

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 654

Session of
2015

INTRODUCED BY NEUMAN, CUTLER, BIZZARRO, CALTAGIRONE, KOTIK,
McNEILL, W. KELLER, JAMES, SNYDER, PASHINSKI, KORTZ,
LONGIETTI, READSHAW, D. MILLER, MULLERY, SCHLOSSBERG,
M. DALEY, MURT, SCHWEYER, MILLARD, DeLUCA, ROZZI, SCHREIBER,
D. COSTA, SABATINA AND HANNA, FEBRUARY 26, 2015

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 26, 2015

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," providing for liability
4 for false claims, for adoption of congressional intent of the
5 Federal False Claims Act, for treble damages, costs and civil
6 penalties, for powers of the Attorney General and for qui tam
7 actions.

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

10 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
11 as the Public Welfare Code, is amended by adding an article to
12 read:

13 ARTICLE XIV-C

14 LIABILITY FOR FALSE CLAIMS

15 (a) Preliminary Provisions

16 Section 1401-C. Short title.

17 This article shall be known and may be cited as the

18 Pennsylvania False Claims Act.

19 Section 1402-C. Declaration of policy.

1 The General Assembly declares that this article adopts the
2 intent of Congress in enacting the Federal False Claims Act
3 (Public Law 97-258, 31 U.S.C. §§ 3729-3733) on September 13,
4 1982, including the amendments (Public Law 99-562, 100 Stat.
5 3153) enacted October 27, 1986, and all subsequent amendments.
6 Section 1403-C. Definitions.

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

10 "Claim." As follows:

11 (1) A request or demand for money or property, whether
12 under contract or otherwise and regardless of whether the
13 Commonwealth has title to the money or property, which meets
14 any of the following:

15 (i) Is presented to an employee, officer or agent of
16 the Commonwealth.

17 (ii) Is made to a contractor, grantee or other
18 recipient and any portion of the money or property will
19 be spent or used on the Commonwealth's behalf or to
20 advance a program or interest of the Commonwealth, and
21 the Commonwealth:

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

24 (B) will reimburse the contractor, grantee or
25 other recipient for any portion of the money or
26 property which is requested or demanded.

27 (2) The term does not include requests or demands for
28 money or property the Commonwealth has paid to an individual
29 as compensation for employment or as an income subsidy with
30 no restrictions on the individual's use of the money or

1 property.

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

6 "Executive-level State employee." The term includes the
7 following:

8 (1) The Governor and Lieutenant Governor.
9 (2) The Governor's and the Lieutenant Governor's
10 executive office staff.

11 (3) A cabinet member and deputy secretary.
12 (4) An employee of the executive branch who has
13 discretionary power that may affect or influence the outcome
14 of an executive branch agency's action or decision.

15 "Knowingly." As follows:

16 (1) Whenever a person, with respect to information, does
17 any of the following:

18 (i) Has actual knowledge of the information.
19 (ii) Acts in deliberate ignorance of the truth or
20 falsity of the information.
21 (iii) Acts in reckless disregard of the truth or
22 falsity of the information.

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

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

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

28 (1) An express or implied contract.
29 (2) A grantor-grantee relationship.
30 (3) A licensor-licensee relationship.

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

2 (5) A statute or regulation.

3 (6) The retention of an overpayment.

4 "Official use." Any use that is consistent with the law and
5 the regulations and policies of the Office of Attorney General
6 including the following:

7 (1) Use in connection with internal memoranda and
8 reports.

9 (2) Communications between the Office of Attorney
10 General and a Federal, State or local government agency or a
11 contractor of a Federal, State or local government agency,
12 undertaken in furtherance of an investigation or prosecution
13 of an action.

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

15 (4) Oral examinations.

16 (5) Depositions.

17 (6) Preparation for and response to civil discovery
18 requests.

19 (7) Introduction into the record of an action or
20 proceeding.

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

23 (9) Communications with investigators, auditors,
24 consultants and experts, the counsel of other parties,
25 arbitrators and mediators, concerning an investigation,
26 action or proceeding.

27 "Original source." An individual who:

28 (1) prior to a public disclosure in the news media or in
29 a publicly disseminated governmental report, has voluntarily
30 disclosed to the Commonwealth the information on which

1 allegations or transactions in a claim are based; or
2 (2) has knowledge that is independent of and materially
3 adds to the publicly disclosed allegations or transactions
4 and who has voluntarily provided the information to the
5 Commonwealth before filing an action under section 302.
6 "Person." A natural person, corporation, firm, association,
7 organization, partnership, business or trust.
8 "Qui tam plaintiff." A person bringing a civil action under
9 section 1412-C.

10 (b) False Claims

11 Section 1411-C. Acts subjecting persons to liability.

12 (a) Liability.--A person who commits an act prohibited in
13 subsection (b) shall be liable to the Commonwealth for three
14 times the amount of damages which the Commonwealth sustains
15 because of the act of that person.

16 (b) Prohibited acts.--A person who commits any of the
17 following acts shall also be liable to the Commonwealth for a
18 civil penalty of not less than \$5,500 and not more than \$11,000
19 for each violation:

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

22 (2) Knowingly makes, uses or causes to be made or used,
23 a false record or statement material to a false or fraudulent
24 claim.

25 (3) Has possession, custody or control of public
26 property or money used or to be used by the Commonwealth and
27 knowingly delivers or causes to be delivered less than all of
28 the money or property.

29 (4) Is authorized to make or deliver a document
30 certifying receipt of property used or to be used by the

1 Commonwealth and knowingly makes or delivers a receipt that
2 falsely represents the property used or to be used.

3 (5) Knowingly buys or receives as a pledge of an
4 obligation or debt, property owned by the Commonwealth from
5 any person who lawfully may not sell or pledge the property.

6 (6) Knowingly makes, uses or causes to be made or used,
7 a false record or statement material to an obligation to pay
8 or transmit money or property to the Commonwealth or
9 knowingly conceals, or knowingly and improperly avoids or
10 decreases an obligation to pay or transmit money or property
11 to the Commonwealth.

12 (7) Knowingly fails to disclose a fact, event or
13 occurrence material to an obligation to pay or transmit money
14 or property to the Commonwealth.

15 (8) Is a beneficiary of an inadvertent submission of a
16 false claim, subsequently discovers the falsity of the claim
17 and fails to disclose the false claim to the Commonwealth
18 within a reasonable time after discovery of the false claim.

19 (9) Conspires to commit a violation of paragraph (1),
20 (2), (3), (4), (5), (6), (7) or (8).

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

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

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

3 (3) At the time the person furnished the Commonwealth
4 with information about the violation, no criminal
5 prosecution, civil action or administrative action had
6 commenced with respect to the violation, and the person did
7 not have actual knowledge of the existence of an
8 investigation into the violation.

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

12 (e) Actions to recover damages and adjustment of
13 penalties.--A person who is liable for the damages or penalties
14 assessed under subsections (a) and (b) shall also be liable to
15 the Commonwealth for the costs of a civil action, including
16 reasonable outside and in-house attorney fees of the Attorney
17 General, brought to recover any of those damages or penalties.
18 The civil penalties payable under subsection (b) shall be
19 adjusted from time to time as provided in the Federal Civil
20 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note;
21 Public Law 104-410).

22 Section 1412-C. Attorney General investigations and
23 prosecutions; civil actions by qui tam plaintiffs.

24 (a) Responsibilities of the Attorney General.--The Attorney
25 General shall diligently investigate a violation of section
26 1411-C. If the Attorney General finds that a person has violated
27 or is violating section 1411-C, the Attorney General may bring a
28 civil action in Commonwealth Court under this section against
29 that person.

30 (b) Actions by qui tam plaintiffs.--

1 (1) A qui tam plaintiff may bring a civil action in
2 Commonwealth Court for a violation of this article for the
3 qui tam plaintiff and for the Commonwealth in the name of the
4 Commonwealth. Once filed, the action shall be dismissed only
5 with the written consent of the court, taking into account
6 the best interest of the parties involved and the policy of
7 this article.

8 (2) A copy of the complaint and written disclosure of
9 substantially all material evidence and information the qui
10 tam plaintiff possesses shall be served on the Attorney
11 General. The complaint shall be filed in camera and shall
12 remain under seal for at least 60 days and shall not be
13 served on the defendant until the court orders the service.
14 The Commonwealth may elect to intervene and proceed with the
15 action within 60 days after it receives the complaint and the
16 material evidence and information.

17 (3) The Commonwealth may, for good cause shown, move the
18 court for extensions of the time during which the complaint
19 remains under seal under paragraph (2). The motions may be
20 supported by affidavits or other submissions in camera. The
21 defendant shall not be required to respond to any complaint
22 filed under this section until the complaint is unsealed and
23 served upon the defendant under the Pennsylvania Rules of
24 Civil Procedure.

25 (4) Before the expiration of the 60-day period or any
26 extensions obtained under paragraph (3), the Commonwealth
27 shall:

- 28 (i) proceed with the action, in which case the
29 action shall be conducted by the Commonwealth; or
- 30 (ii) notify the court it declines to take over the

1 action, in which case the qui tam plaintiff shall have
2 the right to conduct the action.

3 (c) Intervention.--When a qui tam plaintiff brings a valid
4 action under subsection (b), no person other than the
5 Commonwealth may intervene or bring a related action based on
6 the facts underlying the pending action.

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

8 (1) If the Commonwealth proceeds with the action, it
9 shall have the primary responsibility for prosecuting the
10 action and shall not be bound by an act of the qui tam
11 plaintiff. The qui tam plaintiff shall have the right to
12 continue as a party to the action, subject to the limitations
13 set forth in paragraph (2).

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

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

27 (iii) Upon a showing by the Commonwealth that
28 unrestricted participation during the course of the
29 action by the qui tam plaintiff would interfere with or
30 unduly delay the Commonwealth's prosecution of the case

1 or would be repetitious, irrelevant or harassment, the
2 court may, in its discretion, impose limitations on the
3 qui tam plaintiff's participation by:

4 (A) limiting the number of witnesses the qui tam
5 plaintiff may call;

6 (B) limiting the length of the testimony of the
7 witnesses;

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

10 (D) otherwise limiting the participation by the
11 qui tam plaintiff in the action.

12 (iv) Upon a showing by the defendant that
13 unrestricted participation during the action by the qui
14 tam plaintiff would be for purposes of harassment or
15 would cause the defendant undue burden or unnecessary
16 expense, the court may limit the participation by the qui
17 tam plaintiff in the action.

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

27 (4) Whether or not the Commonwealth proceeds with the
28 action, upon a showing by the Commonwealth that certain
29 actions of discovery by the qui tam plaintiff would interfere
30 with the Commonwealth's investigation or prosecution of a

1 criminal or civil matter arising out of the same facts, the
2 court may stay the discovery for a period of not more than 60
3 days. The showing shall be conducted in camera. The court may
4 extend the 60-day period upon a further showing in camera
5 that the Commonwealth has pursued the criminal or civil
6 investigation or proceedings with reasonable diligence and
7 the discovery proposed in the civil action will interfere
8 with the ongoing criminal or civil investigations or
9 proceedings.

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

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

26 (1) If the Commonwealth proceeds with an action brought
27 by a qui tam plaintiff, the qui tam plaintiff shall, subject
28 to the provisions of this paragraph, receive at least 15% but
29 not more than 25% of the proceeds of the action or settlement
30 of the claim, depending upon the extent to which either or

1 both the qui tam plaintiff and counsel for the qui tam
2 plaintiff substantially contributed to the prosecution of the
3 action. Where the court finds the action is based primarily
4 on disclosures of specific information, other than
5 information provided by the qui tam plaintiff, relating to
6 allegations or transactions specifically in a criminal, civil
7 or administrative hearing or in a legislative or
8 administrative report, hearing, audit or investigation or
9 from the news media, the court may award a sum it considers
10 appropriate, but in no case more than 10% of the proceeds,
11 taking into account the significance of the information and
12 the role of the qui tam plaintiff in advancing the action. A
13 payment to a qui tam plaintiff under the first or second
14 sentence of this paragraph shall be made from the proceeds.
15 The qui tam plaintiff shall also receive an amount for
16 reasonable expenses which the court finds was necessarily
17 incurred, plus reasonable attorney fees and costs. The
18 expenses, fees and costs shall be awarded against the
19 defendant.

20 (2) If the Commonwealth does not proceed with an action
21 under this section, the qui tam plaintiff shall receive at
22 least 25% but not more than 30% of the proceeds of the action
23 or settlement of the claim, as the court deems reasonable.
24 The amount shall be paid from the proceeds. The qui tam
25 plaintiff shall also receive an amount for reasonable
26 expenses which the court finds to have been necessarily
27 incurred, plus reasonable attorney fees and costs. The
28 expenses, fees and costs shall be awarded against the
29 defendant.

30 (3) Whether or not the Commonwealth proceeds with the

1 action, if the court finds the qui tam plaintiff planned and
2 initiated the violation of section 1411-C upon which the
3 action was filed, then the court may, to the extent the court
4 considers appropriate, reduce the share of the proceeds of
5 the action which the qui tam plaintiff would otherwise
6 receive under paragraph (1) or (2), taking into account the
7 role of the qui tam plaintiff in advancing the action and any
8 relevant circumstances pertaining to the violation. If the
9 qui tam plaintiff is convicted of criminal conduct arising
10 from his or her role in the violation, the qui tam plaintiff
11 shall be dismissed from the civil action and shall not
12 receive a share of the proceeds of the action. The dismissal
13 shall not prejudice the right of the Commonwealth to continue
14 the action.

15 (4) If the Commonwealth does not proceed with the action
16 and the qui tam plaintiff conducts the action, the court may
17 award to the defendant its reasonable attorney fees and
18 expenses if the defendant prevails in the action and the
19 court finds the claim of the qui tam plaintiff was clearly
20 frivolous, clearly vexatious or brought primarily for
21 purposes of harassment.

22 (5) Fifteen percent of the Commonwealth's share of
23 proceeds of an action or settlement of a claim under this
24 section shall be deposited into the False Claims Prosecution
25 Fund established in subsection (k).

26 (f) Limitations on actions.--

27 (1) A court does not have jurisdiction over an action
28 filed under this section against a member of the General
29 Assembly, a member of the judiciary or an executive-level
30 State employee if the action is based on evidence or

1 information known to the Commonwealth when the action was
2 brought.

3 (2) Subject to the provisions of paragraph (3), the
4 court shall dismiss an action brought under subsection (b) if
5 substantially the same allegations or transactions alleged in
6 the action were publicly disclosed in:

7 (i) the news media;

8 (ii) a criminal, civil or administrative hearing in
9 which the Commonwealth is or was a party; or
10 (iii) a State legislative or other State report,
11 hearing, audit or investigation.

12 (3) The court may not dismiss an action under paragraph
13 (2) if:

14 (i) the action was brought by the Attorney General;

15 (ii) the dismissal is opposed by the Attorney
16 General; or

17 (iii) the qui tam plaintiff is the original source
18 of the information.

19 (g) Commonwealth not liable for certain expenses.--The
20 Commonwealth is not liable for expenses which a qui tam
21 plaintiff incurs in bringing an action under this section.

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

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

11 (i) Civil investigative demand.--

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

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

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

26 (ii) Each demand shall:

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

1 conduct under investigation;

2 (B) describe the class or classes of documentary
3 material to be produced with sufficient definiteness
4 and certainty to permit the material to be fairly
5 identified;

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

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

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

18 (iii) The demand shall not:

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

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

28 (iv) Service of any such demand or any petition
29 filed under this paragraph shall be made in the manner
30 prescribed by the Pennsylvania Rules of Civil Procedure

1 for service of writs and complaints.

2 (v) A verified return by the individual serving a
3 demand or petition setting forth the manner of the
4 service shall be prima facie proof of the service. In the
5 case of service by registered or certified mail, the
6 return shall be accompanied by the return post office
7 receipt of delivery of the demand.

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

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

1 prescribe, documentary material while in the
2 possession of the investigator shall be available for
3 examination by the person who produced the material
4 or a duly authorized representative of the person.

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

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

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

1 enforcement of this paragraph.

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

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

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

28 (3) Whenever an individual refuses, on the basis of the
29 individual's Fifth Amendment privilege against self-
30 incrimination, to comply with a civil investigative demand

1 issued under paragraph (2), the Attorney General may invoke
2 the provisions of 42 Pa.C.S. § 5947 (relating to immunity of
3 witnesses).

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

18 (j) Cooperation by agencies.--Commonwealth agencies shall
19 cooperate in the investigation and prosecution of false claims
20 under this section, whether the claims are brought by the
21 Attorney General or a qui tam plaintiff.

22 (k) False Claims Prosecution Fund.--There is hereby
23 established in the State Treasury a special fund to be known as
24 the False Claims Prosecution Fund. The money deposited into the
25 fund shall be utilized by the Attorney General for the exclusive
26 purpose of investigating and prosecuting false claims under this
27 article. The money in the fund may not lapse and is continuously
28 appropriated for the purposes set forth in this subsection.

29 Section 1413-C. Statute of limitations; burden of proof;
30 estoppel.

1 (a) Statute of limitations.--

2 (1) Except for an action brought under section 1412-
3 C(h), a civil action under section 1412-C may not be brought
4 more than ten years after the date on which the violation was
5 committed. An action under section 1412-C(h) may not be
6 brought more than three years after the date the retaliation
7 occurred.

8 (2) (i) If the Commonwealth elects to intervene and
9 proceed with an action brought under section 1412-C(b),
10 the Commonwealth may file its own complaint or amend the
11 complaint of the qui tam plaintiff who brought the action
12 in order to clarify or add detail to the claims and to
13 add any additional claims with respect to which the
14 Commonwealth contends it is entitled to relief.

15 (ii) If the Commonwealth makes an election under
16 subparagraph (i), any such Commonwealth pleading shall
17 relate back to the filing date of the complaint of the
18 qui tam plaintiff to the extent that the claim of the
19 Commonwealth arises out of the conduct, transactions or
20 occurrences set forth, or attempted to be set forth, in
21 the qui tam plaintiff's complaint.

22 (b) Burden of proof.--In any action brought under section

23 1412-C, the Commonwealth or the qui tam plaintiff shall be
24 required to prove all essential elements of the cause of action,
25 including damages, by a preponderance of the evidence.

26 (c) Estoppel.--Notwithstanding any other provision of law, a
27 guilty verdict rendered in a criminal proceeding charging false
28 statements or fraud, whether upon a verdict after trial or upon
29 a plea of guilty or nolo contendere, shall estop the defendant
30 from denying the essential elements of the offense in any action

1 which involves the same transaction as in the criminal
2 proceeding and which is brought under section 1412-C(a) or (b).

3 Section 1414-C. Miscellaneous provisions.

4 (a) Remedies under other laws.--The provisions of this
5 article are not exclusive and the remedies provided for in this
6 article shall be in addition to any other remedies provided for
7 in any other law or available under common law.

8 (b) Liberality of legislative construction.--This article
9 shall be liberally construed and applied to promote the public
10 interest.

11 (c) Regulations.--The Attorney General shall have the power
12 and authority to promulgate rules and regulations which may be
13 necessary to carry out the purposes set forth in this article.

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

27 Section 2. This act shall take effect immediately.