
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2352 Session of
2020

INTRODUCED BY GROVE, KAUFER, GAYDOS, OWLETT, SANKEY, THOMAS,
JONES, MILLARD, BERNSTINE, RYAN, WHEELAND, SAYLOR, COX, MOUL,
KEEFER, KLUNK, DUSH, B. MILLER, RADER AND ROWE, MAY 21, 2020

REFERRED TO COMMITTEE ON HUMAN SERVICES, MAY 21, 2020

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," providing for liability
4 for false claims, for adoption of congressional intent of the
5 Federal False Claims Act, for damages, costs and civil
6 penalties, for powers of Attorney General and for civil
7 investigative demands.

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

10 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
11 as the Human Services Code, is amended by adding an article to
12 read:

13 ARTICLE XIV-D

14 LIABILITY FOR FALSE CLAIMS

15 (a) Preliminary Provisions

16 Section 1401-D. Short title.

17 This article shall be known and may be cited as the
18 Commonwealth Fraud Prevention Act.

19 Section 1402-D. Definitions.

20 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Claim." As follows:

4 (1) A request or demand for money or property, whether
5 under contract or otherwise and regardless of whether the
6 Commonwealth has title to the money or property that is
7 presented, submitted or otherwise made to:

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

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

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

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

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

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

28 "Knowingly." As follows:

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

1 (i) Has actual knowledge of the information.
2 (ii) Acts in deliberate ignorance of the truth or
3 falsity of the information.
4 (iii) Acts in reckless disregard of the truth or
5 falsity of the information.
6 (2) Proof of specific intent to defraud is not required.
7 "Legal claim." A claim for relief at law or equity, whether
8 contemplated or asserted, including any claim, demand, account,
9 note or any other cause of action or liability.
10 "Material." A natural tendency to influence, or be capable
11 of influencing, the payment or receipt of money or property.
12 "Obligation." An established duty, whether or not fixed,
13 arising from any of the following:
14 (1) An express or implied contractual relationship.
15 (2) An express or implied grantor-grantee relationship.
16 (3) An express or implied licensor-licensee
17 relationship.
18 (4) A fee-based or similar relationship.
19 (5) A statute or regulation.
20 (6) The retention of an overpayment.
21 "Official use." A use that is consistent with the law and
22 the regulations and policies of the Office of Attorney General,
23 including the following:
24 (1) Use in connection with internal memoranda and
25 reports.
26 (2) Communications between the Office of Attorney
27 General and a Federal, State or local government agency or a
28 contractor of a Federal, State or local government agency,
29 undertaken in furtherance of an investigation or prosecution
30 of an action.

1 (3) Interviews of a whistleblower or other witness.

2 (4) Oral examinations.

3 (5) Depositions.

4 (6) Preparation for and response to civil discovery
5 requests.

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

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

10 (9) Communications with investigators, auditors,
11 consultants and experts, the counsel of other parties,
12 arbitrators and mediators, concerning an investigation,
13 action or proceeding.

14 "Original information." Either of the following:

15 (1) Information voluntarily disclosed to the Office of
16 Attorney General, prior to a public disclosure, on which the
17 allegations or transactions in a claim are based.

18 (2) Information that is independent of and materially
19 adds to publicly disclosed allegations or transactions.

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

23 "Public disclosure." Disclosure of substantially the same
24 allegations or transactions as alleged by a whistleblower, made
25 in any of the following:

26 (1) The news media.

27 (2) A criminal, civil or administrative hearing in which
28 the Commonwealth is or was a party.

29 (3) A Federal, State or local legislative or other
30 governmental report, hearing, audit or investigation.

1 "Whistleblower." An individual who furnishes the Office of
2 Attorney General with information concerning a violation of
3 section 1411-D.

4 (b) False Claims
5 Section 1411-D. Acts subjecting persons to liability and
6 damages.

7 (a) Liability.--Except as provided in subsection (b), a
8 person who commits any of the following acts shall be liable to
9 the Commonwealth for three times the amount of damages that the
10 Commonwealth sustains because of the act of that person plus,
11 subject to subsection (d), a civil penalty of \$8,000 for each
12 violation:

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

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

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

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

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

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

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

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

14 (9) Conspires to commit a violation of paragraph (1),
15 (2), (3), (4), (5), (6), (7) or (8).

16 (b) Safe harbor and limitation of damages.--

17 (1) Notwithstanding subsection (a), a person violating
18 this section shall not be subject to more than one time the
19 amount of damages under subsection (a) if all of the
20 following apply:

21 (i) The person committing the violation furnished
22 the Office of Attorney General with all information known
23 to that person about the violation within 30 days after
24 the date on which the person first obtained the
25 information.

26 (ii) The person fully cooperated with an
27 investigation by the Commonwealth.

28 (iii) At the time the person furnished the Office of
29 Attorney General with information about the violation, no
30 criminal prosecution, civil action or administrative

1 action had commenced with respect to the violation, and
2 the person did not have actual knowledge of the existence
3 of an investigation into the violation.

4 (iv) Under terms that the Attorney General specifies
5 or to which the Attorney General otherwise agrees, the
6 person pays the Commonwealth for the total amount of
7 damages that the Commonwealth sustained as a result of
8 the violation, plus applicable civil penalties under
9 subsection (a) and the Commonwealth's costs under
10 subsection (c).

11 (2) This subsection shall not be construed to:

12 (i) limit the Attorney General's authority and
13 discretion to investigate a violation of, or prosecute or
14 settle an action brought under, section 1412-D; or

15 (ii) restrict the terms of a settlement respecting a
16 violation of section 1412-D.

17 (c) Commonwealth costs.--A person liable for damages or
18 penalties under subsection (a) shall also be liable to the
19 Commonwealth for the reasonable costs of investigating and
20 prosecuting violations specified under subsection (a) or (b),
21 including reasonable costs to the Office of Attorney General
22 and, if applicable, a district attorney designated under section
23 1412-D(a) (2).

24 (d) Adjustment of penalties.--The civil penalties payable
25 under subsection (a) shall be adjusted from time to time
26 consistent with the Federal Civil Penalties Inflation Adjustment
27 Act of 1990 (Public Law 101-410, 28 U.S.C. § 2461 note, as
28 amended).

29 (e) Exemption from disclosure.--Information furnished under
30 subsection (b) shall be exempt from disclosure under the act of

1 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
2 Section 1412-D. Attorney General investigations, prosecutions
3 and civil actions.

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

5 (1) The Attorney General shall have authority to
6 investigate a violation of section 1411-D. If the Attorney
7 General finds that a person has violated or is violating
8 section 1411-D, the Attorney General may bring a civil action
9 under this section against that person.

10 (2) The Attorney General may enter into an agreement
11 with a district attorney to designate the district attorney
12 to serve as the Attorney General's designee, investigate a
13 violation of section 1411-D and bring a civil action under
14 this section against a person that has violated or is
15 violating section 1411-D. The Attorney General at any time
16 may rescind the designation made under this paragraph.

17 (3) Nothing in section 1407 shall be construed to limit
18 the authority of the Attorney General to investigate or
19 prosecute violations under section 1411-D.

20 (b) Information provided by whistleblowers.--The following
21 shall apply:

22 (1) If the Commonwealth prosecutes an action under
23 section 1411-D based on original information furnished by a
24 whistleblower, the Attorney General may award the
25 whistleblower a portion of the proceeds of the action or
26 settlement of the legal claim, not to exceed 25% based on the
27 following factors:

28 (i) The extent to which the information
29 substantially contributed to the prosecution of the
30 action or settlement of the legal claim.

1 (ii) Whether the action is based primarily on
2 disclosures of specific information, other than
3 information provided by the whistleblower, relating to
4 allegations or transactions in a criminal, civil or
5 administrative hearing in which the Commonwealth is a
6 party or in a Federal, State or local legislative or
7 governmental report, hearing, audit or investigation, or
8 from the news media.

9 (iii) If the whistleblower planned or initiated the
10 violation.

11 (iv) Whether the whistleblower complies with
12 paragraph (2).

13 (2) If a whistleblower is a relator or qui tam plaintiff
14 in an action in another jurisdiction and the action is based
15 on or related to information that the whistleblower furnishes
16 or will furnish under this subsection, within 90 days after
17 becoming a party to the action, the whistleblower must serve
18 on the Office of Attorney General a copy of the complaint and
19 written disclosure of substantially all material evidence and
20 information that the whistleblower possesses, including all
21 material evidence and information adduced in the action.

22 (3) A whistleblower shall not be eligible to receive an
23 award under this subsection if the whistleblower planned and
24 initiated the violation of section 1411-D and is convicted of
25 criminal conduct arising from the whistleblower's role in the
26 violation. The conviction shall not prejudice the
27 Commonwealth's authority to prosecute an action under section
28 1411-D.

29 (4) To qualify for an award under this subsection, if a
30 whistleblower is an employee of a person suspected to have

1 committed a violation under section 1411-D, the whistleblower
2 must first inform the whistleblower's employer that the
3 conduct may constitute a violation under this article. A
4 whistleblower who so informs the employer shall qualify for
5 the protections specified under section 1417-D.

6 (c) Commonwealth not liable for expenses.--The Commonwealth
7 is not liable for expenses that a whistleblower incurs in
8 furnishing information described in subsection (b).

9 (d) Cooperation by agencies.--Commonwealth agencies shall
10 cooperate in the investigation and prosecution of false claims
11 under this section.

12 (e) Limitations on Office of Attorney General.--A person
13 suspected of committing a violation under section 1411-D may not
14 be investigated if the whistleblower associated with the
15 suspected violation was part of one of the following:

16 (1) A civil action taken by the United States Department
17 of Justice for a violation under the False Claims Act (Public
18 Law 97-258, 31 U.S.C. § 3729-3733).

19 (2) An action taken by a qui tam plaintiff under the
20 False Claims Act (Public Law 97-258, 31 U.S.C. § 3729-3733)
21 that was dismissed by a court of competent jurisdiction, but
22 only if the dismissal was based on the merits.

23 Section 1413-D. Civil investigative demands.

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

25 (1) Whenever the Attorney General or, for the purposes
26 of this subsection, the Attorney General's designee, has
27 reason to believe that a person may be in possession, custody
28 or control of documentary material or information relevant to
29 a false claims investigation under this article, the Attorney
30 General or designee may, before commencing a civil action

1 under section 1412-D(a), issue in writing and cause to be
2 served upon the person a civil investigative demand requiring
3 the person to:

4 (i) produce documentary material for inspection and
5 copying;

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

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

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

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

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

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

20 (3) Notwithstanding the provisions of 18 Pa.C.S. Ch. 91
21 (relating to criminal history record information) or any
22 other law to the contrary, the Attorney General may access
23 and share data, records, documents or other information,
24 including criminal history record information, intelligence
25 information, investigative information and treatment
26 information obtained during the course of, and as necessary
27 to advance, an investigation or prosecution of a potential or
28 actual violation of section 1411-D with the following:

29 (i) A section, unit, subunit or individual employee
30 or agent of the Office of Attorney General authorized and

1 designated by the Attorney General to investigate or
2 prosecute a potential or actual violation of section
3 1411-D.

4 (ii) The United States Department of Justice.

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

7 (4) The recipient described in paragraph (3)(i) shall be
8 subject to the provisions of 18 Pa.C.S. Ch. 91 relating to
9 further disclosure, dissemination and sharing of the
10 information with noncriminal justice agencies, departments
11 and individuals, except as may be permitted by paragraph (3)
12 (ii) and (iii).

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

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

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

20 (i) describe each class of documentary material to
21 be produced with definiteness and certainty as to permit
22 the material to be fairly identified;

23 (ii) prescribe a return date for each class that
24 will provide a reasonable time period within which the
25 material so demanded may be assembled and made available
26 for inspection and copying; and

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

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

1 (i) set forth with specificity the written
2 interrogatories to be answered;

3 (ii) prescribe dates at which time the answers to
4 the written interrogatories shall be submitted; and

5 (iii) identify the false claims investigator to whom
6 the answers shall be submitted.

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

9 (i) prescribe a date, time and place at which the
10 oral testimony shall be given;

11 (ii) identify a false claims investigator who shall
12 conduct the examination and the custodian to whom the
13 transcript of the examination shall be submitted;

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

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

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

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

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

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

10 (i) the person requests otherwise; or

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

14 (c) Protected material or information.--The following shall
15 apply:

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

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

24 (ii) the standards applicable to discovery under the
25 Pennsylvania Rules of Civil Procedure or other applicable
26 court rule, to the extent that the application of the
27 standards to a demand is appropriate and consistent with
28 the provisions and purposes of this section.

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

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

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

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

16 (j):

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

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

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

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

27 (i) A civil investigative demand or petition may be
28 served upon a person or entity consistent with and in the
29 manner prescribed by 42 Pa.C.S. Ch. 53 (relating to bases
30 of jurisdiction and interstate and international

1 procedure) and the Pennsylvania Rules of Civil Procedure
2 or other applicable court rule, for personal service
3 inside or outside this Commonwealth.

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

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

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

15 (A) delivering an executed copy of the demand or
16 petition to any partner, executive officer, managing
17 agent or general agent of the legal entity or to an
18 employee designated or agent authorized by
19 appointment or law to receive service of process on
20 behalf of the legal entity;

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

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

29 (D) any other method provided by the
30 Pennsylvania Rules of Civil Procedure or other

1 applicable court rule.

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

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

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

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

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

20 (e) Documentary material.--

21 (1) The following shall apply regarding verified
22 certificate:

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

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

29 (B) if the demand issuee is not a natural
30 person, by an individual who has knowledge of facts

1 and circumstances relating to the production and is
2 authorized to act on the demand issuee's behalf.

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

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

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

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

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

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

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

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

30 (f) Interrogatories.--

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

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

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

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

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

21 (1) With respect to procedures:

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

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

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

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

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

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

14 (i) the witness giving the testimony;

15 (ii) the attorney for the witness;

16 (iii) the attorney for the Commonwealth;

17 (iv) the officer before whom the testimony is to be
18 taken;

19 (v) the court reporter taking the testimony; and

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

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

27 (4) With respect to transcripts:

28 (i) When the transcript of testimony is completed,
29 the false claims investigator or the officer before whom
30 the testimony is taken shall afford the witness, who may

1 be accompanied by counsel, a reasonable opportunity to
2 examine and read the transcript, unless the witness
3 waives the reading and examination.

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

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

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

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

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

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

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

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

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

30 (1) furnish documentary material or answer an

1 interrogatory in response to a civil investigative demand;

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

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

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

6 (1) With respect to the designation of a custodian,
7 unless the Attorney General designates another person, the
8 false claims investigator identified on a civil investigative
9 demand shall serve as custodian of documentary material,
10 interrogatory answers and oral testimony transcripts received
11 under this section. The Attorney General may designate
12 additional persons as the Attorney General determines to be
13 necessary to serve as deputy, alternative or successor
14 custodians.

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

19 (i) if serving as custodian, take possession of the
20 material, answers or transcripts and be responsible for
21 their usage and for the return of documentary material;
22 or

23 (ii) if not serving as custodian, transmit the
24 materials, answers or transcripts to the custodian, who
25 shall take possession and responsibility for the
26 materials, answers or transcripts.

27 (3) With respect to custodian copies, the custodian may
28 cause the preparation of copies of documentary material,
29 interrogatory answers or oral testimony transcripts as may be
30 required for official use by a false claims investigator or

1 any other officer or employee of the Office of Attorney
2 General authorized to use the materials, answers or
3 transcripts in connection with the taking of oral testimony
4 under this section. Except as otherwise provided in this
5 section, no documentary material, interrogatory answers or
6 oral testimony transcripts or copies of the foregoing shall
7 be available for examination by any individual other than a
8 false claims investigator or other officer or employee of the
9 Office of Attorney General.

10 (4) With respect to restricted disclosure:

11 (i) Except as otherwise provided in this section, no
12 documentary material, interrogatory answers or oral
13 testimony transcripts or copies of the foregoing shall be
14 available for examination by any individual other than a
15 false claims investigator or other officer or employee of
16 the Office of Attorney General.

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

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

28 (iv) While in the custodian's possession and under
29 reasonable terms and conditions as the Attorney General
30 prescribes, documentary material, interrogatory answers

1 and oral testimony transcripts shall be made available
2 for examination by the person that produced them or by
3 the person's authorized representative.

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

6 (i) Notwithstanding 18 Pa.C.S. Ch. 91, an attorney
7 of the Office of Attorney General who is designated to
8 appear before a court, grand jury or Commonwealth agency
9 in a case or proceeding may, in connection with the case
10 or proceeding, obtain from the custodian and use any
11 documentary material, interrogatory answers or oral
12 testimony transcripts that the attorney determines is
13 required.

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

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

22 (i) Subject to subparagraphs (ii) and (iii), upon
23 the written request of a person producing documentary
24 material in connection with a false claims investigation,
25 the custodian shall return the material.

26 (ii) The custodian shall return the material only
27 if:

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

30 (B) no case or proceeding in which the material

1 may be used has been commenced within a reasonable
2 time after completion of the examination and analysis
3 of all documentary material and other information
4 assembled in the course of the false claims
5 investigation.

6 (iii) The custodian shall not return either of the
7 following:

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

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

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

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

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

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

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

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

30 (ii) If a civil investigative demand is an express

1 demand for a product of discovery, the person from whom
2 or which discovery was obtained may, upon receipt of the
3 demand, file and serve upon the false claims investigator
4 identified in the demand a petition for a court order
5 modifying or setting aside those portions of the demand
6 requiring production of the product of discovery.

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

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

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

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

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

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

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

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

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

1 the court.

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

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

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

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

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

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

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

1 (1) Definitions.--For purposes of this section, the
2 following words and phrases shall have the meanings given to
3 them in this subsection unless the context clearly indicates
4 otherwise:

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

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

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

17 "False claims investigation." Any inquiry conducted by a
18 false claims investigator for the purposes of ascertaining
19 whether any person is or has been engaged in a violation of this
20 article.

21 "False claims investigator." An attorney or investigator
22 employed by the Office of Attorney General, or by a district
23 attorney designated under section 1412-D(a)(2), who is charged
24 with the duty of enforcing or carrying out the provisions of
25 this article, or an officer or employee of the Commonwealth
26 acting under the attorney or investigator's direction and
27 supervision in connection with a false claims investigation.

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

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

1 "Product of discovery." The term includes:

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

7 (2) a digest, analysis, selection, compilation or
8 derivation of an item listed in paragraph (1); and

9 (3) an index or other manner of access to an item listed
10 in paragraph (1).

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

14 Section 1414-D. Disposition of Commonwealth's share of
15 proceeds.

16 (a) Distribution and division.--The Commonwealth's share of
17 the proceeds of an action or settlement under this article, not
18 including the costs under section 1411-D(c) and less any amount
19 legally required to be paid from the Commonwealth's share, shall
20 be distributed in the following manner:

21 (1) An amount equal to the total enforcement costs shall
22 be distributed from the Commonwealth's share as follows:

23 (i) The Office of Attorney General shall receive an
24 amount proportionate to its share of the enforcement
25 costs.

26 (ii) The amount proportionate to the district
27 attorney's share of the enforcement costs.

28 (iii) Money distributed to the Office of Attorney
29 General under this paragraph shall be reserved for use by
30 the Medicaid Fraud Control Section.

1 (2) After distribution under paragraph (1), an amount
2 sufficient to reimburse the damages sustained by Commonwealth
3 agencies as a result of a violation of section 1411-D shall
4 be distributed from the Commonwealth's share to the agencies.
5 A Commonwealth agency distributed money under this paragraph
6 shall use the money to reimburse the programs administered by
7 the agency whose funds were diminished as a result of the
8 violation.

9 (3) The amount from the Commonwealth's share remaining
10 after distribution under paragraphs (1) and (2) shall be
11 deposited into the Budget Stabilization Reserve Fund.

12 (b) Definition.--As used in this section, the term
13 "enforcement costs" means the costs awarded under section 1411-
14 D(c) to the Office of Attorney General and, if applicable, to a
15 district attorney designated under section 1411-D(a)(2).

16 Section 1415-D. Annual report.

17 (a) Report required.--The Attorney General shall prepare an
18 annual report concerning actions taken under this article by
19 December 31 each year, beginning December 31, 2021. The report
20 shall be submitted to the following:

21 (1) The Governor.

22 (2) The Department of Auditor General.

23 (3) The Independent Fiscal Office.

24 (4) The Office of Inspector General.

25 (5) The members of the General Assembly.

26 (6) The Legislative Budget and Finance Committee.

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

28 (1) The number of actions filed under this article by
29 the Attorney General.

30 (2) The number of actions filed under this article by

1 the Attorney General that were completed.

2 (3) The amount that was recovered in actions filed under
3 this article by the Attorney General through settlement or
4 through a judgment and, if known, the amount recovered for
5 damages, penalties and litigation costs.

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

9 (5) A narrative describing the most notable or prevalent
10 violations of section 1411-D and recommendations on how
11 Commonwealth agencies may prevent similar violations from
12 occurring.

13 (6) Legislative recommendations that the Attorney
14 General may have for amendments to this article and any other
15 law as it relates to this article.

16 Section 1416-D. Statute of limitations, burden of proof and
17 estoppel.

18 (a) Statute of limitations.--

19 (1) Except as otherwise provided under this section, a
20 civil action under section 1412-D may not be brought more
21 than 10 years after the date on which the violation was
22 committed.

23 (2) If a violation is part of a continuing course of
24 conduct, a civil action under section 1412-D may not be
25 brought more than 10 years after the date on which the last
26 violation in the continuing course of conduct was committed.

27 (b) Burden of proof.--In an action brought under section
28 1412-D, the Commonwealth shall be required to prove all
29 essential elements of the cause of action, including damages, by
30 a preponderance of the evidence.

1 (c) Estoppel.--Notwithstanding any other provision of law, a
2 final judgment rendered in favor of the Commonwealth in a
3 criminal proceeding charging false statements or fraud, whether
4 upon a verdict after trial or upon a plea of guilty or nolo
5 contendere, shall estop the defendant from denying the essential
6 elements of the offense in an action brought under section 1412-
7 D that involves the same transaction as in the criminal
8 proceeding.

9 Section 1417-D. Relief from retaliatory actions.

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

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

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

29 Section 1418-D. Actions and remedies under other laws.

30 (a) Actions and remedies not exclusive.--The provisions of

1 this article are not exclusive and the actions and remedies
2 provided for in this article shall be in addition to any other
3 actions and remedies provided for in any other law or available
4 under the common law.

5 (b) Construction.--The availability of an action or remedy
6 provided for in any other law or available under the common law
7 shall not be construed to exclude, impair or limit the
8 availability or use of the provisions of this article.

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

12 Section 1419-D. Rules of procedure.

13 Except as otherwise specified in, or where clearly
14 inconsistent with, this article, civil actions under this
15 article shall be governed by the Pennsylvania Rules of Civil
16 Procedure or other applicable court rule.

17 Section 1420-D. Implementation.

18 (a) Regulations.--The Attorney General is empowered and
19 authorized to promulgate regulations as necessary to carry out
20 the purpose of this article.

21 (b) Guidelines.--The following shall apply:

22 (1) To facilitate the prompt implementation of this
23 article, in lieu of initially promulgating regulations, the
24 Attorney General may promulgate, adopt and use guidelines
25 that shall be transmitted to the Legislative Reference Bureau
26 for publication in the Pennsylvania Bulletin. A guideline
27 promulgated under this section shall not be subject to review
28 under any of the following:

29 (i) Section 612 of the act of April 9, 1929
30 (P.L.177, No.175), known as The Administrative Code of

1 1929.

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

5 (iii) Sections 204(b) and 301(10) of the act of
6 October 15, 1980 (P.L.950, No.164), known as the
7 Commonwealth Attorneys Act.

8 (iv) The act of June 25, 1982 (P.L.633, No.181),
9 known as the Regulatory Review Act.

10 (2) A guideline promulgated under this section shall be
11 effective for three years after the effective date of this
12 article, after which it shall be promulgated as a regulation.

13 (c) Mandatory provisions.--The Attorney General, whether by
14 regulation, guideline or internal policy, shall implement
15 provisions to:

16 (1) control a person's disclosure, dissemination,
17 sharing or use of information that is protected under 18
18 Pa.C.S. Ch. 91 (relating to criminal history record
19 information) and that the person lawfully obtains in
20 connection with an investigation or prosecution of a
21 potential or actual violation of section 1411-D; and

22 (2) prevent the disclosure, dissemination, sharing or
23 use of protected information in accordance with section 1413-
24 D(a) (4).

25 Section 1421-D. Jurisdiction and Attorney General as relator in
26 Federal false claims actions.

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

30 (1) An action or petition that is brought in the courts

1 of the Commonwealth shall be filed in Commonwealth Court.

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

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

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

16 Section 1422-D. Expiration.

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

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

21 (1) A violation of this article that occurred before the
22 expiration of this article.

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

26 Section 2. This act shall take effect in 120 days.