

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 849 Session of
1999

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MELIO, CURRY, COLAFELLA, TRELLO, WILLIAMS, ROONEY AND RUBLEY,
MARCH 10, 1999

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 1999

AN ACT

1 Prohibiting false claims; imposing duties on the Attorney
2 General and on district attorneys; and providing for
3 procedures and for penalties.

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

28 CHAPTER 1

29 PRELIMINARY PROVISIONS

30 Section 101. Short title.

1 This act shall be known and may be cited as the False Claims
2 Act.

3 Section 102. Definitions.

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

7 "Claim." Any request or demand for money, property or
8 services made to any employee, officer or agent of the
9 Commonwealth or of any political subdivision thereof or to any
10 contractor, subcontractor, grantee or other recipient of the
11 Commonwealth or any political subdivision thereof, whether under
12 contract or not, if any portion of the money, property or
13 services requested or demanded issued from, was provided or will
14 be reimbursed by the Commonwealth, referred to as Commonwealth
15 funds, or by any political subdivision thereof, referred to as
16 political subdivision funds.

17 "False." In addition to its ordinary meaning, this term also
18 means fraudulent.

19 "Knowing" or "knowingly." A person who, with respect to
20 information, does any of the following:

21 (1) has actual knowledge of the information;

22 (2) acts in deliberate ignorance of the truth or falsity
23 of the information; or

24 (3) acts in reckless disregard of the truth or falsity
25 of the information.

26 Proof of specific intent to defraud shall not be required.

27 "Person." Any natural person, corporation, county, political
28 subdivision, firm, association, legal entity, organization,
29 partnership, business or trust.

30 "Political subdivision." Any city, county, tax or assessment

1 district, municipal or government authority or other legally
2 authorized local governmental entity in this Commonwealth.

3 "Proceeds." The term includes civil penalties as well as
4 double or treble damages as provided in Chapter 3.

5 "Prosecuting authority." The Attorney General and where
6 appropriate under section 3, the district attorney of any county
7 charged with investigating, filing and conducting legal
8 proceedings.

9 Section 103. Construction.

10 This act shall be liberally and broadly construed to
11 effectuate its purposes. It shall be applied and interpreted to
12 promote the public interest in eliminating fraud, waste and
13 abuse through the submission of false or fraudulent claims in
14 this Commonwealth or in any of its political subdivisions.

15 CHAPTER 3

16 FALSE CLAIMS

17 Section 301. Offenses defined.

18 (a) Liability.--A person who commits any of the following
19 acts shall be liable to the Commonwealth or to the political
20 subdivision for three times the amount of damages which the
21 Commonwealth or the political subdivision sustains because of
22 the act of that person and shall also be liable to the
23 Commonwealth or to the political subdivision for the costs of a
24 civil action brought to recover any of those penalties or
25 damages and shall be liable to the Commonwealth or political
26 subdivision for a civil penalty of not less than \$5,000 nor more
27 than \$10,000 for each false claim:

28 (1) Knowingly presents or causes to be presented to an
29 officer or employee of the Commonwealth or any political
30 subdivision a false claim for payment or approval.

1 (2) Knowingly makes, uses or causes to be made or used a
2 false record or statement to get a false claim paid or
3 approved by the Commonwealth or by any political subdivision.

4 (3) Conspires to defraud the Commonwealth or any
5 political subdivision by getting a false claim allowed or
6 paid by the Commonwealth or by any political subdivision.

7 (4) Has possession, custody or control of public
8 property or money used or to be used by the Commonwealth or
9 by any political subdivision and knowingly delivers or causes
10 to be delivered property or lesser quality, quantity or value
11 than for which the person receives a certificate or receipt.

12 (5) Is authorized to make or deliver a document
13 certifying receipt of property used or to be used by the
14 Commonwealth or by any political subdivision and knowingly
15 makes or delivers a receipt that falsely represents the
16 quality, quantity or value of the property used or to be
17 used.

18 (6) Knowingly buys or receives as a pledge of an
19 obligation or debt public property from any person who
20 lawfully may not sell or pledge the property.

21 (7) Knowingly makes, uses or causes to be made or used a
22 false record or statement to conceal, avoid or decrease an
23 obligation to pay or transmit money or property to the
24 Commonwealth or any political subdivision.

25 (8) Is a beneficiary of an inadvertent submission of a
26 false claim to the Commonwealth or a political subdivision,
27 subsequently discovers the falsity of the claim and fails to
28 disclose the false claim to the Commonwealth or the political
29 subdivision within a reasonable time, but in no event longer
30 than 90 days after discovery of the false claim.

1 (b) Reduced assessment.--Notwithstanding subsection (a), the
2 court may assess not less than two times nor more than three
3 times the amount of damages which the Commonwealth or the
4 political subdivision sustains because of the act of the person
5 described in subsection (a)(1), and no civil penalty, if the
6 court finds all of the following:

7 (1) The person committing the violation furnished the
8 prosecuting authority with all information known to that
9 person about the violation within 60 days after the date on
10 which the person first obtained the information.

11 (2) The person fully cooperated with any investigation
12 by the prosecuting authority of the violation.

13 (3) At the time the person furnished the prosecuting
14 authority with information about the violation, no criminal
15 prosecution, civil action or administrative action had
16 commenced with respect to the violation and the person did
17 not have actual knowledge of the existence of an
18 investigation into the violation.

19 (c) Joint and several liability.--Liability under this
20 section shall be joint and several for any act committed by two
21 or more persons.

22 (d) Limitation.--

23 (1) This section does not apply to any controversy
24 involving an aggregate amount of less than \$2,500 in value or
25 to any claims involving benefits or compensation conferred
26 under the act of June 2, 1915 (P.L.736, No.338), known as the
27 Workers' Compensation Act, or the act of December 5, 1936
28 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the
29 Unemployment Compensation Law, or the act of June 13, 1967
30 (P.L.31, No.21), known as the Public Welfare Code, except

1 where the claim has not been filed by the individual
2 recipient of benefits.

3 (2) As used in this subsection, the term "controversy"
4 means any one or more false claims submitted or caused to be
5 submitted by either a person or persons who act pursuant to a
6 common plan, scheme or design in violation of this act.

7 Section 302. False claims jurisdiction.

8 An action under this act must be brought in the Commonwealth
9 Court if any defendant can be found, resides or transacts
10 business in this Commonwealth or if an act proscribed by this
11 act occurred within this Commonwealth.

12 Section 303. Procedure.

13 (a) Attorney General prosecution.--

14 (1) The Attorney General shall diligently investigate
15 violations under section 301 involving Commonwealth funds. If
16 the Attorney General finds that a person has violated or is
17 violating section 301, the Attorney General may bring a civil
18 action under this section against that person.

19 (2) If the Attorney General brings a civil action under
20 this act on a claim involving political subdivision funds as
21 well as Commonwealth funds, the Attorney General shall, on
22 the same date that the complaint is filed in this action,
23 serve by mail, return receipt requested, a copy of the
24 complaint on the appropriate prosecuting authority.

25 (3) The prosecuting authority shall have the right to
26 intervene in an action brought by the Attorney General under
27 this act within 90 days after receipt of the complaint
28 pursuant to paragraph (2).

29 (b) Political subdivision prosecution.--

30 (1) The prosecuting authority representing a political

1 subdivision shall diligently investigate violations under
2 section 301 involving political subdivision funds. If the
3 prosecuting authority representing the political subdivision
4 finds that a person has violated or is violating section 301,
5 he may bring a civil action under this section against that
6 person.

7 (2) If the prosecuting authority representing the
8 political subdivision brings a civil action on a claim
9 involving Commonwealth funds as well as political subdivision
10 funds, the prosecuting authority shall, on the same date that
11 the complaint is filed in this action, serve by mail, return
12 receipt requested, a copy of the complaint on the Attorney
13 General.

14 (3) Within 90 days after receiving the complaint
15 pursuant to paragraph (2), the Attorney General shall do one
16 of the following:

17 (i) Notify the court that the prosecuting authority
18 intends to proceed with the action, in which case the
19 Attorney General shall assume primary responsibility for
20 conducting the action and the prosecuting authority
21 representing the political subdivision shall have the
22 right to continue as a party.

23 (ii) Notify the court that the prosecuting authority
24 declines to prosecute the action, in which case the
25 prosecuting authority representing the political
26 subdivision shall have the right to conduct the action on
27 its own.

28 (iii) Proceed jointly with the prosecuting
29 authority, assuming coequal responsibility for
30 prosecution of the action.

1 CHAPTER 5

2 QUI TAM ACTIONS

3 Section 501. General provisions.

4 (a) When action may be brought.--A person may bring a civil
5 action for a violation of this act for the person and either for
6 the Commonwealth in the name of the Commonwealth if any
7 Commonwealth funds are involved or for a political subdivision
8 in the name of the political subdivision if political
9 subdivision funds are exclusively involved. A qui tam complaint
10 may be brought alleging fraud involving both Commonwealth and
11 political subdivision funds. The person bringing the action
12 shall be referred to as the qui tam plaintiff. Once filed, the
13 qui tam action may be dismissed only by the written consent of
14 the court and the prosecuting authority, taking into account the
15 best interests of the parties involved and the public purposes
16 of this act.

17 (b) Filing.--A complaint filed by a private person under
18 this section must be filed ex parte under seal with the Clerk of
19 the Commonwealth Court or in the appropriate Federal district
20 court if Federal funds are also involved, and the complaint and
21 all related pleadings must remain under seal for 90 days from
22 the date of service. No service shall be made on the defendant
23 until after the complaint is unsealed by order of the court.

24 (c) Service upon Attorney General.--Within three days of the
25 complaint being filed pursuant to subsection (b), the qui tam
26 plaintiff shall serve by mail, return receipt requested, the
27 Attorney General with a copy of the complaint and a written
28 disclosure of substantially all material evidence and
29 information the person possesses at that time.

30 Section 502. Commonwealth funds.

1 Within 90 days after receiving a complaint alleging
2 violations which involve Commonwealth funds, but not political
3 subdivision funds, the Attorney General shall do either of the
4 following:

5 (1) Notify the court that it intends to proceed with the
6 action and petition the court to have the case unsealed. If
7 the court grants the Attorney General's request, the seal may
8 be lifted. The court may, upon motion by the Attorney
9 General, order a partial unsealing where appropriate.

10 (2) Notify the court that it declines to prosecute the
11 action, in which case the complaint may be unsealed by the
12 court within 20 days after written notification is made by
13 the Attorney General to the qui tam plaintiff and counsel
14 that the Attorney General does not wish to intervene. Upon
15 such notification, the qui tam plaintiff shall have the right
16 to conduct the action.

17 Section 503. Political subdivision funds.

18 (a) Procedure.--Within 30 days after receiving a complaint
19 alleging violations which exclusively involve political
20 subdivision funds, the Attorney General shall promptly forward
21 the complaint and written disclosure to the appropriate
22 prosecuting authority for review and disposition and shall
23 notify in writing the qui tam plaintiff and counsel of the
24 transfer.

25 (b) Duty of prosecuting authority.--Within 60 days after the
26 Attorney General forwards the complaint and written disclosure
27 under subsection (a), the prosecuting authority shall do either
28 of the following:

29 (1) Notify the court that it intends to proceed with the
30 action and petition the court to have the case unsealed. If

1 the court grants the prosecuting authority's request, the
2 seal shall be lifted.

3 (2) Notify the court that it declines to take over the
4 action, in which case the seal may be lifted within 20 days
5 after such notification has been made and the qui tam
6 plaintiff shall have the right to conduct the action.

7 Section 504. Complaints relating to Commonwealth and political
8 subdivision funds.

9 (a) Complaints.--Within 30 days after receiving a complaint
10 alleging violations which involve or allege both Commonwealth
11 and political subdivision funds, the Attorney General shall
12 forward copies of the complaint and written disclosure to the
13 appropriate prosecuting authority and shall coordinate its
14 review and investigation with those of the prosecuting
15 authority.

16 (b) Procedure.--Within 90 days after receiving a complaint
17 alleging violations which involve or allege both Commonwealth
18 and political subdivision funds, the Attorney General shall do
19 one of the following:

20 (1) Notify the court in writing that the Attorney
21 General intends to proceed with the action, in which case the
22 seal shall be lifted and service effected on the defendant.

23 (2) Notify the court in writing that the Attorney
24 General declines to take over the action but that the
25 prosecuting authority of the political subdivision involved
26 intends to proceed with the action, in which case the seal
27 shall be lifted and the action shall be conducted by the
28 prosecuting authority.

29 (3) Notify the court that both the Attorney General and
30 the district attorney representing the political subdivision

1 decline to take over the action, in which case the seal may
2 be lifted within 20 days after notification has been made and
3 the qui tam plaintiff shall have the right to conduct the
4 action.

5 Section 505. Intervention by political subdivision.

6 If the Attorney General proceeds with the action under
7 section 503(b)(1), the district attorney representing the
8 political subdivision shall be permitted to intervene in the
9 action within 60 days after the Attorney General notifies the
10 court of his intentions.

11 Section 506. Extension of time.

12 Upon a showing of good cause and reasonable diligence in his
13 investigation, the prosecuting authority or the prosecuting
14 authority of a political subdivision may move the court for
15 reasonable extensions of time during which the complaint will
16 remain under seal. The qui tam plaintiff shall be notified of
17 any extensions requested under this section. Any such motions
18 may be supported by affidavits or other submissions in camera.

19 Section 507. Other actions prohibited.

20 When a person brings an action under this chapter, no other
21 person shall be permitted to bring a related action based on the
22 same or similar facts underlying the pending action.

23 Section 508. Exclusions.

24 (a) General rule.--No court shall have jurisdiction over an
25 action brought under this chapter against a member of the
26 General Assembly, a member of the State judiciary, an elected
27 official in the executive branch of State government or a member
28 of the governing body or elected official of any political
29 subdivision if the action is based on evidence or information
30 known to the Commonwealth or political subdivision when the

1 action was brought.

2 (b) Dismissal.--The court may dismiss an action under this
3 act upon motion of the Attorney General if it finds that
4 substantially all allegations and material facts have been
5 publicly disclosed in a criminal, civil or administrative
6 hearing, in an investigation, report, hearing or audit conducted
7 by or at the request of the General Assembly, auditor or
8 governing body of a political subdivision or by the news media,
9 unless the action is brought by the Attorney General or the
10 prosecuting authority of a political subdivision or the person
11 bringing the action is an original source of the information. No
12 court shall have jurisdiction over an action under this section
13 based upon the public disclosure of allegations or transactions
14 in a criminal, civil or administrative hearing, in any
15 governmental report, hearing, audit or investigation or from the
16 news media, unless the action is brought by a prosecuting
17 authority or the person bringing the action is an original
18 source of the information.

19 (c) Definition.--As used in this section, the term "original
20 source" means an individual who has voluntarily provided the
21 information to the Commonwealth or political subdivision before
22 filing an action based on that information and either has direct
23 and independent knowledge of the information on which the
24 allegations are based or directly or indirectly provided the
25 impetus, basis or catalyst for the investigation, hearing, audit
26 or report which led to the public disclosure.

27 Section 509. Employment-related discovery of information.

28 No court shall have jurisdiction over an action brought under
29 this chapter based upon information discovered by a present or
30 former employee of the Commonwealth or a political subdivision

1 during the course of his employment unless that employee first
2 in good faith attempts to use existing internal procedures for
3 reporting and seeking recovery of the falsely claimed sums
4 through official channels and unless the Commonwealth or
5 political subdivision failed to act on the information provided
6 within a reasonable period of time. A reasonable period of time
7 shall mean no longer than six months after information has been
8 disclosed.

9 Section 510. Responsibility for prosecution.

10 If the Commonwealth or political subdivision proceeds with
11 the action, it shall have the primary responsibility for
12 prosecuting the action. The qui tam plaintiff shall have the
13 right to continue with all rights and obligations as a full
14 party to the action.

15 Section 511. Dismissal of action.

16 The Commonwealth or political subdivision may seek to dismiss
17 the action for good cause notwithstanding the objections of the
18 qui tam plaintiff if the qui tam plaintiff has been notified by
19 the Commonwealth or political subdivision of the filing of the
20 motion and the court has provided the qui tam plaintiff with an
21 adequate opportunity to oppose the motion.

22 Section 512. Settlement.

23 The Commonwealth or political subdivision may settle the
24 action with the defendant notwithstanding the objections of the
25 qui tam plaintiff if the court determines that the proposed
26 settlement is fair, adequate and reasonable under all of the
27 circumstances to all parties involved.

28 Section 513. Election not to proceed.

29 If the Commonwealth or political subdivision elects not to
30 proceed, the qui tam plaintiff shall have the right to conduct

1 the action. If the Commonwealth or political subdivision so
2 requests, the Commonwealth or political subdivision shall be
3 served with copies of all pleadings filed in the action and
4 supplied with copies of all deposition transcripts.

5 Section 514. Intervention.

6 Upon timely application, the court may permit the
7 Commonwealth or political subdivision to intervene in an action
8 with which it had initially declined to proceed if the interest
9 of the Commonwealth or political subdivision in recovery of the
10 property or funds involved is not being adequately represented
11 by the qui tam plaintiff.

12 Section 515. Proceeds.

13 (a) Attorney General.--If the Attorney General initiates an
14 action under section 303(a) or assumes control of an action
15 initiated by the district attorney representing the political
16 subdivision pursuant to section 303, the Attorney General shall
17 receive a fixed 33% of the proceeds of the action or settlement
18 of the claim, which funds shall be used to support and expand
19 its ongoing investigation and prosecution of false claims
20 violations in this Commonwealth or to support other
21 investigation and prosecution efforts.

22 (b) District attorney.--If a district attorney representing
23 a political subdivision initiates and conducts an action
24 pursuant to section 303(b), the office of the district attorney
25 shall receive a fixed 33% of the proceeds of the action or
26 settlement of the claim, which funds shall be used to support
27 and expand its ongoing investigation and prosecution of false
28 claims violations within its jurisdiction or to support other
29 investigation and prosecution efforts.

30 (c) Award of portion of recovery.--If a district attorney

1 intervenes in an action initiated by the Attorney General
2 pursuant to section 303(a)(3) or remains a party to an action
3 assumed by the Attorney General pursuant to section
4 303(b)(3)(i), the court may award the office of the district
5 attorney a portion of the Attorney General's fixed 33% of the
6 recovery under subsection (a), taking into account the district
7 attorney's role in investigating and conducting the action and
8 the resources of the office expended on the prosecution.

9 (d) Qui tam recovery.--

10 (1) If the Commonwealth or political subdivision
11 proceeds with an action brought by a qui tam plaintiff under
12 this chapter, the qui tam plaintiff shall, subject to
13 subsections (f) and (g), receive not less than 20% nor more
14 than 33% of the full proceeds of the action or settlement of
15 the claim, depending upon the extent to which the qui tam
16 plaintiff substantially contributed to the overall
17 prosecution of the action.

18 (2) When it conducts the action, the Office of Attorney
19 General or the office of the prosecuting authority of the
20 political subdivision shall receive a fixed 33% of the
21 proceeds of the action or settlement of the claim, which
22 funds shall be used to support and expand its ongoing
23 investigation and prosecution of false claims made against
24 the Commonwealth or political subdivision or otherwise to
25 investigate or prosecute consistent with the duties of those
26 offices.

27 (3) When both the Attorney General and the district
28 attorney representing the political subdivision are involved
29 as coparties in a qui tam action pursuant to section 504, the
30 court in its discretion may award the district attorney a

1 portion of the Attorney General's fixed 33% of the recovery,
2 taking into account the district attorney's cooperation and
3 contribution to investigating and conducting the action.

4 (e) Decline to proceed.--If the Commonwealth or political
5 subdivision declines to proceed with an action under subsection
6 (c), the qui tam plaintiff shall, subject to subsections (f) and
7 (g), receive an amount which the court decides is reasonable for
8 collecting the civil penalty and damages on behalf of the
9 Commonwealth or political subdivision. The amount awarded by the
10 court shall be not less than 30% nor more than 50% of the
11 proceeds of the action or settlement and shall be paid out of
12 the proceeds.

13 (f) Present or former employee.--If the action is one
14 provided for under section 507, the present or former employee
15 of the Commonwealth or political subdivision shall not be
16 entitled to any minimum guaranteed recovery from the proceeds.
17 The court, however, may award the qui tam plaintiff those sums
18 from the proceeds as it considers appropriate, but in no case
19 more than 33% of the proceeds if the Commonwealth or political
20 subdivision goes forth with the action or 50% if the
21 Commonwealth or political subdivision declines to go forth,
22 taking into account the significance of the information, the
23 role of the qui tam plaintiff in advancing the case to
24 litigation and the scope of and response to the employee's
25 attempts to report and gain recovery of the falsely claimed
26 funds through official channels.

27 (g) Fraudulent activity.--

28 (1) Where the action is one which the court finds to be
29 based primarily on information from a person who actively
30 participated in the fraudulent activity, the person shall not

1 be entitled to any minimum guaranteed recovery from the
2 proceeds. The court, however, in its sole discretion after a
3 full review of all of the facts and circumstances may award
4 the qui tam plaintiff such sums from the proceeds as it
5 considers appropriate under the circumstances, but in no case
6 more than 33% of the proceeds if the Commonwealth or
7 political subdivision goes forth with the action or 50% if
8 the Commonwealth or political subdivision declines to go
9 forth, taking into account the significance of the
10 information, the role of the qui tam plaintiff in advancing
11 the case to litigation, the scope of the person's involvement
12 in the fraudulent activity, the person's attempts to avoid or
13 resist such activity and all other circumstances surrounding
14 the activity.

15 (2) A person who has been convicted of a crime, either
16 in the same or another jurisdiction, based on participation
17 in the fraudulent activity shall under no circumstances be
18 permitted to participate in any action under this act as a
19 qui tam plaintiff.

20 (h) Present or former sworn law enforcement officer or other
21 governmental investigator.--Any present or former sworn law
22 enforcement officer or other governmental investigator who
23 obtains information regarding a false claim in the course of
24 that officer's or investigator's official duties shall be
25 precluded from participating in the proceeds of a qui tam action
26 on the basis of that information.

27 Section 516. Reversion to General Fund.

28 The portion of the recovery not distributed under section 516
29 shall revert to the General Fund if the underlying false claims
30 involved Commonwealth funds exclusively and to the political

1 subdivision if the underlying false claims involved political
2 subdivision funds exclusively. If petitioned to do so, the court
3 shall make an apportionment of the recovered proceeds between
4 the Commonwealth and political subdivision based on their
5 relative share of the funds falsely claimed.

6 Section 517. Expenses.

7 If the Commonwealth, political subdivision or qui tam
8 plaintiff prevails in or settles any action under this chapter,
9 the qui tam plaintiff shall receive an amount for all reasonable
10 expenses incurred in the prosecution of the claim, including
11 expert witness fees plus reasonable litigation costs and
12 attorney fees. All expenses, costs and attorney fees shall be
13 awarded against the defendant, and under no circumstances shall
14 they be the responsibility of the Commonwealth or a political
15 subdivision.

16 CHAPTER 7

17 GENERAL PROVISIONS

18 Section 701. Stay of discovery.

19 The court may stay discovery of the person initiating the
20 action for a period of not more than 90 days if the prosecuting
21 authority shows that discovery would interfere with an
22 investigation or a prosecution of a criminal or civil matter
23 arising out of the same facts, regardless of whether the
24 prosecuting authority proceeds with the action. Such a showing
25 shall be conducted in camera. The court may extend the 90-day
26 period upon a further showing in camera that the prosecuting
27 authority has pursued the criminal or civil investigation or
28 proceedings with reasonable diligence and that any proposed
29 discovery in the civil action would interfere with the ongoing
30 criminal or civil investigation or proceedings.

1 Section 702. Limitations on participation.

2 Upon a showing by the prosecuting authority by a
3 preponderance of the evidence that unrestricted participation
4 during the course of the litigation by the person initiating the
5 action would interfere with or unduly delay the prosecuting
6 authority's prosecution of the case or would be repetitious,
7 irrelevant or for purposes of harassment, the court may, in its
8 discretion, impose limitations on the person's participation,
9 including the following:

10 (1) limiting the number of witnesses the person may
11 call;

12 (2) limiting the length of the testimony of these
13 witnesses;

14 (3) limiting the person's cross-examination of
15 witnesses; or

16 (4) otherwise limiting the participation by the person
17 in the litigation.

18 Section 703. Employee protection.

19 (a) Disclosing information.--No employer shall solicit,
20 attempt or conspire to prevent, make, adopt or enforce any rule,
21 regulation or policy preventing an employee from disclosing
22 information to a State or local law enforcement agency or from
23 acting in furtherance of a false claims action, including
24 investigating, initiating, testifying or assisting in an action
25 filed or to be filed under this act.

26 (b) Discrimination.--No employer shall discharge, demote,
27 suspend, threaten, harass, deny promotion to or in any other
28 manner discriminate, or solicit, attempt or conspire to
29 discriminate against an employee in the terms of and conditions
30 of employment because of lawful acts done by the employee on

1 behalf of the employee or others in disclosing information to a
2 State or local government or law enforcement agency or in
3 furthering false claims action, including investigation for,
4 initiation of, testimony for or assistance in an action filed or
5 to be filed under this act.

6 (c) Penalty.--An employer who violates subsection (a) or (b)
7 shall be liable for all relief necessary to make the employee
8 whole, including reinstatement with the same seniority status
9 that the employee would have had but for the discrimination,
10 three times the amount of back pay, prevailing interest on the
11 back pay, compensation for any special damage sustained as a
12 result of the discrimination and, where appropriate, punitive
13 damages. In addition, the defendant shall be required to pay all
14 litigation costs and reasonable attorney fees. An employee may
15 bring an action in the Commonwealth Court for the relief
16 provided in this subsection.

17 (d) Limitations.--An employee who is discharged, demoted,
18 suspended, harassed, denied promotion, threatened with
19 termination or in any other manner discriminated against in the
20 terms and conditions of employment by his employer because of
21 participation in conduct which directly or indirectly resulted
22 in a false claim being submitted to the Commonwealth or a
23 political subdivision shall be entitled to the remedies under
24 subsection (c) if the employee voluntarily discloses information
25 to a State or local government or law enforcement agency or
26 acted in furtherance of a false claims action, including
27 investigation for, initiation of, testimony for or assistance in
28 an action filed or to be filed.

29 Section 704. Limitations.

30 (a) Time of filing.--A civil action under this act may not

1 be filed more than six years after the date on which the
2 violation of this act is completed or more than three years
3 after the date of discovery by the official of the Commonwealth
4 or political subdivision charged with responsibility to act in
5 the circumstances, but in any event no more than ten years after
6 the date on which the violation of section 301 is completed.

7 (b) Prior acts.--A civil action under this act may be
8 brought for activity prior to the effective date of this act if
9 the limitations period set in subsection (a) has not elapsed.

10 (c) Proof.--In any action brought under this act, the
11 Commonwealth, the political subdivision or the qui tam plaintiff
12 shall be required to prove all essential elements of the cause
13 of action, including damages, by a preponderance of the
14 evidence.

15 (d) Estoppel.--Notwithstanding any other provision of law, a
16 guilty verdict, guilty plea or nolo contendere plea rendered in
17 a criminal proceeding which alleged a scheme to obtain funds
18 fraudulently from the Commonwealth or a political subdivision
19 shall estop the defendant from denying the essential elements of
20 the offense in any action which involves the same transaction as
21 in the criminal proceeding and which is brought under this act.

22 Section 705. Remedies.

23 (a) Civil remedies.--

24 (1) The Commonwealth Court shall have jurisdiction to
25 prevent and restrain violations of section 301 by issuing
26 appropriate orders, including, but not limited to, orders
27 relating to ordering any person to divest himself of any
28 financial interest in any business or entity; imposing
29 reasonable restrictions on the future activities or
30 investments of any person, including, but not limited to,

1 prohibiting any person from engaging in the same type of
2 endeavor or freezing the person's assets, making due
3 provisions for the rights of innocent persons; ordering the
4 dissolution of any business or entity; ordering the denial,
5 suspension or revocation of charters of domestic
6 corporations, certificates of authority authorizing foreign
7 corporations to do business in this Commonwealth, licenses,
8 permits or prior approval granted to any business or entity
9 by any department or agency of the Commonwealth or any of its
10 political subdivisions; or prohibiting any business or entity
11 from engaging in any business.

12 (2) Injunctions against false claims:

13 (i) If a person violates or is about to violate this
14 act, the prosecuting authority may commence an action in
15 Commonwealth Court to enjoin such violation.

16 (ii) If a person alienates or disposes of property,
17 or intends to alienate or dispose of property obtained as
18 a result of a violation of this act or property which is
19 traceable to such violation, the prosecuting authority
20 may commence an action in Commonwealth Court to enjoin
21 such alienation or disposition of property, or for a
22 restraining order to prohibit any person from
23 withdrawing, transferring, removing, dissipating or
24 disposing of any such property or property of equivalent
25 value and appoint a temporary receiver to administer such
26 restraining order.

27 (3) In any proceeding under this section, the court
28 shall proceed as soon as practicable to the hearing and
29 determination thereof. Pending final determination, the court
30 may enter preliminary or special injunctions or take such

1 other actions, including the acceptance of satisfactory
2 performance bonds, as it may deem proper.

3 (b) Remedies cumulative.--The provisions of this act are not
4 exclusive, and the remedies provided for in this act shall be in
5 addition to any other remedies provided for in any other law or
6 available under common law.

7 Section 706. Enforcement.

8 (a) Prosecuting authority.--The prosecuting authority shall
9 have the power and duty to enforce this act, including the
10 authority to issue civil investigative demands pursuant to this
11 act, to institute proceedings under this act and to take such
12 actions as may be necessary to ascertain and investigate alleged
13 violations of this act. The prosecuting authority may delegate
14 its powers to investigate and prosecute actions under this act
15 to appropriate Deputy Attorneys General or deputy or assistant
16 district attorneys.

17 (b) Construction.--Nothing contained in this act shall be
18 construed to limit the regulatory or investigative authority of
19 any department or agency of the Commonwealth whose functions
20 might relate to persons, enterprises or matters falling within
21 the scope of this act.

22 Section 707. Civil investigative demand.

23 (a) General rule.--Whenever the prosecuting authority has
24 reason to believe that any person may be in possession, custody
25 or control of any documentary material or information relevant
26 to a false claim investigation, the prosecuting authority may
27 issue in writing and cause to be served upon the person a civil
28 investigative demand requiring such person to:

29 (1) produce such documentary material for inspection and
30 copying;

1 (2) answer in written interrogatories with respect to
2 such documentary material or information;

3 (3) give oral testimony concerning such documentary
4 material or information; or

5 (4) furnish any combination of such material, answers
6 and testimony.

7 (b) Content.--Each demand under this section shall:

8 (1) State the nature of the conduct constituting the
9 alleged false claim violation which is under investigation
10 and the provision of law applicable thereto.

11 (2) If the demand is for the production of documentary
12 material:

13 (i) describe the class or classes of documentary
14 material to be produced thereunder with such definiteness
15 and certainty as to permit the material to be fairly
16 identified;

17 (ii) state that the demand is returnable forthwith
18 or prescribe a return date which will provide a
19 reasonable period of time within which the material so
20 demanded may be assembled and made available for
21 inspection and copying or reproduction; and

22 (iii) identify an investigator to whom the material
23 shall be made available.

24 (3) If the demand is for written interrogatories:

25 (i) set forth with specificity the written
26 interrogatories to be answered;

27 (ii) prescribe dates at which time answers to
28 written interrogatories shall be submitted; and

29 (iii) identify the investigator to whom such answers
30 shall be submitted.

1 (4) If such demand is for the giving of oral testimony:

2 (i) prescribe a date, time and place at which oral
3 testimony should be commenced;

4 (ii) identify the investigator who shall conduct the
5 examination and the person to whom the transcript of such
6 investigation shall be submitted;

7 (iii) specify that such attendance and testimony are
8 necessary to the conduct of the investigation; and

9 (iv) describe the general purpose for which the
10 demand is being issued and the general nature of the
11 testimony, including the primary areas of inquiry, which
12 will be taken pursuant to the demand.

13 (5) Contain the following statement printed
14 conspicuously at the top of the demand:

15 You have the right to seek the assistance of any
16 attorney, and he may represent you in all phases of
17 the false claim investigation of which this civil
18 investigative demand is a part.

19 (c) Limitation.--No demand under this section shall:

20 (1) contain any requirement which would be held to be
21 unreasonable if contained in a subpoena duces tecum issued by
22 any court in connection with a grand jury investigation of
23 the alleged fraud violation; or

24 (2) require the production of any documentary evidence
25 which would be privileged from disclosure if demanded by a
26 subpoena duces tecum issued by any court in connection with a
27 grand jury investigation of the alleged false claim
28 violation.

29 (d) Service.--Service of any demand or any petition filed
30 under this section shall be made in the manner prescribed by the

1 Pennsylvania Rules of Civil Procedure for service of writs and
2 complaints unless otherwise agreed to by the prosecuting
3 authority and the person.

4 (e) Return.--A verified return by the individual serving any
5 demand or petition under this section setting forth the manner
6 of service shall be prima facie proof of such service. In the
7 case of service by registered or certified mail, the return
8 shall be accompanied by the return post office receipt of
9 delivery of the demand.

10 (f) Procedure.--

11 (1) A person upon whom a demand issued under this
12 section has been duly served shall make the demanded material
13 available for inspection and copying or reproduction to an
14 investigator designated in the demand at the principal place
15 of business of the person or at such other place as the
16 investigator and the person thereafter may agree or as the
17 court may direct pursuant to this section on the return date
18 specified in the demand. The person may, upon agreement of
19 the investigator, substitute copies of all or any part of the
20 demanded material for the originals of the demanded material.

21 (2) The investigator to whom any documentary material is
22 so delivered shall take physical possession of the material
23 and shall be responsible for the use made of the material and
24 for its return pursuant to this section. The investigator may
25 cause the preparation of the copies of the documentary
26 material as may be required for official use. While in the
27 possession of the investigator, no material so produced shall
28 be available for examination by any individual other than the
29 prosecuting authority or any investigator without the consent
30 of the person who produced the material. Under such

1 reasonable terms and conditions as the prosecuting authority
2 shall prescribe, documentary material while in the possession
3 of the investigator shall be available for examination by the
4 person who produced the material or any duly authorized
5 representatives of that person.

6 (3) The production of documentary material in response
7 to a civil investigative demand served under this section
8 shall be made under a sworn certificate, in such form as the
9 demand designates, by:

10 (i) in the case of a natural person, the person to
11 whom the demand is directed; or

12 (ii) in the case of a person other than a natural
13 person, a person having knowledge of the facts and
14 circumstances relating to such production and authorized
15 to act on behalf of such person.

16 The certificate shall state that all of the documentary
17 material required by the demand and in the possession,
18 custody or control of the person to whom the demand is
19 directed has been produced and made available to the
20 investigator identified in the demand.

21 (4) Each interrogatory in a civil demand served under
22 this section shall be answered separately and fully in
23 writing under oath and shall be submitted under a sworn
24 certificate, in such form as the demand designates, by:

25 (i) in the case of a natural person, the person to
26 whom the demand is directed; or

27 (ii) in the case of a person other than a natural
28 person, a person or persons responsible for answering
29 each interrogatory. If any interrogatory is objected to,
30 the reasons for the objection shall be stated in the

1 certificate instead of an answer. The certificate shall
2 state that all information required by the demand and in
3 the possession, custody, control or knowledge of the
4 person to whom the demand is directed has been submitted.
5 To the extent that any information is not furnished, the
6 information shall be identified and reasons set forth
7 with particularity regarding the reasons why the
8 information was not furnished.

9 (5) (i) The examination of any person pursuant to a
10 civil investigative demand for oral testimony served
11 under this section shall be deemed an "official
12 proceeding" within the meaning of 18 Pa.C.S. Ch. 49
13 Subch. A (relating to perjury and falsification in
14 official matters). The examination shall be taken before
15 an officer authorized to administer oaths and
16 affirmations by the laws of this Commonwealth. The
17 officer before whom the testimony is to be taken shall
18 put the witness on oath or affirmation and shall,
19 personally or by someone acting under the direction of
20 the officer and in the officer's presence, record the
21 testimony of the witness. The testimony shall be taken
22 accurately and shall be transcribed. When the testimony
23 is fully transcribed, a copy of the transcript shall be
24 promptly forwarded to the designated person. This
25 subsection shall not preclude the taking of testimony by
26 any means authorized by, and in a manner consistent with,
27 the Pennsylvania Rules of Civil Procedure.

28 (ii) The investigator conducting the examination
29 shall exclude from the place where the examination is
30 held all persons except the person giving the testimony,

1 the attorney for and any other representative of the
2 person giving the testimony, the prosecuting authority,
3 any person who may be agreed upon by the prosecuting
4 authority and the person giving the testimony, and any
5 stenographer taking such testimony.

6 (iii) The oral testimony of any person taken
7 pursuant to a civil investigative demand served under
8 this section shall be taken in the county where the
9 office of the investigator conducting the examination is
10 situated, or in such other place as may be agreed upon by
11 the investigator and such person.

12 (iv) When the testimony is fully transcribed, the
13 investigator shall afford the witness, who may be
14 accompanied by counsel, a reasonable opportunity to
15 examine and read the transcript, unless such examination
16 and reading are waived by the witness. Any changes in
17 form or substance which the witness desires to make shall
18 be entered and identified upon the transcript by the
19 officer or the investigator, with a statement of the
20 reasons given by the witness for making such changes. The
21 transcript shall then be signed by the witness, unless
22 the witness in writing waives the signing, is ill, cannot
23 be found or refuses to sign. If the transcript is not
24 signed by the witness within 30 days after being afforded
25 a reasonable opportunity to examine it, the officer or
26 the investigator shall sign it and state on the record
27 the fact of the waiver, illness, absence of the witness
28 or the refusal to sign, together with the reasons, if
29 any, given therefor.

30 (v) Upon payment of reasonable charges therefor, the

1 investigator shall furnish a copy of the transcript to
2 the witness only, except that the prosecuting authority
3 may, for good cause, limit such witness to inspection of
4 the official transcript of the witness' testimony.

5 (vi) Any person compelled to appear for oral
6 testimony under a civil investigative demand may be
7 accompanied, represented and advised by counsel. Counsel
8 may advise the person, in confidence, with respect to any
9 question asked of that person. The person or counsel may
10 object on the record to any question, in whole or in
11 part, and shall briefly state for the record the reason
12 for the objection. An objection may be made, received and
13 entered upon the record when it is claimed that such
14 person is entitled to refuse to answer the question on
15 the grounds of any constitutional or other legal right or
16 privilege, including the privilege against self-
17 incrimination. The person may not otherwise object to or
18 refuse to answer any question, and may not directly or
19 through counsel otherwise interrupt the oral examination.
20 If the person refuses to answer any question, a petition
21 may be filed in the Commonwealth Court under section
22 706(g) for an order compelling the person to answer the
23 question.

24 (6) Upon completion of:

25 (i) the false claims investigation for which any
26 documentary material was produced under this section; and

27 (ii) any case or proceeding arising from such
28 investigation;

29 the investigator shall return to the person who produced the
30 material all of the material other than copies of the

1 material made pursuant to this section which have not passed
2 into the control of any court or grand jury through
3 introduction into the record of such case or proceeding.

4 (7) When documentary material has been produced by a
5 person under this section for use in a false claims
6 investigation and no case or proceeding arising from the
7 investigation has been instituted within a reasonable time
8 after completion of the examination and analysis of all
9 evidence assembled in the course of the investigation, the
10 person shall be entitled, upon written demand made upon the
11 prosecuting authority, to the return of all documentary
12 material, other than copies of the material made pursuant to
13 this section, so produced by that person.

14 (g) Failure to comply.--Whenever a person fails to comply
15 with a civil investigative demand that is served upon him under
16 this section or whenever satisfactory copying or reproduction of
17 any of the material cannot be done and the person refuses to
18 surrender the material, the prosecuting authority may file in
19 the Commonwealth Court and serve upon the person a petition for
20 an order of the court for the enforcement of this section.

21 (h) Petition for relief.--

22 (1) Within 20 days after the service of any demand under
23 this section upon any person or at any time before the return
24 date specified in the demand, whichever period is shorter,
25 the person may file in the Commonwealth Court and serve upon
26 the prosecuting authority a petition for an order of the
27 court modifying or setting aside this demand. The time
28 allowed for compliance with the demand, in whole or in part,
29 as deemed proper and ordered by the court shall not run
30 during the pendency of the petition in the court. The

1 petition shall specify each ground upon which the petitioner
2 relies in seeking the relief and may be based on any failure
3 of the demand to comply with the provisions of this section
4 or on any constitutional or other legal right or privilege of
5 the person.

6 (2) At any time during which the prosecuting authority
7 is in custody or control of documentary material delivered by
8 a person in compliance with a demand under this section, the
9 person may file in the Commonwealth Court and serve upon the
10 prosecuting authority a petition for an order of the court
11 requiring the performance of any duty imposed by this
12 section.

13 (3) Whenever a petition is filed in the Commonwealth
14 Court, the court shall have jurisdiction to hear and
15 determine the matter so presented and, after a hearing at
16 which all parties are represented, to enter such order or
17 orders as may be required to carry into effect the provisions
18 of this section.

19 (i) Definition.--As used in this section, the term
20 "documentary material" includes, but is not limited to, any
21 book, paper, record, recording, tape, report, memorandum,
22 written communication or other document relating to the business
23 affairs of any person, enterprise or matter falling within the
24 purview of this act.

25 Section 708. Immunity.

26 Whenever any individual refuses on the basis of his privilege
27 against self-incrimination to comply with a civil investigative
28 demand issued pursuant to this act or to testify or produce
29 other information in a proceeding under this act, the
30 prosecuting authority may invoke the provisions of 42 Pa.C.S. §

- 1 5947 (relating to immunity of witnesses).
- 2 Section 709. Effective date.
- 3 This act shall take effect in 60 days.