

## AMENDMENTS TO HOUSE BILL NO. 2352

Sponsor: REPRESENTATIVE EVERETT

Printer's No. 3913

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

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

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

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

7 CHAPTER 1  
8 PRELIMINARY PROVISIONS

9 Section 101. Short title.

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

12 Section 102. Declaration of policy.

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

19 Section 103. Definitions.

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

23 "Claim." As follows:

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

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

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

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

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

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

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

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

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

8 "Knowingly." As follows:

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

11 (i) Has actual knowledge of the information.

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

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

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

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

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

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

24 (1) An express or implied contractual relationship.

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

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

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

29 (5) A statute or regulation.

30 (6) The retention of an overpayment.

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

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

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

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

42 (4) Oral examinations.

43 (5) Depositions.

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

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

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

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

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

3 "Original source." An individual who:

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

5 (2), has voluntarily disclosed to the Commonwealth the  
6 information on which the allegations or transactions in a  
7 claim are based; or

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

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

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

### 17 CHAPTER 3

#### 18 FALSE CLAIMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (1) The Attorney General shall investigate a violation

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

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

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

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

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

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

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

44 (i) proceed with the action; or

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

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

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

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

8 (2) The following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

43 (f) Certain actions barred.--

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

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

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

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

7 (i) the action was brought by the Attorney General;  
8 (ii) the dismissal is opposed by the Attorney  
9 General; or

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

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

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

20 (h) (Reserved).

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

25 Section 303. Civil investigative demands.

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

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

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

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

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

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

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

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

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

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

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

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

20           (ii) The United States Department of Justice.

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

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

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

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

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

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

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

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

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

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

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

51           (iii) Identify the false claims investigator to whom

1 the answers shall be submitted.

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

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

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

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

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

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

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

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

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

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

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

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

46 (i) the standards applicable to subpoenas or  
47 subpoenas duces tecum issued by a court of this  
48 Commonwealth to aid in a grand jury investigation; or  
49 (ii) the standards applicable to discovery under the  
50 Pennsylvania Rules of Civil Procedure or other applicable  
51 court rule, to the extent that the application of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (e) Documentary material.--

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

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

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

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

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

51 (2) The following shall apply regarding production of

1 materials:

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

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

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

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

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

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

22 (f) Interrogatories.--

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

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

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

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

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

43 (1) With respect to procedures:

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

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

1 presence, record the witness's testimony.

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

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

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

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

15 (i) The witness giving the testimony.

16 (ii) The attorney for the witness.

17 (iii) The attorney for the Commonwealth.

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

20 (v) The court reporter taking the testimony.

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

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

28 (4) With respect to transcripts:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) With respect to restricted disclosure:

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (A) material that has passed into a court, grand  
32 jury or Commonwealth agency's control through

33 introduction into a case or proceeding's record; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Section 304. Disposition of Commonwealth's proceeds.

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

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

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

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

26 Section 305. Report.

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

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

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

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

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

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

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

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

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

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

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

7 (i) The Provider Relief Fund.

8 (ii) The Paycheck Protection Program.

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

11 (iv) The Unemployment Compensation Fund.

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

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

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

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

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

27 (a) Statute of limitations.--

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

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

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

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

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

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

1 including damages, by a preponderance of the evidence.

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

10 Section 307. Relief from retaliatory actions.

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

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

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

30 Section 308. Actions and remedies under other laws.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

1           (2) Prevent the disclosure, dissemination, sharing or  
2       use of protected information in accordance with section  
3       303(a)(4).  
4       Section 312. Jurisdiction and Attorney General as relator in  
5           Federal false claims actions.

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

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

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

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

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

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

## 39                               CHAPTER 5

### 40                               COVID-19-RELATED LIABILITY

41       Section 501. Definitions.

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

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

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

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

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

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

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

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

9 "Covered provider." Any of the following:

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

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

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

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

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

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

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

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

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

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.

(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.

(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

1 issued by the Federal or State government regarding:

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

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

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

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

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

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

27 Section 502. Personal protective equipment liability.

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

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

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

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

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

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

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

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

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

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

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

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

32 Section 503. Business or government services liability.

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

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

45 Section 504. Covered provider liability.

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

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

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

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

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

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

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

23 Section 505. Application of chapter.

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

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

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

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

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

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

44 Section 506. Construction of chapter.

45 This chapter shall not:

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

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

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

4 CHAPTER 7

5 MISCELLANEOUS PROVISIONS

6 Section 701. Nonseverability.

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

11 Section 702. Expiration.

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

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

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

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

21 Section 703. Effective date.

22 This act shall take effect as follows:

23 (1) The following shall take effect immediately:

24 (i) This section.

25 (ii) Chapter 5.

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