

AMENDMENTS TO HOUSE BILL NO. 2352

Sponsor: REPRESENTATIVE EVERETT

Printer's No. 3913

1 Amend Bill, page 1, lines 1 through 7, by striking out all of
2 said lines and inserting

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

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1 Section 701. Nonseverability.
2 Section 702. Expiration.
3 Section 703. Effective date.

4 Amend Bill, page 1, lines 10 through 19; pages 2 through 37,
5 lines 1 through 30; page 38, lines 1 through 6; by striking out
6 all of said lines on said pages and inserting

7 CHAPTER 1
8 PRELIMINARY PROVISIONS

9 Section 101. Short title.

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

12 Section 102. Declaration of policy.

13 The General Assembly declares that this act adopts the intent
14 of the Congress of the United States in enacting the Federal
15 False Claims Act (Public Law 97-258, 31 U.S.C. §§ 3729-3733) on
16 September 13, 1982, including the amendments enacted October 27,
17 1986 (Public Law 99-562, 100 Stat. 3153), and all subsequent
18 amendments.

19 Section 103. Definitions.

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

23 "Claim." As follows:

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

28 (2) Beginning January 1, 2022, a request or demand for
29 money or property, whether under contract or otherwise and
30 regardless of whether the Commonwealth has title to the money
31 or property that is presented, submitted or otherwise made
32 to:

33 (i) An employee, officer or agent of the
34 Commonwealth.

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

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

41 (B) will reimburse the contractor, grantee or
42 other recipient for any portion of the money or
43 property that is requested or demanded.

44 (3) The term does not include requests or demands for
45 money or property that the Commonwealth has paid to an
46 individual as compensation for employment or as an income
47 subsidy with no restrictions on the individual's use of the
48 money or property.

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

5 "COVID-19." The novel coronavirus as identified in the
6 Governor's proclamation of disaster emergency issued on March 6,
7 2020, published at 50 Pa.B. 1644 (March 21, 2020).

8 "Knowingly." As follows:

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

11 (i) Has actual knowledge of the information.

12 (ii) Acts in deliberate ignorance of the truth or
13 falsity of the information.

14 (iii) Acts in reckless disregard of the truth or
15 falsity of the information.

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

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

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

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

24 (1) An express or implied contractual relationship.

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

26 (3) An express or implied licensor-licensee
27 relationship.

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

29 (5) A statute or regulation.

30 (6) The retention of an overpayment.

31 "Official use." A use that is consistent with the law and
32 the regulations and policies of the Office of Attorney General,
33 including the following:

34 (1) Use in connection with internal memoranda and
35 reports.

36 (2) Communications between the Office of Attorney
37 General and a Federal, State or local government agency or a
38 contractor of a Federal, State or local government agency,
39 undertaken in furtherance of an investigation or prosecution
40 of an action.

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

42 (4) Oral examinations.

43 (5) Depositions.

44 (6) Preparation for and response to civil discovery
45 requests.

46 (7) Introduction into the record of an action or
47 proceeding.

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

50 (9) Communications with investigators, auditors,
51 consultants and experts, the counsel of other parties,

1 arbitrators and mediators, concerning an investigation,
2 action or proceeding.

3 "Original source." An individual who:

4 (1) prior to a public disclosure under section 302(f)
5 (2), has voluntarily disclosed to the Commonwealth the
6 information on which the allegations or transactions in a
7 claim are based; or

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

12 "Person." A natural person, corporation, firm, association,
13 organization, partnership, limited liability company, business,
14 trust, business trust, estate or foundation.

15 "Qui tam plaintiff." A person bringing a civil action under
16 section 302.

17 CHAPTER 3

18 FALSE CLAIMS

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

20 (a) Liability.--A person who commits an act prohibited under
21 subsection (b) shall be liable to the Commonwealth for three
22 times the amount of damages that the Commonwealth sustains
23 because of the act of that person.

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

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

30 (2) Knowingly makes, uses or causes to be made or used,
31 a false record or statement material to a false or fraudulent
32 claim.

33 (3) Has possession, custody or control of property or
34 money used or to be used by the Commonwealth and knowingly
35 delivers or causes to be delivered less than all of the money
36 or property.

37 (4) Is authorized to make or deliver a document
38 certifying receipt of property used or to be used by the
39 Commonwealth and, intending to defraud the Commonwealth,
40 makes or delivers a receipt without completely knowing that
41 the information on the receipt is true.

42 (5) Knowingly buys or receives as a pledge of an
43 obligation or debt, public property from an officer or
44 employee of the Commonwealth who lawfully may not sell or
45 pledge the property.

46 (6) Knowingly makes, uses or causes to be made or used,
47 a false record or statement material to an obligation to pay
48 or transmit money or property to the Commonwealth or
49 knowingly conceals, or knowingly and improperly avoids or
50 decreases, an obligation to pay or transmit money or property
51 to the Commonwealth.

1 (7) Knowingly fails to disclose a fact, event or
2 occurrence material to an obligation to pay or transmit money
3 or property to Commonwealth.

4 (8) Is a beneficiary of an inadvertent submission of a
5 false claim, subsequently discovers the falsity of the claim
6 and fails to disclose the false claim to the Commonwealth
7 within a reasonable time after discovery of the false claim.

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

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

14 (1) The person that commits the violation under this
15 section furnished to the Commonwealth officials who are
16 responsible for investigating false claims violations with
17 all information known to that person about the violation
18 within 45 days after the date on which the person first
19 obtained the information.

20 (2) The person fully cooperated with an investigation by
21 the Commonwealth.

22 (3) At the time when the person furnished the
23 Commonwealth with information about the violation under this
24 section or at the time when an administrative action is
25 commenced with respect to the violation, the person did not
26 have actual knowledge of the existence of an investigation
27 into the violation.

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

31 (e) Actions to recover damages.--A person who is liable for
32 damages or civil penalties under subsection (a) or (b) shall
33 also be liable to the Commonwealth for the reasonable costs of a
34 civil action brought to recover the damages or civil penalties
35 under subsection (a) or (b), including reasonable costs to the
36 Office of Attorney General.

37 (f) Adjustments.--The civil penalties payable under
38 subsection (b) shall be adjusted from time to time consistent
39 with the Federal Civil Penalties Inflation Adjustment Act of
40 1990 (Public Law 104-410, 28 U.S.C. § 2461).

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

44 (h) Recipient liability restricted.--A person who is a
45 recipient of public support services shall not be liable under
46 this section unless the person intentionally violates subsection
47 (a) and benefits financially from the violation.
48 Section 302. Attorney General investigations, prosecutions and
49 civil actions.

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

51 (1) The Attorney General shall investigate a violation

1 of section 301. If the Attorney General finds that a person
2 has violated or is violating section 301, the Attorney
3 General may bring a civil action under this section against
4 that person. Nothing under section 1407 of the act of June
5 13, 1967 (P.L.31, No.21), known as the Human Services Code,
6 shall be construed to limit the authority of the Attorney
7 General to investigate or prosecute violations under section
8 301.

9 (2) The Attorney General may designate a district
10 attorney to serve as the Attorney General's designee,
11 investigate a violation of section 301 and bring a civil
12 action under this section against a person that has violated
13 or is violating section 301. The Attorney General may rescind
14 the designation made under this paragraph.

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

16 (1) A qui tam plaintiff may bring a civil action for a
17 violation of section 301 for the qui tam plaintiff and for
18 the Commonwealth in the name of the Commonwealth. Once filed,
19 the action may be dismissed only if the court and the
20 Attorney General give written consent to the dismissal and
21 their reasons for consenting.

22 (2) A copy of the complaint and written disclosure of
23 substantially all material evidence and information the qui
24 tam plaintiff possesses shall be served promptly on the
25 Attorney General as provided for in the Pennsylvania Rules of
26 Civil Procedure or applicable court rules. The complaint
27 shall be filed in camera and shall remain under seal for at
28 least 120 days and shall not be served on the defendant until
29 the court orders the service. The Commonwealth may elect to
30 intervene and proceed with the action within 120 days after
31 the Commonwealth receives the complaint and the material
32 evidence and information.

33 (3) The Commonwealth may, for good cause shown, move the
34 court for extensions of the time during which the complaint
35 remains under seal under paragraph (2). The motions may be
36 supported by affidavits or other submissions in camera. The
37 defendant shall not be required to respond to a complaint
38 filed under this section until the complaint is unsealed and
39 served upon the defendant under the Pennsylvania Rules of
40 Civil Procedure or applicable court rule.

41 (4) Before the expiration of the 120-day period or any
42 extensions obtained under paragraph (3), the Commonwealth
43 shall:

44 (i) proceed with the action; or

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

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

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

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

8 (2) The following apply:

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

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

27 (iii) Upon a showing by the Commonwealth that
28 unrestricted participation of the qui tam plaintiff
29 during the course of the action by the qui tam plaintiff
30 would interfere with or unduly delay the Commonwealth's
31 prosecution of the case or would be repetitious,
32 irrelevant or for purposes of harassment, the court may,
33 in its discretion, impose limitations on the qui tam
34 plaintiff's participation by:

35 (A) limiting the number of witnesses the qui tam
36 plaintiff may call;

37 (B) limiting the length of the testimony of the
38 witnesses;

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

41 (D) otherwise limiting the participation by the
42 qui tam plaintiff in the action.

43 (iv) Upon a showing by the defendant that
44 unrestricted participation during the action by the qui
45 tam plaintiff would be for the purpose of harassment or
46 would cause the defendant undue burden or unnecessary
47 expense, the court may limit the participation by the qui
48 tam plaintiff in the action.

49 (3) If the Commonwealth elects not to proceed with the
50 action, the qui tam plaintiff shall have the right to conduct
51 the action. If the Commonwealth requests, the Commonwealth

1 shall be served with copies of all pleadings filed in the
2 action and shall be supplied, at the expense of the
3 Commonwealth, with copies of all deposition transcripts and
4 other discovery produced in the action. The court, without
5 limiting the status and rights of the qui tam plaintiff, may
6 permit the Commonwealth to intervene at a later date upon a
7 showing of good cause.

8 (4) Whether or not the Commonwealth proceeds with the
9 action, upon a showing by the Commonwealth that certain
10 actions of discovery by the qui tam plaintiff would interfere
11 with the Commonwealth's investigation or prosecution of a
12 criminal or civil matter arising out of the same facts, the
13 court may stay the discovery for a period of not more than 60
14 days. The showing shall be conducted in camera. The court may
15 extend the 60-day period upon a further showing in camera
16 that the Commonwealth has pursued the criminal or civil
17 investigation or proceedings with reasonable diligence and
18 that the discovery proposed in the civil action will
19 interfere with the ongoing criminal or civil investigations
20 or proceedings.

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

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

38 (1) If the Commonwealth proceeds with an action brought
39 by a qui tam plaintiff, the qui tam plaintiff shall, subject
40 to the provisions of this paragraph, receive at least 15% but
41 not more than 25% of the proceeds of the action or settlement
42 of the legal claim, depending upon the extent to which the
43 qui tam plaintiff and counsel for the qui tam plaintiff
44 substantially contributed to the prosecution of the action.
45 If the court finds that the action is based primarily on
46 disclosures of specific information, other than information
47 provided by the qui tam plaintiff, relating to allegations or
48 transactions in a criminal, civil or administrative hearing
49 or in a legislative or administrative report, hearing, audit
50 or investigation or from the news media, the court may award
51 a sum the court considers appropriate, but in no case more

1 than 10% of the proceeds, taking into account the
2 significance of the information and the role of the qui tam
3 plaintiff in advancing the action. A payment to a qui tam
4 plaintiff under this subsection shall be made from the
5 proceeds of the action or settlement of the legal claim. The
6 qui tam plaintiff shall also receive an amount for reasonable
7 expenses which the court finds were necessarily incurred,
8 plus reasonable attorney fees and costs. The expenses, fees
9 and costs shall be awarded against the defendant.

10 (2) If the Commonwealth does not proceed with an action
11 under this section, the qui tam plaintiff shall receive at
12 least 25% but not more than 30% of the proceeds of the action
13 or settlement of the legal claim, as the court deems
14 reasonable. The amount shall be paid from the proceeds of the
15 action or settlement of the legal claim. The qui tam
16 plaintiff shall also receive an amount for reasonable
17 expenses which the court finds to have been necessarily
18 incurred, plus reasonable attorney fees and costs. The
19 expenses, fees and costs shall be awarded against the
20 defendant.

21 (3) Whether or not the Commonwealth proceeds with an
22 action under this section, if the court finds the qui tam
23 plaintiff planned and initiated the violation of section 301
24 upon which the action was filed, then the court may, to the
25 extent the court considers appropriate, reduce the share of
26 the proceeds of the action which the qui tam plaintiff would
27 otherwise receive under paragraph (1) or (2), taking into
28 account the role of the qui tam plaintiff in advancing the
29 action and any relevant circumstances pertaining to the
30 violation. If the qui tam plaintiff is convicted of criminal
31 conduct arising from the qui tam plaintiff's role in the
32 violation, the qui tam plaintiff shall be dismissed from the
33 civil action and shall not receive a share of the proceeds of
34 the action. The dismissal shall not prejudice the right of
35 the Commonwealth to continue the action.

36 (4) If the Commonwealth does not proceed with the action
37 under this section and the qui tam plaintiff conducts the
38 action, the court may award to the defendant reasonable
39 attorney fees and expenses if the defendant prevails in the
40 action and the court finds the legal claim of the qui tam
41 plaintiff was clearly frivolous, clearly vexatious or brought
42 primarily for purposes of harassment.

43 (f) Certain actions barred.--

44 (1) A court does not have jurisdiction over an action
45 filed under this section against the Governor, the Lieutenant
46 Governor, the Attorney General, the Auditor General, the
47 Treasurer, a cabinet member, a deputy secretary, a member of
48 the General Assembly or a member of the judiciary if the
49 action is based on evidence or information known to the
50 Commonwealth when the action was brought.

51 (2) Subject to the provisions under paragraph (3), the

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

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

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

8 (ii) the dismissal is opposed by the Attorney
9 General; or

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

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

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

20 (h) (Reserved).

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

25 Section 303. Civil investigative demands.

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

27 (1) For the purpose of this subsection, whenever the
28 Attorney General or the Attorney General's designee has
29 reason to believe that a person may be in possession, custody
30 or control of documentary material or information relevant to
31 a false claims investigation under this act, the Attorney
32 General or designee may, before commencing a civil action
33 under section 302(a) or making an election under section
34 302(b), issue in writing or cause to be served upon the
35 person a civil investigative demand requiring the person to:

36 (i) produce documentary material for inspection and
37 copying;

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

40 (iii) give oral testimony concerning documentary
41 material or information; or

42 (iv) furnish any combination of materials, answers
43 or testimony.

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

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

50 (ii) notify the demand issuee of the date on which
51 the copy was served.

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

7 (4) Notwithstanding the provisions of 18 Pa.C.S. Ch. 91
8 (relating to criminal history record information) or any
9 other law to the contrary, the Attorney General may access
10 and share data, records, documents or other information,
11 including criminal history record information, intelligence
12 information, investigative information and treatment
13 information obtained during the course of, and as necessary
14 to advance, an investigation or prosecution of a potential or
15 actual violation of section 301 with the following:

16 (i) A section, unit, subunit or individual employee
17 or agent of the Office of Attorney General authorized and
18 designated by the Attorney General to investigate or
19 prosecute a potential or actual violation of section 301.

20 (ii) The United States Department of Justice.

21 (iii) The appropriate civil prosecutorial authority
22 of another jurisdiction.

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

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

30 (1) A civil investigative demand shall state the nature
31 of the conduct constituting the alleged violation of this act
32 that is under investigation and the applicable provisions of
33 this act alleged to be violated.

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

36 (i) describe each class of documentary material to
37 be produced with definiteness and certainty as to permit
38 the material to be fairly identified;

39 (ii) prescribe a return date for each class that
40 will provide a reasonable time period within which the
41 material demanded may be assembled and made available for
42 inspection and copying; and

43 (iii) identify the false claims investigator to whom
44 the material shall be available.

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

47 (i) State with specificity the written
48 interrogatories to be answered.

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

51 (iii) Identify the false claims investigator to whom

1 the answers shall be submitted.

2 (4) If the civil investigative demand is for oral
3 testimony, the demand shall:

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

6 (ii) Identify a false claims investigator who shall
7 conduct the examination and the custodian to whom the
8 transcript of the examination shall be submitted.

9 (iii) Specify that attendance and testimony are
10 necessary to the conduct of the false claims
11 investigation.

12 (iv) Describe the general purpose for which the
13 demand is being issued and general nature of the
14 testimony, including the primary areas of inquiry, which
15 will be taken under the demand.

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

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

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

26 (7) The date prescribed for commencement of oral
27 testimony under a civil investigative demand shall not be
28 less than seven days after the date on which the demand is
29 served, unless the Attorney General or a designee determines
30 that exceptional circumstances exist and warrant the
31 commencement of testimony within a lesser time period.

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

35 (i) the person requests otherwise; or

36 (ii) the Attorney General or designee notifies the
37 person in writing that an additional demand for oral
38 testimony is necessary.

39 (c) Protected material or information.--The following shall
40 apply:

41 (1) A civil investigative demand may not require the
42 production of documentary material, the submission of answers
43 to written interrogatories or the giving of oral testimony if
44 the material, answers or testimony would be protected from
45 disclosure under:

46 (i) the standards applicable to subpoenas or
47 subpoenas duces tecum issued by a court of this
48 Commonwealth to aid in a grand jury investigation; or

49 (ii) the standards applicable to discovery under the
50 Pennsylvania Rules of Civil Procedure or other applicable
51 court rule, to the extent that the application of the

standards to a demand is appropriate and consistent with the provisions and purposes of this section.

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

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

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

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

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

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

(ii) A petition may be served by any person authorized to serve process under the Pennsylvania Rules of Civil Procedure or other applicable court rule.

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

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

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

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

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

(A) delivering an executed copy of the demand or petition to any partner, executive officer, managing agent or general agent of the legal entity or to an

1 employee designated or agent authorized by
2 appointment or law to receive service of process on
3 behalf of the legal entity;

4 (B) delivering an executed copy of the demand or
5 petition to the legal entity's principal office or
6 place of business;

7 (C) depositing an executed copy of the demand or
8 petition in the United States mail by registered or
9 certified mail with a return receipt requested,
10 addressed to the legal entity at its principal office
11 or place of business; or

12 (D) any other method provided by the
13 Pennsylvania Rules of Civil Procedure or other
14 applicable court rule.

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

17 (A) delivering an executed copy of the demand or
18 petition to the person;

19 (B) depositing an executed copy of the demand or
20 petition in the United States mail by registered or
21 certified mail with a return receipt requested,
22 addressed to the person at the person's residence or
23 principal office or place of business; or

24 (C) any other method provided by the
25 Pennsylvania Rules of Civil Procedure or other
26 applicable court rule.

27 (4) A verified return by the individual serving a civil
28 investigative demand or petition, specifying the manner of
29 service, shall be proof of service. In the case of service by
30 registered or certified mail, the return post office receipt
31 of the demand's or petition's delivery shall accompany the
32 return.

33 (e) Documentary material.--

34 (1) The following shall apply regarding verified
35 certificate:

36 (i) The production of documentary material shall be
37 made under a written and verified certificate, in the
38 form as the demand designates, by the following
39 individuals:

40 (A) if the demand issuee is a natural person, by
41 the demand issuee; and

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

46 (ii) The certificate shall state that all the
47 documentary material required by the demand and in the
48 demand issuee's possession, custody or control has been
49 produced and made available to the false claims
50 investigator identified in the demand.

51 (2) The following shall apply regarding production of

1 materials:

2 (i) A demand issuee shall make the demanded material
3 available for inspection and copy to the false claims
4 investigator identified in the demand:

5 (A) at the demand issuee's principal place of
6 business;

7 (B) at another place as the false claims
8 investigator and the demand issuee thereafter may
9 agree and prescribe in writing; or

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

11 (ii) The documentary material shall be made
12 available on the return date specified in the demand or
13 on a later date as the false claims investigator may
14 prescribe in writing. The demand issuee may, upon written
15 agreement with the false claims investigator, substitute
16 copies for originals of all or any part of the material.

17 (3) If the demand issuee objects to the production of
18 any portion of the required documentary material or otherwise
19 withholds any portion of the material, the issuee shall with
20 particularity state the reasons for the objection or
21 withholding and identify all withheld material.

22 (f) Interrogatories.--

23 (1) With respect to answers and verified certificates,
24 each interrogatory in a civil investigative demand shall be
25 answered separately and fully in writing under oath and shall
26 be submitted under a verified certificate, in the form as the
27 demand designates stating that all information required by
28 the demand and in the demand issuee's possession, custody,
29 control or knowledge has been submitted by the following
30 individuals:

31 (i) if the demand issuee is a natural person, by the
32 demand issuee; and

33 (ii) if the demand issuee is not a natural person,
34 by the individuals responsible for answering each
35 interrogatory.

36 (2) With respect to objections and withholding of
37 information, if the demand issuee objects to an interrogatory
38 or any portion thereof, or otherwise withholds information,
39 the demand issuee shall state with particularity the reasons
40 for the objection or withholding and identify all withheld
41 information.

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

43 (1) With respect to procedures:

44 (i) The examination of a person under a civil
45 investigative demand for oral testimony shall be taken
46 before an officer authorized to administer oaths and
47 affirmations by the laws of this Commonwealth or of the
48 place where the examination is held.

49 (ii) The officer shall put the witness on oath or
50 affirmation and shall personally or by someone acting
51 under the officer's direction and in the officer's

1 presence, record the witness's testimony.

2 (iii) The testimony shall be stenographically
3 transcribed.

4 (iv) When the transcribing is complete, the officer
5 shall promptly transmit a copy of the transcript to the
6 custodian.

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

11 (2) With respect to persons present, the false claims
12 investigator conducting the examination shall exclude from
13 the place where the examination is held all persons except
14 the following:

15 (i) The witness giving the testimony.

16 (ii) The attorney for the witness.

17 (iii) The attorney for the Commonwealth.

18 (iv) The officer before whom the testimony is to be
19 taken.

20 (v) The court reporter taking the testimony.

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

23 (3) Oral testimony taken under a civil investigative
24 demand shall be taken in the county or city within which the
25 person resides, is found, or transacts business, or in a
26 place to which the false claims investigator and the witness
27 otherwise agree.

28 (4) With respect to transcripts:

29 (i) When the transcript of testimony is completed,
30 the false claims investigator or the officer before whom
31 the testimony is taken shall afford the witness, who may
32 be accompanied by counsel, a reasonable opportunity to
33 examine and read the transcript, unless the witness
34 waives the reading and examination.

35 (ii) The officer or false claims investigator shall
36 enter and identify on the transcript any changes in form
37 or substance that the witness desires to make with a
38 statement of the reasons the witness gives for making the
39 changes.

40 (iii) The witness shall sign the transcript after
41 the changes, if any, are made, unless the witness waives
42 the signing in writing, is ill, cannot be found, or
43 refuses to sign. If the witness does not sign the
44 transcript within 30 days after being afforded a
45 reasonable opportunity to sign it, the officer or false
46 claims investigator shall sign it and state on the record
47 the fact of the witness's waiver, illness, absence or
48 refusal to sign, together with the reasons, if any, given
49 for why the witness did not sign the transcript.

50 (iv) The officer before whom the testimony is taken
51 shall certify on the transcript that the witness was

1 sworn by the officer and the transcript is a true record
2 of the witness's testimony, and the officer shall
3 promptly deliver the transcript or send the transcript by
4 registered or certified mail to the custodian.

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

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

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

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

31 (6) With respect to fees, a witness appearing for oral
32 testimony under a civil investigative demand shall be
33 entitled to the same fees and allowances that are paid to
34 witnesses in the courts of common pleas.

35 (h) Refusal to comply on self-incrimination privilege
36 grounds.--The Attorney General may invoke the provisions of 42
37 Pa.C.S. § 5947 (relating to immunity of witnesses) if a demand
38 issuee, on the grounds of privilege against self-incrimination,
39 refuses to:

- 40 (1) furnish documentary material or answer an
41 interrogatory in response to a civil investigative demand;
- 42 (2) answer a question asked during oral examination made
43 under a civil investigative demand; or
- 44 (3) otherwise comply with a civil investigative demand.

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

46 (1) With respect to the designation of a custodian,
47 unless otherwise set forth by rule adopted by the Attorney
48 General under section 311, the false claims investigator
49 identified on a civil investigative demand shall serve as
50 custodian of documentary material, interrogatory answers and
51 oral testimony transcripts received under this section. The

1 Attorney General may designate additional persons as the
2 Attorney General determines to be necessary to serve as
3 deputy, alternative or successor custodians.

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

8 (i) if serving as custodian, take possession of the
9 material, answers or transcripts and be responsible for
10 their usage and for the return of documentary material;
11 or

12 (ii) if not serving as custodian, transmit the
13 materials, answers or transcripts to the custodian, who
14 shall take possession and responsibility for the
15 materials, answers or transcripts.

16 (3) With respect to custodian copies, the custodian may
17 cause the preparation of copies of documentary material,
18 interrogatory answers or oral testimony transcripts as may be
19 required for official use by a false claims investigator or
20 any other officer or employee of the Office of Attorney
21 General authorized to use the materials, answers or
22 transcripts in connection with the taking of oral testimony
23 under this section. Except as otherwise provided in this
24 section, no documentary material, interrogatory answers or
25 oral testimony transcripts or copies of the foregoing shall
26 be available for examination by any individual other than a
27 false claims investigator or other officer or employee of the
28 Office of Attorney General.

29 (4) With respect to restricted disclosure:

30 (i) The prohibition under paragraph (3) shall not
31 apply if the person producing material, answers or
32 transcripts, or in the case of any product of discovery
33 produced under an express demand for the material, the
34 person from whom or which the discovery was obtained,
35 consents.

36 (ii) Nothing in this paragraph shall be construed to
37 prevent disclosure to the General Assembly or to a
38 Commonwealth agency in furtherance of statutory or
39 constitutional obligations, except that any disclosure
40 shall be subject to 18 Pa.C.S. Ch. 91.

41 (iii) While in the custodian's possession and under
42 reasonable terms and conditions as the Attorney General
43 prescribes, documentary material, interrogatory answers
44 and oral testimony transcripts shall be made available
45 for examination by the person that produced them or by
46 the person's authorized representative.

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

49 (i) Subject to 18 Pa.C.S. Ch. 91 and the rules,
50 guidelines and procedures adopted by the Attorney General
51 under section 311, an attorney of the Office of Attorney

1 General who is designated to appear before a court, grand
2 jury or Commonwealth agency in a case or proceeding may,
3 in connection with the case or proceeding, obtain from
4 the custodian and use any documentary material,
5 interrogatory answers or oral testimony transcripts that
6 the attorney determines is required.

7 (ii) Upon the case's or proceeding's completion, the
8 attorney shall return to the custodian documentary
9 material, interrogatory answers or oral testimony
10 transcripts that have not passed into the court's, grand
11 jury's or agency's control through introduction into the
12 case or proceeding's record.

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

15 (i) Subject to subparagraphs (ii) and (iii), upon
16 the written request of a person producing documentary
17 material under this section, the custodian shall return
18 the material to the person.

19 (ii) The custodian shall return the material only
20 if:

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

23 (B) no case or proceeding in which the material
24 may be used has been commenced within a reasonable
25 time after completion of the examination and analysis
26 of all documentary material and other information
27 assembled in the course of the false claims
28 investigation.

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

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

34 (B) copies furnished to the false claims
35 investigator or made for the Attorney General under
36 this subsection.

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

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

42 (i) the person fails to comply with a demand served
43 upon the person; or

44 (ii) satisfactory copying or reproduction of the
45 material requested in the demand cannot be done and the
46 person refuses to surrender the material.

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

49 (i) A demand issuee that has received a civil
50 investigative demand may file and serve upon the false
51 claims investigator identified in the demand a petition

1 for a court order modifying or setting aside the demand.

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

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

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

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

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

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

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

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

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

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

34 (3) With respect to a petition to require custodian's
35 performance of duties, at any time a custodian possesses or
36 is in custody or control of documentary material,
37 interrogatory answers or transcripts of oral testimony given
38 under a civil investigative demand, the following persons may
39 file and serve upon the custodian a petition for a court
40 order requiring the custodian to perform any duty imposed on
41 the custodian by this section:

42 (i) the demand issuer furnishing the material,
43 answers or testimony; and

44 (ii) in the case of an express demand for a product
45 of discovery, the person from whom or which discovery was
46 obtained.

47 (4) With respect to jurisdiction and contempt, the
48 following shall apply:

49 (i) The court shall have jurisdiction to hear and
50 determine a petition filed under this section and, after
51 a hearing at which all parties have the opportunity to be

1 heard, to enter orders as may be required to carry out
2 the provisions of this section.

3 (ii) A final order entered by Commonwealth Court
4 under this section shall be subject to appeal to the
5 Supreme Court under 42 Pa.C.S. § 723 (relating to appeals
6 from Commonwealth Court).

7 (k) Exemption from disclosure.--Documentary material,
8 interrogatory answers and oral testimony provided under a civil
9 investigative demand issued are exempt from disclosure under the
10 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
11 Know Law.

12 (l) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection unless the context clearly indicates otherwise:

15 "Custodian." The false claims investigator or other
16 custodian or any deputy or alternate custodian designated by the
17 Attorney General under subsection (i).

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

20 "Documentary material." Includes the original or any copy of
21 any book, record, report, memorandum, paper, communication,
22 tabulation, chart or other document or data compilations stored
23 or accessible through computer or other information retrieval
24 systems, together with appropriate and succinct instructions and
25 all other materials necessary to use or interpret the data
26 compilations, and any product of discovery.

27 "False claims investigation." An inquiry conducted by a
28 false claims investigator for the purposes of ascertaining
29 whether any person is or has been engaged in a violation of this
30 act.

31 "False claims investigator." An attorney or investigator
32 employed by the Office of Attorney General, or by a district
33 attorney designated under section 302(a)(2), who is charged with
34 the duty of enforcing or carrying out the provisions of this
35 act, or an officer or employee of the Commonwealth acting under
36 the attorney or investigator's direction and supervision in
37 connection with a false claims investigation.

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

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

41 "Product of discovery." The term includes all of the
42 following:

43 (1) The original or duplicate of a deposition
44 interrogatory, document, thing, result of the inspection of
45 land or other property, examination or admission that is
46 obtained by any method of discovery in a judicial or
47 administrative proceeding of an adversarial nature.

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

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

1 "Verified." Supported by oath or affirmation and averred
2 subject to the penalties of 18 Pa.C.S. § 4904 (relating to
3 unsworn falsification to authorities).

4 Section 304. Disposition of Commonwealth's proceeds.

5 The Commonwealth's share of the proceeds of an action under
6 this act, not including the costs of a civil action paid to the
7 Commonwealth under section 301(e) and less any amount legally
8 required to be paid from the share, shall be distributed as
9 follows:

10 (1) The Commonwealth's share of the proceeds shall be
11 allocated to reimburse the Office of Attorney General or a
12 district attorney designated under section 302 for the actual
13 costs incurred to recover damages or penalties under this
14 act.

15 (2) If any amount of the Commonwealth's share of the
16 proceeds or settlement of a legal claim remain after
17 reimbursing the Office of Attorney General for actual costs
18 incurred, the proceeds of the Commonwealth's share shall be
19 allocated to reimburse the Commonwealth for the actual costs
20 incurred as a result of a violation under section 301.

21 (3) Any remaining funds of the Commonwealth's share of
22 the proceeds or settlement of a legal claim after the Office
23 of the Attorney General and the Commonwealth are reimbursed
24 for actual costs incurred shall be deposited into the Budget
25 Stabilization Reserve Fund.

26 Section 305. Report.

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

- 31 (1) The Governor.
- 32 (2) The Department of Auditor General.
- 33 (3) The Independent Fiscal Office.
- 34 (4) The Office of Inspector General.
- 35 (5) The members of the General Assembly.
- 36 (6) The Legislative Budget and Finance Committee.

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

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

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

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

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

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

50 (6) The amounts that were recovered in actions filed
51 under this act by a person other than the Attorney General

1 through settlement or through a judgment and, if known, the
2 amount recovered for damages, penalties and litigation costs
3 and the amount recovered by the Commonwealth and the person.

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

7 (i) The Provider Relief Fund.

8 (ii) The Paycheck Protection Program.

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

11 (iv) The Unemployment Compensation Fund.

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

15 (7) The amount expended by the Office of Attorney
16 General for investigation, litigation and all other costs for
17 legal claims under this act.

18 (8) A narrative describing the most notable or prevalent
19 violations of section 301 and recommendations on how
20 Commonwealth agencies may prevent similar violations from
21 occurring.

22 (9) Legislative recommendations that the Attorney
23 General may have for amendments to this act and any other law
24 as it relates to this act.

25 Section 306. Statute of limitations, burden of proof and
26 estoppel.

27 (a) Statute of limitations.--

28 (1) Except as otherwise provided under this section, a
29 civil action under section 302 may not be brought more than
30 10 years after the date on which the violation was committed.

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

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

38 (i) The Commonwealth may file its own complaint or
39 amend the complaint of the qui tam plaintiff who brought
40 the action in order to clarify or add detail to the
41 claims and to add any additional claims with respect to
42 which the Commonwealth contends it is entitled to relief.

43 (ii) The Commonwealth pleading shall relate back to
44 the filing date of the complaint of the qui tam plaintiff
45 to the extent that the claim of the Commonwealth arises
46 out of the conduct, transactions or occurrences
47 specified, or attempted to be specified, in the qui tam
48 plaintiff's complaint.

49 (b) Burden of proof.--In an action brought under section
50 302, the Commonwealth or the qui tam plaintiff shall be required
51 to prove all essential elements of the cause of action,

1 including damages, by a preponderance of the evidence.

2 (c) Estoppel.--Notwithstanding any other provision of law, a
3 final judgment rendered in favor of the Commonwealth in a
4 criminal proceeding charging false statements or fraud, whether
5 upon a verdict after trial or upon a plea of guilty or nolo
6 contendere, shall estop the defendant from denying the essential
7 elements of the offense in an action brought under section 302
8 that involves the same transaction as in the criminal
9 proceeding.

10 Section 307. Relief from retaliatory actions.

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

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

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

30 Section 308. Actions and remedies under other laws.

31 (a) Actions and remedies not exclusive.--The provisions of
32 this act are not exclusive and the actions and remedies provided
33 for in this act shall be in addition to any other actions and
34 remedies provided for in any other law or available under the
35 common law.

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

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

43 Section 309. Qualification of act for increase share of
44 recoveries.

45 (a) Submission.--Within 30 days of the effective date of
46 this act, the Attorney General shall submit a copy of this act
47 and any other relevant information to the Office of Inspector
48 General, United States Department of Health and Human Services
49 and request a determination that this act meets the requirements
50 of section 1909(b) of the Social Security Act (49 Stat. 620, 42
51 U.S.C. § 1396h(b)), in order to qualify the Commonwealth for an

1 increased share of amounts recovered under this act with respect
2 to false or fraudulent claims submitted to the medical
3 assistance program.

4 (b) Review and recommendations.--If the Office of Inspector
5 General, United States Department of Health and Human Services
6 determines that this act does not meet the requirements of
7 section 1909(b) of the Social Security Act, the Attorney General
8 shall prepare a report explaining the reasons for the denial and
9 suggested revisions to this act which would cause this act to
10 meet the requirements of section 1909(b) of the Social Security
11 Act. A copy of the report shall be transmitted to the officials
12 designated to receive the report required under section 305(a).
13 Section 310. Rules of procedure.

14 Except as otherwise specified in, or where clearly
15 inconsistent with, this act, proceedings under this act shall be
16 governed by the Pennsylvania Rules of Civil Procedure or other
17 applicable court rule.
18 Section 311. Implementation.

19 (a) Temporary regulations.--In order to facilitate the
20 prompt implementation of this chapter, the Attorney General
21 shall promulgate temporary regulations within six months of the
22 effective date of this section. The Attorney General shall
23 promulgate temporary regulations not subject to:

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

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

29 (3) Sections 204(b) and 301(10) of the act of October
30 15, 1980 (P.L.950, No.164), known as the Commonwealth
31 Attorneys Act.

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

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

38 (b.1) Final regulations.--The Attorney General shall
39 promulgate final regulations within two years of the effective
40 date of this section. The temporary regulations promulgated
41 under this section shall expire upon promulgation of the final
42 regulations.

43 (c) Mandatory provisions.--The Attorney General, whether by
44 regulation, guideline or internal policy, shall implement
45 provisions to:

46 (1) Control a person's disclosure, dissemination,
47 sharing or use of information that is protected under 18
48 Pa.C.S. Ch. 91 (relating to criminal history record
49 information) and that the person lawfully obtains in
50 connection with an investigation or prosecution of a
51 potential or actual violation of section 301.

1 (2) Prevent the disclosure, dissemination, sharing or
2 use of protected information in accordance with section
3 303(a)(4).

4 Section 312. Jurisdiction and Attorney General as relator in
5 Federal false claims actions.

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

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

11 (2) The Commonwealth Court shall have jurisdiction over
12 a legal claim asserted under the laws of the United States,
13 any state or any local government which arises from the same
14 transaction or occurrence as an action brought under this
15 act.

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

21 (c) Service on other authorities.--With respect to the
22 Federal Government or any state or local government that is
23 named as a coplaintiff with the Commonwealth in an action
24 brought under this act, a seal on action ordered by the court
25 under section 302(b) shall not preclude the Commonwealth or the
26 person bringing the action from serving the complaint, any other
27 pleadings or the written disclosure of substantially all
28 material evidence and information possessed by the person
29 bringing the action upon the law enforcement authorities that
30 are authorized under the law of that Federal, State or local
31 government to investigate and prosecute the actions on behalf of
32 the governments. A seal ordered under section 302(b) shall apply
33 to the law enforcement authorities so served to the same extent
34 as the seal applies to other parties in the action.

35 (d) Definition.--As used in this section, the term "state"
36 includes the District of Columbia, the Commonwealth of Puerto
37 Rico, the Virgin Islands and all insular territories of the
38 United States.

39 CHAPTER 5

40 COVID-19-RELATED LIABILITY

41 Section 501. Definitions.

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

45 "Business or government services." A lawful activity
46 conducted by a trade, business, nonprofit organization or local
47 governmental unit that is permitted by the terms of the
48 proclamation of disaster emergency to hold itself out as open to
49 members of the public.

50 "Child-care facility." Any of the following:

51 (1) A child-care center as defined in section 1001 of

1 the act of June 13, 1967 (P.L.31, No.21), known as the Human
2 Services Code.

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

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

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

9 "Covered provider." Any of the following:

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

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

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

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

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

32 (6) A licensed, certified, registered or authorized
33 person providing emergency medical services as defined in 35
34 Pa.C.S. § 8103 (relating to definitions), including an EMS
35 vehicle operator.

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

38 (8) A person engaged in nursing care as defined in 28
39 Pa. Code Ch. 201 (relating to applicability, definitions,
40 ownership and general operation of long-term care nursing
41 facilities), if the nursing care is in support of the
42 activities of daily living and other instrumental activities
43 of daily living as defined in 55 Pa. Code Chs. 2600 (relating
44 to personal care homes) and 2800 (relating to assisted living
45 residences), or services covered that nursing care providers
46 are obligated to deliver or arrange under their requirements
47 of licensure.

48 (9) A clinical laboratory certified under the Federal
49 Clinical Laboratory amendments in section 353 of the Public
50 Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.),
51 or licensed under the act of September 26, 1951 (P.L.1539,

1 No.389), known as The Clinical Laboratory Act.

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

6 "Direct cost." The direct labor and direct material costs of
7 producing personal protective equipment, excluding any
8 manufacturing overhead costs.

9 "Institution of higher education." The term includes any of
10 the following:

11 (1) A community college operating under Article XIX-A.

12 (2) A university within the State System of Higher
13 Education.

14 (3) The Pennsylvania State University, the University of
15 Pittsburgh, Temple University, Lincoln University or any
16 other institution designated as State-related by the
17 Commonwealth.

18 (4) The Thaddeus Stevens College of Technology and The
19 Pennsylvania College of Technology.

20 (5) A college established under Article XIX-G.

21 (6) An institution of higher education located in and
22 incorporated or chartered by the Commonwealth and entitled to
23 confer degrees under 24 Pa.C.S. § 6505 (relating to power to
24 confer degrees) and as provided for by the standards and
25 qualifications prescribed by the State Board of Education
26 under 24 Pa.C.S. Ch. 65 (relating to private colleges,
27 universities and seminaries).

28 (7) A private school licensed under the act of December
29 15, 1986 (P.L.1585, No.174), known as the Private Licensed
30 Schools Act.

31 (8) A foreign corporation approved to operate an
32 educational enterprise under 22 Pa. Code Ch. 36 (relating to
33 foreign corporation standards).

34 "Local governmental unit." A municipality or local
35 authority.

36 "Personal protective equipment." A device, equipment,
37 substance or material recommended by the Centers for Disease
38 Control and Prevention, Food and Drug Administration,
39 Environmental Protection Agency, Department of Homeland
40 Security, another Federal authority or the Department of Health
41 to prevent, limit or slow the spread of COVID-19, such as
42 respirators, masks, surgical apparel, gowns, gloves and other
43 apparel intended for a medical purpose. The term includes
44 sanitizers and disinfectants.

45 "Proclamation of disaster emergency." A proclamation of
46 disaster emergency issued by the Governor relating to COVID-19
47 and any renewal of the state of disaster emergency, such as the
48 proclamation of disaster emergency issued by the Governor on
49 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and
50 renewed on June 3, 2020, and August 31, 2020.

51 "Public health directives." Orders or guidelines lawfully

1 issued by the Federal or State government regarding:

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

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

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

8 "School entity." A public school, including a charter school
9 or cyber charter school, private school, nonpublic school, pre-
10 kindergarten, intermediate unit, area career and technical
11 school, approved private school or institution of higher
12 education operating within the Commonwealth. The term includes
13 an individual employed by or contracted by a school entity.
14 Section 501.1. School and child care liability.

15 (a) Limited liability.--Notwithstanding any other provision
16 of law, a school entity or child care facility shall not be
17 civilly liable for damages or personal injury relating to an
18 actual or alleged exposure to COVID-19, absent a showing, by
19 clear and convincing evidence, of gross negligence,
20 recklessness, willful misconduct or intentional infliction of
21 harm.

22 (b) Compliance with public health directives.--An act or
23 omission in compliance with, or in a good faith belief that the
24 act or omission is in compliance with, public health directives
25 shall not be considered gross negligence, recklessness, willful
26 misconduct or intentional infliction of harm.

27 Section 502. Personal protective equipment liability.

28 (a) Manufacturer, distributor, labeler and donor.--The
29 following apply:

30 (1) Notwithstanding any other provision of law, a person
31 that manufactures, distributes, labels or donates personal
32 protective equipment shall not be civilly liable for damages
33 or personal injury related to actual or alleged exposure to
34 COVID-19, in connection with the use of personal protective
35 equipment that, during the proclamation of disaster
36 emergency, is donated or sold at direct cost, to a charitable
37 organization, the Commonwealth, a local governmental unit or
38 covered provider, absent a showing by clear and convincing
39 evidence of recklessness, willful misconduct or intentional
40 infliction of harm.

41 (2) An act or omission in compliance with, or in a good
42 faith belief that the act or omission was in compliance with,
43 public health directives, shall not be considered
44 recklessness, willful misconduct or intentional infliction of
45 harm.

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

48 (1) Notwithstanding any other provision of law, a person
49 that manufactures, distributes or labels personal protective
50 equipment shall not be civilly liable for damages or personal
51 injury related to actual or alleged exposure to COVID-19 in

1 connection with the use of personal protective equipment
2 absent a showing, by clear and convincing evidence, of gross
3 negligence, recklessness, willful misconduct or intentional
4 infliction of harm if the person commenced manufacturing,
5 distributing or labeling:

6 (i) only in connection with a proclamation of
7 disaster emergency; or

8 (ii) to the same standards that it manufactured,
9 distributed or labeled the equipment before a
10 proclamation of disaster emergency, unless the equipment
11 is clearly labeled to indicate otherwise.

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

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

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

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

32 Section 503. Business or government services liability.

33 (a) Limited liability.--Notwithstanding any other provision
34 of law, a person providing business or government services shall
35 not be civilly liable for damages or personal injury relating to
36 an actual or alleged exposure to COVID-19, absent a showing, by
37 clear and convincing evidence, of gross negligence,
38 recklessness, willful misconduct or intentional infliction of
39 harm.

40 (b) Compliance with public health directives.--An act or
41 omission in compliance with, or in a good faith belief that the
42 act or omission is in compliance with, public health directives,
43 shall not be considered gross negligence, recklessness, willful
44 misconduct or intentional infliction of harm.

45 Section 504. Covered provider liability.

46 (a) Limited liability.--Notwithstanding any other provision
47 of law, a covered provider shall not be civilly liable for
48 damages or personal injury relating to the following absent a
49 showing, by clear and convincing evidence, of gross negligence,
50 recklessness, willful misconduct or intentional infliction of
51 harm:

1 (1) the provision of treatment or testing for COVID-19
2 to patients that have been exposed to or whom a covered
3 provider reasonably believes may have been exposed to COVID-
4 19; or

5 (2) an act or omission proximately caused by any of the
6 following:

7 (i) equipment, supplies or personnel shortages
8 caused by the demand for testing for or treatment of
9 COVID-19 and which was beyond the reasonable control of
10 the covered provider;

11 (ii) a number of patients in excess of the capacity
12 of a department or of a unit of a covered provider as a
13 direct result of the need to test for or treat COVID-19;
14 or

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

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

23 Section 505. Application of chapter.

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

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

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

33 (2) For a person providing business or government
34 services, user of personal protective equipment, school
35 entity or child care facility, consider public health
36 directives that were in effect at the time of an alleged act
37 or omission occurred.

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

41 (c) Proclamation of disaster emergency.--This chapter shall
42 apply to acts or omissions during a proclamation of disaster
43 emergency.

44 Section 506. Construction of chapter.

45 This chapter shall not:

46 (1) Be construed to create a new cause of action or
47 expand a civil or criminal liability otherwise imposed, limit
48 a defense or affect the applicability of a law that affords
49 greater protections to defendants than are provided under
50 this chapter.

51 (2) Prevent an individual from filing a claim for

1 Workers' Compensation or receiving benefits under the act of
2 June 2, 1915 (P.L.736, No.338), known as the Workers'
3 Compensation Act, if otherwise available.

4 CHAPTER 7

5 MISCELLANEOUS PROVISIONS

6 Section 701. Nonseverability.

7 The provisions of this act are nonseverable. If any provision
8 of this act or its application to any person or circumstance is
9 held invalid, the remaining provisions or applications of this
10 act are void.

11 Section 702. Expiration.

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

14 (b) Exception.--The expiration of this act shall not apply
15 to or otherwise affect the following:

16 (1) A violation of this act that occurred before the
17 expiration of this act.

18 (2) An investigation of an alleged violation of this act
19 that commenced, but was not completed, before the expiration
20 of this act.

21 Section 703. Effective date.

22 This act shall take effect as follows:

23 (1) The following shall take effect immediately:

24 (i) This section.

25 (ii) Chapter 5.

26 (2) The remainder of this act shall take effect in 120
27 days.