legal entity or to an
26 employee designated or agent authorized by
27 appointment or law to receive service of process on
28 behalf of the legal entity;

29 (B) delivering an executed copy of the demand or
30 petition to the legal entity's principal office or

1 place of business;

2 (C) depositing an executed copy of the demand or
3 petition in the United States mail by registered or
4 certified mail with a return receipt requested,
5 addressed to the legal entity at its principal office
6 or place of business; or

7 (D) any other method provided by the
8 Pennsylvania Rules of Civil Procedure or other
9 applicable court rule.

10 (ii) A civil investigative demand or petition may be
11 served upon a natural person by:

12 (A) delivering an executed copy of the demand or
13 petition to the person;

14 (B) depositing an executed copy of the demand or
15 petition in the United States mail by registered or
16 certified mail with a return receipt requested,
17 addressed to the person at the person's residence or
18 principal office or place of business; or

19 (C) any other method provided by the
20 Pennsylvania Rules of Civil Procedure or other
21 applicable court rule.

22 (4) A verified return by the individual serving a civil
23 investigative demand or petition, specifying the manner of
24 service, shall be proof of service. In the case of service by
25 registered or certified mail, the return post office receipt
26 of the demand's or petition's delivery shall accompany the
27 return.

28 (e) Documentary material.--

29 (1) The following shall apply regarding verified
30 certificate:

1 (i) The production of documentary material shall be
2 made under a written and verified certificate, in the
3 form as the demand designates, by the following
4 individuals:

5 (A) if the demand issuee is a natural person, by
6 the demand issuee; and

7 (B) if the demand issuee is not a natural
8 person, by an individual who has knowledge of facts
9 and circumstances relating to the production and is
10 authorized to act on the demand issuee's behalf.

11 (ii) The certificate shall state that all the
12 documentary material required by the demand and in the
13 demand issuee's possession, custody or control has been
14 produced and made available to the false claims
15 investigator identified in the demand.

16 (2) The following shall apply regarding production of
17 materials:

18 (i) A demand issuee shall make the demanded material
19 available for inspection and copy to the false claims
20 investigator identified in the demand:

21 (A) at the demand issuee's principal place of
22 business;

23 (B) at another place as the false claims
24 investigator and the demand issuee thereafter may
25 agree and prescribe in writing; or

26 (C) as the court may direct under this section.

27 (ii) The documentary material shall be made
28 available on the return date specified in the demand or
29 on a later date as the false claims investigator may
30 prescribe in writing. The demand issuee may, upon written

1 agreement with the false claims investigator, substitute
2 copies for originals of all or any part of the material.

3 (3) If the demand issuee objects to the production of
4 any portion of the required documentary material or otherwise
5 withholds any portion of the material, the issuee shall with
6 particularity state the reasons for the objection or
7 withholding and identify all withheld material.

8 (f) Interrogatories.--

9 (1) With respect to answers and verified certificates,
10 each interrogatory in a civil investigative demand shall be
11 answered separately and fully in writing under oath and shall
12 be submitted under a verified certificate, in the form as the
13 demand designates stating that all information required by
14 the demand and in the demand issuee's possession, custody,
15 control or knowledge has been submitted by the following
16 individuals:

17 (i) if the demand issuee is a natural person, by the
18 demand issuee; and

19 (ii) if the demand issuee is not a natural person,
20 by the individuals responsible for answering each
21 interrogatory.

22 (2) With respect to objections and withholding of
23 information, if the demand issuee objects to an interrogatory
24 or any portion thereof, or otherwise withholds information,
25 the demand issuee shall state with particularity the reasons
26 for the objection or withholding and identify all withheld
27 information.

28 (g) Oral examinations.--The following shall apply:

29 (1) With respect to procedures:

30 (i) The examination of a person under a civil

1 investigative demand for oral testimony shall be taken
2 before an officer authorized to administer oaths and
3 affirmations by the laws of this Commonwealth or of the
4 place where the examination is held.

5 (ii) The officer shall put the witness on oath or
6 affirmation and shall personally or by someone acting
7 under the officer's direction and in the officer's
8 presence, record the witness's testimony.

9 (iii) The testimony shall be stenographically
10 transcribed.

11 (iv) When the transcribing is complete, the officer
12 shall promptly transmit a copy of the transcript to the
13 custodian.

14 (v) This subsection shall not preclude the taking of
15 testimony by any means authorized by, and in a manner
16 consistent with, the Pennsylvania Rules of Civil
17 Procedure or other applicable court rule.

18 (2) With respect to persons present, the false claims
19 investigator conducting the examination shall exclude from
20 the place where the examination is held all persons except
21 the following:

22 (i) The witness giving the testimony.

23 (ii) The attorney for the witness.

24 (iii) The attorney for the Commonwealth.

25 (iv) The officer before whom the testimony is to be
26 taken.

27 (v) The court reporter taking the testimony.

28 (vi) Any other person agreed to by the witness and
29 the attorney for the Commonwealth.

30 (3) Oral testimony taken under a civil investigative

1 demand shall be taken in the county or city within which the
2 person resides, is found, or transacts business, or in a
3 place to which the false claims investigator and the witness
4 otherwise agree.

5 (4) With respect to transcripts:

6 (i) When the transcript of testimony is completed,
7 the false claims investigator or the officer before whom
8 the testimony is taken shall afford the witness, who may
9 be accompanied by counsel, a reasonable opportunity to
10 examine and read the transcript, unless the witness
11 waives the reading and examination.

12 (ii) The officer or false claims investigator shall
13 enter and identify on the transcript any changes in form
14 or substance that the witness desires to make with a
15 statement of the reasons the witness gives for making the
16 changes.

17 (iii) The witness shall sign the transcript after
18 the changes, if any, are made, unless the witness waives
19 the signing in writing, is ill, cannot be found, or
20 refuses to sign. If the witness does not sign the
21 transcript within 30 days after being afforded a
22 reasonable opportunity to sign it, the officer or false
23 claims investigator shall sign it and state on the record
24 the fact of the witness's waiver, illness, absence or
25 refusal to sign, together with the reasons, if any, given
26 for why the witness did not sign the transcript.

27 (iv) The officer before whom the testimony is taken
28 shall certify on the transcript that the witness was
29 sworn by the officer and the transcript is a true record
30 of the witness's testimony, and the officer shall

1 promptly deliver the transcript or send the transcript by
2 registered or certified mail to the custodian.

3 (v) Upon receipt of payment of reasonable charges,
4 the false claims investigator shall furnish a copy of the
5 transcript to the witness only, except that the Attorney
6 General or the Attorney General's designee may, for good
7 cause, limit the witnesses to inspecting the official
8 transcript.

9 (5) With respect to the conduct of oral testimony, the
10 following shall apply:

11 (i) A witness compelled to appear for oral testimony
12 may be accompanied, represented, and advised by counsel.
13 Counsel may advise the witness in confidence with respect
14 to any question asked of the witness.

15 (ii) The witness or counsel may object on the record
16 to any question, in whole or in part, and shall briefly
17 state for the record the reason for the objection. An
18 objection may be made, received and entered upon the
19 record when the objection is claimed that the witness is
20 entitled to refuse to answer on the grounds of any
21 constitutional or legal right or privilege, including the
22 privilege against self-incrimination. The witness may not
23 otherwise object to or refuse to answer any question and
24 may not directly or through counsel otherwise interrupt
25 the oral examination. If a witness refuses to answer a
26 question, a petition may be filed with the court under
27 this section for an order compelling the witness to
28 answer the question.

29 (6) With respect to fees, a witness appearing for oral
30 testimony under a civil investigative demand shall be

1 entitled to the same fees and allowances that are paid to
2 witnesses in the courts of common pleas.

3 (h) Refusal to comply on self-incrimination privilege
4 grounds.--The Attorney General may invoke the provisions of 42
5 Pa.C.S. § 5947 (relating to immunity of witnesses) if a demand
6 issuee, on the grounds of privilege against self-incrimination,
7 refuses to:

8 (1) furnish documentary material or answer an
9 interrogatory in response to a civil investigative demand;

10 (2) answer a question asked during oral examination made
11 under a civil investigative demand; or

12 (3) otherwise comply with a civil investigative demand.

13 (i) Custody of documents, answers and transcripts.--

14 (1) With respect to the designation of a custodian,
15 unless otherwise set forth by rule adopted by the Attorney
16 General under section 311, the false claims investigator
17 identified on a civil investigative demand shall serve as
18 custodian of documentary material, interrogatory answers and
19 oral testimony transcripts received under this section. The
20 Attorney General may designate additional persons as the
21 Attorney General determines to be necessary to serve as
22 deputy, alternative or successor custodians.

23 (2) With respect to responsibility for materials, copies
24 and disclosure, a false claims investigator who receives
25 documentary material, interrogatory answers or oral testimony
26 transcripts under this section shall:

27 (i) if serving as custodian, take possession of the
28 material, answers or transcripts and be responsible for
29 their usage and for the return of documentary material;
30 or

1 (ii) if not serving as custodian, transmit the
2 materials, answers or transcripts to the custodian, who
3 shall take possession and responsibility for the
4 materials, answers or transcripts.

5 (3) With respect to custodian copies, the custodian may
6 cause the preparation of copies of documentary material,
7 interrogatory answers or oral testimony transcripts as may be
8 required for official use by a false claims investigator or
9 any other officer or employee of the Office of Attorney
10 General authorized to use the materials, answers or
11 transcripts in connection with the taking of oral testimony
12 under this section. Except as otherwise provided in this
13 section, no documentary material, interrogatory answers or
14 oral testimony transcripts or copies of the foregoing shall
15 be available for examination by any individual other than a
16 false claims investigator or other officer or employee of the
17 Office of Attorney General.

18 (4) With respect to restricted disclosure:

19 (i) The prohibition under paragraph (3) shall not
20 apply if the person producing material, answers or
21 transcripts, or in the case of any product of discovery
22 produced under an express demand for the material, the
23 person from whom or which the discovery was obtained,
24 consents.

25 (ii) Nothing in this paragraph shall be construed to
26 prevent disclosure to the General Assembly or to a
27 Commonwealth agency in furtherance of statutory or
28 constitutional obligations, except that any disclosure
29 shall be subject to 18 Pa.C.S. Ch. 91.

30 (iii) While in the custodian's possession and under

1 reasonable terms and conditions as the Attorney General
2 prescribes, documentary material, interrogatory answers
3 and oral testimony transcripts shall be made available
4 for examination by the person that produced them or by
5 the person's authorized representative.

6 (5) With respect to the use of documentary material,
7 answers or transcripts in other proceedings:

8 (i) Subject to 18 Pa.C.S. Ch. 91 and the rules,
9 guidelines and procedures adopted by the Attorney General
10 under section 311, an attorney of the Office of Attorney
11 General who is designated to appear before a court, grand
12 jury or Commonwealth agency in a case or proceeding may,
13 in connection with the case or proceeding, obtain from
14 the custodian and use any documentary material,
15 interrogatory answers or oral testimony transcripts that
16 the attorney determines is required.

17 (ii) Upon the case's or proceeding's completion, the
18 attorney shall return to the custodian documentary
19 material, interrogatory answers or oral testimony
20 transcripts that have not passed into the court's, grand
21 jury's or agency's control through introduction into the
22 case or proceeding's record.

23 (6) With respect to conditions for return of material,
24 the following shall apply:

25 (i) Subject to subparagraphs (ii) and (iii), upon
26 the written request of a person producing documentary
27 material under this section, the custodian shall return
28 the material to the person.

29 (ii) The custodian shall return the material only
30 if:

1 (A) all cases or proceedings arising out of the
2 false claims investigation have been completed; or

3 (B) no case or proceeding in which the material
4 may be used has been commenced within a reasonable
5 time after completion of the examination and analysis
6 of all documentary material and other information
7 assembled in the course of the false claims
8 investigation.

9 (iii) The custodian shall not be required to return
10 either of the following:

11 (A) material that has passed into a court, grand
12 jury or Commonwealth agency's control through
13 introduction into a case or proceeding's record; or

14 (B) copies furnished to the false claims
15 investigator or made for the Attorney General under
16 this subsection.

17 (j) Judicial proceedings.--The following shall apply:

18 (1) With respect to a petition for enforcement, the
19 Attorney General or the Attorney General's designee may file
20 and serve upon a person a petition for a court order
21 enforcing a civil investigative demand if:

22 (i) the person fails to comply with a demand served
23 upon the person; or

24 (ii) satisfactory copying or reproduction of the
25 material requested in the demand cannot be done and the
26 person refuses to surrender the material.

27 (2) With respect to a petition to modify or set aside a
28 demand, the following shall apply:

29 (i) A demand issuer that has received a civil
30 investigative demand may file and serve upon the false

1 claims investigator identified in the demand a petition
2 for a court order modifying or setting aside the demand.

3 (ii) If a civil investigative demand is an express
4 demand for a product of discovery, the person from whom
5 or which discovery was obtained may, upon receipt of the
6 demand, file and serve upon the false claims investigator
7 identified in the demand a petition for a court order
8 modifying or setting aside those portions of the demand
9 requiring production of the product of discovery.

10 (iii) A petition under this paragraph must be filed
11 within:

12 (A) the earlier of 20 days after the civil
13 investigative demand is served on the person or at
14 any time before the return date specified in the
15 demand; or

16 (B) a longer period if the false claims
17 investigator so prescribes in writing in the demand.

18 (iv) A petition under this paragraph shall specify
19 each ground the petitioner relies on in seeking relief
20 and may be based on either of the following:

21 (A) failure of the civil investigative demand,
22 or any portion thereof, to comply with this section's
23 provisions; or

24 (B) a constitutional or other legal right or
25 privilege of the petitioner.

26 (v) During the pendency of a petition under this
27 paragraph, the following apply:

28 (A) The court may stay, as it deems proper,
29 compliance with all or part of the demand and the
30 running of time allowed for compliance the demand.

1 (B) The petitioner must comply with any portion
2 of the demand that is not sought to be modified or
3 set aside, or otherwise subject to a stay issued by
4 the court.

5 (3) With respect to a petition to require custodian's
6 performance of duties, at any time a custodian possesses or
7 is in custody or control of documentary material,
8 interrogatory answers or transcripts of oral testimony given
9 under a civil investigative demand, the following persons may
10 file and serve upon the custodian a petition for a court
11 order requiring the custodian to perform any duty imposed on
12 the custodian by this section:

13 (i) the demand issuer furnishing the material,
14 answers or testimony; and

15 (ii) in the case of an express demand for a product
16 of discovery, the person from whom or which discovery was
17 obtained.

18 (4) With respect to jurisdiction and contempt, the
19 following shall apply:

20 (i) The court shall have jurisdiction to hear and
21 determine a petition filed under this section and, after
22 a hearing at which all parties have the opportunity to be
23 heard, to enter orders as may be required to carry out
24 the provisions of this section.

25 (ii) A final order entered by Commonwealth Court
26 under this section shall be subject to appeal to the
27 Supreme Court under 42 Pa.C.S. § 723 (relating to appeals
28 from Commonwealth Court).

29 (k) Exemption from disclosure.--Documentary material,
30 interrogatory answers and oral testimony provided under a civil

1 investigative demand issued are exempt from disclosure under the
2 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
3 Know Law.

4 (1) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection unless the context clearly indicates otherwise:

7 "Custodian." The false claims investigator or other
8 custodian or any deputy or alternate custodian designated by the
9 Attorney General under subsection (i).

10 "Demand issuee." A person to whom or which a civil
11 investigative demand is issued or directed.

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

19 "False claims investigation." An inquiry conducted by a
20 false claims investigator for the purposes of ascertaining
21 whether any person is or has been engaged in a violation of this
22 act.

23 "False claims investigator." An attorney or investigator
24 employed by the Office of Attorney General, or by a district
25 attorney designated under section 302(a)(2), who is charged with
26 the duty of enforcing or carrying out the provisions of this
27 act, or an officer or employee of the Commonwealth acting under
28 the attorney or investigator's direction and supervision in
29 connection with a false claims investigation.

30 "Legal entity." A person other than a natural person.

1 "Person." As defined in 1 Pa.C.S. § 1991 (relating to
2 definitions).

3 "Product of discovery." The term includes all of the
4 following:

5 (1) The original or duplicate of a deposition
6 interrogatory, document, thing, result of the inspection of
7 land or other property, examination or admission that is
8 obtained by any method of discovery in a judicial or
9 administrative proceeding of an adversarial nature.

10 (2) A digest, analysis, selection, compilation or
11 derivation of an item listed under paragraph (1).

12 (3) An index or other manner of access to an item listed
13 under paragraph (1).

14 "Verified." Supported by oath or affirmation and averred
15 subject to the penalties of 18 Pa.C.S. § 4904 (relating to
16 unsworn falsification to authorities).
17 Section 304. Disposition of Commonwealth's proceeds.

18 The Commonwealth's share of the proceeds of an action under
19 this act, not including the costs of a civil action paid to the
20 Commonwealth under section 301(e) and less any amount legally
21 required to be paid from the share, shall be distributed as
22 follows:

23 (1) The Commonwealth's share of the proceeds shall be
24 allocated to reimburse the Office of Attorney General or a
25 district attorney designated under section 302 for the actual
26 costs incurred to recover damages or penalties under this
27 act.

28 (2) If any amount of the Commonwealth's share of the
29 proceeds or settlement of a legal claim remain after
30 reimbursing the Office of Attorney General for actual costs

1 incurred, the proceeds of the Commonwealth's share shall be
2 allocated to reimburse the Commonwealth for the actual costs
3 incurred as a result of a violation under section 301.

4 (3) Any remaining funds of the Commonwealth's share of
5 the proceeds or settlement of a legal claim after the Office
6 of the Attorney General and the Commonwealth are reimbursed
7 for actual costs incurred shall be deposited into the Budget
8 Stabilization Reserve Fund.

9 Section 305. Report.

10 (a) Report required.--The Attorney General shall prepare a
11 report within two years of the publication of the temporary
12 regulations under section 311. The report shall include actions
13 taken under this act and shall be submitted to the following:

14 (1) The Governor.

15 (2) The Department of Auditor General.

16 (3) The Independent Fiscal Office.

17 (4) The Office of Inspector General.

18 (5) The members of the General Assembly.

19 (6) The Legislative Budget and Finance Committee.

20 (b) Contents.--The report shall include the following:

21 (1) The number of actions filed under this act by the
22 Attorney General.

23 (2) The number of actions filed under this act by the
24 Attorney General that were completed.

25 (3) The amount that was recovered in actions filed under
26 this act by the Attorney General through settlement or
27 through a judgment and, if known, the amount recovered for
28 damages, penalties and litigation costs.

29 (4) The number of actions filed by a person other than
30 the Attorney General under this act.

1 (5) The number of actions filed under this act by a
2 person other than the Attorney General that were completed.

3 (6) The amounts that were recovered in actions filed
4 under this act by a person other than the Attorney General
5 through settlement or through a judgment and, if known, the
6 amount recovered for damages, penalties and litigation costs
7 and the amount recovered by the Commonwealth and the person.

8 (7) The number of actions filed under this act related
9 to funds appropriated in response to COVID-19, including the
10 following:

11 (i) The Provider Relief Fund.

12 (ii) The Paycheck Protection Program.

13 (iii) The Families First Coronavirus Response Act
14 (Public Law 116-127, 134 Stat. 178).

15 (iv) The Unemployment Compensation Fund.

16 (v) Any other stimulus programs put into place by
17 the Coronavirus Aid, Relief, and Economic Security Act
18 (Public Law 116-136, 134 Stat. 281).

19 (8) The amount expended by the Office of Attorney
20 General for investigation, litigation and all other costs for
21 legal claims under this act.

22 (9) A narrative describing the most notable or prevalent
23 violations of section 301 and recommendations on how
24 Commonwealth agencies may prevent similar violations from
25 occurring.

26 (10) Legislative recommendations that the Attorney
27 General may have for amendments to this act and any other law
28 as it relates to this act.

29 Section 306. Statute of limitations, burden of proof and
30 estoppel.

1 (a) Statute of limitations.--

2 (1) Except as otherwise provided under this section, a
3 civil action under section 302 may not be brought more than
4 10 years after the date on which the violation was committed.

5 (2) If a violation is part of a continuing course of
6 conduct, a civil action under section 302 may not be brought
7 more than 10 years after the date on which the last violation
8 in the continuing course of conduct was committed.

9 (3) If the Commonwealth elects to intervene and proceed
10 with an action brought under section 302(b), then all of the
11 following apply:

12 (i) The Commonwealth may file its own complaint or
13 amend the complaint of the qui tam plaintiff who brought
14 the action in order to clarify or add detail to the
15 claims and to add any additional claims with respect to
16 which the Commonwealth contends it is entitled to relief.

17 (ii) The Commonwealth pleading shall relate back to
18 the filing date of the complaint of the qui tam plaintiff
19 to the extent that the claim of the Commonwealth arises
20 out of the conduct, transactions or occurrences
21 specified, or attempted to be specified, in the qui tam
22 plaintiff's complaint.

23 (b) Burden of proof.--In an action brought under section
24 302, the Commonwealth or the qui tam plaintiff shall be required
25 to prove all essential elements of the cause of action,
26 including damages, by a preponderance of the evidence.

27 (c) Estoppel.--Notwithstanding any other provision of law, a
28 final judgment rendered in favor of the Commonwealth in a
29 criminal proceeding charging false statements or fraud, whether
30 upon a verdict after trial or upon a plea of guilty or nolo

1 contendere, shall estop the defendant from denying the essential
2 elements of the offense in an action brought under section 302
3 that involves the same transaction as in the criminal
4 proceeding.

5 Section 307. Relief from retaliatory actions.

6 (a) General rule.--An employee, contractor or agent shall be
7 entitled to all relief necessary to make the employee,
8 contractor or agent whole, if the employee, contractor or agent
9 is discharged, demoted, suspended, threatened, harassed or in
10 any other manner discriminated against in the terms and
11 conditions of employment, contract or agency because of lawful
12 acts done by the employee, contractor, agent or associated
13 others in furtherance of an action under this act or other
14 efforts to stop one or more violations of this act.

15 (b) Relief.--Relief under subsection (a) shall include
16 reinstatement with the same seniority status that the employee,
17 contractor or agent would have had but for the discrimination,
18 two times the amount of back pay, interest on the back pay and
19 compensation for special damages sustained as a result of the
20 discrimination, including litigation costs and reasonable
21 attorney fees.

22 (c) Limitation.--An action under this section may not be
23 brought more than three years after the date on which the
24 retaliation occurred.

25 Section 308. Actions and remedies under other laws.

26 (a) Actions and remedies not exclusive.--The provisions of
27 this act are not exclusive and the actions and remedies provided
28 for in this act shall be in addition to any other actions and
29 remedies provided for in any other law or available under the
30 common law.

1 (b) Construction.--The availability of an action or remedy
2 provided for in any other law or available under the common law
3 shall not be construed to exclude, impair or limit the
4 availability or use of the provisions of this act.

5 (c) Existing privileges and immunities unaffected.--This act
6 shall not abrogate or modify any existing statutory or common
7 law privilege or immunity.

8 Section 309. Qualification of act for increase share of
9 recoveries.

10 (a) Submission.--Within 30 days of the effective date of
11 this act, the Attorney General shall submit a copy of this act
12 and any other relevant information to the Office of Inspector
13 General, United States Department of Health and Human Services
14 and request a determination that this act meets the requirements
15 of section 1909(b) of the Social Security Act (49 Stat. 620, 42
16 U.S.C. § 1396h(b)), in order to qualify the Commonwealth for an
17 increased share of amounts recovered under this act with respect
18 to false or fraudulent claims submitted to the medical
19 assistance program.

20 (b) Review and recommendations.--If the Office of Inspector
21 General, United States Department of Health and Human Services
22 determines that this act does not meet the requirements of
23 section 1909(b) of the Social Security Act, the Attorney General
24 shall prepare a report explaining the reasons for the denial and
25 suggested revisions to this act which would cause this act to
26 meet the requirements of section 1909(b) of the Social Security
27 Act. A copy of the report shall be transmitted to the officials
28 designated to receive the report required under section 305(a).

29 Section 310. Rules of procedure.

30 Except as otherwise specified in, or where clearly

1 inconsistent with, this act, proceedings under this act shall be
2 governed by the Pennsylvania Rules of Civil Procedure or other
3 applicable court rule.

4 Section 311. Implementation.

5 (a) Temporary regulations.--In order to facilitate the
6 prompt implementation of this chapter, the Attorney General
7 shall promulgate temporary regulations within six months of the
8 effective date of this section. The Attorney General shall
9 promulgate temporary regulations not subject to:

10 (1) Section 612 of the act of April 9, 1929 (P.L.177,
11 No.175), known as The Administrative Code of 1929.

12 (2) Sections 201, 202, 203, 204 and 205 of the act of
13 July 31, 1968 (P.L.769, No.240), referred to as the
14 Commonwealth Documents Law.

15 (3) Sections 204(b) and 301(10) of the act of October
16 15, 1980 (P.L.950, No.164), known as the Commonwealth
17 Attorneys Act.

18 (4) The act of June 25, 1982 (P.L.633, No.181), known as
19 the Regulatory Review Act.

20 (b) Publication.--The Attorney General shall transmit the
21 temporary regulations to the Legislative Reference Bureau for
22 publication in the Pennsylvania Bulletin no later than six
23 months after the effective date of this section.

24 (b.1) Final regulations.--The Attorney General shall
25 promulgate final regulations within two years of the effective
26 date of this section. The temporary regulations promulgated
27 under this section shall expire upon promulgation of the final
28 regulations.

29 (c) Mandatory provisions.--The Attorney General, whether by
30 regulation, guideline or internal policy, shall implement

1 provisions to:

2 (1) Control a person's disclosure, dissemination,
3 sharing or use of information that is protected under 18
4 Pa.C.S. Ch. 91 (relating to criminal history record
5 information) and that the person lawfully obtains in
6 connection with an investigation or prosecution of a
7 potential or actual violation of section 301.

8 (2) Prevent the disclosure, dissemination, sharing or
9 use of protected information in accordance with section
10 303(a) (4).

11 Section 312. Jurisdiction and Attorney General as relator in
12 Federal false claims actions.

13 (a) Jurisdiction.--An action or petition under this act
14 shall be filed in a court of competent jurisdiction. The
15 following shall apply:

16 (1) An action or petition that is brought in the courts
17 of the Commonwealth shall be filed in Commonwealth Court.

18 (2) The Commonwealth Court shall have jurisdiction over
19 a legal claim asserted under the laws of the United States,
20 any state or any local government which arises from the same
21 transaction or occurrence as an action brought under this
22 act.

23 (b) Attorney General as relator.--To the extent permitted by
24 Federal law, the Attorney General may bring an action as a
25 relator under 31 U.S.C. § 3730 (relating to civil actions for
26 false claims) with respect to any act for which a person may be
27 held liable under 31 U.S.C. Ch. 37 (relating to claims).

28 (c) Service on other authorities.--With respect to the
29 Federal Government or any state or local government that is
30 named as a coplaintiff with the Commonwealth in an action

1 brought under this act, a seal on action ordered by the court
2 under section 302(b) shall not preclude the Commonwealth or the
3 person bringing the action from serving the complaint, any other
4 pleadings or the written disclosure of substantially all
5 material evidence and information possessed by the person
6 bringing the action upon the law enforcement authorities that
7 are authorized under the law of that Federal, State or local
8 government to investigate and prosecute the actions on behalf of
9 the governments. A seal ordered under section 302(b) shall apply
10 to the law enforcement authorities so served to the same extent
11 as the seal applies to other parties in the action.

12 (d) Definition.--As used in this section, the term "state"
13 includes the District of Columbia, the Commonwealth of Puerto
14 Rico, the Virgin Islands and all insular territories of the
15 United States.

16 CHAPTER 5

17 COVID-19-RELATED LIABILITY

18 Section 501. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Business or government services." A lawful activity
23 conducted by a trade, business, nonprofit organization or local
24 governmental unit that is permitted by the terms of the
25 proclamation of disaster emergency to hold itself out as open to
26 members of the public.

27 "Child care facility." Any of the following:

28 (1) A child care center as defined in section 1001 of
29 the act of June 13, 1967 (P.L.31, No.21), known as the Human
30 Services Code.

1 (2) A children's institution as defined in section 901
2 of the Human Services Code.

3 (3) A family child care home as defined in section 1001
4 of the Human Services Code.

5 (4) An individual employed or contracted by an
6 individual or entity under paragraph (1), (2) or (3).

7 "Covered provider." Any of the following:

8 (1) A health care practitioner as defined in sections
9 103 and 802.1 of the act of July 19, 1979 (P.L.130, No.48),
10 known as the Health Care Facilities Act, or a health care
11 practitioner or provider, including a registered nurse,
12 licensed by a state or a political division of the United
13 States, including pursuant to a waiver of a law or a
14 regulation issued by the United States, the Commonwealth or a
15 local governmental authority.

16 (2) A health care facility as defined in the Health Care
17 Facilities Act or a temporary site operated by a health care
18 facility during the proclamation of disaster emergency,
19 including a facility authorized to operate pursuant to a
20 waiver of a law or a regulation issued by the United States,
21 the Commonwealth or a local governmental authority.

22 (3) A health care provider as defined in the Health Care
23 Facilities Act or other legal entity whose primary purpose is
24 the provision of medical care for a health care provider.

25 (4) A facility as defined in section 1001 of the Human
26 Services Code, or a parent organization of the facility.

27 (5) A business, institution of higher education,
28 facility or organization that provides a venue for the
29 provision of medical care.

30 (6) A licensed, certified, registered or authorized

1 person providing emergency medical services as defined in 35
2 Pa.C.S. § 8103 (relating to definitions), including an EMS
3 vehicle operator.

4 (7) An EMS agency as defined in 35 Pa.C.S. § 8103,
5 including a parent organization of the EMS agency.

6 (8) A person engaged in nursing care as defined in 28
7 Pa. Code Ch. 201 (relating to applicability, definitions,
8 ownership and general operation of long-term care nursing
9 facilities), if the nursing care is in support of the
10 activities of daily living and other instrumental activities
11 of daily living as defined in 55 Pa. Code Chs. 2600 (relating
12 to personal care homes) and 2800 (relating to assisted living
13 residences), or services covered that nursing care providers
14 are obligated to deliver or arrange under their requirements
15 of licensure.

16 (9) A clinical laboratory certified under the Federal
17 Clinical Laboratory amendments in section 353 of the Public
18 Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.),
19 or licensed under the act of September 26, 1951 (P.L.1539,
20 No.389), known as The Clinical Laboratory Act.

21 (10) An individual employed or contracted by an
22 individual or entity under paragraph (1), (2), (3), (4), (5),
23 (6), (7), (8) or (9), who is involved in providing medical
24 care.

25 "Direct cost." The direct labor and direct material costs of
26 producing personal protective equipment, excluding any
27 manufacturing overhead costs.

28 "Institution of higher education." The term includes any of
29 the following:

30 (1) A community college operating under Article XIX-A of

1 the act of March 10, 1949 (P.L.30, No.14), known as the
2 Public School Code of 1949.

3 (2) A university within the State System of Higher
4 Education.

5 (3) The Pennsylvania State University, the University of
6 Pittsburgh, Temple University, Lincoln University or any
7 other institution designated as State-related by the
8 Commonwealth.

9 (4) The Thaddeus Stevens College of Technology and The
10 Pennsylvania College of Technology.

11 (5) A college established under Article XIX-G of the
12 Public School Code of 1949.

13 (6) An institution of higher education located in and
14 incorporated or chartered by the Commonwealth and entitled to
15 confer degrees under 24 Pa.C.S. § 6505 (relating to power to
16 confer degrees) and as provided for by the standards and
17 qualifications prescribed by the State Board of Education
18 under 24 Pa.C.S. Ch. 65 (relating to private colleges,
19 universities and seminaries).

20 (7) A private school licensed under the act of December
21 15, 1986 (P.L.1585, No.174), known as the Private Licensed
22 Schools Act.

23 (8) A foreign corporation approved to operate an
24 educational enterprise under 22 Pa. Code Ch. 36 (relating to
25 foreign corporation standards).

26 "Local governmental unit." A municipality or local
27 authority.

28 "Personal protective equipment." A device, equipment,
29 substance or material recommended by the Centers for Disease
30 Control and Prevention, Food and Drug Administration,

1 Environmental Protection Agency, Department of Homeland
2 Security, another Federal authority or the Department of Health
3 to prevent, limit or slow the spread of COVID-19, such as
4 respirators, masks, surgical apparel, gowns, gloves and other
5 apparel intended for a medical purpose. The term includes
6 sanitizers and disinfectants.

7 "Proclamation of disaster emergency." A proclamation of
8 disaster emergency issued by the Governor relating to COVID-19
9 and any renewal of the state of disaster emergency, such as the
10 proclamation of disaster emergency issued by the Governor on
11 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and
12 renewed on June 3, 2020, and August 31, 2020.

13 "Public health directives." Orders or guidelines lawfully
14 issued by the Federal or State government regarding:

15 (1) The manufacturing or use of personal protective
16 equipment during the proclamation of disaster emergency.

17 (2) Treatment or testing of individuals with or
18 reasonably believed to have COVID-19.

19 (3) Steps necessary or recommended to prevent, limit or
20 slow the spread of COVID-19.

21 "School entity." A public school, including a charter school
22 or cyber charter school, private school, nonpublic school, pre-
23 kindergarten, intermediate unit, area career and technical
24 school, approved private school or institution of higher
25 education operating within the Commonwealth. The term includes
26 an individual employed by or contracted by a school entity.
27 Section 501.1. School and child care liability.

28 (a) Limited liability.--Notwithstanding any other provision
29 of law, a school entity or child care facility shall not be
30 civilly liable for damages or personal injury relating to an

1 actual or alleged exposure to COVID-19, absent a showing, by
2 clear and convincing evidence, of gross negligence,
3 recklessness, willful misconduct or intentional infliction of
4 harm.

5 (b) Compliance with public health directives.--An act or
6 omission in compliance with, or in a good faith belief that the
7 act or omission is in compliance with, public health directives
8 shall not be considered gross negligence, recklessness, willful
9 misconduct or intentional infliction of harm.

10 Section 502. Personal protective equipment liability.

11 (a) Manufacturer, distributor, labeler and donor.--The
12 following apply:

13 (1) Notwithstanding any other provision of law, a person
14 that manufactures, distributes, labels or donates personal
15 protective equipment shall not be civilly liable for damages
16 or personal injury related to actual or alleged exposure to
17 COVID-19, in connection with the use of personal protective
18 equipment that, during the proclamation of disaster
19 emergency, is donated or sold at direct cost, to a charitable
20 organization, the Commonwealth, a local governmental unit or
21 covered provider, absent a showing by clear and convincing
22 evidence of recklessness, willful misconduct or intentional
23 infliction of harm.

24 (2) An act or omission in compliance with, or in a good
25 faith belief that the act or omission was in compliance with,
26 public health directives, shall not be considered
27 recklessness, willful misconduct or intentional infliction of
28 harm.

29 (b) Other manufacturers, distributors and labelers.--Except
30 as provided under subsection (a), the following apply:

1 (1) Notwithstanding any other provision of law, a person
2 that manufactures, distributes or labels personal protective
3 equipment shall not be civilly liable for damages or personal
4 injury related to actual or alleged exposure to COVID-19 in
5 connection with the use of personal protective equipment
6 absent a showing, by clear and convincing evidence, of gross
7 negligence, recklessness, willful misconduct or intentional
8 infliction of harm if the person commenced manufacturing,
9 distributing or labeling:

10 (i) only in connection with a proclamation of
11 disaster emergency; or

12 (ii) to the same standards that it manufactured,
13 distributed or labeled the equipment before a
14 proclamation of disaster emergency, unless the equipment
15 is clearly labeled to indicate otherwise.

16 (2) An act or omission in compliance with, or in a good
17 faith belief that the act of omission was in compliance with,
18 public health directives shall not be considered gross
19 negligence, recklessness, willful misconduct or intentional
20 infliction of harm.

21 (c) Users.--The following apply:

22 (1) Notwithstanding any other provision of law, a person
23 that used or employed personal protective equipment during
24 the proclamation of disaster emergency in compliance with
25 public health directives related to the personal protective
26 equipment shall not be civilly liable for damages or personal
27 injury related to use of the personal protective equipment
28 absent a showing, by clear and convincing evidence, of gross
29 negligence, recklessness, willful misconduct or intentional
30 infliction of harm.

1 (2) An act or omission in compliance with, or in a good
2 faith belief that the act or omission was in compliance with,
3 public health directives, shall not be considered gross
4 negligence, recklessness, willful misconduct or intentional
5 infliction of harm.

6 Section 503. Business or government services liability.

7 (a) Limited liability.--Notwithstanding any other provision
8 of law, a person providing business or government services shall
9 not be civilly liable for damages or personal injury relating to
10 an actual or alleged exposure to COVID-19, absent a showing, by
11 clear and convincing evidence, of gross negligence,
12 recklessness, willful misconduct or intentional infliction of
13 harm.

14 (b) Compliance with public health directives.--An act or
15 omission in compliance with, or in a good faith belief that the
16 act or omission is in compliance with, public health directives,
17 shall not be considered gross negligence, recklessness, willful
18 misconduct or intentional infliction of harm.

19 Section 504. Covered provider liability.

20 (a) Limited liability.--Notwithstanding any other provision
21 of law, a covered provider shall not be civilly liable for
22 damages or personal injury relating to the following absent a
23 showing, by clear and convincing evidence, of gross negligence,
24 recklessness, willful misconduct or intentional infliction of
25 harm:

26 (1) the provision of treatment or testing for COVID-19
27 to patients that have been exposed to or whom a covered
28 provider reasonably believes may have been exposed to COVID-
29 19; or

30 (2) an act or omission proximately caused by any of the

1 following:

2 (i) equipment, supplies or personnel shortages
3 caused by the demand for testing for or treatment of
4 COVID-19 and which was beyond the reasonable control of
5 the covered provider;

6 (ii) a number of patients in excess of the capacity
7 of a department or of a unit of a covered provider as a
8 direct result of the need to test for or treat COVID-19;
9 or

10 (iii) compliance with public health directives
11 regarding the testing for and treatment of COVID-19.

12 (b) Compliance with public health directives.--An act or
13 omission by a covered provider in compliance with, or in a good
14 faith belief that the act of omission was in compliance with,
15 public health directives, shall not be considered gross
16 negligence, recklessness, willful misconduct or intentional
17 infliction of harm.

18 Section 505. Application of chapter.

19 (a) Vicarious liability.--Vicarious liability shall not
20 attach to the employer of a person who is otherwise immune under
21 this chapter or an executive order.

22 (b) Public health directives.--In determining civil
23 liability under this chapter, a court shall:

24 (1) For a manufacturer, distributor, labeler or donor,
25 consider public health directives that were in effect at the
26 time, either of the manufacture, distribution, labeling or
27 sale of the personal protective equipment.

28 (2) For a person providing business or government
29 services, user of personal protective equipment, school
30 entity or child care facility, consider public health

1 directives that were in effect at the time of an alleged act
2 or omission occurred.

3 (3) For a covered provider, consider public health
4 directives that were in effect at the time an alleged act or
5 omission occurred.

6 (c) Proclamation of disaster emergency.--This chapter shall
7 apply to acts or omissions during a proclamation of disaster
8 emergency.

9 Section 506. Construction of chapter.

10 This chapter shall not:

11 (1) Be construed to create a new cause of action or
12 expand a civil or criminal liability otherwise imposed, limit
13 a defense or affect the applicability of a law that affords
14 greater protections to defendants than are provided under
15 this chapter.

16 (2) Prevent an individual from filing a claim for
17 Workers' Compensation or receiving benefits under the act of
18 June 2, 1915 (P.L.736, No.338), known as the Workers'
19 Compensation Act, if otherwise available.

20 CHAPTER 7

21 MISCELLANEOUS PROVISIONS

22 Section 701. Nonseverability.

23 The provisions of this act are nonseverable. If any provision
24 of this act or its application to any person or circumstance is
25 held invalid, the remaining provisions or applications of this
26 act are void.

27 Section 702. Expiration.

28 (a) General rule.--Subject to subsection (b), this act shall
29 expire 20 years after the effective date of this section.

30 (b) Exception.--The expiration of this act shall not apply

1 to or otherwise affect the following:

2 (1) A violation of this act that occurred before the
3 expiration of this act.

4 (2) An investigation of an alleged violation of this act
5 that commenced, but was not completed, before the expiration
6 of this act.

7 Section 703. Effective date.

8 This act shall take effect as follows:

9 (1) The following shall take effect immediately:

10 (i) This section.

11 (ii) Chapter 5.

12 (2) The remainder of this act shall take effect in 120
13 days.