AN ACT

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

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.
This act shall be known and may be cited as the Commonwealth Fraud Prevention and COVID-19-Related Liability Act.
Section 102. Declaration of policy.
The General Assembly declares that this act adopts the intent of the Congress of the United States in enacting the False
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Claims Act (Public Law 97-258, 31 U.S.C. §§ 3729-3733) on September 13, 1982, including the amendments enacted October 27, 1986 (Public Law 99-562, 100 Stat. 3153), and all subsequent amendments.

Section 103. Definitions.

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

"Claim." As follows:

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

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

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

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

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

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

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

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

"COVID-19." The novel coronavirus as identified in the
Governor's proclamation of disaster emergency issued on March 6,

"Knowingly." As follows:

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

(i) Has actual knowledge of the information.

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

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

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

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

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

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

(1) An express or implied contractual relationship.

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

(3) An express or implied licensor-licensee
relationship.
(4) A fee-based or similar relationship.
(5) A statute or regulation.
(6) The retention of an overpayment.

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

(1) Use in connection with internal memoranda and reports.
(2) Communications between the Office of Attorney General and a Federal, State or local government agency or a contractor of a Federal, State or local government agency, undertaken in furtherance of an investigation or prosecution of an action.
(3) Interviews of a qui tam plaintiff or other witness.
(4) Oral examinations.
(5) Depositions.
(6) Preparation for and response to civil discovery requests.
(7) Introduction into the record of an action or proceeding.
(8) Applications, motions, memoranda and briefs submitted to a court or other tribunal.
(9) Communications with investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, action or proceeding.

"Original source." An individual who:

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

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

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

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

CHAPTER 3

FALSE CLAIMS

Section 301. Acts subjecting persons to liability and damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Recipient liability restricted.--A person who is a
recipient of public support services shall not be liable under
this section unless the person intentionally violates subsection
(a) and benefits financially from the violation.

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

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

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

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

(b) Actions by qui tam plaintiffs.--

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

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

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

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

(i) proceed with the action; or

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

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

(d) Rights in qui tam actions.--

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

(2) The following apply:

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

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

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

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

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

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

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

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

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

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

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

(e) Award to qui tam plaintiff.--

(1) If the Commonwealth proceeds with an action brought
by a qui tam plaintiff, the qui tam plaintiff shall, subject
to the provisions of this paragraph, receive at least 15% but
not more than 25% of the proceeds of the action or settlement
of the legal claim, depending upon the extent to which the
qui tam plaintiff and counsel for the qui tam plaintiff
substantially contributed to the prosecution of the action.
If the court finds that the action is based primarily on
disclosures of specific information, other than information
provided by the qui tam plaintiff, relating to allegations or
transactions in a criminal, civil or administrative hearing
or in a legislative or administrative report, hearing, audit
or investigation or from the news media, the court may award
a sum the court considers appropriate, but in no case more
than 10% of the proceeds, taking into account the
significance of the information and the role of the qui tam
plaintiff in advancing the action. A payment to a qui tam
plaintiff under this subsection shall be made from the
proceeds of the action or settlement of the legal claim. The
qui tam plaintiff shall also receive an amount for reasonable
expenses which the court finds were necessarily incurred,
plus reasonable attorney fees and costs. The expenses, fees
and costs shall be awarded against the defendant.

(2) If the Commonwealth does not proceed with an action
under this section, the qui tam plaintiff shall receive at
least 25% but not more than 30% of the proceeds of the action
or settlement of the legal claim, as the court deems
reasonable. The amount shall be paid from the proceeds of the
action or settlement of the legal claim. The qui tam
plaintiff shall also receive an amount for reasonable
expenses which the court finds to have been necessarily
incurred, plus reasonable attorney fees and costs. The
expenses, fees and costs shall be awarded against the
defendant.
(3) Whether or not the Commonwealth proceeds with an action under this section, if the court finds the qui tam plaintiff planned and initiated the violation of section 301 upon which the action was filed, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under paragraph (1) or (2), taking into account the role of the qui tam plaintiff in advancing the action and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from the qui tam plaintiff's role in the violation, the qui tam plaintiff shall be dismissed from the civil action and shall not receive a share of the proceeds of the action. The dismissal shall not prejudice the right of the Commonwealth to continue the action.

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

(f) Certain actions barred.--

(1) A court does not have jurisdiction over an action filed under this section against the Governor, the Lieutenant Governor, the Attorney General, the Auditor General, the Treasurer, a cabinet member, a deputy secretary, a member of the General Assembly or a member of the judiciary if the action is based on evidence or information known to the Commonwealth when the action was brought.
Subject to the provisions under paragraph (3), the court shall dismiss an action or legal claim brought under subsection (b) if substantially the same allegations or transactions alleged in the action or legal claim were publicly disclosed the news media.

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

(i) the action was brought by the Attorney General;
(ii) the dismissal is opposed by the Attorney General; or
(iii) the qui tam plaintiff is an original source of the information.

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

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

(h) (Reserved).

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

Section 303. Civil investigative demands.

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

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

(i) produce documentary material for inspection and copying;

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

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

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

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

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

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

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

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

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

(ii) The United States Department of Justice.

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

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

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

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

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

(i) describe each class of documentary material to
be produced with definiteness and certainty as to permit
the material to be fairly identified;
(ii) prescribe a return date for each class that
will provide a reasonable time period within which the
material demanded may be assembled and made available for
inspection and copying; and

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

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

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

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

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

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

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

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

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

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

(5) A civil investigative demand shall contain the
following statement printed at the beginning of the demand:
You have the right to seek the assistance of an attorney, who may represent you in all phases of the investigation of which this civil investigative demand is a part.

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

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

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

(i) the person requests otherwise; or

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

(c) Protected material or information.—The following shall apply:

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

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

(ii) the standards applicable to discovery under the Pennsylvania Rules of Civil Procedure or other applicable 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 employee designated or agent authorized by appointment or law to receive service of process on behalf of the legal entity;

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

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

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

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

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

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

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

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

(e) Documentary material.--

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

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

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

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

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

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

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

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

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

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

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

(f) Interrogatories.--

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

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

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

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

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

(1) With respect to procedures:

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

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

(iii) The testimony shall be stenographically transcribed.

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

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

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

(i) The witness giving the testimony.

(ii) The attorney for the witness.

(iii) The attorney for the Commonwealth.

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

(v) The court reporter taking the testimony.

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

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

(4) With respect to transcripts:

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

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

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

(iv) The officer before whom the testimony is taken
shall certify on the transcript that the witness was
sworn by the officer and the transcript is a true record
of the witness's testimony, and the officer shall
promptly deliver the transcript or send the transcript by
registered or certified mail to the custodian.

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

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

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

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

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

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

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

(i) Custody of documents, answers and transcripts.--
(1) With respect to the designation of a custodian,
unless otherwise set forth by rule adopted by the Attorney
General under section 311, the false claims investigator
identified on a civil investigative demand shall serve as
custodian of documentary material, interrogatory answers and
oral testimony transcripts received under this section. The
Attorney General may designate additional persons as the
Attorney General determines to be necessary to serve as
deputy, alternative or successor custodians.
(2) With respect to responsibility for materials, copies
and disclosure, a false claims investigator who receives
documentary material, interrogatory answers or oral testimony
transcripts under this section shall:
(i) if serving as custodian, take possession of the
material, answers or transcripts and be responsible for
their usage and for the return of documentary material;
or
(ii) if not serving as custodian, transmit the materials, answers or transcripts to the custodian, who shall take possession and responsibility for the materials, answers or transcripts.

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

(4) With respect to restricted disclosure:

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

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

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

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

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

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

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

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

   (ii) The custodian shall return the material only if:
(A) all cases or proceedings arising out of the false claims investigation have been completed; or

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

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

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

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

(j) Judicial proceedings.—The following shall apply:

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

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

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

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

   (i) A demand issuee that has received a civil investigative demand may file and serve upon the false
claims investigator identified in the demand a petition
for a court order modifying or setting aside the demand.

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

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

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

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

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

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

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

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

(A) The court may stay, as it deems proper,
compliance with all or part of the demand and the
running of time allowed for compliance the demand.
(B) The petitioner must comply with any portion
of the demand that is not sought to be modified or
set aside, or otherwise subject to a stay issued by
the court.

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

(i) the demand issuee furnishing the material,
answers or testimony; and

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

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

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

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

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

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

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

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

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

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

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

"Legal entity." A person other than a natural person.
"Person." As defined in 1 Pa.C.S. § 1991 (relating to definitions).

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

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

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

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

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

Section 304. Disposition of Commonwealth's proceeds.

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

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

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

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

Section 305. Report.

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

(1) The Governor.
(2) The Department of Auditor General.
(3) The Independent Fiscal Office.
(4) The Office of Inspector General.
(5) The members of the General Assembly.
(6) The Legislative Budget and Finance Committee.

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

(1) The number of actions filed under this act by the
Attorney General.
(2) The number of actions filed under this act by the
Attorney General that were completed.
(3) The amount that was recovered in actions filed under
this act by the Attorney General through settlement or
through a judgment and, if known, the amount recovered for
damages, penalties and litigation costs.
(4) The number of actions filed by a person other than
the Attorney General under this act.
(5) The number of actions filed under this act by a person other than the Attorney General that were completed.

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

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

   (i) The Provider Relief Fund.
   (ii) The Paycheck Protection Program.
   (iv) The Unemployment Compensation Fund.
   (v) Any other stimulus programs put into place by the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, 134 Stat. 281).

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

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

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

Section 306. Statute of limitations, burden of proof and estoppel.
(a) Statute of limitations.--

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

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

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

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

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

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

(c) Estoppel.--Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo
contendere, shall estop the defendant from denying the essential
elements of the offense in an action brought under section 302
that involves the same transaction as in the criminal
proceeding.
Section 307. Relief from retaliatory actions.
(a) General rule.--An employee, contractor or agent shall be
entitled to all relief necessary to make the employee,
contractor or agent whole, if the employee, contractor or agent
is discharged, demoted, suspended, threatened, harassed or in
any other manner discriminated against in the terms and
conditions of employment, contract or agency because of lawful
acts done by the employee, contractor, agent or associated
others in furtherance of an action under this act or other
efforts to stop one or more violations of this act.
(b) Relief.--Relief under subsection (a) shall include
reinstatement with the same seniority status that the employee,
contractor or agent would have had but for the discrimination,
two times the amount of back pay, interest on the back pay and
compensation for special damages sustained as a result of the
discrimination, including litigation costs and reasonable
attorney fees.
(c) Limitation.--An action under this section may not be
brought more than three years after the date on which the
retaliation occurred.
Section 308. Actions and remedies under other laws.
(a) Actions and remedies not exclusive.--The provisions of
this act are not exclusive and the actions and remedies provided
for in this act shall be in addition to any other actions and
remedies provided for in any other law or available under the
common law.
(b) Construction.--The availability of an action or remedy provided for in any other law or available under the common law shall not be construed to exclude, impair or limit the availability or use of the provisions of this act.

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

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

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

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

Section 310. Rules of procedure.

Except as otherwise specified in, or where clearly
inconsistent with, this act, proceedings under this act shall be
governed by the Pennsylvania Rules of Civil Procedure or other
applicable court rule.
Section 311. Implementation.
(a) Temporary regulations.--In order to facilitate the
prompt implementation of this chapter, the Attorney General
shall promulgate temporary regulations within six months of the
effective date of this section. The Attorney General shall
promulgate temporary regulations not subject to:
(1) Section 612 of the act of April 9, 1929 (P.L.177,
No.175), known as The Administrative Code of 1929.
(2) Sections 201, 202, 203, 204 and 205 of the act of
July 31, 1968 (P.L.769, No.240), referred to as the
Commonwealth Documents Law.
(3) Sections 204(b) and 301(10) of the act of October
15, 1980 (P.L.950, No.164), known as the Commonwealth
Attorneys Act.
(4) The act of June 25, 1982 (P.L.633, No.181), known as
the Regulatory Review Act.
(b) Publication.--The Attorney General shall transmit the
temporary regulations to the Legislative Reference Bureau for
publication in the Pennsylvania Bulletin no later than six
months after the effective date of this section.
(b.1) Final regulations.--The Attorney General shall
promulgate final regulations within two years of the effective
date of this section. The temporary regulations promulgated
under this section shall expire upon promulgation of the final
regulations.
(c) Mandatory provisions.--The Attorney General, whether by
regulation, guideline or internal policy, shall implement
provisions to:

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

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

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

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

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

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

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

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

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

CHAPTER 5

COVID-19-RELATED LIABILITY

Section 501. Definitions.

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

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

"Child care facility." Any of the following:

(1) A child care center as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code.
(2) A children's institution as defined in section 901 of the Human Services Code.

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

(4) An individual employed or contracted by an individual or entity under paragraph (1), (2) or (3). "Covered provider." Any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(1) A community college operating under Article XIX-A of 20210HB0042PN0021
the act of March 10, 1949 (P.L.30, No.14), known as the
Public School Code of 1949.

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

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

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

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

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

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

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

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

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

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

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

1. The manufacturing or use of personal protective equipment during the proclamation of disaster emergency.
2. Treatment or testing of individuals with or reasonably believed to have COVID-19.
3. Steps necessary or recommended to prevent, limit or slow the spread of COVID-19.

"School entity." A public school, including a charter school or cyber charter school, private school, nonpublic school, pre-kindergarten, intermediate unit, area career and technical school, approved private school or institution of higher education operating within the Commonwealth. The term includes an individual employed by or contracted by a school entity.

Section 501.1. School and child care liability.

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

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

Section 502. Personal protective equipment liability.
(a) Manufacturer, distributor, labeler and donor.—The
following apply:

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

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

(b) Other manufacturers, distributors and labelers.—Except
as provided under subsection (a), the following apply:
(1) Notwithstanding any other provision of law, a person that manufactures, distributes or labels personal protective equipment shall not be civilly liable for damages or personal injury related to actual or alleged exposure to COVID-19 in connection with the use of personal protective equipment absent a showing, by clear and convincing evidence, of gross negligence, recklessness, willful misconduct or intentional infliction of harm if the person commenced manufacturing, distributing or labeling:

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

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

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

(c) Users.--The following apply:

(1) Notwithstanding any other provision of law, a person that used or employed personal protective equipment during the proclamation of disaster emergency in compliance with public health directives related to the personal protective equipment shall not be civilly liable for damages or personal injury related to use of the personal protective equipment absent a showing, by clear and convincing evidence, of gross negligence, recklessness, willful misconduct or intentional infliction of harm.
An act or omission in compliance with, or in a good faith belief that the act or omission was in compliance with, public health directives, shall not be considered gross negligence, recklessness, willful misconduct or intentional infliction of harm.

Section 503. Business or government services liability.

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

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

Section 504. Covered provider liability.

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

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

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

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

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

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

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

Section 505. Application of chapter.

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

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

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

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

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

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

Section 506. Construction of chapter.

This chapter shall not:

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

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

CHAPTER 7
MISCELLANEOUS PROVISIONS

Section 701. Nonseverability.

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

Section 702. Expiration.

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

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

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

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

Section 703. Effective date.

This act shall take effect as follows:

(1) The following shall take effect immediately:

   (i) This section.

   (ii) Chapter 5.

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