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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1285

Session of  
2001

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INTRODUCED BY KENNEY, BLAUM, TIGUE, FICHTER, STABACK, ADOLPH, BARRAR, BASTIAN, BELARDI, CAPPABIANCA, CIVERA, CLARK, CLYMER, L. I. COHEN, DALEY, EACHUS, FRANKEL, GEIST, GEORGE, GODSHALL, HALUSKA, HARHAI, HERMAN, HORSEY, LEDERER, MANN, MARSICO, NAILOR, PETRARCA, PRESTON, READSHAW, SAINATO, SHANER, B. SMITH, SOLOBAY, E. Z. TAYLOR, J. TAYLOR, THOMAS, TULLI, WALKO, WASHINGTON, J. WILLIAMS, WILT, WOJNAROSKI AND YOUNGBLOOD, APRIL 4, 2001

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SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
OCTOBER 1, 2002

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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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1       The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3                               CHAPTER 1

4                               PRELIMINARY PROVISIONS

5 Section 101. Short title.

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

8 Section 102. Definitions.

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

12       "Claim." Any request or demand for money, property or  
13 services made to any employee, officer or agent of the  
14 Commonwealth or of any political subdivision thereof or to any  
15 contractor, subcontractor, grantee or other recipient of the  
16 Commonwealth or any political subdivision thereof, if any  
17 portion of the money, property or services requested or demanded  
18 issued from, was provided or will be reimbursed by the  
19 Commonwealth, referred to as Commonwealth funds, or by any  
20 political subdivision thereof, referred to as political  
21 subdivision funds. PROVIDED, HOWEVER, THAT A FILING WITH AN  
22 AGENCY OF THE COMMONWEALTH SHALL NOT CONSTITUTE A CLAIM UNDER  
23 THIS ACT TO THE EXTENT IT IS NOT CONNECTED TO ANY REQUEST OR  
24 DEMAND FOR REIMBURSEMENT FROM THE COMMONWEALTH OR ANY POLITICAL  
25 SUBDIVISION THEREOF, OR TO ANY REQUEST OR DEMAND FOR A CONTRACT  
26 OR GRANT WITH THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION  
27 THEREOF. SERVICES SHALL NOT INCLUDE A REVIEW OF A FILING BY AN  
28 AGENCY OF THE COMMONWEALTH.

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

1       ~~"Interest." Four percentage points greater than the prime~~ <—  
2       ~~lending rate at its highest point during the period commencing~~  
3       ~~with the commission of the first act defined in section 301 and~~  
4       ~~ending with entry of judgment for all such violations. Interest~~  
5       ~~shall be compounded daily commencing from the commission of the~~  
6       ~~first act defined in section 301.~~

7       "INTEREST." TWO PERCENTAGE POINTS GREATER THAN THE PRIME <—  
8       LENDING RATE IN EFFECT AT THE TIME OF CALCULATION OF AN  
9       OUTSTANDING AMOUNT REQUIRED UNDER THIS ACT. INTEREST SHALL BE  
10      COMPOUNDED DAILY COMMENCING FROM THE COMMISSION OF THE FIRST ACT  
11      DEFINED IN SECTION 301 AND ENDING WITH EITHER AN ENTRY OF A  
12      JUDGMENT IN A MATTER PURSUED UNDER SECTION 301(A) OR THE  
13      DISCLOSURE BY A PERSON OF INFORMATION LEADING TO A RESOLUTION OF  
14      AN ACTION UNDER THIS ACT PURSUANT TO SECTION 301(B).

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

17           (1) has actual knowledge of the information;  
18           (2) acts in deliberate ignorance of the truth or falsity  
19      of the information; or

20           (3) acts in reckless disregard of the truth or falsity  
21      of the information. A PERSON SHALL NOT BE DEEMED TO HAVE <—  
22      ACTED IN RECKLESS DISREGARD WHERE THE PERSON FILED AN  
23      ERRONEOUS CLAIM BASED ON GOOD FAITH RELIANCE ON GUIDANCE OR  
24      ADVICE PROVIDED BY THE GOVERNMENTAL ENTITY TO WHICH IT  
25      SUBMITTED THE CLAIM OR BY AN EMPLOYEE OR AGENT OF THE ENTITY.  
26      THE SUBMISSION OF A SERIES OR BODY OF CLAIMS CONTAINING THE  
27      SAME TYPE OF ERROR MAY CONSTITUTE RECKLESS DISREGARD, BUT THE  
28      FACT THAT A NUMBER OR VOLUME OF ERRONEOUS CLAIMS MAY HAVE  
29      BEEN SUBMITTED DOES NOT DEMONSTRATE, PER SE, THAT THE CLAIMS  
30      WERE INTENTIONALLY FALSE.

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

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

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

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

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

13 Section 103. Construction.

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

19 CHAPTER 3

20 FALSE CLAIMS

21 Section 301. Offenses defined.

22 (a) Liability.--

23 (1) A person shall be liable to the Commonwealth or to  
24 the political subdivision for each false claim in the amount  
25 specified in paragraph (2) if that person commits any of the  
26 following acts:

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

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

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

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

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

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

25          ~~(vii) Submits a false claim, is a beneficiary of~~ <—  
26          ~~payment by the Commonwealth or political subdivision for~~  
27          ~~that claim, subsequently discovers or recklessly fails to~~  
28          ~~discover that the claim was false and fails to disclose~~  
29          ~~that the claim was false. Disclosure shall be made to the~~  
30          ~~Commonwealth or political subdivision within a reasonable~~

time, but in no event longer than 30 days after discovery  
of the false claim.

~~(viii)~~ (VII) Conspires to commit any of the acts  
specified in subparagraphs (i) through ~~(vii)~~ (VI).

(2) The liability imposed under paragraph (1) shall be:

(i) The greater of:

(A) three times the amount of damages which the  
Commonwealth or political subdivision sustains  
because of the act of that person; or

(B) three times the amount of the interest  
accumulated on such damages.

(ii) The costs of an action brought to recover any  
of those penalties or damages.

(iii) A civil penalty of not less than \$5,000 nor  
more than \$10,000 FOR EACH FALSE CLAIM.

~~(b) Reduced assessment.~~

~~(1) Notwithstanding subsection (a), the court shall  
assess the amount of damages which the Commonwealth or the  
political subdivision sustains because of the act of the  
person described in subsection (a) and the interest  
accumulated on such damages, and no civil penalty, if the  
court finds all of the following:~~

~~(i) the violation was committed by a corporation,  
firm, association, organization, partnership, business,  
trust or other legal entity and promulgated by an  
employee or other agent of the entity who did not act in  
a managerial role within the entity;~~

~~(ii) the person committing the violation furnished  
the appropriate prosecuting authority, the Commonwealth  
or political subdivision with all information known to~~

~~that person about the violation within 120 days after the date on which the person first obtained the information;~~

~~(iii) the person fully cooperated with any investigation by the prosecuting authority of the violation;~~

~~(iv) at the time the person furnished the appropriate prosecuting authority, the Commonwealth or political subdivision with all information about the violation, no investigation, criminal prosecution, civil action or administrative action had commenced with respect to the violation; and~~

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

~~(2) Notwithstanding subsection (a), the court shall assess the amount of damages which the Commonwealth or the political subdivision sustains because of the act of the person described in subsection (a) and two times the amount of the interest accumulated on such damages and no civil penalty, if the court finds all of the following:~~

~~(i) the person committing the violation furnished the prosecuting authority with all information known to that person about the violation within 120 days after the date on which the person first obtained the information;~~

~~(ii) the person fully cooperated with any investigation by the prosecuting authority of the violation;~~

~~(iii) at the time the person furnished the appropriate prosecuting authority with all information~~



~~about the violation, no investigation, criminal prosecution, civil action or administrative action had commenced with respect to the violation; and~~

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

~~(3) Notwithstanding subsection (a), the court shall assess a civil penalty not to exceed \$5,000 for each false claim and the greater of:~~

~~(i) two times the amount of damages which the Commonwealth or the political subdivision sustains because of the act of the person described in subsection (a); or~~

~~(ii) three times the interest accumulated on such damages, if the court finds all of the following:~~

~~(A) The person committing the violation furnished the prosecuting authority with all information known to that person about the violation within 120 days after the date on which the person first obtained the information.~~

~~(B) The person fully cooperated with any investigation by the prosecution authority of the violation.~~

~~(C) At the time the person furnished the appropriate prosecuting authority with all information about the violation, the person did not have knowledge or notice that an investigation, criminal prosecution, civil action or administrative action had commenced with regard to the violation.~~

1                   ~~(D) The person had an effective compliance~~  
2                   ~~program that could reasonably be expected to prevent~~  
3                   ~~and detect violations of law, even if the program did~~  
4                   ~~not detect the instant violation.~~

5                   ~~(c) Joint and several liability. Liability under this~~  
6                   ~~section shall be joint and several for any act committed by two~~  
7                   ~~or more persons.~~

8                   (B) REDUCED ASSESSMENT.--

<—

9                   (1) NOTWITHSTANDING SUBSECTION (A), THE COURT SHALL  
10                  ASSESS NO MORE THAN TWO TIMES THE AMOUNT OF DAMAGES WHICH THE  
11                  COMMONWEALTH OR THE POLITICAL SUBDIVISION SUSTAINS BECAUSE OF  
12                  THE ACT OF THE PERSON DESCRIBED IN SUBSECTION (A) PLUS THE  
13                  COSTS OF PROSECUTION AND THE INTEREST ACCUMULATED ON SUCH  
14                  DAMAGES, IF THE COURT FINDS ALL OF THE FOLLOWING:

15                  (I) THE PERSON COMMITTING THE VIOLATION OR THE  
16                  PERSON RESPONSIBLE FOR THE VIOLATION OF THIS SUBSECTION  
17                  FURNISHED OFFICIALS OF THE COMMONWEALTH OR THE POLITICAL  
18                  SUBDIVISION RESPONSIBLE FOR INVESTIGATING FALSE CLAIMS  
19                  VIOLATIONS WITH ALL INFORMATION KNOWN TO SUCH PERSON  
20                  ABOUT THE VIOLATION WITHIN 60 DAYS AFTER THE DATE ON  
21                  WHICH THE DEFENDANT FIRST OBTAINED THE INFORMATION.

22                  (II) THE PERSON FULLY COOPERATED WITH ANY  
23                  COMMONWEALTH OR POLITICAL SUBDIVISION INVESTIGATION OF  
24                  SUCH VIOLATION.

25                  (III) AT THE TIME THE PERSON FURNISHED THE  
26                  COMMONWEALTH OR POLITICAL SUBDIVISION INFORMATION ABOUT  
27                  THE VIOLATION, THE PERSON DID NOT HAVE ACTUAL KNOWLEDGE  
28                  OF THE EXISTENCE OF AN INVESTIGATION INTO SUCH VIOLATION.

29                  (IV) THE PERSON HAD A COMPLIANCE PROGRAM THAT COULD  
30                  REASONABLY BE EXPECTED TO PREVENT AND DETECT VIOLATIONS

1 OF LAW, EVEN IF THE PROGRAM DID NOT DETECT THE INSTANT  
2 OFFENSE.

3 ~~(D)~~ (C) Limitation.--

<—

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

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

17 (3) THIS SECTION SHALL NOT APPLY TO A CLAIM THAT A  
18 PERSON HAS FAILED TO SATISFY STATUTORY OR REGULATORY  
19 STANDARDS SUCH AS THE GENERAL CONDITIONS OF PARTICIPATION  
20 WITH A GOVERNMENTAL PROGRAM UNLESS THE SUBMISSION OF A CLAIM  
21 FOR PAYMENT IS CONDITIONED UPON AN EXPRESS CERTIFICATION OF  
22 COMPLIANCE WITH SUCH STANDARDS OR PROVISIONS AND THE PERSON  
23 HAS THEREBY FALSELY CERTIFIED SUCH COMPLIANCE TO OBTAIN  
24 PAYMENT. THE FOREGOING LIMITATION SHALL NOT PRECLUDE THE  
25 APPLICATION OF THIS SECTION IN CASES WHERE A PERSON INVOICES  
26 THE COMMONWEALTH OR A POLITICAL SUBDIVISION FOR SERVICES  
27 RENDERED UNDER A GRANT OR REGULATORY PROGRAM FOR SERVICES THE  
28 PERSON HAS FAILED TO PROVIDE OR WHICH ARE WHOLLY WORTHLESS.

<—

29 Section 302. False claims jurisdiction.

30 If any defendant can be found, resides or transacts business

1 in this Commonwealth or if an act proscribed by this act  
2 occurred within this Commonwealth, an action under this act  
3 shall be brought in the Commonwealth Court exclusively.

4 Section 303. Procedure.

5 (a) Commonwealth prosecution.--

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

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

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

21 (b) Political subdivision prosecution.--

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

27 (2) The district attorney may refer a matter involving  
28 political subdivision funds to the Attorney General at any  
29 time. The Attorney General may decline or accept the  
30 referral.



1 exclusively involved. A qui tam action may be brought  
2 alleging fraud involving both Commonwealth and political  
3 subdivision funds. The person bringing the qui tam action  
4 shall be referred to as the qui tam plaintiff.

5 (2) The prosecuting authority may ~~dismiss~~ SEEK DISMISSAL <—  
6 OF the qui tam action notwithstanding the objection of the  
7 qui tam plaintiff if the qui tam plaintiff has been notified  
8 by the prosecuting authority of the filing of the motion to  
9 dismiss and the court has provided the qui tam plaintiff with  
10 an opportunity for a hearing on the motion.

11 (b) Filing and service on defendant.--

12 (1) A complaint filed by a qui tam plaintiff under this  
13 act shall be filed ex parte under seal with the Clerk of the  
14 Commonwealth Court or ex parte under seal in the appropriate  
15 Federal district court if Federal funds are also involved,  
16 and the complaint and all related pleadings shall remain  
17 under seal for 90 days from the date of service. Except as  
18 provided in paragraph (2), no service shall be made on the  
19 defendant until after the complaint is unsealed by order of  
20 the court.

21 (2) If the defendant can prove by a preponderance of the  
22 evidence that a qui tam action has been brought against him,  
23 that the bringing of the qui tam action has been disclosed to  
24 the public, and that the defendant neither made the  
25 disclosure nor caused it to be made, the defendant may obtain  
26 from the court a copy of the complaint. The defendant may not  
27 disclose or cause to be disclosed to any other person the  
28 fact that a qui tam action has been brought, the complaint or  
29 any of the information contained in the complaint.

30 ~~(c) Service on Commonwealth and political subdivisions.~~ <—

~~(1) Within three days of the complaint being filed~~

(C) SERVICE ON COMMONWEALTH.--WITHIN THREE DAYS OF THE  
COMPLAINT BEING FILED pursuant to subsection (b), the qui tam  
plaintiff shall serve by mail, return receipt requested, the  
Attorney General and the General Counsel with a copy of the  
complaint and a written disclosure of substantially all material  
evidence and information the qui tam plaintiff possesses at that  
time.

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

Section 502. Commonwealth funds.

Within 90 days after receiving a complaint alleging  
violations which involve Commonwealth funds, but not political  
subdivision funds, the Attorney General 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 Attorney General's request, the seal may  
be lifted. The court may, upon motion by the Attorney  
General, order a partial unsealing where appropriate.

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

1 Section 503. Political subdivision funds.

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

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

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

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

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

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

28 (b) Procedure.--Within 90 days after receiving a complaint  
29 alleging violations which involve or allege both Commonwealth  
30 and political subdivision funds, the Attorney General shall do



1 one of the following:

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

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

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

15 Section 505. Intervention by political subdivision.

16 If the Attorney General proceeds with the action under  
17 section 503, the district attorney shall be permitted to  
18 intervene in the action within 60 days after the Attorney  
19 General notifies the court of his intentions.

20 Section 506. Extension of time.

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

27 Section 507. Other actions prohibited.

28 When a qui tam plaintiff brings an action under this act, no  
29 other person shall be permitted to bring a related action under  
30 this act based on the same or similar facts underlying the

1 pending action.

2 Section 508. Exclusions.

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

5 (1) Against the Commonwealth, a political subdivision or  
6 a prosecuting authority.

7 (2) Against an official or employee of the Commonwealth  
8 or a political subdivision if the official or employee did  
9 not act with actual knowledge.

10 (3) 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 (4) By a prisoner.

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

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

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

1 knowledge of the information on which the allegations are based  
2 or directly or indirectly provided the impetus, basis or  
3 catalyst for the investigation, hearing, audit or report which  
4 led to the public disclosure.

5 Section 509. Employment-related discovery of information.

6 No court shall have jurisdiction over an action brought under  
7 this act by a present or former employee of the Commonwealth, of  
8 a political subdivision or of the person if that employee's  
9 ~~exclusive~~ PRIMARY responsibility is the investigation or <—  
10 prosecution of fraud, unless such employee first makes a good  
11 faith attempt to use existing internal procedures for reporting,  
12 auditing and seeking recovery of the falsely claimed funds  
13 before filing an action. The Commonwealth, political subdivision  
14 or the person shall have promulgated internal procedures for  
15 reporting, auditing and seeking recovery of falsely claimed  
16 funds and must act on the information reported by the employee  
17 within 60 days of receipt of the information.

18 Section 510. Responsibility for prosecution.

19 If the prosecuting authority proceeds with the action, it  
20 shall have the primary responsibility for prosecuting the  
21 action. The qui tam plaintiff shall have the right to continue  
22 with all rights and obligations as a full party to the action.

23 Section 511. Dismissal of action.

24 The Commonwealth or political subdivision may seek to dismiss  
25 the action at any time notwithstanding the objections of the qui  
26 tam plaintiff if the qui tam plaintiff has been notified by the  
27 prosecuting authority of the filing of the motion and the court  
28 has provided the qui tam plaintiff with an opportunity for a  
29 hearing on the motion.

30 Section 512. Settlement.

1 (a) General rule.--The prosecuting authority may settle the  
2 action with the defendant notwithstanding the objections of the  
3 qui tam plaintiff. ~~if the court determines, after a hearing,~~ <—  
4 ~~that the proposed settlement is fair, adequate and reasonable~~  
5 ~~under all the circumstances. Upon a showing of good cause, such~~  
6 ~~hearing may be held in camera.~~

7 (b) Consultation with political subdivision.--The district  
8 attorney shall consult with the political subdivision regarding  
9 any proposed settlement.

10 Section 513. Election not to proceed.

11 If the prosecuting authority elects not to proceed, the qui  
12 tam plaintiff shall have the right to conduct the action and  
13 shall apprise the prosecuting authority of all developments  
14 during the course of the action. If the prosecuting authority so  
15 requests, it shall be served with copies of all pleadings filed  
16 in the action and supplied with copies of all deposition  
17 transcripts.

18 Section 514. Intervention.

19 Upon application, the court shall permit the prosecuting  
20 authority to intervene in an action with which it had initially  
21 declined to proceed.

22 Section 515. Proceeds.

23 (a) Attorney General.--If the Attorney General initiates an  
24 action under section 303(a) or assumes control of an action  
25 initiated by the district attorney pursuant to section  
26 303(b)(4)(i), the Attorney General shall receive a fixed 33% of  
27 the proceeds of the action or settlement of the claim, which  
28 funds shall be used to support and expand its ongoing  
29 investigation and prosecution of false claims violations.

30 (b) District attorney.--If a district attorney initiates and

1 conducts an action pursuant to section 303(b), the office of the  
2 district attorney shall receive a fixed 33% of the proceeds of  
3 the action or settlement of the claim, which funds shall be used  
4 to support and expand its ongoing investigation and prosecution  
5 of false claims violations.

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

15 (d) Qui tam recovery.--

16 (1) If the prosecuting authority proceeds with an action  
17 brought by a qui tam plaintiff under this act, the qui tam  
18 plaintiff shall, subject to subsections (h) and (i), receive  
19 not less than 20% nor more than 33% of the full proceeds of  
20 the action or settlement of the claim, depending upon the  
21 extent to which the qui tam plaintiff substantially  
22 contributed to the overall prosecution of the action. If the  
23 prosecuting authority and the qui tam plaintiff cannot reach  
24 an agreement concerning the percentage of proceeds to be  
25 distributed to the qui tam plaintiff, the determination shall  
26 be made by the court.

27 (2) When it conducts the action, the Attorney General or  
28 the district attorney shall receive a fixed 33% of the  
29 proceeds of the action or settlement of the claim, which  
30 funds shall be used to support and expand its ongoing

1 investigation and prosecution of false claims.

2 (3) When both the Attorney General and the district  
3 attorney are involved as coparties in a qui tam action  
4 pursuant to section 504, the court in its discretion may  
5 award the district attorney a portion of the Attorney  
6 General's fixed 33% of the recovery, taking into account the  
7 district attorney's cooperation and contribution to  
8 investigating and conducting the action.

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

17 (f) Attorney fees and expenses.--If the prosecuting  
18 authority does not proceed with the action and the person  
19 bringing the action conducts the action, the court may award to  
20 the defendant its reasonable attorney fees and expenses if the  
21 defendant prevails in the action and the court finds that the  
22 claim of the person bringing the action was clearly frivolous,  
23 clearly vexatious or brought primarily for purposes of  
24 harassment.

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

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

17 (i) Fraudulent activity.--

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

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

8 (2) A person who has been convicted of a crime, either  
9 in the same or another jurisdiction, based on participation  
10 in the fraudulent activity at issue in the action under this  
11 act or whom the defendant has shown by a preponderance of the  
12 evidence to have led, directed or received substantial  
13 proceeds from the fraudulent activity, even if that person  
14 has not been convicted of a crime, shall under no  
15 circumstances be permitted to participate in any action under  
16 this act as a qui tam plaintiff.

17 (j) Use of recoveries.--

18 (1) Proceeds recovered under this act by the prosecuting  
19 authority or awarded to the government auditor pursuant to  
20 subsection (g) shall be placed in the General Fund of the  
21 Commonwealth, the operating fund of the county of the  
22 district attorney or the operating fund of the county of the  
23 government auditor, as appropriate.

24 (2) Notwithstanding any other provision of law to the  
25 contrary, the Commonwealth, county of the district attorney  
26 or the county of the government auditor, as appropriate,  
27 shall immediately make such funds available for expenditure,  
28 without restriction, by the prosecuting authority or  
29 government auditor for the purposes specified elsewhere in  
30 this act. The entity having budgetary control over such funds



1 may not anticipate future recoveries in the adoption or  
2 approval of the budget for the prosecuting authority.

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

13 (l) Annual report.--The Attorney General shall annually  
14 submit a report to the Appropriations Committee and the  
15 Judiciary Committee of the Senate and the Appropriations  
16 Committee and Judiciary Committee of the House of  
17 Representatives, specifying the recoveries obtained under this  
18 act. The report shall give an accounting of all moneys recovered  
19 through the sale of any property seized in satisfaction of any  
20 judgment arising from an action under this act.

21 (m) Recoveries and appropriations.--Recoveries or future  
22 recoveries under this act shall be in addition to any  
23 appropriation made to the office of the prosecuting authority.  
24 Section 516. Reversion to General Fund.

25 (a) General rule.--The portion of the proceeds not  
26 distributed under section 515 shall revert to the General Fund  
27 when the underlying false claims involved Commonwealth funds  
28 exclusively and to the political subdivision when the underlying  
29 false claims involved political subdivision funds exclusively.  
30 When petitioned to do so, the court shall make an apportionment

1 of the recovered proceeds between the Commonwealth and political  
2 subdivision based on their relative share of the funds falsely  
3 claimed.

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

6 (1) reimbursing the Commonwealth or political  
7 subdivision; or

8 (2) directly paying a claimant;

9 the insurer, guarantor or surety shall be reimbursed for its  
10 losses to the extent that proceeds reverting to the General Fund  
11 or to the political subdivision under this section exceed any  
12 uninsured loss to the Commonwealth or the political subdivision.

13 Section 517. Expenses.

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

22 CHAPTER 7

23 MISCELLANEOUS PROVISIONS

24 Section 701. Rules of civil procedure.

25 Except where this act provides otherwise, actions under this  
26 act shall be governed by the Pennsylvania Rules of Civil  
27 Procedure.

28 Section 702. Stay of discovery.

29 (a) General rule.--The court may stay discovery for a period  
30 of not more than 90 days if the prosecuting authority or the

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

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

22 Section 703. Control over prosecution.

23 When the prosecuting authority has intervened in an action  
24 brought under section 501, the prosecuting authority shall have  
25 full authority as to the manner in which the prosecution is  
26 conducted.

27 Section 704. Employee protection.

28 (a) Disclosing information.--No employer shall solicit,  
29 attempt or conspire to prevent, make, adopt or enforce any rule,  
30 regulation or policy preventing an employee from disclosing

1 information to a Federal, State or local law enforcement agency  
2 or from acting in furtherance of the investigation of,  
3 initiation of, testimony in or assistance in filing an action  
4 under this act.

5 (b) Discrimination.--No employer shall discharge, demote,  
6 suspend, threaten, harass, deny promotion to or in any other  
7 manner discriminate, or solicit, attempt or conspire to  
8 discriminate against an employee in the terms of and conditions  
9 of employment because of lawful acts done by the employee on  
10 behalf of the employee or others in disclosing information to a  
11 Federal, State or local government or law enforcement agency or  
12 in furthering false claims action, including investigation for,  
13 initiation of, testimony for or assistance in an action filed or  
14 to be filed under this act.

15 (c) Good faith reporting to employer.--No employer may  
16 discharge, threaten or otherwise discriminate or retaliate  
17 against an employee regarding the employee's compensation,  
18 terms, conditions, location or privileges of employment because  
19 the employee made or is about to make a good faith report to the  
20 employer regarding a false claim under this act, regardless of  
21 whether the report is made or to be made orally or in writing.

22 (d) Penalty.--An employer who violates subsection (a), (b)  
23 or (c) shall be liable for all relief necessary to make the  
24 employee whole, including reinstatement with the same seniority  
25 status that the employee would have had but for the  
26 discrimination., ~~three times the amount of back pay, prevailing~~ <—  
27 ~~interest on the back pay, compensation for any special damage~~  
28 ~~sustained as a result of the discrimination and, where~~  
29 ~~appropriate, punitive damages. Except in cases alleging~~  
30 ~~intentional misconduct, punitive damages against a person shall~~

1 ~~not exceed 200% of the compensatory damages awarded. In~~  
2 ~~addition, the employer shall be required to pay all litigation~~  
3 ~~costs and reasonable attorney fees. An employee may bring an~~  
4 ~~action in the Commonwealth Court for the relief provided in this~~  
5 ~~subsection.~~

6 Section 705. Limitations.

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

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

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

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

29 Section 706. Remedies.

30 (a) Civil remedies.--

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

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

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

21           ~~(2)~~ (1) Injunctions against false claims:

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

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

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

6       ~~(3)~~ (2) In any proceeding under this section, the court     <—  
7       shall proceed as soon as practicable to the hearing and  
8       determination thereof. Pending final determination, the court  
9       may enter preliminary or special injunctions or take such  
10      other actions, including the acceptance of satisfactory  
11      performance bonds, as it may deem proper.

12      (b) Remedies cumulative.--

13           (1) The provisions of this act are not exclusive and  
14      shall be in addition to any other remedies provided for in  
15      any other law or available under common law.

16           (2) Election by the prosecuting authority or a qui tam  
17      plaintiff to bring an action under this act shall neither  
18      preclude the Commonwealth or political subdivision from  
19      bringing any other appropriate action nor moot any such  
20      action filed prior to commencement of an action under this  
21      act.

22           (3) Election by the prosecuting authority or a qui tam  
23      plaintiff to bring an action under this act shall not  
24      preclude the Commonwealth or prosecuting authority from  
25      bringing criminal charges against the defendant, nor shall it  
26      moot any pending criminal charges.

27           (4) Judgment for a defendant in any action brought under  
28      this act shall have no res judicata effect in any other  
29      action brought by the Commonwealth or political subdivision.

30      Section 707. Enforcement.

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

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

15 Section 708. Civil investigative demand.

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

22 (1) produce such documentary material for inspection and  
23 copying;

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

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

28 (4) furnish any combination of such material, answers  
29 and testimony.

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



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

4           (2) If the demand is for the production of documentary  
5           material:

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

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

15                (iii) identify an investigator to whom the material  
16                shall be made available.

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

18                 (i) set forth with specificity the written  
19                 interrogatories to be answered;

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

22                 (iii) identify the investigator to whom such answers  
23                 shall be submitted.

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

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

27                 (ii) identify the investigator who shall conduct the  
28                 examination and the person to whom the transcript of such  
29                 investigation shall be submitted;

30                 (iii) specify that such attendance and testimony are

1 necessary to the conduct of the investigation; and

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

6 (5) Contain the following statement printed  
7 conspicuously at the top of the demand:

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

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

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

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

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

26 (e) Return.--A verified return by the individual serving any  
27 demand or petition under this section setting forth the manner  
28 of service shall be prima facie proof of such service. In the  
29 case of service by registered or certified mail, the return  
30 shall be accompanied by the return post office receipt of

1 delivery of the demand.

2 (f) Procedure.--

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

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

28 (3) The production of documentary material in response  
29 to a civil investigative demand served under this section  
30 shall be made under a sworn certificate, in such form as the

1 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 having knowledge of the facts and  
6 circumstances relating to such production and authorized  
7 to act on behalf of such person.

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

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

22 (5) If any interrogatory is objected to, the reasons for  
23 the objection shall be stated in the certificate instead of  
24 an answer. The certificate shall state that all information  
25 required by the demand and in the possession, custody,  
26 control or knowledge of the person to whom the demand is  
27 directed has been submitted. To the extent that any  
28 information is not furnished, the information shall be  
29 identified and reasons set forth with particularity regarding  
30 the reasons why the information was not furnished.

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

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

27       (iii) The oral testimony of any person taken  
28 pursuant to a civil investigative demand served under  
29 this section shall be taken in the county where the  
30 office of the investigator conducting the examination is

1       situated, or in such other place as may be agreed upon by  
2       the investigator and such person.

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

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

26      (vi) Any person compelled to appear for oral  
27      testimony under a civil investigative demand may be  
28      accompanied, represented and advised by counsel. Counsel  
29      may advise the person, in confidence, with respect to any  
30      question asked of that person. The person or counsel may

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

15 (7) Upon completion of:

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

18 (ii) any case or proceeding arising from such  
19 investigation;

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

25 (8) When documentary material has been produced by a  
26 person under this section for use in a false claims  
27 investigation and no case or proceeding arising from the  
28 investigation has been instituted within a reasonable time  
29 after completion of the examination and analysis of all  
30 evidence assembled in the course of the investigation, the

1 person shall be entitled, upon written demand made upon the  
2 prosecuting authority, to the return of all documentary  
3 material, other than copies of the material made pursuant to  
4 this section, so produced by that person.

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

12 (h) Petition for relief.--

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

27 (2) At any time during which the prosecuting authority  
28 is in custody or control of documentary material delivered by  
29 a person in compliance with a demand under this section, the  
30 person may file in the Commonwealth Court and serve upon the



1 prosecuting authority a petition for an order of the court  
2 requiring the performance of any duty imposed by this  
3 section.

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

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

16 Section 709. Immunity.

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

23 Section 710. Regulations.

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

27 (b) Guidelines.--In order to facilitate the speedy  
28 implementation of this act, the Attorney General shall have the  
29 power and authority to promulgate, adopt and use guidelines  
30 which shall be published in the Pennsylvania Bulletin. The

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

12 Section 711. Severability.

13 The provisions of this act are severable. If any provision of  
14 this act or its application to any person or circumstance is  
15 held invalid, the invalidity shall not affect other provisions  
16 or applications of this act which can be given effect without  
17 the invalid provision or application.

18 Section 712. Effective date.

19 This act shall take effect in 60 days.