

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

No. 1285 Session of  
2001

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YOUNGBLOOD, APRIL 4, 2001

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REFERRED TO COMMITTEE ON JUDICIARY, APRIL 4, 2001

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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.

4 TABLE OF CONTENTS

5 Chapter 1. Preliminary Provisions

6 Section 101. Short title.

7 Section 102. Definitions.

8 Section 103. Construction.

9 Chapter 3. False Claims

10 Section 301. Offenses defined.

11 Section 302. False claims jurisdiction.

12 Section 303. Procedure.

13 Chapter 5. Qui Tam Actions

14 Section 501. General provisions.

15 Section 502. Commonwealth funds.

1 Section 503. Political subdivision funds.  
2 Section 504. Complaints relating to Commonwealth and political  
3 subdivision funds.  
4 Section 505. Intervention by political subdivision.  
5 Section 506. Extension of time.  
6 Section 507. Other actions prohibited.  
7 Section 508. Exclusions.  
8 Section 509. Responsibility for prosecution.  
9 Section 510. Dismissal of action.  
10 Section 511. Settlement.  
11 Section 512. Election not to proceed.  
12 Section 513. Intervention.  
13 Section 514. Proceeds.  
14 Section 515. Reversion to General Fund.  
15 Section 516. Expenses.  
16 Chapter 7. General Provisions  
17 Section 701. Rules of civil procedure.  
18 Section 702. Stay of discovery.  
19 Section 703. Limitations on participation.  
20 Section 704. Employee protection.  
21 Section 705. Limitations.  
22 Section 706. Remedies.  
23 Section 707. Enforcement.  
24 Section 708. Civil investigative demand.  
25 Section 709. Immunity.  
26 Section 710. Regulations.  
27 Section 711. Effective date.

28 The General Assembly of the Commonwealth of Pennsylvania  
29 hereby enacts as follows:

30 CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. Definitions.

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

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

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

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

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud shall not be required.

"Person." Any natural person, corporation, county, political subdivision, firm, association, legal entity, organization,

1 partnership, business or trust.

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

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

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

10 Section 103. Construction.

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

16 CHAPTER 3

17 FALSE CLAIMS

18 Section 301. Offenses defined.

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

29 (1) Knowingly presents or causes to be presented to an  
30 officer or employee of the Commonwealth or any political

1 subdivision a false claim for payment or approval.

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

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

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

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

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

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

26 (8) Unknowingly submits a false claim, is a beneficiary  
27 of payment by the Commonwealth or political subdivision for  
28 that claim, subsequently discovers or recklessly fails to  
29 discover that the claim was false and fails to disclose that  
30 the claim was false. Disclosure shall be made to the

1 Commonwealth or political subdivision within a reasonable  
2 time, but in no event longer than 90 days after discovery of  
3 the false claim.

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

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

14 (2) the person fully cooperated with any investigation  
15 by the prosecuting authority of the violation; and

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

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

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

30 (d) Limitation.--

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

(2) As used in this subsection, the term "controversy" 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 the Commonwealth Court.

(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 513, the prosecuting authority shall proceed in the Commonwealth Court.

Section 303. Procedure.

1 (a) Commonwealth prosecution.--

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

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

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

17 (b) Political subdivision prosecution.--

18 (1) The district attorney shall diligently investigate  
19 violations under section 301 involving political subdivision  
20 funds. If the district attorney finds that a person has  
21 violated or is violating section 301, he may bring an action  
22 under this act against that person.

23 (2) The district attorney may refer a matter involving  
24 political subdivision funds to the Attorney General at any  
25 time. The Attorney General may decline or accept the  
26 referral.

27 (3) If the district attorney brings an action on a claim  
28 involving Commonwealth funds as well as political subdivision  
29 funds, the district attorney shall, on the same date that the  
30 complaint is filed in this action, serve by mail, return



1 receipt requested, a copy of the complaint on the Attorney  
2 General.

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

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

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

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

## 18 CHAPTER 5

### 19 QUI TAM ACTIONS

20 Section 501. General provisions.

21 (a) When action may be brought.--A person may bring a qui  
22 tam action for a violation of this act for the person and either  
23 for the Commonwealth in the name of the Commonwealth if any  
24 Commonwealth funds are involved or for a political subdivision  
25 in the name of the political subdivision if political  
26 subdivision funds are exclusively involved. A qui tam action may  
27 be brought alleging fraud involving both Commonwealth and  
28 political subdivision funds. The person bringing the qui tam  
29 action shall be referred to as the qui tam plaintiff. Once  
30 filed, the qui tam action may be dismissed only by the written

1 consent of the court and the prosecuting authority after a  
2 hearing, taking into account the best interests of the parties  
3 involved and the public purposes of this act.

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

12 (c) Service.--

13 (1) Within three days of the complaint being filed  
14 pursuant to subsection (b), the qui tam plaintiff shall serve  
15 by mail, return receipt requested, the Attorney General and  
16 the General Counsel with a copy of the complaint and a  
17 written disclosure of substantially all material evidence and  
18 information the qui tam plaintiff possesses at that time.

19 (2) Where the complaint involves both Commonwealth and  
20 political subdivision funds, or exclusively political  
21 subdivision funds, the prosecuting authority shall serve a  
22 copy of the complaint, return receipt requested, to counsel  
23 for the political subdivision.

24 Section 502. Commonwealth funds.

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

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

1 court may grant the Attorney General's request to lift the  
2 seal. The court may, upon motion by the Attorney General,  
3 order a partial unsealing where appropriate.

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

11 Section 503. Political subdivision funds.

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

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

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

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

30 Section 504. Complaints relating to Commonwealth and political

1 subdivision funds.

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

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

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

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

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

25 Section 505. Intervention by political subdivision.

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

30 Section 506. Extension of time.

1       Upon a showing of good cause and reasonable diligence in his  
2 investigation, the prosecuting authority may move the court for  
3 reasonable extensions of time during which the complaint will  
4 remain under seal. The qui tam plaintiff shall be notified of  
5 any extensions requested under this section. Any such motions  
6 may be supported by affidavits or other submissions in camera.  
7 Section 507. Other actions prohibited.

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

12 Section 508. Exclusions.

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

15           (1) Which relies upon the public disclosure of specific  
16 allegations or specific transactions in a criminal, civil or  
17 administrative hearing, in a governmental report, hearing,  
18 audit or investigation or from the news media, unless the  
19 action is brought by or intervened in by a prosecuting  
20 authority or the qui tam plaintiff is an original source of  
21 the information.

22           (2) By a prisoner against any official or employee of  
23 the Commonwealth or a political subdivision for acts relating  
24 to the operations and expenditures of a correctional agency  
25 or facility.

26           (3) Based upon allegations or transactions which are the  
27 subject of an investigation, a settlement agreement, or any  
28 civil or administrative proceeding, in which the Commonwealth  
29 or political subdivision is already a party.

30       (b) Definition.--As used in this section, the term "original

1 source" means an individual who has voluntarily provided the  
2 information to the prosecuting authority before filing an action  
3 based on that information and either has direct and independent  
4 knowledge of the information on which the allegations are based  
5 or directly or indirectly provided the impetus, basis or  
6 catalyst for the investigation, hearing, audit or report which  
7 led to the public disclosure.

8 Section 509. Responsibility for prosecution.

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

13 Section 510. Dismissal of action.

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

20 Section 511. Settlement.

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

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

29 Section 512. Election not to proceed.

30 If the prosecuting authority elects not to proceed, the qui

1 tam plaintiff shall have the right to conduct the action. If the  
2 prosecuting authority so requests, it shall be served with  
3 copies of all pleadings filed in the action and supplied with  
4 copies of all deposition transcripts.

5 Section 513. Intervention.

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

12 Section 514. Proceeds.

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

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

29 (c) Award of portion of recovery.--If a district attorney  
30 intervenes in an action initiated by the Attorney General

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

8 (d) Qui tam recovery.--

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

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

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



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

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

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

20      (g) Present or former employee.--If a qui tam action is  
21      brought by a present or former employee of the Commonwealth or  
22      political subdivision, the qui tam plaintiff shall not be  
23      entitled to any minimum guaranteed recovery from the proceeds.  
24      If the prosecuting authority and the qui tam plaintiff cannot  
25      reach an agreement concerning the percentage of proceeds to be  
26      distributed to the qui tam plaintiff, the determination shall be  
27      made by the court. The court may award the qui tam plaintiff  
28      those sums from the proceeds as it considers appropriate, but in  
29      no case more than 33% of the proceeds if the prosecuting  
30      authority goes forth with the action or 50% if it declines to go

1 forth, taking into account the significance of the information,  
2 the role of the qui tam plaintiff in advancing the case to  
3 litigation and the scope of and response to the qui tam  
4 plaintiff's attempts to report and gain recovery of the falsely  
5 claimed funds through official channels.

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

11 (i) Present or former investigators.--Notwithstanding any  
12 other provision of this act, any present or former sworn law  
13 enforcement officer, city controller, other government  
14 investigator, auditor or inspector general or other auditor or  
15 investigator of a person, who obtains information regarding a  
16 false claim in the course of his duties, whether or not as an  
17 employee or a contractor, shall be precluded from participating  
18 in the proceeds of a qui tam action on the basis of that  
19 information unless that officer, city controller, government  
20 investigator, auditor or inspector general or other auditor or  
21 investigator has presented such information to the person and  
22 the person fails to take appropriate action within a reasonable  
23 time.

24 (j) Use of recoveries.--

25 (1) Proceeds recovered under this act by the prosecuting  
26 authority or awarded to the government auditor pursuant to  
27 subsection (f) shall be placed in the General Fund of the  
28 Commonwealth, the operating fund of the county of the  
29 district attorney or the operating fund of the county of the  
30 government auditor, as appropriate.

1           (2) Notwithstanding any other provision of law to the  
2       contrary, the Commonwealth, county of the district attorney  
3       or the county of the government auditor, as appropriate,  
4       shall immediately make such funds available for expenditure,  
5       without restriction, by the prosecuting authority or  
6       government auditor for the purposes specified elsewhere in  
7       this act. The entity having budgetary control over such funds  
8       may not anticipate future recoveries in the adoption or  
9       approval of the budget for the prosecuting authority.

10       (k) Annual audit of recoveries.--It shall be the  
11      responsibility of the Commonwealth, the county of the district  
12      attorney, or both, as appropriate, to provide, through the  
13      controller, board of auditors or other appropriate auditor, an  
14      annual audit of all recoveries under this act. The audit shall  
15      be made public, subject to the right of the prosecuting  
16      authority to redact portions of the audit which it reasonably  
17      believes will compromise investigations or criminal proceedings,  
18      and shall be submitted to the Attorney General's office by  
19      September 30 of each year.

20       (l) Annual report.--The Attorney General shall annually  
21      submit a report to the Appropriations Committee and the  
22      Judiciary Committee of the Senate and the Appropriations  
23      Committee and Judiciary Committee of the House of  
24      Representatives, specifying the recoveries obtained under this  
25      act. The report shall give an accounting of all moneys recovered  
26      through the sale of any property seized in satisfaction of any  
27      judgment arising from an action under this act.

28       (m) Recoveries and appropriations.--Recoveries or future  
29      recoveries under this act shall be in addition to any  
30      appropriation made to the office of the prosecuting authority.

1 Section 515. Reversion to General Fund.

2 (a) General rule.--The portion of the proceeds not  
3 distributed under section 514 shall revert to the General Fund  
4 when the underlying false claims involved Commonwealth funds  
5 exclusively and to the political subdivision when the underlying  
6 false claims involved political subdivision funds exclusively.  
7 When petitioned to do so, the court shall make an apportionment  
8 of the recovered proceeds between the Commonwealth and political  
9 subdivision based on their relative share of the funds falsely  
10 claimed.

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

13 (1) reimbursing the Commonwealth or political  
14 subdivision; or

15 (2) directly paying a claimant; and

16 (3) when the proceeds reverting to the operating fund  
17 under this section exceed any uninsured loss to the  
18 Commonwealth or the political subdivision;

19 the insurer, guarantor or surety shall be reimbursed for its  
20 loss before further distribution is made under this act.

21 Section 516. Expenses.

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

30 CHAPTER 7

1 GENERAL PROVISIONS

2 Section 701. Rules of civil procedure.

3 Except where this act provides otherwise, actions under this  
4 act shall be governed by the Pennsylvania Rules of Civil  
5 Procedure.

6 Section 702. Stay of discovery.

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

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

29 Section 703. Limitations on participation.

30 Upon a showing by the prosecuting authority by a

1 preponderance of the evidence that unrestricted participation  
2 during the course of the litigation by the person initiating the  
3 action would interfere with or unduly delay the prosecuting  
4 authority's prosecution of the case or would be repetitious,  
5 irrelevant or for purposes of harassment, the court may, in its  
6 discretion, impose limitations on the person's participation,  
7 including, but not limited to, the following:

8           (1) limiting the number of witnesses the person may  
9       call;

10           (2) limiting the length of the testimony of these  
11       witnesses;

12           (3) limiting the person's cross-examination of  
13       witnesses; or

14           (4) otherwise limiting the participation by the person  
15       in the litigation.

16 Section 704. Employee protection.

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

24       (b) Discrimination.--No employer shall discharge, demote,  
25 suspend, threaten, harass, deny promotion to or in any other  
26 manner discriminate, or solicit, attempt or conspire to  
27 discriminate against an employee in the terms of and conditions  
28 of employment because of lawful acts done by the employee on  
29 behalf of the employee or others in disclosing information to a  
30 Federal, State or local government or law enforcement agency or

1 in furthering false claims action, including investigation for,  
2 initiation of, testimony for or assistance in an action filed or  
3 to be filed under this act.

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

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

25 (e) Limitations.--An employee who is discharged, demoted,  
26 suspended, harassed, denied promotion, threatened with  
27 termination or in any other manner discriminated against in the  
28 terms and conditions of employment by his employer because of  
29 participation in conduct which directly or indirectly resulted  
30 in a false claim being submitted to the Commonwealth or a

1 political subdivision shall be entitled to the remedies under  
2 subsection (d) if the employee voluntarily discloses information  
3 to a Federal, State or local government or law enforcement  
4 agency or acted in furtherance of a false claims action,  
5 including investigation for, initiation of, testimony for or  
6 assistance in an action filed or to be filed.

7 Section 705. Limitations.

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

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

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

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

30 Section 706. Remedies.



1 (a) Civil remedies.--

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

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

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

22 (2) Injunctions against false claims:

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

26 (ii) If a person alienates or disposes of property,  
27 or intends to alienate or dispose of property obtained as  
28 a result of a violation of this act or property which is  
29 traceable to such violation, the prosecuting authority  
30 may commence an action in Commonwealth Court to enjoin

1       such alienation or disposition of property, or for a  
2       restraining order to prohibit any person from  
3       withdrawing, transferring, removing, dissipating or  
4       disposing of any such property or property of equivalent  
5       value and appoint a temporary receiver to administer such  
6       restraining order.

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

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

17      Section 707. Enforcement.

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

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

1 or matters falling within the scope of this act.

2 Section 708. Civil investigative demand.

3 (a) General rule.--Whenever the prosecuting authority has  
4 reason to believe that any person may be in possession, custody  
5 or control of any documentary material or information relevant  
6 to a false claim investigation, the prosecuting authority may  
7 issue in writing and cause to be served upon the person a civil  
8 investigative demand requiring such person to:

9 (1) produce such documentary material for inspection and  
10 copying;

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

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

15 (4) furnish any combination of such material, answers  
16 and testimony.

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

18 (1) State the nature of the conduct constituting the  
19 alleged false claim violation which is under investigation  
20 and the provision of law applicable thereto.

21 (2) If the demand is for the production of documentary  
22 material:

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

27 (ii) state that the demand is returnable forthwith  
28 or prescribe a return date which will provide a  
29 reasonable period of time within which the material so  
30 demanded may be assembled and made available for

1 inspection and copying or reproduction; and

2 (iii) identify an investigator to whom the material  
3 shall be made available.

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

5 (i) set forth with specificity the written  
6 interrogatories to be answered;

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

9 (iii) identify the investigator to whom such answers  
10 shall be submitted.

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

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

14 (ii) identify the investigator who shall conduct the  
15 examination and the person to whom the transcript of such  
16 investigation shall be submitted;

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

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

23 (5) Contain the following statement printed  
24 conspicuously at the top of the demand:

25 You have the right to seek the assistance of any  
26 attorney, and he may represent you in all phases of  
27 the false claim investigation of which this civil  
28 investigative demand is a part.

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

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

1 unreasonable if contained in a subpoena duces tecum issued by  
2 any court in connection with a grand jury investigation of  
3 the alleged fraud violation; or

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

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

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

20 (f) Procedure.--

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

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

16           (3) The production of documentary material in response  
17      to a civil investigative demand served under this section  
18      shall be made under a sworn certificate, in such form as the  
19      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 having knowledge of the facts and  
24      circumstances relating to such production and authorized  
25      to act on behalf of such person.

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

1           (4) Each interrogatory in a civil demand served under  
2 this section shall be answered separately and fully in  
3 writing under oath and shall be submitted under a sworn  
4 certificate, in such form as the 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 or persons responsible for answering  
9 each interrogatory.

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

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

1 accurately and shall be transcribed. When the testimony  
2 is fully transcribed, a copy of the transcript shall be  
3 promptly forwarded to the designated person. This  
4 subsection shall not preclude the taking of testimony by  
5 any means authorized by, and in a manner consistent with,  
6 the Pennsylvania Rules of Civil Procedure.

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

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

21 (iv) When the testimony is fully transcribed, the  
22 investigator shall afford the witness, who may be  
23 accompanied by counsel, a reasonable opportunity to  
24 examine and read the transcript, unless such examination  
25 and reading are waived by the witness. Any changes in  
26 form or substance which the witness desires to make shall  
27 be entered and identified upon the transcript by the  
28 officer or the investigator, with a statement of the  
29 reasons given by the witness for making such changes. The  
30 transcript shall then be signed by the witness, unless



1 the witness in writing waives the signing, is ill, cannot  
2 be found or refuses to sign. If the transcript is not  
3 signed by the witness within 30 days after being afforded  
4 a reasonable opportunity to examine it, the officer or  
5 the investigator shall sign it and state on the record  
6 the fact of the waiver, illness, absence of the witness  
7 or the refusal to sign, together with the reasons, if  
8 any, given therefor.

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

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

1           708(g) for an order compelling the person to answer the  
2           question.

3           (7) Upon completion of:

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

6                 (ii) any case or proceeding arising from such  
7           investigation;

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

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

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

30          (h) Petition for relief.--

1           (1) Within 20 days after the service of any demand under  
2 this section upon any person or at any time before the return  
3 date specified in the demand, whichever period is shorter,  
4 the person may file in the Commonwealth Court and serve upon  
5 the prosecuting authority a petition for an order of the  
6 court modifying or setting aside this demand. The time  
7 allowed for compliance with the demand, in whole or in part,  
8 as deemed proper and ordered by the court shall not run  
9 during the pendency of the petition in the court. The  
10 petition shall specify each ground upon which the petitioner  
11 relies in seeking the relief and may be based on any failure  
12 of the demand to comply with the provisions of this section  
13 or on any constitutional or other legal right or privilege of  
14 the person.

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

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

28           (i) Definition.--As used in this section, the term  
29 "documentary material" includes, but is not limited to, any  
30 book, paper, record, recording, tape, report, memorandum, data,

1 written or electronic communication or other document relating  
2 to the business affairs of any person, enterprise or matter  
3 falling within the purview of this act.

4 Section 709. Immunity.

5 Whenever any individual refuses on the basis of his privilege  
6 against self-incrimination to comply with a civil investigative  
7 demand issued pursuant to this act or to testify or produce  
8 other information in a proceeding under this act, the  
9 prosecuting authority may invoke the provisions of 42 Pa.C.S. §  
10 5947 (relating to immunity of witnesses).

11 Section 710. Regulations.

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

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

30 Section 711. Effective date.

1        This act shall take effect in 60 days.