

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 849

Session of
1999

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STEELMAN AND RAMOS, MARCH 10, 1999

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 11, 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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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

12 This act shall be known and may be cited as the False Claims
13 Act.

14 Section 102. Definitions.

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

18 "Claim." Any request or demand for money, property or
19 services made to any employee, officer or agent of the
20 Commonwealth or of any political subdivision thereof or to any
21 contractor, subcontractor, grantee or other recipient of the
22 Commonwealth or any political subdivision thereof, if any
23 portion of the money, property or services requested or demanded
24 issued from, was provided or will be reimbursed by the
25 Commonwealth, referred to as Commonwealth funds, or by any
26 political subdivision thereof, referred to as political
27 subdivision funds.

28 "False." In addition to its ordinary meaning, this term also
29 means fraudulent.

30 "Knowing" or "knowingly." A person who, with respect to

1 information, does any of the following:

2 (1) has actual knowledge of the information;

3 (2) acts in deliberate ignorance of the truth or falsity
4 of the information; or

5 (3) acts in reckless disregard of the truth or falsity
6 of the information.

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

8 "Person." Any natural person, corporation, county, political
9 subdivision, firm, association, legal entity, organization,
10 partnership, business or trust.

11 "Political subdivision." Any city, county, tax or assessment
12 district, municipal or government authority or other legally
13 authorized local governmental entity in this Commonwealth.

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

16 "Prosecuting authority." The Attorney General and where
17 appropriate the district attorney of any county in which the
18 political subdivision, including the county itself, lies.

19 Section 103. Construction.

20 This act shall be liberally and broadly construed to
21 effectuate its purposes. It shall be applied and interpreted to
22 promote the public interest to eliminate fraud, waste and abuse
23 through the submission of false or fraudulent claims in this
24 Commonwealth or in any of its political subdivisions.

25 CHAPTER 3

26 FALSE CLAIMS

27 Section 301. Offenses defined.

28 (a) Liability.--A person who commits any of the following
29 acts shall be liable to the Commonwealth or to the political
30 subdivision for three times the amount of damages which the

1 Commonwealth or the political subdivision sustains because of
2 the act of that person and shall also be liable to the
3 Commonwealth or to the political subdivision for the costs of an
4 action brought to recover any of those penalties or damages and
5 shall be liable to the Commonwealth or political subdivision for
6 a civil penalty of not less than \$5,000 nor more than \$10,000
7 for each false claim:

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

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

14 (3) Conspires to defraud the Commonwealth or any
15 political subdivision by getting a false claim allowed or
16 paid by the Commonwealth or by any political subdivision.

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

22 (5) Is authorized to make or deliver a document
23 certifying receipt of property used or to be used by the
24 Commonwealth or by any political subdivision and knowingly
25 makes or delivers a receipt that falsely represents the
26 quality, quantity or value of the property used or to be
27 used.

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

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

5 (8) Unknowingly submits a false claim, is a beneficiary
6 of payment by the Commonwealth or political subdivision for
7 that claim, subsequently discovers or has reasonable grounds
8 to discover that the claim was false and fails to disclose
9 that the claim was false. Disclosure shall be made ~~in writing~~ <—
10 to the Commonwealth or political subdivision within a
11 reasonable time, but in no event longer than 90 days after
12 discovery of the false claim.

13 (b) Reduced assessment.--Notwithstanding subsection (a), the
14 court shall assess not less than two times nor more than three
15 times the amount of damages which the Commonwealth or the
16 political subdivision sustains because of the act of the person
17 described in subsection (a)(1), and no civil penalty, if the
18 court finds all of the following:

19 (1) The person committing the violation furnished the
20 prosecuting authority with all information known to that
21 person about the violation within 60 days after the date on
22 which the person first obtained the information.

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

25 (3) At the time the person furnished the prosecuting
26 authority with information about the violation, no criminal
27 prosecution, civil action or administrative action had
28 commenced with respect to the violation and the person did
29 not have knowledge or notice of the existence of an
30 investigation into the violation.

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

4 (d) Limitation.--

5 (1) This section does not apply to any controversy
6 involving an aggregate amount of less than \$2,500 in value or
7 to any claims involving benefits or compensation conferred
8 under the act of June 2, 1915 (P.L.736, No.338), known as the
9 Workers' Compensation Act, or the act of December 5, 1936
10 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the
11 Unemployment Compensation Law, or the act of June 13, 1967
12 (P.L.31, No.21), known as the Public Welfare Code, except
13 where the claim has not been filed by the individual
14 recipient of benefits.

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

19 Section 302. False claims jurisdiction.

20 An action under this act shall be brought in the Commonwealth
21 Court if any defendant can be found, resides or transacts
22 business in this Commonwealth or if an act proscribed by this
23 act occurred within this Commonwealth.

24 Section 303. Procedure.

25 (a) Commonwealth prosecution.--

26 (1) The Attorney General shall diligently investigate
27 violations under section 301 involving Commonwealth funds. If
28 the Attorney General finds that a person has violated or is
29 violating section 301, the Attorney General may bring an
30 action under this act against that person.

1 (2) If the Attorney General brings an action under this
2 act on a claim involving political subdivision funds as well
3 as Commonwealth funds, the Attorney General shall, on the
4 same date that the complaint is filed in this action, serve
5 by mail, return receipt requested, a copy of the complaint on
6 the appropriate district attorney.

7 (3) The district attorney shall have the right to
8 intervene in an action brought by the ~~district attorney~~ <—
9 ATTORNEY GENERAL under this act within 90 days after receipt <—
10 of the complaint pursuant to paragraph (2).

11 (b) Political subdivision prosecution.--

12 (1) The district attorney shall diligently investigate
13 violations under section 301 involving political subdivision
14 funds. If the district attorney finds that a person has
15 violated or is violating section 301, he may bring an action
16 under this act against that person.

17 ~~(2) The district attorney may refer a matter involving <—~~
18 ~~political subdivision funds to the Attorney General at any~~
19 ~~time. The Attorney General may decline the referral or may~~
20 ~~accept it under such terms, as the Attorney General may~~
21 ~~determine, including, but not limited to, terms regarding the~~
22 ~~distribution of any recovery from such action, as both the~~
23 ~~Attorney General and the district attorney deem fit.~~

24 (2) THE DISTRICT ATTORNEY MAY REFER A MATTER INVOLVING <—
25 POLITICAL SUBDIVISION FUNDS TO THE ATTORNEY GENERAL AT ANY
26 TIME. THE ATTORNEY GENERAL MAY DECLINE OR ACCEPT THE
27 REFERRAL.

28 (3) If the district attorney brings an action on a claim
29 involving Commonwealth funds as well as political subdivision
30 funds, the district attorney shall, on the same date that the

1 complaint is filed in this action, serve by mail, return
2 receipt requested, a copy of the complaint on the Attorney
3 General.

4 (4) Within 90 days after receiving the complaint
5 pursuant to paragraph (2), the Attorney General shall do one
6 of the following:

7 (i) Notify the court that the ~~district attorney~~ <—
8 ATTORNEY GENERAL intends to proceed with the action, in <—
9 which case the Attorney General shall assume primary
10 responsibility for conducting the action and the district
11 attorney shall have the right to continue as a party.

12 (ii) Notify the court that the ~~district attorney~~ <—
13 ATTORNEY GENERAL declines to prosecute the action, in <—
14 which case the ~~prosecuting authority representing the~~ <—
15 ~~political subdivision~~ DISTRICT ATTORNEY shall have the <—
16 right to conduct the action on its own.

17 (iii) Proceed jointly with the ~~prosecuting authority~~ <—
18 DISTRICT ATTORNEY, assuming coequal responsibility for <—
19 prosecution of the action.

20 CHAPTER 5

21 QUI TAM ACTIONS

22 Section 501. General provisions.

23 (a) When action may be brought.--A person may bring a qui
24 tam action for a violation of this act for the person and either
25 for the Commonwealth in the name of the Commonwealth if any
26 Commonwealth funds are involved or for a political subdivision
27 in the name of the political subdivision if political
28 subdivision funds are exclusively involved. A qui tam action may
29 be brought alleging fraud involving both Commonwealth and
30 political subdivision funds. The person bringing the qui tam

1 action shall be referred to as the qui tam plaintiff. Once
2 filed, the qui tam action may be dismissed only by the written
3 consent of the court and the ~~district attorney~~ PROSECUTING
4 AUTHORITY, taking into account the best interests of the parties
5 involved and the public purposes of this act.

6 (b) Filing.--A complaint filed by a qui tam plaintiff under
7 this act shall be filed ex parte under seal with the Clerk of
8 the Commonwealth Court or ex parte under seal in the appropriate
9 Federal district court if Federal funds are also involved, and
10 the complaint and all related pleadings shall remain under seal
11 for 90 days from the date of service. No service shall be made
12 on the defendant until after the complaint is unsealed by order
13 of the court.

14 (c) Service ~~upon Attorney General~~.--Within three days of the
15 complaint being filed pursuant to subsection (b), the qui tam
16 plaintiff shall serve by mail, return receipt requested, the
17 Attorney General AND THE GENERAL COUNSEL with a copy of the
18 complaint and a written disclosure of substantially all material
19 evidence and information the qui tam plaintiff possesses at that
20 time.

21 Section 502. Commonwealth funds.

22 Within 90 days after receiving a complaint alleging
23 violations which involve Commonwealth funds, but not political
24 subdivision funds, the Attorney General shall do either of the
25 following:

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

1 (2) Notify the court that it declines to prosecute the
2 action, in which case the complaint may be unsealed by the
3 court within 20 days after written notification is made by
4 the Attorney General to the qui tam plaintiff and counsel
5 that the Attorney General does not wish to intervene. Upon
6 such notification, the qui tam plaintiff shall have the right
7 to conduct the action.

8 Section 503. Political subdivision funds.

9 (a) Procedure.--Within 30 days after receiving a complaint
10 alleging violations which exclusively involve political
11 subdivision funds, the Attorney General shall promptly forward
12 the complaint and written disclosure to the appropriate district
13 attorney for review and disposition and shall notify in writing
14 the qui tam plaintiff and counsel of the transfer.

15 (b) Duty of district attorney.--Within 60 days after the
16 Attorney General forwards the complaint and written disclosure
17 under subsection (a), the district attorney shall do either of
18 the following:

19 (1) Notify the court that it intends to proceed with the
20 action and petition the court to have the case unsealed. If
21 the court grants the district attorney's request, the seal
22 shall be lifted.

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

27 Section 504. Complaints relating to Commonwealth and political
28 subdivision funds.

29 (a) Complaints.--Within 30 days after receiving a complaint
30 alleging violations which involve or allege both Commonwealth

1 and political subdivision funds, the Attorney General shall
2 forward copies of the complaint and written disclosure to the
3 appropriate district attorney and shall coordinate its review
4 and investigation with those of the ~~prosecuting authority~~ <—
5 DISTRICT ATTORNEY. <—

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

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

13 (2) Notify the court in writing that the Attorney
14 General declines to take over the action but that the
15 district attorney involved intends to proceed with the
16 action, in which case the seal shall be lifted and the action
17 shall be conducted by the district attorney.

18 (3) Notify the court that both the Attorney General and
19 the district attorney decline to take over the action, in
20 which case the seal may be lifted within 20 days after
21 notification has been made and the qui tam plaintiff shall
22 have the right to conduct the action.

23 Section 505. Intervention by political subdivision.

24 If the Attorney General proceeds with the action under
25 section 503(b)(1), the district attorney shall be permitted to
26 intervene in the action within 60 days after the Attorney
27 General notifies the court of his intentions.

28 Section 506. Extension of time.

29 Upon a showing of good cause and reasonable diligence in his
30 investigation, the ~~district attorney~~ PROSECUTING AUTHORITY may <—

1 move the court for reasonable extensions of time during which
2 the complaint will remain under seal. The qui tam plaintiff
3 shall be notified of any extensions requested under this
4 section. Any such motions may be supported by affidavits or
5 other submissions in camera.

6 Section 507. Other actions prohibited.

7 When a qui tam plaintiff brings an action under this act, no
8 other person shall be permitted to bring a related action under
9 this act based on the same or similar facts underlying the
10 pending action.

11 Section 508. Exclusions.

12 (a) General rule.--No court shall have jurisdiction over an
13 action brought under this act CHAPTER: <—

14 (1) ~~against a member of the General Assembly, a member~~ <—
15 ~~of the judiciary of the Commonwealth, an elected official in~~
16 ~~the executive branch of the government~~ AN OFFICIAL OR <—
17 EMPLOYEE of the Commonwealth or a ~~member of the governing~~ <—
18 ~~body or elected official of any~~ political subdivision if the
19 action is NOT based on ~~evidence or information known to the~~ <—
20 ~~Commonwealth or political subdivision when the action was~~
21 ~~brought.~~ ACTUAL KNOWLEDGE AND BAD FAITH OF THE OFFICIAL OR <—
22 EMPLOYEE.

23 (2) Which relies upon the public disclosure of specific
24 allegations or transactions in a criminal, civil or
25 administrative hearing, in a governmental report, hearing,
26 audit or investigation or from the news media, unless the
27 action is brought by or intervened in by a prosecuting
28 authority or the qui tam plaintiff is an original source of
29 the information.

30 (3) BY A PRISONER AGAINST ANY OFFICIAL OR EMPLOYEE OF <—

1 THE COMMONWEALTH OR A POLITICAL SUBDIVISION FOR ACTS RELATING
2 TO THE OPERATIONS AND EXPENDITURES OF A CORRECTIONAL AGENCY
3 OR FACILITY.

4 (4) BASED UPON ALLEGATIONS OR TRANSACTIONS WHICH ARE THE
5 SUBJECT OF AN INVESTIGATION, SETTLEMENT DISCUSSION, A
6 SETTLEMENT AGREEMENT, OR ANY CIVIL OR ADMINISTRATIVE
7 PROCEEDING, IN WHICH THE COMMONWEALTH OR POLITICAL
8 SUBDIVISION IS ALREADY A PARTY.

9 (b) Definition.--As used in this section, the term "original
10 source" means an individual who has voluntarily provided the
11 information to the prosecuting authority before filing an action
12 based on that information and either has direct and independent
13 knowledge of the information on which the allegations are based
14 or directly or indirectly provided the impetus, basis or
15 catalyst for the investigation, hearing, audit or report which
16 led to the public disclosure.

17 Section 509. Employment-related discovery of information.

18 No court shall have jurisdiction over an action brought under
19 this act based upon information discovered by a present or
20 former employee of the Commonwealth or a political subdivision
21 during the course of his employment unless that employee first
22 in good faith attempts to use existing internal procedures for
23 reporting and seeking recovery of the falsely claimed sums
24 through official channels and unless the ~~prosecuting authority~~ <—
25 COMMONWEALTH OR POLITICAL SUBDIVISION failed to act on the <—
26 information provided within a reasonable period of time. A
27 reasonable period of time shall mean no longer than six months
28 after information has been disclosed.

29 Section 510. Responsibility for prosecution.

30 If the prosecuting authority proceeds with the action, it

1 shall have the primary responsibility for prosecuting the
2 action. The qui tam plaintiff shall have the right to continue
3 with all rights and obligations as a full party to the action.

4 Section 511. Dismissal of action.

5 The Commonwealth or political subdivision may seek to dismiss
6 the action for good cause notwithstanding the objections of the
7 qui tam plaintiff if the qui tam plaintiff has been notified by
8 the prosecuting authority of the filing of the motion and the
9 court has provided the qui tam plaintiff with an adequate
10 opportunity to oppose the motion.

11 Section 512. Settlement.

12 The prosecuting authority may settle the action with the
13 defendant notwithstanding the objections of the qui tam
14 plaintiff if the court determines that the proposed settlement
15 is fair, adequate and reasonable under all of the circumstances
16 to all parties involved.

17 Section 513. Election not to proceed.

18 If the prosecuting authority elects not to proceed, the qui
19 tam plaintiff shall have the right to conduct the action. If the
20 prosecuting authority so requests, it shall be served with
21 copies of all pleadings filed in the action and supplied with
22 copies of all deposition transcripts.

23 Section 514. Intervention.

24 Upon timely application, the court may permit the prosecuting
25 authority to intervene in an action with which it had initially
26 declined to proceed if the interest of the Commonwealth or
27 political subdivision in recovery of the property or funds
28 involved is not being adequately represented by the qui tam
29 plaintiff.

30 Section 515. Proceeds.

1 (a) Attorney General.--If the Attorney General initiates an
2 action under section 303(a) or assumes control of an action
3 initiated by the district attorney pursuant to section
4 303(b)(4)(ii), the Attorney General shall receive a fixed 33% of
5 the proceeds of the action or settlement of the claim, which
6 funds shall be used to support and expand its ongoing
7 investigation and prosecution of false claims violations in this
8 Commonwealth or to support other investigation and prosecution
9 efforts.

10 (b) District attorney.--If a district attorney initiates and
11 conducts an action pursuant to section 303(b), the office of the
12 district attorney shall receive a fixed 33% of the proceeds of
13 the action or settlement of the claim, which funds shall be used
14 to support and expand its ongoing investigation and prosecution
15 of false claims violations within its jurisdiction or to support
16 other investigation and prosecution efforts.

17 (c) Award of portion of recovery.--If a district attorney
18 intervenes in an action initiated by the Attorney General
19 pursuant to section 303(a)(3) or remains a party to an action
20 assumed by the Attorney General pursuant to section 303(b)(4)(i)
21 AND (III), the court may award the office of the district
22 attorney a portion of the Attorney General's fixed 33% of the
23 recovery under subsection (a), taking into account the district
24 attorney's role in investigating and conducting the action and
25 the resources of the office expended on the prosecution.

26 (d) Qui tam recovery.--

27 (1) If the prosecuting authority proceeds with an action
28 brought by a qui tam plaintiff under this act, the qui tam
29 plaintiff shall, subject to subsections (f) and (g), receive
30 not less than 20% nor more than 33% of the full proceeds of

1 the action or settlement of the claim, depending upon the
2 extent to which the qui tam plaintiff substantially
3 contributed to the overall prosecution of the action. If the
4 prosecuting authority and the qui tam plaintiff cannot reach
5 an agreement concerning the percentage of proceeds to be
6 distributed to the qui tam plaintiff, the determination shall <—
7 be made by the court.

8 (2) When it conducts the action, the ~~Office of Attorney~~ <—
9 General or the district attorney shall receive a fixed 33% of
10 the proceeds of the action or settlement of the claim, which
11 funds shall be used to support and expand its ongoing
12 investigation and prosecution of false claims made against
13 the Commonwealth or political subdivision or otherwise to
14 investigate or prosecute consistent with the duties of these
15 offices.

16 (3) When both the Attorney General and the district
17 attorney ~~representing the political subdivision~~ are involved <—
18 as coparties in a qui tam action pursuant to section 504, the
19 court in its discretion may award the district attorney a
20 portion of the Attorney General's fixed 33% of the recovery,
21 taking into account the district attorney's cooperation and
22 contribution to investigating and conducting the action.

23 (e) Decline to proceed.--If the prosecuting authority
24 declines to proceed with an action ~~under subsection (e)~~, the qui <—
25 tam plaintiff shall, subject to subsections (f) and (g), receive
26 an amount which the court decides is reasonable for collecting
27 the civil penalty and damages on behalf of the Commonwealth or
28 political subdivision. The amount awarded by the court shall be
29 not less than 30% nor more than 50% of the proceeds of the
30 action or settlement and shall be paid out of the proceeds.

1 (f) Present or former employee.--If a qui tam action is
2 brought by a present or former employee of the Commonwealth or
3 political subdivision, the qui tam plaintiff shall not be
4 entitled to any minimum guaranteed recovery from the proceeds.
5 If the prosecuting authority and the qui tam plaintiff cannot
6 reach an agreement concerning the percentage of proceeds to be
7 distributed to the qui tam plaintiff, the determination shall be
8 made by the court. The court may award the qui tam plaintiff
9 those sums from the proceeds as it considers appropriate, but in
10 no case more than 33% of the proceeds if the prosecuting
11 authority goes forth with the action or 50% if it declines to go
12 forth, taking into account the significance of the information,
13 the role of the qui tam plaintiff in advancing the case to
14 litigation and the scope of and response to the qui tam
15 plaintiff's attempts to report and gain recovery of the falsely
16 claimed funds through official channels.

17 (g) Fraudulent activity.--

18 (1) Where the action is one which the court finds to be
19 based primarily on information from a qui tam plaintiff who
20 actively participated in the fraudulent activity, the qui tam
21 plaintiff shall not be entitled to any minimum guaranteed
22 recovery from the proceeds. If the prosecuting authority and
23 the qui tam plaintiff cannot reach an agreement concerning
24 the percentage of proceeds to be distributed to the qui tam
25 plaintiff, the determination shall be made by the court. The
26 court, in its sole discretion after a full review of all the
27 facts and circumstances, may award the qui tam plaintiff such
28 sums from the proceeds as it considers appropriate under the
29 circumstances, but in no case more than 33% of the proceeds
30 if the prosecuting authority goes forth with the action or

1 50% if it declines to go forth, taking into account the
2 significance of the information, the role of the qui tam
3 plaintiff in advancing the case to litigation, the scope of
4 the qui tam plaintiff's involvement in the fraudulent
5 activity, the qui tam plaintiff's attempts to avoid or resist
6 such activity and all other circumstances surrounding the
7 activity.

8 (2) A person who has been convicted of a crime, either
9 in the same or another jurisdiction, based on participation
10 in the fraudulent activity at issue in the action under this
11 act shall under no circumstances be permitted to participate
12 in any action under this act as a qui tam plaintiff.

13 (h) Present or former sworn law enforcement officer or other
14 governmental investigator.--Any present or former sworn law
15 enforcement officer or other governmental investigator who
16 obtains information regarding a false claim in the course of
17 that officer's or investigator's official duties shall be
18 precluded from participating in the proceeds of a qui tam action
19 on the basis of that information.

20 (i) Use of recoveries.--Proceeds recovered under this act by
21 the prosecuting authority shall be placed in the operating fund
22 of the Commonwealth, the county of the district attorney, or
23 both, as appropriate. The Commonwealth, the county of the
24 district attorney, or both, as appropriate, shall immediately
25 release from the operating fund, without restriction, a like
26 amount for the use of the prosecuting authority for the purposes
27 elsewhere specified in this act. The entity having budgetary
28 control shall not anticipate future recoveries in adoption and
29 approval of the budget for the prosecuting authority.

30 (j) Annual audit of recoveries.--It shall be the

1 responsibility of the Commonwealth, the county of the district
2 attorney, or both, as appropriate, to provide, through the
3 controller, board of auditors or other appropriate auditor, an
4 annual audit of all recoveries under this act. The audit shall
5 not be made public but shall be submitted to the Attorney
6 General's office by September 30 of each year.

7 (k) Annual report.--The Attorney General shall annually
8 submit a report to the Appropriations Committee and the
9 Judiciary Committee of the Senate and the Appropriations
10 Committee and Judiciary Committee of the House of
11 Representatives, specifying the recoveries obtained under this
12 act. The report shall give an accounting of all moneys recovered
13 through the sale of any property seized in satisfaction of any
14 judgment arising from an action under this act.

15 (l) Recoveries and appropriations.--Recoveries or future
16 recoveries under this act shall be in addition to any
17 appropriation made to the office of the prosecuting authority.
18 Section 516. Reversion to General Fund.

19 (a) General rule.--The portion of the proceeds not
20 distributed under section ~~516~~ 515 shall revert to the General <—
21 Fund when the underlying false claims involved Commonwealth
22 funds exclusively and to the political subdivision when the
23 underlying false claims involved political subdivision funds
24 exclusively. When petitioned to do so, the court shall make an
25 apportionment of the recovered proceeds between the Commonwealth
26 and political subdivision based on their relative share of the
27 funds falsely claimed.

28 (b) Reimbursement.--When an insurer, guarantor or surety has
29 suffered a loss on an underlying false claim through either:

30 (1) reimbursing the Commonwealth or political

1 subdivision; or

2 (2) directly paying a claimant;

<—

3 ~~It~~ IT shall be reimbursed for both. When the reversion to the

<—

4 General Fund is inadequate to compensate the Commonwealth or

5 political subdivision for damages sustained and the insurer,

6 guarantor or surety for all moneys reimbursed to the

7 Commonwealth or political subdivision or directly paid to a

8 claimant as a result of those damages, the uninsured losses of

9 the commonwealth or political subdivision shall be paid first

10 and the insurer, guarantor or surety shall recover its

11 reimbursement and direct payments to claimants before further

12 distribution is made under this act.

13 Section 517. Expenses.

14 If the Commonwealth, political subdivision or qui tam

15 plaintiff prevails in or settles any action under this act, the

16 qui tam plaintiff shall receive an amount for all reasonable

17 expenses incurred in the prosecution of the claim, including

18 expert witness fees plus reasonable litigation costs and

19 attorney fees. All expenses, costs and attorney fees shall be

20 awarded against the defendant, and under no circumstances shall

21 they be the responsibility of the prosecuting authority.

22 CHAPTER 7

23 GENERAL PROVISIONS

24 Section 701. Rules of civil procedure.

25 Except where this act provides otherwise, actions under this

26 act shall be governed by the Pennsylvania Rules of Civil

27 Procedure.

28 Section 702. Stay of discovery.

29 (a) General rule.--The court may stay discovery for a period

30 of not more than 90 days if the prosecuting authority OR THE

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1 GENERAL COUNSEL shows that discovery would interfere with an
2 investigation or a prosecution of a criminal or civil matter
3 arising out of the same or similar facts, regardless of whether
4 the prosecuting authority proceeds with the action. Such a
5 showing shall be conducted in camera. The court may extend the
6 90-day period upon a further showing in camera that the
7 prosecuting authority OR THE GENERAL COUNSEL has pursued the <—
8 criminal or civil investigation or proceedings with reasonable
9 diligence and that any proposed discovery in the action under
10 this act would interfere with the ongoing criminal or civil
11 investigation or proceedings.

12 (b) Criminal action.--When a criminal action has commenced
13 based upon the same or similar facts underlying the pending
14 action under this act, discovery by the defendant in the pending
15 action under this act shall be confined to that available to a
16 criminal defendant under the Rules of Criminal Procedure and the
17 United States and the Constitution of the Commonwealth of
18 Pennsylvania. The defendant in the pending action under this act
19 may petition the court for a stay of proceedings pending the
20 conclusion of the criminal action. ~~on the ground that~~ <—
21 ~~restriction of discovery has substantially impaired the~~
22 ~~defendant in presenting a defense in the pending action under~~
23 ~~this act.~~

24 Section 703. Limitations on participation.

25 Upon a showing by the prosecuting authority by a
26 preponderance of the evidence that unrestricted participation
27 during the course of the litigation by the person initiating the
28 action would interfere with or unduly delay the prosecuting
29 authority's prosecution of the case or would be repetitious,
30 irrelevant or for purposes of harassment, the court may, in its

1 discretion, impose limitations on the person's participation,
2 including, but not limited to, the following:

3 (1) limiting the number of witnesses the person may
4 call;

5 (2) limiting the length of the testimony of these
6 witnesses;

7 (3) limiting the person's cross-examination of
8 witnesses; or

9 (4) otherwise limiting the participation by the person
10 in the litigation.

11 Section 704. Employee protection.

12 (a) Disclosing information.--No employer shall solicit,
13 attempt or conspire to prevent, make, adopt or enforce any rule,
14 regulation or policy preventing an employee from disclosing
15 information to a Federal, State or local law enforcement agency
16 or from acting in furtherance of the investigation of,
17 initiation of, testimony in or assistance in filing an action
18 under this act.

19 (b) Discrimination.--No employer shall discharge, demote,
20 suspend, threaten, harass, deny promotion to or in any other
21 manner discriminate, or solicit, attempt or conspire to
22 discriminate against an employee in the terms of and conditions
23 of employment because of lawful acts done by the employee on
24 behalf of the employee or others in disclosing information to a
25 Federal, State or local government or law enforcement agency or
26 in furthering false claims action, including investigation for,
27 initiation of, testimony for or assistance in an action filed or
28 to be filed under this act.

29 (c) Penalty.--An employer who violates subsection (a) or (b)
30 shall be liable for all relief necessary to make the employee

1 whole, including reinstatement with the same seniority status
2 that the employee would have had but for the discrimination,
3 three times the amount of back pay, prevailing interest on the
4 back pay, compensation for any special damage sustained as a
5 result of the discrimination and, where appropriate, punitive
6 damages. In addition, the employer shall be required to pay all
7 litigation costs and reasonable attorney fees. An employee may
8 bring an action in the Commonwealth Court for the relief
9 provided in this subsection.

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

22 Section 705. Limitations.

23 (a) Time of filing.--An action under this act may not be
24 filed more than six years after the date on which the violation
25 of this act is completed or more than three years after the date
26 of discovery by the prosecuting authority, but in any event no
27 more than ten years after the date on which the violation of
28 section 301 is completed.

29 (b) Prior acts.--An action under this act may be brought
30 regarding false claims made prior to the effective date of this

1 act if the limitations period set forth in subsection (a) has
2 not elapsed.

3 (c) Proof.--In any action brought under this act, the
4 Commonwealth, the political subdivision or the qui tam plaintiff
5 shall be required to prove all essential elements of the cause
6 of action, including damages, by a preponderance of the
7 evidence.

8 (d) Estoppel.--Notwithstanding any other provision of law, a
9 guilty verdict, guilty plea or nolo contendere plea rendered in
10 a criminal proceeding which alleged a scheme to obtain funds
11 fraudulently from the Commonwealth or a political subdivision
12 shall estop the defendant from denying the essential elements of
13 the offense in any action which involves the same transaction as
14 in the criminal proceeding and which is brought under this act.

15 Section 706. Remedies.

16 (a) Civil remedies.--

17 (1) The Commonwealth Court shall have jurisdiction to
18 prevent and restrain violations of section 301 by issuing
19 appropriate orders, including, but not limited to:

20 (i) Ordering any person to divest himself of any
21 interest, direct or indirect, in any business or entity;
22 imposing reasonable restrictions on the future activities
23 or investments of any person, including, but not limited
24 to, prohibiting any person from engaging in the same type
25 of endeavor or freezing the person's assets.

26 (ii) Making due provisions for the rights of
27 innocent persons, ordering the dissolution of any
28 business or entity, ordering the denial, suspension or
29 revocation of charters of domestic corporations,
30 certificates of authority authorizing foreign

1 corporations to do business in this Commonwealth,
2 licenses, permits or prior approval granted to any
3 business or entity by any department or agency of the
4 Commonwealth or any of its political subdivisions; or
5 prohibiting any business or entity from engaging in any
6 business.

7 (2) Injunctions against false claims:

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

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

22 (3) In any proceeding under this section, the court
23 shall proceed as soon as practicable to the hearing and
24 determination thereof. Pending final determination, the court
25 may enter preliminary or special injunctions or take such
26 other actions, including the acceptance of satisfactory
27 performance bonds, as it may deem proper.

28 (b) Remedies cumulative.--The provisions of this act are not
29 exclusive, and the remedies provided for in this act shall be in
30 addition to any other remedies provided for in any other law or

1 available under common law.

2 Section 707. Enforcement.

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

12 (b) Construction.--Nothing contained in this act shall be
13 construed to limit the regulatory or investigative authority of
14 any department or agency of the Commonwealth or political
15 subdivision whose functions might relate to persons, enterprises
16 or matters falling within the scope of this act.

17 Section 708. Civil investigative demand.

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

24 (1) produce such documentary material for inspection and
25 copying;

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

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

30 (4) furnish any combination of such material, answers

1 and testimony.

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

3 (1) State the nature of the conduct constituting the
4 alleged false claim violation which is under investigation
5 and the provision of law applicable thereto.

6 (2) If the demand is for the production of documentary
7 material:

8 (i) describe the class or classes of documentary
9 material to be produced thereunder with such definiteness
10 and certainty as to permit the material to be fairly
11 identified;

12 (ii) state that the demand is returnable forthwith
13 or prescribe a return date which will provide a
14 reasonable period of time within which the material so
15 demanded may be assembled and made available for
16 inspection and copying or reproduction; and

17 (iii) identify an investigator to whom the material
18 shall be made available.

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

20 (i) set forth with specificity the written
21 interrogatories to be answered;

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

24 (iii) identify the investigator to whom such answers
25 shall be submitted.

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

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

29 (ii) identify the investigator who shall conduct the
30 examination and the person to whom the transcript of such

1 investigation shall be submitted;

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

4 (iv) describe the general purpose for which the
5 demand is being issued and the general nature of the
6 testimony, including the primary areas of inquiry, which
7 will be taken pursuant to the demand.

8 (5) Contain the following statement printed
9 conspicuously at the top of the demand:

10 You have the right to seek the assistance of any
11 attorney, and he may represent you in all phases of
12 the false claim investigation of which this civil
13 investigative demand is a part.

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

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

19 (2) require the production of any documentary evidence
20 which would be privileged from disclosure if demanded by a
21 subpoena duces tecum issued by any court in connection with a
22 grand jury investigation of the alleged false claim
23 violation.

24 (d) Service.--Service of any demand or any petition filed
25 under this section shall be made in the manner prescribed by the
26 Pennsylvania Rules of Civil Procedure for service of writs and
27 complaints unless otherwise agreed to by the prosecuting
28 authority and the person.

29 (e) Return.--A verified return by the individual serving any
30 demand or petition under this section setting forth the manner

1 of service shall be prima facie proof of such service. In the
2 case of service by registered or certified mail, the return
3 shall be accompanied by the return post office receipt of
4 delivery of the demand.

5 (f) Procedure.--

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

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

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

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

7 (ii) in the case of a person other than a natural
8 person, a person having knowledge of the facts and
9 circumstances relating to such production and authorized
10 to act on behalf of such person.

11 The certificate shall state that all of the documentary
12 material required by the demand and in the possession,
13 custody or control of the person to whom the demand is
14 directed has been produced and made available to the
15 investigator identified in the demand.

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

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

22 (ii) in the case of a person other than a natural
23 person, a person or persons responsible for answering
24 each interrogatory. If any interrogatory is objected to,
25 the reasons for the objection shall be stated in the
26 certificate instead of an answer. The certificate shall
27 state that all information required by the demand and in
28 the possession, custody, control or knowledge of the
29 person to whom the demand is directed has been submitted.

30 To the extent that any information is not furnished, the

1 information shall be identified and reasons set forth
2 with particularity regarding the reasons why the
3 information was not furnished.

4 (5) (i) The examination of any person pursuant to a
5 civil investigative demand for oral testimony served
6 under this section shall be deemed an "official
7 proceeding" within the meaning of 18 Pa.C.S. § 4902(a)
8 (relating to perjury). The examination shall be taken
9 before an officer authorized to administer oaths and
10 affirmations by the laws of this Commonwealth. The
11 officer before whom the testimony is to be taken shall
12 put the witness on oath or affirmation and shall,
13 personally or by someone acting under the direction of
14 the officer and in the officer's presence, record the
15 testimony of the witness. The testimony shall be taken
16 accurately and shall be transcribed. When the testimony
17 is fully transcribed, a copy of the transcript shall be
18 promptly forwarded to the designated person. This
19 subsection shall not preclude the taking of testimony by
20 any means authorized by, and in a manner consistent with,
21 the Pennsylvania Rules of Civil Procedure.

22 (ii) The investigator conducting the examination
23 shall exclude from the place where the examination is
24 held all persons except the person giving the testimony,
25 the attorney for and any other representative of the
26 person giving the testimony, the prosecuting authority,
27 any person who may be agreed upon by the prosecuting
28 authority and the person giving the testimony, and any
29 stenographer taking such testimony.

30 (iii) The oral testimony of any person taken

1 pursuant to a civil investigative demand served under
2 this section shall be taken in the county where the
3 office of the investigator conducting the examination is
4 situated, or in such other place as may be agreed upon by
5 the investigator and such person.

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

24 (v) Upon payment of reasonable charges therefor, the
25 investigator shall furnish a copy of the transcript to
26 the witness only, except that the prosecuting authority
27 may, for good cause, limit such witness to inspection of
28 the official transcript of the witness' testimony.

29 (vi) Any person compelled to appear for oral
30 testimony under a civil investigative demand may be

1 accompanied, represented and advised by counsel. Counsel
2 may advise the person, in confidence, with respect to any
3 question asked of that person. The person or counsel may
4 object on the record to any question, in whole or in
5 part, and shall briefly state for the record the reason
6 for the objection. An objection may be made, received and
7 entered upon the record when it is claimed that such
8 person is entitled to refuse to answer the question on
9 the grounds of any constitutional or other legal right or
10 privilege, including the privilege against self-
11 incrimination. The person may not otherwise object to or
12 refuse to answer any question, and may not directly or
13 through counsel otherwise interrupt the oral examination.
14 If the person refuses to answer any question, a petition
15 may be filed in the Commonwealth Court under section
16 708(g) for an order compelling the person to answer the
17 question.

18 (6) Upon completion of:

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

21 (ii) any case or proceeding arising from such
22 investigation;

23 the investigator shall return to the person who produced the
24 material all of the material other than copies of the
25 material made pursuant to this section which have not passed
26 into the control of any court or grand jury through
27 introduction into the record of such case or proceeding.

28 (7) When documentary material has been produced by a
29 person under this section for use in a false claims
30 investigation and no case or proceeding arising from the

1 investigation has been instituted within a reasonable time
2 after completion of the examination and analysis of all
3 evidence assembled in the course of the investigation, the
4 person shall be entitled, upon written demand made upon the
5 prosecuting authority, to the return of all documentary
6 material, other than copies of the material made pursuant to
7 this section, so produced by that person.

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

15 (h) Petition for relief.--

16 (1) Within 20 days after the service of any demand under
17 this section upon any person or at any time before the return
18 date specified in the demand, whichever period is shorter,
19 the person may file in the Commonwealth Court and serve upon
20 the prosecuting authority a petition for an order of the
21 court modifying or setting aside this demand. The time
22 allowed for compliance with the demand, in whole or in part,
23 as deemed proper and ordered by the court shall not run
24 during the pendency of the petition in the court. The
25 petition shall specify each ground upon which the petitioner
26 relies in seeking the relief and may be based on any failure
27 of the demand to comply with the provisions of this section
28 or on any constitutional or other legal right or privilege of
29 the person.

30 (2) At any time during which the prosecuting authority

1 is in custody or control of documentary material delivered by
2 a person in compliance with a demand under this section, the
3 person may file in the Commonwealth Court and serve upon the
4 prosecuting authority a petition for an order of the court
5 requiring the performance of any duty imposed by this
6 section.

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

13 (i) Definition.--As used in this section, the term
14 "documentary material" includes, but is not limited to, any
15 book, paper, record, recording, tape, report, memorandum, data,
16 written or electronic communication or other document relating
17 to the business affairs of any person, enterprise or matter
18 falling within the purview of this act.

19 Section 709. Immunity.

20 Whenever any individual refuses on the basis of his privilege
21 against self-incrimination to comply with a civil investigative
22 demand issued pursuant to this act or to testify or produce
23 other information in a proceeding under this act, the
24 prosecuting authority may invoke the provisions of 42 Pa.C.S. §
25 5947 (relating to immunity of witnesses).

26 Section 710. Regulations.

27 (a) General rule.--The Attorney General shall have the power
28 and authority to promulgate rules and regulations which may be
29 necessary to carry out the purposes set forth in this act.

30 (b) Guidelines.--In order to facilitate the speedy

1 implementation of this act, the Attorney General shall have the
2 power and authority to promulgate, adopt and use guidelines
3 which shall be published in the Pennsylvania Bulletin. The
4 guidelines shall not be subject to review pursuant to section
5 205 of the act of July 31, 1968 (P.L.769, No.240), referred to
6 as the Commonwealth Documents Law, sections 204(b) and 301(10)
7 of the act of October 15, 1980 (P.L.950, No.164), known as the
8 Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633,
9 No.181), known as the Regulatory Review Act, and shall be
10 effective for a period of not more than two years from the
11 effective date of this act. After the expiration of the two-year
12 period, the guidelines shall expire and be replaced by
13 regulations which shall be promulgated, adopted and published as
14 provided by law.

15 Section 711. Effective date.

16 This act shall take effect in 60 days.