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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 849      Session of  
1999

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STEELMAN, RAMOS, EVANS, FICHTER, SEYFERT AND R. MILLER,  
MARCH 10, 1999

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SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 26, 1999

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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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30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 CHAPTER 1

3 PRELIMINARY PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the False Claims  
6 Act.

7 Section 102. Definitions.

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

11 "Claim." Any request or demand for money, property or  
12 services made to any employee, officer or agent of the  
13 Commonwealth or of any political subdivision thereof or to any  
14 contractor, subcontractor, grantee or other recipient of the  
15 Commonwealth or any political subdivision thereof, if any  
16 portion of the money, property or services requested or demanded  
17 issued from, was provided or will be reimbursed by the  
18 Commonwealth, referred to as Commonwealth funds, or by any  
19 political subdivision thereof, referred to as political  
20 subdivision funds.

21 "False." In addition to its ordinary meaning, this term also  
22 means fraudulent.

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

25 (1) has actual knowledge of the information;

26 (2) acts in deliberate ignorance of the truth or falsity  
27 of the information; or

28 (3) acts in reckless disregard of the truth or falsity  
29 of the information.

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

1 "Person." Any natural person, corporation, county, political  
2 subdivision, firm, association, legal entity, organization,  
3 partnership, business or trust.

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

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

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

12 Section 103. Construction.

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

## 18 CHAPTER 3

### 19 FALSE CLAIMS

20 Section 301. Offenses defined.

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

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

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

7           (3) Conspires to defraud the Commonwealth or any  
8 political subdivision by getting a false claim allowed or  
9 paid by the Commonwealth or by any political subdivision.

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

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

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

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

28          (8) Unknowingly submits a false claim, is a beneficiary  
29 of payment by the Commonwealth or political subdivision for  
30 that claim, subsequently discovers or recklessly fails to

1 discover that the claim was false and fails to disclose that  
2 the claim was false. Disclosure shall be made to the  
3 Commonwealth or political subdivision within a reasonable  
4 time, but in no event longer than 90 days after discovery of  
5 the false claim.

6 ~~(b) Reduced assessment. Notwithstanding subsection (a), the~~ <—  
7 ~~court shall assess not less than two times nor more than three~~  
8 ~~times the amount of damages which the Commonwealth or the~~  
9 ~~political subdivision sustains because of the act of the person~~  
10 ~~described in subsection (a)(1), and no civil penalty, if the~~  
11 ~~person can demonstrate that:~~

12 ~~(1) the person committing the violation furnished the~~  
13 ~~prosecuting authority with all information known to that~~  
14 ~~person about the violation within 60 days after the date on~~  
15 ~~which the person first obtained the information;~~

16 ~~(2) the person fully cooperated with any investigation~~  
17 ~~by the prosecuting authority of the violation; and~~

18 ~~(3) (i) at the time the person furnished the appropriate~~  
19 ~~prosecuting authority with all information about the~~  
20 ~~violation, no criminal prosecution, civil action or~~  
21 ~~administrative action had commenced with respect to the~~  
22 ~~violation and the person did not have knowledge or notice~~  
23 ~~of the existence of an investigation into the violation;~~  
24 ~~or~~

25 ~~(ii) the person had an effective program that could~~  
26 ~~reasonably be expected to prevent and detect violations~~  
27 ~~of law, even if the program did not detect the instant~~  
28 ~~offense.~~

29 (B) REDUCED ASSESSMENT.-- <—

30 (1) NOTWITHSTANDING SUBSECTION (A), THE COURT SHALL

1 ASSESS TWO TIMES THE AMOUNT OF DAMAGES, AND INTEREST WHICH  
2 THE COMMONWEALTH OR THE POLITICAL SUBDIVISION SUSTAINS  
3 BECAUSE OF THE ACT OF THE PERSON DESCRIBED IN SUBSECTION (A),  
4 AND NO CIVIL PENALTY, IF THE COURT FINDS ALL OF THE  
5 FOLLOWING:

6 (I) THE PERSON COMMITTING THE VIOLATION FURNISHED  
7 THE PROSECUTING AUTHORITY WITH ALL INFORMATION KNOWN TO  
8 THAT PERSON ABOUT THE VIOLATION WITHIN 60 DAYS AFTER THE  
9 DATE ON WHICH THE PERSON FIRST OBTAINED THE INFORMATION;

10 (II) THE PERSON FULLY COOPERATED WITH ANY  
11 INVESTIGATION BY THE PROSECUTING AUTHORITY OF THE  
12 VIOLATION;

13 (III) AT THE TIME THE PERSON FURNISHED THE  
14 APPROPRIATE PROSECUTING AUTHORITY WITH ALL INFORMATION  
15 ABOUT THE VIOLATION, NO INVESTIGATION, CRIMINAL  
16 PROSECUTION, CIVIL ACTION OR ADMINISTRATIVE ACTION HAD  
17 COMMENCED WITH RESPECT TO THE VIOLATION; AND

18 (IV) THE PERSON HAD AN EFFECTIVE COMPLIANCE PROGRAM  
19 THAT COULD REASONABLY BE EXPECTED TO PREVENT AND DETECT  
20 VIOLATIONS OF LAW, EVEN IF THE PROGRAM DID NOT DETECT THE  
21 INSTANT OFFENSE.

22 (2) NOTWITHSTANDING SUBSECTION (A), THE COURT SHALL  
23 ASSESS NOT LESS THAN TWO TIMES NOR MORE THAN THREE TIMES THE  
24 AMOUNT OF DAMAGES WHICH THE COMMONWEALTH OR THE POLITICAL  
25 SUBDIVISION SUSTAINS BECAUSE OF THE ACT OF THE PERSON  
26 DESCRIBED IN SUBSECTION (A) AND A CIVIL PENALTY NOT TO EXCEED  
27 \$5,000 FOR EACH FALSE CLAIM, IF THE COURT FINDS ALL OF THE  
28 FOLLOWING:

29 (I) THE PERSON COMMITTING THE VIOLATION FURNISHED  
30 THE PROSECUTING AUTHORITY WITH ALL INFORMATION KNOWN TO

1            THAT PERSON ABOUT THE VIOLATION WITHIN 60 DAYS AFTER THE  
2            DATE ON WHICH THE PERSON FIRST OBTAINED THE INFORMATION;

3            (II)    THE PERSON FULLY COOPERATED WITH ANY  
4            INVESTIGATION BY THE PROSECUTING AUTHORITY OF THE  
5            VIOLATION;

6            (III)   AT THE TIME THE PERSON FURNISHED THE  
7            APPROPRIATE PROSECUTING AUTHORITY WITH ALL INFORMATION  
8            ABOUT THE VIOLATION, THE PERSON DID NOT HAVE KNOWLEDGE OR  
9            NOTICE THAT AN INVESTIGATION, A CRIMINAL PROSECUTION, A  
10          CIVIL ACTION OR AN ADMINISTRATIVE ACTION HAD COMMENCED  
11          WITH REGARD TO THE VIOLATION; AND

12          (IV)    THE PERSON HAD AN EFFECTIVE COMPLIANCE PROGRAM  
13          THAT COULD REASONABLY BE EXPECTED TO PREVENT AND DETECT  
14          VIOLATIONS OF LAW, EVEN IF THE PROGRAM DID NOT DETECT THE  
15          INSTANT OFFENSE.

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

19          (d)    Limitation.--

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

29          (2)    As used in this subsection, the term "controversy"  
30          means any one or more false claims submitted or caused to be



submitted by either a person or persons who act pursuant to a common plan, scheme or design in violation of this act.

Section 302. False claims jurisdiction.

(a) General rule.--If any defendant can be found, resides or transacts business in this Commonwealth or if an act proscribed by this act occurred within this Commonwealth, an action under this act:

(1) involving Commonwealth funds or both Commonwealth and political subdivision funds shall be brought in the Commonwealth Court; or

(2) involving exclusively political subdivision funds shall be brought in either the Commonwealth Court or the Court of Common Pleas of the county of the political subdivision, at the election of the district attorney.

(b) Election by prosecuting authority.--When an action is filed by a qui tam plaintiff pursuant to section 501 and the prosecuting authority proceeds with the action pursuant to section 502, 503, 504 or 505, or intervenes in the action pursuant to section 514, the prosecuting authority may elect to proceed in either the Commonwealth Court or the Court of Common Pleas of the county of the political subdivision.

Section 303. Procedure.

(a) Commonwealth prosecution.--

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

(2) If the Attorney General brings an action under this act on a claim involving political subdivision funds as well

1 as Commonwealth funds, the Attorney General shall, on the  
2 same date that the complaint is filed in this action, serve  
3 by mail, return receipt requested, a copy of the complaint on  
4 the appropriate district attorney.

5 (3) The district attorney shall have the right to  
6 intervene in an action brought by the Attorney General under  
7 this act within 90 days after receipt of the complaint  
8 pursuant to paragraph (2).

9 (b) Political subdivision prosecution.--

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

15 (2) The district attorney may refer a matter involving  
16 political subdivision funds to the Attorney General at any  
17 time. The Attorney General may decline or accept the  
18 referral.

19 (3) If the district attorney brings an action on a claim  
20 involving Commonwealth funds as well as political subdivision  
21 funds, the district attorney shall, on the same date that the  
22 complaint is filed in this action, serve by mail, return  
23 receipt requested, a copy of the complaint on the Attorney  
24 General.

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

28 (i) Notify the court that the Attorney General  
29 intends to proceed with the action, in which case the  
30 Attorney General shall assume primary responsibility for

conducting the action and the district attorney shall have the right to continue as a party.

(ii) Notify the court that the Attorney General declines to prosecute the action, in which case the district attorney shall have the right to conduct the action on its own.

(iii) Proceed jointly with the district attorney, assuming coequal responsibility for prosecution of the action.

## CHAPTER 5

### QUI TAM ACTIONS

#### Section 501. General provisions.

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

(b) Filing.--A complaint filed by a qui tam plaintiff under this act shall be filed ex parte under seal with the Clerk of the Commonwealth Court or ex parte under seal in the appropriate Federal district court if Federal funds are also involved, and the complaint and all related pleadings shall remain under seal

1 for 90 days from the date of service. No service shall be made  
2 on the defendant until after the complaint is unsealed by order  
3 of the court.

4 (c) Service.--

5 (1) Within three days of the complaint being filed  
6 pursuant to subsection (b), the qui tam plaintiff shall serve  
7 by mail, return receipt requested, the Attorney General and  
8 the General Counsel with a copy of the complaint and a  
9 written disclosure of substantially all material evidence and  
10 information the qui tam plaintiff possesses at that time.

11 (2) Where the complaint involves both Commonwealth and  
12 political subdivision funds, or exclusively political  
13 subdivision funds, the prosecuting authority shall serve a  
14 copy of the complaint, return receipt requested, to counsel  
15 for the political subdivision.

16 Section 502. Commonwealth funds.

17 Within 90 days after receiving a complaint alleging  
18 violations which involve Commonwealth funds, but not political  
19 subdivision funds, the Attorney General shall do either of the  
20 following:

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

26 (2) Notify the court that it declines to prosecute the  
27 action, in which case the complaint may be unsealed by the  
28 court within 20 days after written notification is made by  
29 the Attorney General to the qui tam plaintiff and counsel  
30 that the Attorney General does not wish to intervene. Upon

such notification, the qui tam plaintiff shall have the right to conduct the action.

Section 503. Political subdivision funds.

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

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

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

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

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

(a) Complaints.--Within 30 days after receiving a complaint alleging violations which involve or allege both Commonwealth and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate district attorney and shall coordinate its review and investigation with those of the district attorney.

(b) Procedure.--Within 90 days after receiving a complaint

alleging violations which involve or allege both Commonwealth and political subdivision funds, the Attorney General shall do one of the following:

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

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

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

Section 505. Intervention by political subdivision.

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

Section 506. Extension of time.

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

Section 507. Other actions prohibited.

When a qui tam plaintiff brings an action under this act, no

1 other person shall be permitted to bring a related action under  
2 this act based on the same or similar facts underlying the  
3 pending action.

4 Section 508. Exclusions.

5 (a) General rule.--No court shall have jurisdiction over an  
6 action brought under this chapter:

7 (1) against an official or employee of the Commonwealth  
8 or a political subdivision if the action is not based on  
9 actual knowledge of the official or employee.

10 (2) Which relies upon the public disclosure of specific  
11 allegations or transactions in a criminal, civil or  
12 administrative hearing, in a governmental report, hearing,  
13 audit or investigation or from the news media, unless the  
14 action is brought by or intervened in by a prosecuting  
15 authority or the qui tam plaintiff is an original source of  
16 the information.

17 (3) By a prisoner against any official or employee of  
18 the Commonwealth or a political subdivision for acts relating  
19 to the operations and expenditures of a correctional agency  
20 or facility.

21 (4) Based upon allegations or transactions which are the  
22 subject of an investigation, settlement discussion, a  
23 settlement agreement, or any civil or administrative  
24 proceeding, in which the Commonwealth or political  
25 subdivision is already a party.

26 (b) Definition.--As used in this section, the term "original  
27 source" means an individual who has voluntarily provided the  
28 information to the prosecuting authority before filing an action  
29 based on that information and either has direct and independent  
30 knowledge of the information on which the allegations are based

1 or directly or indirectly provided the impetus, basis or  
2 catalyst for the investigation, hearing, audit or report which  
3 led to the public disclosure.

4 Section 509. Employment-related discovery of information.

5 ~~No court shall have jurisdiction over an action brought under~~ <—  
6 ~~this act by any present or former:~~

7 ~~(1) employee of the Commonwealth or political~~  
8 ~~subdivision;~~

9 ~~(2) investigator, auditor or inspector not employed by~~  
10 ~~the Commonwealth or political subdivision but who is~~  
11 ~~otherwise contracted or engaged to review any actions taken~~  
12 ~~by the Commonwealth or the political subdivisions; or~~

13 ~~(3) investigator, auditor or inspector employed,~~  
14 ~~contracted or otherwise engaged by the person submitting the~~  
15 ~~false claim;~~

16 ~~based upon information discovered during the course of his~~  
17 ~~employment unless that employee, investigator, auditor or~~  
18 ~~inspector first in good faith attempts to use existing internal~~  
19 ~~procedures for reporting, auditing and seeking recovery of the~~  
20 ~~falsely claimed funds through official channels and unless the~~  
21 ~~Commonwealth, the political subdivision or the person submitting~~  
22 ~~the false claim, as appropriate, failed to act on the~~  
23 ~~information within a reasonable period of time.~~

24 NO COURT SHALL HAVE JURISDICTION OVER AN ACTION BROUGHT UNDER <—  
25 THIS ACT BY A PRESENT OR FORMER EMPLOYEE OF THE COMMONWEALTH, OF  
26 A POLITICAL SUBDIVISION OR OF THE PERSON IF THAT EMPLOYEE'S  
27 EXCLUSIVE RESPONSIBILITY IS THE INVESTIGATION OR PROSECUTION OF  
28 FRAUD, UNLESS SUCH EMPLOYEE FIRST MAKES A GOOD FAITH ATTEMPT TO  
29 USE EXISTING INTERNAL PROCEDURES FOR REPORTING, AUDITING AND  
30 SEEKING RECOVERY OF THE FALSELY CLAIMED FUNDS BEFORE FILING AN



1 ACTION. THE COMMONWEALTH, POLITICAL SUBDIVISION OR THE PERSON  
2 SHALL HAVE PROMULGATED INTERNAL PROCEDURES FOR REPORTING,  
3 AUDITING AND SEEKING RECOVERY OF FALSELY CLAIMED FUNDS AND MUST  
4 ACT ON THE INFORMATION REPORTED BY THE EMPLOYEE WITHIN 60 DAYS  
5 OF RECEIPT OF THE INFORMATION.

6 Section 510. Responsibility for prosecution.

7 If the prosecuting authority proceeds with the action, it  
8 shall have the primary responsibility for prosecuting the  
9 action. The qui tam plaintiff shall have the right to continue  
10 with all rights and obligations as a full party to the action.

11 Section 511. Dismissal of action.

12 The Commonwealth or political subdivision may seek to dismiss  
13 the action for good cause notwithstanding the objections of the  
14 qui tam plaintiff if the qui tam plaintiff has been notified by  
15 the prosecuting authority of the filing of the motion and the  
16 court has provided the qui tam plaintiff with an adequate  
17 opportunity to oppose the motion.

18 Section 512. Settlement.

19 (a) General rule.--The prosecuting authority may settle the  
20 action with the defendant notwithstanding the objections of the  
21 qui tam plaintiff if the court determines that the proposed  
22 settlement is fair, adequate and reasonable under all of the  
23 circumstances to all parties involved.

24 (b) Consultation with political subdivision.--The district  
25 attorney shall consult with the political subdivision regarding  
26 any proposed settlement.

27 Section 513. Election not to proceed.

28 If the prosecuting authority elects not to proceed, the qui  
29 tam plaintiff shall have the right to conduct the action. If the  
30 prosecuting authority so requests, it shall be served with

1 copies of all pleadings filed in the action and supplied with  
2 copies of all deposition transcripts.

3 Section 514. Intervention.

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

10 Section 515. Proceeds.

11 (a) Attorney General.--If the Attorney General initiates an  
12 action under section 303(a) or assumes control of an action  
13 initiated by the district attorney pursuant to section  
14 303(b)(4)(ii), the Attorney General shall receive a fixed 33% of  
15 the proceeds of the action or settlement of the claim, which  
16 funds shall be used to support and expand its ongoing  
17 investigation and prosecution of false claims violations in this  
18 Commonwealth or to support other investigation and prosecution  
19 efforts.

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

27 (c) Award of portion of recovery.--If a district attorney  
28 intervenes in an action initiated by the Attorney General  
29 pursuant to section 303(a)(3) or remains a party to an action  
30 assumed by the Attorney General pursuant to section 303(b)(4)(i)

1 and (iii), the court may award the office of the district  
2 attorney a portion of the Attorney General's fixed 33% of the  
3 recovery under subsection (a), taking into account the district  
4 attorney's role in investigating and conducting the action and  
5 the resources of the office expended on the prosecution.

6 (d) Qui tam recovery.--

7 (1) If the prosecuting authority proceeds with an action  
8 brought by a qui tam plaintiff under this act, the qui tam  
9 plaintiff shall, subject to subsections (g) and (h), receive  
10 not less than 20% nor more than 33% of the full proceeds of  
11 the action or settlement of the claim, depending upon the  
12 extent to which the qui tam plaintiff substantially  
13 contributed to the overall prosecution of the action. If the  
14 prosecuting authority and the qui tam plaintiff cannot reach  
15 an agreement concerning the percentage of proceeds to be  
16 distributed to the qui tam plaintiff, the determination shall  
17 be made by the court.

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

26 (3) When both the Attorney General and the district  
27 attorney are involved as coparties in a qui tam action  
28 pursuant to section 504, the court in its discretion may  
29 award the district attorney a portion of the Attorney  
30 General's fixed 33% of the recovery, taking into account the

district attorney's cooperation and contribution to  
investigating and conducting the action.

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

(f) Allocation of proceeds for costs of annual audit.--The controller, board of auditors or other government auditor performing the annual audit of recoveries as provided under subsection (k) shall receive a fixed 1% of the proceeds of the action or settlement of the claim, which funds shall be used to defray the costs of the annual audit.

(g) Present or former employee.--If a qui tam action is brought by a present or former employee of the Commonwealth or political subdivision, the qui tam plaintiff shall not be entitled to any minimum guaranteed recovery from the proceeds. If the prosecuting authority and the qui tam plaintiff cannot reach an agreement concerning the percentage of proceeds to be distributed to the qui tam plaintiff, the determination shall be made by the court. The court may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than 33% of the proceeds if the prosecuting authority goes forth with the action or 50% if it declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation and the scope of and response to the qui tam

1 plaintiff's attempts to report and gain recovery of the falsely  
2 claimed funds through official channels.

3 (h) Fraudulent activity.--

4 (1) Where the action is one which the court finds to be  
5 based primarily on information from a qui tam plaintiff who  
6 actively participated in the fraudulent activity, the qui tam  
7 plaintiff shall not be entitled to any minimum guaranteed  
8 recovery from the proceeds. If the prosecuting authority and  
9 the qui tam plaintiff cannot reach an agreement concerning  
10 the percentage of proceeds to be distributed to the qui tam  
11 plaintiff, the determination shall be made by the court. The  
12 court, in its sole discretion after a full review of all the  
13 facts and circumstances, may award the qui tam plaintiff such  
14 sums from the proceeds as it considers appropriate under the  
15 circumstances, but in no case more than 33% of the proceeds  
16 if the prosecuting authority goes forth with the action or  
17 50% if it declines to go forth, taking into account the  
18 significance of the information, the role of the qui tam  
19 plaintiff in advancing the case to litigation, the scope of  
20 the qui tam plaintiff's involvement in the fraudulent  
21 activity, the qui tam plaintiff's attempts to avoid or resist  
22 such activity and all other circumstances surrounding the  
23 activity.

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

29 ~~(i) Present or former investigators. Notwithstanding any~~  
30 ~~other provision of this act, any present or former sworn law~~

<—

1 ~~enforcement officer, city controller, other government~~  
2 ~~investigator, auditor or inspector general or other auditor or~~  
3 ~~investigator of a person, who obtains information regarding a~~  
4 ~~false claim in the course of his duties, whether or not as an~~  
5 ~~employee or a contractor, shall be precluded from participating~~  
6 ~~in the proceeds of a qui tam action on the basis of that~~  
7 ~~information unless that officer, city controller, government~~  
8 ~~investigator, auditor or inspector general or other auditor or~~  
9 ~~investigator has presented such information to the person and~~  
10 ~~the person fails to take appropriate action within a reasonable~~  
11 ~~time.~~

12 ~~(j)~~ (I) Use of recoveries.--

<—

13 (1) Proceeds recovered under this act by the prosecuting  
14 authority or awarded to the government auditor pursuant to  
15 subsection (f) shall be placed in the General Fund of the  
16 Commonwealth, the operating fund of the county of the  
17 district attorney or the operating fund of the county of the  
18 government auditor, as appropriate.

19 (2) Notwithstanding any other provision of law to the  
20 contrary, the Commonwealth, county of the district attorney  
21 or the county of the government auditor, as appropriate,  
22 shall immediately make such funds available for expenditure,  
23 without restriction, by the prosecuting authority or  
24 government auditor for the purposes specified elsewhere in  
25 this act. The entity having budgetary control over such funds  
26 may not anticipate future recoveries in the adoption or  
27 approval of the budget for the prosecuting authority.

28 ~~(k)~~ (J) Annual audit of recoveries.--It shall be the  
29 responsibility of the Commonwealth, the county of the district  
30 attorney, or both, as appropriate, to provide, through the

<—

1 controller, board of auditors or other appropriate auditor, an  
2 annual audit of all recoveries under this act. The audit shall  
3 be made public, subject to the right of the prosecuting  
4 authority to redact portions of the audit which it reasonably  
5 believes will compromise investigations or criminal proceedings,  
6 and shall be submitted to the Attorney General's office by  
7 September 30 of each year.

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

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

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

29 ~~(b) Reimbursement. When an insurer, guarantor or surety has <—~~  
30 ~~suffered a loss on an underlying false claim through:~~

~~(1) reimbursing the Commonwealth or political  
subdivision; or  
(2) directly paying a claimant; and  
(3) when the proceeds reverting to the operating fund  
under this section exceed any uninsured loss to the  
Commonwealth or the political subdivision;  
the insurer, guarantor or surety shall be reimbursed for its  
loss before further distribution is made under this act.~~

(B) REIMBURSEMENT.--WHEN AN INSURER, GUARANTOR OR SURETY HAS <—  
SUFFERED A LOSS ON AN UNDERLYING FALSE CLAIM THROUGH EITHER:

(1) REIMBURSING THE COMMONWEALTH OR POLITICAL  
SUBDIVISION; OR

(2) DIRECTLY PAYING A CLAIMANT;  
THE INSURER, GUARANTOR OR SURETY SHALL BE REIMBURSED FOR ITS  
LOSSES TO THE EXTENT THAT PROCEEDS REVERTING TO THE GENERAL FUND  
UNDER THIS SECTION EXCEED ANY UNINSURED LOSS TO THE COMMONWEALTH  
OR THE POLITICAL SUBDIVISION.

Section 517. Expenses.

If the Commonwealth, political subdivision or qui tam  
plaintiff prevails in or settles any action under this act, the  
qui tam plaintiff shall receive an amount for all reasonable  
expenses incurred in the prosecution of the claim, including  
expert witness fees plus reasonable litigation costs and  
attorney fees. All expenses, costs and attorney fees shall be  
awarded against the defendant, and under no circumstances shall  
they be the responsibility of the prosecuting authority.

## CHAPTER 7

### GENERAL PROVISIONS

Section 701. Rules of civil procedure.

Except where this act provides otherwise, actions under this



1 act shall be governed by the Pennsylvania Rules of Civil  
2 Procedure.

3 Section 702. Stay of discovery.

4 (a) General rule.--The court may stay discovery for a period  
5 of not more than 90 days if the prosecuting authority or the  
6 General Counsel shows that discovery would interfere with an  
7 investigation or a prosecution of a criminal or civil matter  
8 arising out of the same or similar facts, regardless of whether  
9 the prosecuting authority proceeds with the action. Such a  
10 showing shall be conducted in camera. The court may extend the  
11 90-day period upon a further showing in camera that the  
12 prosecuting authority or the General Counsel has pursued the  
13 criminal or civil investigation or proceedings with reasonable  
14 diligence and that any proposed discovery in the action under  
15 this act would interfere with the ongoing criminal or civil  
16 investigation or proceedings.

17 (b) Criminal action.--When a criminal action has commenced  
18 based upon the same or similar facts underlying the pending  
19 action under this act, discovery by the defendant in the pending  
20 action under this act shall be confined to that available to a  
21 criminal defendant under the Rules of Criminal Procedure and the  
22 United States and the Constitution of the Commonwealth of  
23 Pennsylvania. The defendant in the pending action under this act  
24 may petition the court for a stay of proceedings pending the  
25 conclusion of the criminal action.

26 Section 703. Limitations on participation.

27 Upon a showing by the prosecuting authority by a  
28 preponderance of the evidence that unrestricted participation  
29 during the course of the litigation by the person initiating the  
30 action would interfere with or unduly delay the prosecuting

1 authority's prosecution of the case or would be repetitious,  
2 irrelevant or for purposes of harassment, the court may, in its  
3 discretion, impose limitations on the person's participation,  
4 including, but not limited to, the following:

5 (1) limiting the number of witnesses the person may  
6 call;

7 (2) limiting the length of the testimony of these  
8 witnesses;

9 (3) limiting the person's cross-examination of  
10 witnesses; or

11 (4) otherwise limiting the participation by the person  
12 in the litigation.

13 Section 704. Employee protection.

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

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

1 (c) Good faith reporting to employer.--No employer may  
2 discharge, threaten or otherwise discriminate or retaliate  
3 against an employee regarding the employee's compensation,  
4 terms, conditions, location or privileges of employment because  
5 the employee made or is about to make a good faith report to the  
6 employer regarding a false claim under this act, regardless of  
7 whether the report is made or to be made orally or in writing.

8 (d) Penalty.--An employer who violates subsection (a), (b)  
9 or (c) shall be liable for all relief necessary to make the  
10 employee whole, including reinstatement with the same seniority  
11 status that the employee would have had but for the  
12 discrimination, three times the amount of back pay, prevailing  
13 interest on the back pay, compensation for any special damage  
14 sustained as a result of the discrimination and, where  
15 appropriate, punitive damages. Except in cases alleging  
16 intentional misconduct, punitive damages against a person shall  
17 not exceed 200% of the compensatory damages awarded. In  
18 addition, the employer shall be required to pay all litigation  
19 costs and reasonable attorney fees. An employee may bring an  
20 action in the Commonwealth Court for the relief provided in this  
21 subsection.

22 ~~(e) Limitations. An employee who is discharged, demoted,~~ <—  
23 ~~suspended, harassed, denied promotion, threatened with~~  
24 ~~termination or in any other manner discriminated against in the~~  
25 ~~terms and conditions of employment by his employer because of~~  
26 ~~participation in conduct which directly or indirectly resulted~~  
27 ~~in a false claim being submitted to the Commonwealth or a~~  
28 ~~political subdivision shall be entitled to the remedies under~~  
29 ~~subsection (d) if the employee voluntarily discloses information~~  
30 ~~to a Federal, State or local government or law enforcement~~

~~1 agency or acted in furtherance of a false claims action,~~  
~~2 including investigation for, initiation of, testimony for or~~  
~~3 assistance in an action filed or to be filed.~~

4 Section 705. Limitations.

5 (a) Time of filing.--An action under this act may not be  
6 filed more than six years after the date on which the violation  
7 of this act is completed or more than three years after the date  
8 of discovery by the prosecuting authority, but in any event no  
9 more than ten years after the date on which the violation of  
10 section 301 is completed.

11 (b) Prior acts.--An action under this act may be brought  
12 regarding false claims made prior to the effective date of this  
13 act if the limitations period set forth in subsection (a) has  
14 not elapsed.

15 (c) Proof.--In any action brought under this act, the  
16 Commonwealth, the political subdivision or the qui tam plaintiff  
17 shall be required to prove all essential elements of the cause  
18 of action, including damages, by a preponderance of the  
19 evidence.

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

27 Section 706. Remedies.

28 (a) Civil remedies.--

29 (1) The Commonwealth Court shall have jurisdiction to  
30 prevent and restrain violations of section 301 by issuing

1 appropriate orders, including, but not limited to:

2 (i) Ordering any person to divest himself of any  
3 interest, direct or indirect, in any business or entity;  
4 imposing reasonable restrictions on the future activities  
5 or investments of any person, including, but not limited  
6 to, prohibiting any person from engaging in the same type  
7 of endeavor or freezing the person's assets.

8 (ii) Making due provisions for the rights of  
9 innocent persons, ordering the dissolution of any  
10 business or entity, ordering the denial, suspension or  
11 revocation of charters of domestic corporations,  
12 certificates of authority authorizing foreign  
13 corporations to do business in this Commonwealth,  
14 licenses, permits or prior approval granted to any  
15 business or entity by any department or agency of the  
16 Commonwealth or any of its political subdivisions; or  
17 prohibiting any business or entity from engaging in any  
18 business.

19 (2) Injunctions against false claims:

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

23 (ii) If a person alienates or disposes of property,  
24 or intends to alienate or dispose of property obtained as  
25 a result of a violation of this act or property which is  
26 traceable to such violation, the prosecuting authority  
27 may commence an action in Commonwealth Court to enjoin  
28 such alienation or disposition of property, or for a  
29 restraining order to prohibit any person from  
30 withdrawing, transferring, removing, dissipating or

1 disposing of any such property or property of equivalent  
2 value and appoint a temporary receiver to administer such  
3 restraining order.

4 (3) In any proceeding under this section, the court  
5 shall proceed as soon as practicable to the hearing and  
6 determination thereof. Pending final determination, the court  
7 may enter preliminary or special injunctions or take such  
8 other actions, including the acceptance of satisfactory  
9 performance bonds, as it may deem proper.

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

14 Section 707. Enforcement.

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

24 (b) Construction.--Nothing contained in this act shall be  
25 construed to limit the regulatory or investigative authority of  
26 any department or agency of the Commonwealth or political  
27 subdivision whose functions might relate to persons, enterprises  
28 or matters falling within the scope of this act.

29 Section 708. Civil investigative demand.

30 (a) General rule.--Whenever the prosecuting authority has

1 reason to believe that any person may be in possession, custody  
2 or control of any documentary material or information relevant  
3 to a false claim investigation, the prosecuting authority may  
4 issue in writing and cause to be served upon the person a civil  
5 investigative demand requiring such person to:

6 (1) produce such documentary material for inspection and  
7 copying;

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

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

12 (4) furnish any combination of such material, answers  
13 and testimony.

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

15 (1) State the nature of the conduct constituting the  
16 alleged false claim violation which is under investigation  
17 and the provision of law applicable thereto.

18 (2) If the demand is for the production of documentary  
19 material:

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

24 (ii) state that the demand is returnable forthwith  
25 or prescribe a return date which will provide a  
26 reasonable period of time within which the material so  
27 demanded may be assembled and made available for  
28 inspection and copying or reproduction; and

29 (iii) identify an investigator to whom the material  
30 shall be made available.

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

2               (i) set forth with specificity the written

3 interrogatories to be answered;

4               (ii) prescribe dates at which time answers to

5 written interrogatories shall be submitted; and

6               (iii) identify the investigator to whom such answers

7 shall be submitted.

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

9               (i) prescribe a date, time and place at which oral

10 testimony should be commenced;

11               (ii) identify the investigator who shall conduct the

12 examination and the person to whom the transcript of such

13 investigation shall be submitted;

14               (iii) specify that such attendance and testimony are

15 necessary to the conduct of the investigation; and

16               (iv) describe the general purpose for which the

17 demand is being issued and the general nature of the

18 testimony, including the primary areas of inquiry, which

19 will be taken pursuant to the demand.

20           (5) Contain the following statement printed

21 conspicuously at the top of the demand:

22               You have the right to seek the assistance of any

23 attorney, and he may represent you in all phases of

24 the false claim investigation of which this civil

25 investigative demand is a part.

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

27               (1) contain any requirement which would be held to be

28 unreasonable if contained in a subpoena duces tecum issued by

29 any court in connection with a grand jury investigation of

30 the alleged fraud violation; or



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

6       (d) Service.--Service of any demand or any petition filed  
7       under this section shall be made in the manner prescribed by the  
8       Pennsylvania Rules of Civil Procedure for service of writs and  
9       complaints unless otherwise agreed to by the prosecuting  
10      authority and the person.

11      (e) Return.--A verified return by the individual serving any  
12      demand or petition under this section setting forth the manner  
13      of service shall be prima facie proof of such service. In the  
14      case of service by registered or certified mail, the return  
15      shall be accompanied by the return post office receipt of  
16      delivery of the demand.

17      (f) Procedure.--

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

28           (2) The investigator to whom any documentary material is  
29      so delivered shall take physical possession of the material  
30      and shall be responsible for the use made of the material and

1 for its return pursuant to this section. The investigator may  
2 cause the preparation of the copies of the documentary  
3 material as may be required for official use. While in the  
4 possession of the investigator, no material so produced shall  
5 be available for examination by any individual other than the  
6 prosecuting authority or any investigator without the consent  
7 of the person who produced the material. Under such  
8 reasonable terms and conditions as the prosecuting authority  
9 shall prescribe, documentary material while in the possession  
10 of the investigator shall be available for examination by the  
11 person who produced the material or any duly authorized  
12 representatives of that person.

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

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

19 (ii) in the case of a person other than a natural  
20 person, a person having knowledge of the facts and  
21 circumstances relating to such production and authorized  
22 to act on behalf of such person.

23 The certificate shall state that all of the documentary  
24 material required by the demand and in the possession,  
25 custody or control of the person to whom the demand is  
26 directed has been produced and made available to the  
27 investigator identified in the demand.

28 (4) Each interrogatory in a civil demand served under  
29 this section shall be answered separately and fully in  
30 writing under oath and shall be submitted under a sworn

1 certificate, in such form as the demand designates, by:

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

4 (ii) in the case of a person other than a natural  
5 person, a person or persons responsible for answering  
6 each interrogatory.

7 (5) If any interrogatory is objected to, the reasons for  
8 the objection shall be stated in the certificate instead of  
9 an answer. The certificate shall state that all information  
10 required by the demand and in the possession, custody,  
11 control or knowledge of the person to whom the demand is  
12 directed has been submitted. To the extent that any  
13 information is not furnished, the information shall be  
14 identified and reasons set forth with particularity regarding  
15 the reasons why the information was not furnished.

16 (6) (i) The examination of any person pursuant to a  
17 civil investigative demand for oral testimony served  
18 under this section shall be deemed an "official  
19 proceeding" within the meaning of 18 Pa.C.S. § 4902(a)  
20 (relating to perjury). The examination shall be taken  
21 before an officer authorized to administer oaths and  
22 affirmations by the laws of this Commonwealth. The  
23 officer before whom the testimony is to be taken shall  
24 put the witness on oath or affirmation and shall,  
25 personally or by someone acting under the direction of  
26 the officer and in the officer's presence, record the  
27 testimony of the witness. The testimony shall be taken  
28 accurately and shall be transcribed. When the testimony  
29 is fully transcribed, a copy of the transcript shall be  
30 promptly forwarded to the designated person. This

1 subsection shall not preclude the taking of testimony by  
2 any means authorized by, and in a manner consistent with,  
3 the Pennsylvania Rules of Civil Procedure.

4 (ii) The investigator conducting the examination  
5 shall exclude from the place where the examination is  
6 held all persons except the person giving the testimony,  
7 the attorney for and any other representative of the  
8 person giving the testimony, the prosecuting authority,  
9 any person who may be agreed upon by the prosecuting  
10 authority and the person giving the testimony, and any  
11 stenographer taking such testimony.

12 (iii) The oral testimony of any person taken  
13 pursuant to a civil investigative demand served under  
14 this section shall be taken in the county where the  
15 office of the investigator conducting the examination is  
16 situated, or in such other place as may be agreed upon by  
17 the investigator and such person.

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

1 a reasonable opportunity to examine it, the officer or  
2 the investigator shall sign it and state on the record  
3 the fact of the waiver, illness, absence of the witness  
4 or the refusal to sign, together with the reasons, if  
5 any, given therefor.

6 (v) Upon payment of reasonable charges therefor, the  
7 investigator shall furnish a copy of the transcript to  
8 the witness only, except that the prosecuting authority  
9 may, for good cause, limit such witness to inspection of  
10 the official transcript of the witness' testimony.

11 (vi) Any person compelled to appear for oral  
12 testimony under a civil investigative demand may be  
13 accompanied, represented and advised by counsel. Counsel  
14 may advise the person, in confidence, with respect to any  
15 question asked of that person. The person or counsel may  
16 object on the record to any question, in whole or in  
17 part, and shall briefly state for the record the reason  
18 for the objection. An objection may be made, received and  
19 entered upon the record when it is claimed that such  
20 person is entitled to refuse to answer the question on  
21 the grounds of any constitutional or other legal right or  
22 privilege, including the privilege against self-  
23 incrimination. The person may not otherwise object to or  
24 refuse to answer any question, and may not directly or  
25 through counsel otherwise interrupt the oral examination.  
26 If the person refuses to answer any question, a petition  
27 may be filed in the Commonwealth Court under section  
28 708(g) for an order compelling the person to answer the  
29 question.

30 (7) Upon completion of:

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

3           (ii) any case or proceeding arising from such  
4           investigation;

5           the investigator shall return to the person who produced the  
6           material all of the material other than copies of the  
7           material made pursuant to this section which have not passed  
8           into the control of any court or grand jury through  
9           introduction into the record of such case or proceeding.

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

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

27          (h) Petition for relief.--

28          (1) Within 20 days after the service of any demand under  
29          this section upon any person or at any time before the return  
30          date specified in the demand, whichever period is shorter,

1 the person may file in the Commonwealth Court and serve upon  
2 the prosecuting authority a petition for an order of the  
3 court modifying or setting aside this demand. The time  
4 allowed for compliance with the demand, in whole or in part,  
5 as deemed proper and ordered by the court shall not run  
6 during the pendency of the petition in the court. The  
7 petition shall specify each ground upon which the petitioner  
8 relies in seeking the relief and may be based on any failure  
9 of the demand to comply with the provisions of this section  
10 or on any constitutional or other legal right or privilege of  
11 the person.

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

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

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

1 Section 709. Immunity.

2 Whenever any individual refuses on the basis of his privilege  
3 against self-incrimination to comply with a civil investigative  
4 demand issued pursuant to this act or to testify or produce  
5 other information in a proceeding under this act, the  
6 prosecuting authority may invoke the provisions of 42 Pa.C.S. §  
7 5947 (relating to immunity of witnesses).

8 Section 710. Regulations.

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

12 (b) Guidelines.--In order to facilitate the speedy  
13 implementation of this act, the Attorney General shall have the  
14 power and authority to promulgate, adopt and use guidelines  
15 which shall be published in the Pennsylvania Bulletin. The  
16 guidelines shall not be subject to review pursuant to section  
17 205 of the act of July 31, 1968 (P.L.769, No.240), referred to  
18 as the Commonwealth Documents Law, sections 204(b) and 301(10)  
19 of the act of October 15, 1980 (P.L.950, No.164), known as the  
20 Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633,  
21 No.181), known as the Regulatory Review Act, and shall be  
22 effective for a period of not more than two years from the  
23 effective date of this act. After the expiration of the two-year  
24 period, the guidelines shall expire and be replaced by  
25 regulations which shall be promulgated, adopted and published as  
26 provided by law.

27 SECTION 711. SEVERABILITY.

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28 THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY PROVISION OF  
29 THIS ACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS  
30 HELD INVALID, THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS



1 OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN EFFECT WITHOUT  
2 THE INVALID PROVISION OR APPLICATION.

3 Section ~~711~~ 712. Effective date.

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4 This act shall take effect in 60 days.