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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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STURLA, SWANGER, VULAKOVICH AND YOUNGBLOOD, JUNE 24, 2011

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 24, 2011

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AN ACT

1 Providing for liability for false claims, for adoption of  
2 Congressional intent of the Federal False Claims Act, for  
3 treble damages, costs and civil penalties, for powers of the  
4 Attorney General and for qui tam actions.

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7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

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

14 Section 102. Declaration of policy.

15 The General Assembly declares that this act adopts the intent  
16 of Congress in enacting the Federal False Claims Act (Public Law  
17 97-258, 31 U.S.C. §§ 3729-3733) on September 13, 1982, including  
18 the amendments (Public Law 99-562, 100 Stat. 3153) enacted  
19 October 27, 1986.

20 Section 103. Definitions.

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

24 "Claim." As follows:

25 (1) A request or demand for money or property under the  
26 Medical Assistance Program, whether under contract or  
27 otherwise and regardless of whether the Commonwealth has  
28 title to the money or property, which meets any of the  
29 following:

30 (i) Is presented to an employee, officer or agent of

1 the Commonwealth.

2 (ii) Is made to a contractor, grantee or other  
3 recipient and any portion of the money or property will  
4 be spent or used on the Commonwealth's behalf or to  
5 advance a program or interest of the Medical Assistance  
6 Program, and the Commonwealth:

7 (A) provides or has provided any portion of the  
8 money or property requested or demanded; or

9 (B) will reimburse the contractor, grantee or  
10 other recipient for any portion of the money or  
11 property which is requested or demanded.

12 (2) The term does not include requests or demands for  
13 money or property the Commonwealth has paid to an individual  
14 as compensation for employment or as an income subsidy with  
15 no restrictions on the individual's use of the money or  
16 property.

17 (3) To the extent it is not connected to a request or  
18 demand for money or property, a filing with a Commonwealth  
19 agency pursuant to the Commonwealth's insurance laws shall  
20 not constitute a claim.

21 "Employer." A natural person, corporation, firm,  
22 association, organization, partnership, business, trust or  
23 Commonwealth-affiliated entity involved in a nongovernmental  
24 function, including State universities and State hospitals.

25 "Knowingly." (1) Whenever a person, with respect to  
26 information, does any of the following:

27 (i) Has actual knowledge of the information.

28 (ii) Acts in deliberate ignorance of the truth or  
29 falsity of the information.

30 (iii) Acts in reckless disregard of the truth or

1 falsity of the information.

2 (2) Proof of specific intent to defraud is not required.

3 "Material." A natural tendency to influence, or be capable  
4 of influencing, the payment or receipt of money or property.

5 "Medical Assistance Program." The program established under  
6 Article IV Subarticle (f) of the act of June 13, 1967 (P.L.31,  
7 No.21), known as the Public Welfare Code.

8 "Obligation." An established duty, whether or not fixed,  
9 arising from any of the following:

10 (1) An express or implied contract.

11 (2) A grantor-grantee relationship.

12 (3) A licensor-licensee relationship.

13 (4) A fee-based or similar relationship.

14 (5) A statute or regulation.

15 (6) The retention of an overpayment.

16 "Official use." Any use that is consistent with the law and  
17 the regulations and policies of the Office of Attorney General  
18 including the following:

19 (1) Use in connection with internal memoranda and  
20 reports.

21 (2) Communications between the Office of Attorney  
22 General and a Federal, State or local government agency or a  
23 contractor of a Federal, State or local government agency,  
24 undertaken in furtherance of an investigation or prosecution  
25 of an action.

26 (3) Interviews of a qui tam plaintiff or other witness.

27 (4) Oral examinations.

28 (5) Depositions.

29 (6) Preparation for and response to civil discovery  
30 requests.

1 (7) Introduction into the record of an action or  
2 proceeding.

3 (8) Applications, motions, memoranda and briefs  
4 submitted to a court or other tribunal.

5 (9) Communications with investigators, auditors,  
6 consultants and experts, the counsel of other parties,  
7 arbitrators and mediators, concerning an investigation,  
8 action or proceeding.

9 "Original source." An individual who:

10 (1) prior to a public disclosure in the news media or in  
11 a publicly disseminated governmental report, has voluntarily  
12 disclosed to the Commonwealth the information on which  
13 allegations or transactions in a claim are based; or

14 (2) has knowledge that is independent of and materially  
15 adds to the publicly disclosed allegations or transactions  
16 and who has voluntarily provided the information to the  
17 Commonwealth before filing an action under section 301.

18 "Person." A natural person, corporation, firm, association,  
19 organization, partnership, business or trust.

20 "Qui tam plaintiff." A person bringing a civil action under  
21 section 301.

22 CHAPTER 3

23 FALSE CLAIMS

24 Section 301. Acts subjecting persons to liability for treble  
25 damages, costs and civil penalties; exceptions.

26 (a) Liability.--A person who commits acts prohibited in  
27 subsection (b) shall be liable to the Commonwealth for three  
28 times the amount of damages which the Commonwealth sustains  
29 because of the act of that person.

30 (b) Prohibited acts.--A person who commits any of the

1 following acts shall also be liable to the Commonwealth for a  
2 civil penalty of not less than \$5,500 and not more than \$11,000  
3 for each violation:

4 (1) Knowingly presents or causes to be presented a false  
5 or fraudulent claim for payment or approval.

6 (2) Knowingly makes, uses or causes to be made or used,  
7 a false record or statement material to a false or fraudulent  
8 claim.

9 (3) Has possession, custody or control of public  
10 property or money used or to be used by the Commonwealth and  
11 knowingly delivers or causes to be delivered less than all of  
12 the money or property.

13 (4) Is authorized to make or deliver a document  
14 certifying receipt of property used or to be used by the  
15 Commonwealth and knowingly makes or delivers a receipt that  
16 falsely represents the property used or to be used.

17 (5) 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 (6) Knowingly fails to disclose a fact, event or  
21 occurrence or knowingly makes, uses or causes to be made or  
22 used, a false record or statement material to an obligation  
23 to pay or transmit money or property to the Commonwealth or  
24 knowingly conceals, or knowingly or improperly avoids or  
25 decreases an obligation to pay or transmit money or property  
26 to the Commonwealth.

27 (7) Is a beneficiary of an inadvertent submission of a  
28 false claim, subsequently discovers the falsity of the claim  
29 and fails to disclose the false claim to the Commonwealth  
30 within a reasonable time after discovery of the false claim.

1 (8) Conspires to commit a violation of paragraph (1),  
2 (2), (3), (4), (5), (6) or (7).

3 (c) Damages limitation.--Notwithstanding subsection (a), the  
4 court may assess not less than two times the amount of damages  
5 which the Commonwealth sustains because of the act of the person  
6 described in that subsection and no civil penalty if the court  
7 finds all of the following:

8 (1) The person committing the violation furnished the  
9 Commonwealth officials who are responsible for investigating  
10 false claims violations with all information known to that  
11 person about the violation within 30 days after the date on  
12 which the person first obtained the information.

13 (2) The person fully cooperated with any investigation  
14 by the Commonwealth.

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

21 (d) Exclusion.--This section does not apply to claims,  
22 records or statements made under the act of March 4, 1971  
23 (P.L.6, No.2), known as the Tax Reform Code of 1971.

24 (e) Actions to recover damages and adjustment of  
25 penalties.--A person who is liable for the damages or penalties  
26 assessed under subsections (a) and (b) shall also be liable to  
27 the Commonwealth for the costs of a civil action brought to  
28 recover any of those damages or penalties. The civil penalties  
29 payable under subsection (b) shall be adjusted from time to time  
30 as provided in the Federal Civil Penalties Inflation Adjustment

1 Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410).  
2 Section 302. Attorney General investigations and prosecutions;  
3 powers of prosecuting authority; civil actions by  
4 individuals as qui tam plaintiff and as private  
5 citizen; jurisdiction of courts.

6 (a) Responsibilities of the Attorney General.--The Attorney  
7 General shall diligently investigate a violation of section 301.  
8 If the Attorney General finds that a person has violated or is  
9 violating section 301, the Attorney General may bring a civil  
10 action under this section against that person.

11 (b) Actions by private persons.--

12 (1) A person may bring a civil action for a violation of  
13 this act for the person and for the Commonwealth in the name  
14 of the Commonwealth. The person bringing the action shall be  
15 referred to as the qui tam plaintiff. Once filed, the action  
16 shall be dismissed only with the written consent of the  
17 court, taking into account the best interest of the parties  
18 involved and the policy of this act.

19 (2) A copy of the complaint and written disclosure of  
20 substantially all material evidence and information the qui  
21 tam plaintiff possesses shall be served on the Attorney  
22 General. The complaint shall be filed in camera and shall  
23 remain under seal for at least 60 days and shall not be  
24 served on the defendant until the court orders the service.  
25 The Commonwealth may elect to intervene and proceed with the  
26 action within 60 days after it receives the complaint and the  
27 material evidence and information.

28 (3) The Commonwealth may, for good cause shown, move the  
29 court for extensions of the time during which the complaint  
30 remains under seal under paragraph (2). The motions may be



1 supported by affidavits or other submissions in camera. The  
2 defendant shall not be required to respond to any complaint  
3 filed under this section until the complaint is unsealed and  
4 served upon the defendant under the Pennsylvania Rules of  
5 Civil Procedure.

6 (4) Before the expiration of the 60-day period or any  
7 extensions obtained under paragraph (3), the Commonwealth  
8 shall:

9 (i) proceed with the action, in which case the  
10 action shall be conducted by the Commonwealth; or

11 (ii) notify the court it declines to take over the  
12 action, in which case the person bringing the action  
13 shall have the right to conduct the action.

14 (5) (i) If a municipality is named as a coplaintiff  
15 with the Commonwealth in an action brought under this  
16 subsection, the qui tam plaintiff or the Commonwealth  
17 may, notwithstanding a seal on the action ordered by the  
18 court, serve the complaint, other pleadings and written  
19 disclosure of substantially all material evidence and  
20 information possessed by the qui tam plaintiff on the  
21 appropriate local law enforcement authorities.

22 (ii) If information about an action is shared with  
23 local law enforcement under subparagraph (i), the seal on  
24 the action ordered by the court shall apply to the  
25 subject municipality and local law enforcement  
26 authorities to the same extent as the seal applied to  
27 other parties in the action.

28 (c) Intervention.--When a person brings a valid action under  
29 this subsection, no person other than the Commonwealth may  
30 intervene or bring a related action based on the facts

1 underlying the pending action.

2 (d) Rights of the parties to qui tam actions.--

3 (1) If the Commonwealth proceeds with the action, it  
4 shall have the primary responsibility for prosecuting the  
5 action and shall not be bound by an act of the person  
6 bringing the action. The qui tam plaintiff shall have the  
7 right to continue as a party to the action, subject to the  
8 limitations set forth in paragraph (2).

9 (2) (i) The Commonwealth may move to dismiss the action  
10 for good cause despite the objections of the qui tam  
11 plaintiff if the qui tam plaintiff has been notified by  
12 the Commonwealth of the filing of the motion and the  
13 court has provided the qui tam plaintiff with an  
14 opportunity to oppose the motion and present evidence at  
15 a hearing.

16 (ii) The Commonwealth may settle the action with the  
17 defendant despite the objections of the qui tam plaintiff  
18 if the court determines, after a hearing providing the  
19 qui tam plaintiff an opportunity to present evidence, the  
20 proposed settlement is fair, adequate and reasonable  
21 under the circumstances.

22 (iii) Upon a showing by the Commonwealth that  
23 unrestricted participation during the course of the  
24 litigation by the qui tam plaintiff would interfere with  
25 or unduly delay the Commonwealth's prosecution of the  
26 case or would be repetitious, irrelevant or harassment,  
27 the court may, in its discretion, impose limitations on  
28 the qui tam plaintiff's participation by:

29 (A) limiting the number of witnesses the person  
30 may call;

1 (B) limiting the length of the testimony of the  
2 witnesses;

3 (C) limiting the qui tam plaintiff's cross-  
4 examination of witnesses; or

5 (D) otherwise limiting the participation by the  
6 person in the litigation.

7 (iv) Upon a showing by the defendant that  
8 unrestricted participation during the litigation by the  
9 qui tam plaintiff initiating the action would be for  
10 purposes of harassment or would cause the defendant undue  
11 burden or unnecessary expense, the court may limit the  
12 participation by the qui tam plaintiff in the litigation.

13 (3) If the Commonwealth elects not to proceed with the  
14 action, the qui tam plaintiff shall have the right to conduct  
15 the action. If the Commonwealth requests, it shall be served  
16 with copies of all pleadings filed in the action and shall be  
17 supplied with copies of all deposition transcripts at the  
18 Commonwealth's expense. When a person proceeds with the  
19 action, the court, without limiting the status and rights of  
20 the qui tam plaintiff, may permit the Commonwealth to  
21 intervene at a later date upon a showing of good cause.

22 (4) Whether or not the Commonwealth proceeds with the  
23 action, upon a showing by the Commonwealth that certain  
24 actions of discovery by the qui tam plaintiff would interfere  
25 with the Commonwealth's investigation or prosecution of a  
26 criminal or civil matter arising out of the same facts, the  
27 court may stay the discovery for a period of not more than 60  
28 days. The showing shall be conducted in camera. The court may  
29 extend the 60-day period upon a further showing in camera  
30 that the Commonwealth has pursued the criminal or civil

1 investigation or proceedings with reasonable diligence and  
2 the discovery proposed in the civil action will interfere  
3 with the ongoing criminal or civil investigations or  
4 proceedings.

5 (5) Notwithstanding subsection (b), the Commonwealth may  
6 elect to pursue its claim through an alternate remedy  
7 available to the Commonwealth, including an administrative  
8 proceeding to determine a civil money penalty. If the  
9 alternate remedy is pursued in another proceeding, the qui  
10 tam plaintiff shall have the same rights in the proceeding as  
11 if the action continued under this section. A finding of fact  
12 or conclusion of law made in the other proceeding that has  
13 become final shall be conclusive on all parties to an action  
14 under this section. A finding or conclusion is final if it  
15 has been finally determined on appeal to the appropriate  
16 court of the Commonwealth, if the time for filing the appeal  
17 regarding the finding or conclusion has expired without an  
18 appeal having been filed or if the finding or conclusion is  
19 not subject to judicial review.

20 (e) Award to qui tam plaintiff.--

21 (1) If the Commonwealth proceeds with an action brought  
22 by a qui tam plaintiff, the qui tam plaintiff shall, subject  
23 to the provisions of this paragraph, receive at least 15% but  
24 not more than 25% of the proceeds of the action or settlement  
25 of the claim, including damages, civil penalties, payments  
26 for costs of compliance and any other economic benefit  
27 realized by the Commonwealth as a result of the action,  
28 depending upon the extent to which either or both the person  
29 and his counsel substantially contributed to the prosecution  
30 of the action. Where the court finds the action is based

1 primarily on disclosures of specific information, other than  
2 information provided by the qui tam plaintiff, relating to  
3 allegations or transactions specifically in a criminal, civil  
4 or administrative hearing or in a legislative or  
5 administrative report, hearing, audit or investigation or  
6 from the news media, the court may award the sums as it  
7 considers appropriate, but in no case more than 10% of the  
8 proceeds, taking into account the significance of the  
9 information and the role of the person bringing the action in  
10 advancing the case to litigation. A payment to a person under  
11 the first or second sentence of this paragraph shall be made  
12 from the proceeds. The person shall also receive an amount  
13 for reasonable expenses which the appropriate judge finds was  
14 necessarily incurred, plus reasonable attorney fees and  
15 costs. The expenses, fees and costs shall be awarded against  
16 the defendant. Reasonable attorney fees shall not exceed 30%  
17 of the proceeds received by the qui tam plaintiff through  
18 pursuit of the action or settlement of the claim.

19 (2) If the Commonwealth does not proceed with an action  
20 under this section, the qui tam plaintiff shall receive an  
21 amount which the court decides is reasonable for collecting  
22 the civil penalty and damages. The amount shall not be less  
23 than 25% and not more than 30% of the proceeds of the action  
24 or settlement and shall be paid out of the proceeds, which  
25 includes damages, civil penalties, payments for costs of  
26 compliance and any other economic benefit realized by the  
27 government as a result of the action. The person shall also  
28 receive an amount for reasonable expenses which the  
29 appropriate Commonwealth court judge finds to have been  
30 necessarily incurred, plus reasonable attorney fees and

1 costs. All the expenses, fees and costs shall be awarded  
2 against the defendant. Reasonable attorney fees shall not  
3 exceed 30% of the proceeds received by the qui tam plaintiff  
4 through pursuit of the action or settlement of the claim.

5 (3) Whether or not the Commonwealth proceeds with the  
6 action, if the court finds the action was filed by a person  
7 who planned and initiated the violation of section 301(a)  
8 upon which the action was filed, then the court may, to the  
9 extent the court considers appropriate, reduce the share of  
10 the proceeds of the action which the person would otherwise  
11 receive under paragraph (1) or (2), taking into account the  
12 role of that person in advancing the case to litigation and  
13 any relevant circumstances pertaining to the violation. If  
14 the person bringing the action is convicted of criminal  
15 conduct arising from his or her role in the violation of  
16 section 301(a), that person shall be dismissed from the civil  
17 action and shall not receive a share of the proceeds of the  
18 action. The dismissal shall not prejudice the right of the  
19 Commonwealth to continue the action.

20 (4) If the Commonwealth does not proceed with the action  
21 and the person bringing the action conducts the action, the  
22 court may award to the defendant its reasonable attorney fees  
23 and expenses if the defendant prevails in the action and the  
24 court finds the claim of the person bringing the action was  
25 clearly frivolous, clearly vexatious or brought primarily for  
26 purposes of harassment.

27 (f) Limitations on actions.--

28 (1) No court shall have jurisdiction over an action  
29 brought under subsection (b) against a member of the  
30 legislative branch, a member of the judiciary or a senior

1 executive branch official if the action is based on evidence  
2 or information known to the Commonwealth when the action was  
3 brought.

4 (2) In no event may a person bring an action under  
5 subsection (b) which is based upon allegations or  
6 transactions which are the subject of a civil suit or an  
7 administrative civil penalty proceeding for money in which  
8 the Commonwealth is already a party.

9 (3) Upon the motion of the Attorney General, the court  
10 may, in consideration of all the equities, dismiss the  
11 elements of an actionable false claim alleged in a qui tam  
12 complaint which have been publicly disclosed in the news  
13 media or in a publicly disseminated governmental report at  
14 the time the complaint is filed, unless the qui tam plaintiff  
15 is an original source of the information.

16 (g) Commonwealth not liable for certain expenses.--The  
17 Commonwealth is not liable for expenses which a person incurs in  
18 bringing an action under this section.

19 (h) Private action for retaliation action.--An employee,  
20 contractor or agent who is discharged, demoted, suspended,  
21 threatened, harassed or in any other manner discriminated  
22 against in the terms and conditions of employment, contract or  
23 agency because of lawful acts by the employee, contractor or  
24 agent on behalf of the employee, contractor or agent or  
25 associated others in furtherance of an action under this section  
26 or efforts to stop one or more violations of this act, including  
27 investigation for, initiation of, testimony for or assistance in  
28 an action filed or to be filed under this section, shall be  
29 entitled to all relief necessary to make the employee,  
30 contractor or agent whole. The relief shall include

1 reinstatement with the same seniority status the employee,  
2 contractor or agent would have had but for the discrimination,  
3 two times the amount of back pay, interest on the back pay, and  
4 compensation for any special damages sustained as a result of  
5 the discrimination, including litigation costs and reasonable  
6 attorney fees. The Commonwealth Court shall have exclusive  
7 jurisdiction for all actions seeking relief under this  
8 subsection.

9 (i) Civil investigative demand.--

10 (1) (i) The Attorney General shall have the authority  
11 to issue civil investigative demands under paragraph (2).

12 (ii) Nothing in this subsection shall be construed  
13 to limit the regulatory or investigative authority of any  
14 department or agency of the Commonwealth whose functions  
15 may relate to persons, enterprises or matters falling  
16 within the scope of this chapter.

17 (2) (i) Whenever the Attorney General has reason to  
18 believe that any person may be in possession, custody or  
19 control of documentary material relevant to an  
20 investigation under this chapter, the Attorney General  
21 may issue in writing, and cause to be served upon the  
22 person, a civil investigative demand requiring the  
23 production of the material for examination.

24 (ii) Each demand shall:

25 (A) state the nature of the conduct constituting  
26 the alleged violation which is under investigation,  
27 the applicable provision of law and the connection  
28 between the documentary material demanded and the  
29 conduct under investigation;

30 (B) describe the class or classes of documentary



1 material to be produced with sufficient definiteness  
2 and certainty to permit the material to be fairly  
3 identified;

4 (C) state the demand is returnable or prescribe  
5 a return date which will provide a reasonable time  
6 period within which the material demanded may be  
7 assembled and made available for inspection and  
8 copying or reproduction;

9 (D) identify an investigator to whom the  
10 material shall be made available; and

11 (E) contain the following statement printed  
12 conspicuously at the top of the demand: "You have the  
13 right to seek the assistance of an attorney and he  
14 may represent you in all phases of the investigation  
15 of which this civil investigative demand is a part."

16 (iii) The demand shall not:

17 (A) contain a requirement which would be held to  
18 be unreasonable if contained in a subpoena duces  
19 tecum issued by any court in connection with a grand  
20 jury investigation of such alleged violation; or

21 (B) require the production of documentary  
22 evidence which would be privileged from disclosure if  
23 demanded by a subpoena duces tecum issued by a court  
24 in connection with a grand jury investigation of the  
25 alleged violation.

26 (iv) Service of any such demand or any petition  
27 filed under this paragraph shall be made in the manner  
28 prescribed by the Pennsylvania Rules of Civil Procedure  
29 for service of writs and complaints.

30 (v) A verified return by the individual serving a

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

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

17 (B) The investigator to whom documentary  
18 material is delivered shall take physical possession  
19 of it and shall be responsible for the use for which  
20 it is made and for its return under this paragraph.  
21 The investigator may cause the preparation of copies  
22 of the documentary material as may be required for  
23 official use. While in the possession of the  
24 investigator, no material produced shall be available  
25 for examination without the consent of the person who  
26 produced the material by an individual other than the  
27 Attorney General or investigator. Under reasonable  
28 terms and conditions as the Attorney General shall  
29 prescribe, documentary material while in the  
30 possession of the investigator shall be available for

1 examination by the person who produced the material  
2 or a duly authorized representative of the person.

3 (C) Upon completion of the investigation for  
4 which documentary material was produced under this  
5 paragraph and any case or proceeding arising from the  
6 investigation, the investigator shall return to the  
7 person who produced the material all the material  
8 other than copies made under this paragraph which  
9 have not passed into the control of any court or  
10 grand jury through introduction into the record of  
11 the case or proceeding.

12 (D) When documentary material has been produced  
13 by a person under this paragraph for use in an  
14 investigation and no case or proceeding arising  
15 therefrom has been instituted within a reasonable  
16 time after completion of the examination and analysis  
17 of all evidence assembled in the course of the  
18 investigation, the person shall be entitled, upon  
19 written demand made upon the Attorney General, to the  
20 return of all documentary material, other than copies  
21 made under this paragraph, produced by the person.

22 (vii) Whenever a person fails to comply with a civil  
23 investigative demand duly served upon the person under  
24 this paragraph or whenever satisfactory copying or  
25 reproduction of the material cannot be done and the  
26 person refuses to surrender the material, the Attorney  
27 General may file, in Commonwealth Court, and serve upon  
28 the person a petition for an order of the court for the  
29 enforcement of this paragraph.

30 (viii) Within 20 days after the service of the

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

14 (ix) When the Attorney General is in custody or  
15 control of documentary material delivered by a person in  
16 compliance with a demand, the person may file, in  
17 Commonwealth Court, and serve upon the Attorney General a  
18 petition for an order of the court requiring the  
19 performance of a duty imposed by this paragraph.

20 (x) Whenever a petition is filed under this  
21 paragraph, the court shall have jurisdiction to hear and  
22 determine the matter so presented, and, after a hearing  
23 at which all parties are represented, to enter an order  
24 as may be required to carry into effect the provisions of  
25 this paragraph.

26 (3) Whenever an individual refuses, on the basis of his  
27 Fifth Amendment privilege against self-incrimination, to  
28 comply with a civil investigative demand issued under  
29 paragraph (2), the Attorney General may invoke the provisions  
30 of 42 Pa.C.S. § 5947 (relating to immunity of witnesses).

1           (4) The Attorney General may delegate the authority to  
2 issue civil investigative demands under this subsection. If a  
3 civil investigative demand is an express demand for the  
4 production of discovery, the Attorney General or his designee  
5 shall cause to be served, in any manner authorized under this  
6 subsection, a copy of the demand upon the person from whom  
7 the discovery was obtained and shall notify the person to  
8 whom the demand is issued of the date on which the copy was  
9 served. Any information obtained by the Attorney General or  
10 his designee under this subsection may be shared with a qui  
11 tam plaintiff if the Attorney General or his designee  
12 determines it is necessary as part of an investigation of a  
13 claim.

14 Section 303. Limitation of actions; prior activities; burden of  
15 proof.

16 (a) Statute of limitations.--

17 (1) A civil action under section 302 may not be brought  
18 more than ten years after the date on which the violation was  
19 committed.

20 (2) (i) If the Commonwealth elects to intervene and  
21 proceed with an action brought under section 302(b), the  
22 Commonwealth may file its own complaint or amend the  
23 complaint of the qui tam plaintiff who brought the action  
24 in order to clarify or add detail to the claims and to  
25 add any additional claims with respect to which the  
26 Commonwealth contends it is entitled to relief.

27 (ii) If the Commonwealth makes an election under  
28 subparagraph (i), any such Commonwealth pleading shall  
29 relate back to the filing date of the complaint of the  
30 qui tam plaintiff to the extent that the claim of the

1 Commonwealth arises out of the conduct, transactions or  
2 occurrences set forth, or attempted to be set forth, in  
3 the qui tam plaintiff's complaint.

4 (b) Burden of proof.--In any action brought under section  
5 302, the Commonwealth or the qui tam plaintiff shall be required  
6 to prove all essential elements of the cause of action,  
7 including damages, by a preponderance of the evidence.

8 (c) Estoppel.--Notwithstanding any other provision of law, a  
9 guilty verdict rendered in a criminal proceeding charging false  
10 statements or fraud, whether upon a verdict after trial or upon  
11 a plea of guilty or nolo contendere, shall estop the defendant  
12 from denying the essential elements of the offense in any action  
13 which involves the same transaction as in the criminal  
14 proceeding and which is brought under section 302(a) or (b).

15 Section 304. Remedies under other laws; severability of  
16 provisions; liberality of legislative construction.

17 (a) Remedies under other laws.--The provisions of this act  
18 are not exclusive and the remedies provided for in this act  
19 shall be in addition to any other remedies provided for in any  
20 other law or available under common law.

21 (b) Liberality of legislative construction.--This chapter  
22 shall be liberally construed and applied to promote the public  
23 interest.

24 Section 305. Regulations.

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

28 (b) Guidelines.--In order to facilitate the speedy  
29 implementation of this chapter, the Attorney General shall have  
30 the power and authority to promulgate, adopt and use guidelines

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

12 CHAPTER 21

13 MISCELLANEOUS PROVISIONS

14 Section 2101. Effective date.

15 This act shall take effect in 60 days.