

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2352 Session of 2020

INTRODUCED BY GROVE, KAUFER, GAYDOS, OWLETT, SANKEY, THOMAS, JONES, MILLARD, BERNSTINE, RYAN, WHEELAND, SAYLOR, COX, MOUL, KEEFER, KLUNK, DUSH, B. MILLER, RADER, ROWE AND NELSON, MAY 21, 2020

AS RE-REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 30, 2020

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 damages, costs and civil~~
6 ~~penalties, for powers of Attorney General and for civil~~
7 ~~investigative demands.~~ PROVIDING FOR LIABILITY FOR FALSE <--
8 CLAIMS, FOR ADOPTION OF CONGRESSIONAL INTENT OF THE FEDERAL
9 FALSE CLAIMS ACT, FOR DAMAGES, COSTS AND CIVIL PENALTIES, FOR
10 POWERS OF ATTORNEY GENERAL, FOR CIVIL INVESTIGATIVE DEMANDS
11 AND FOR COVID-19-RELATED LIABILITY.

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25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

27 ~~Section 1. The act of June 13, 1967 (P.L.31, No.21), known <--~~
28 ~~as the Human Services Code, is amended by adding an article to~~
29 ~~read:~~

30 ARTICLE XIV D

1 LIABILITY FOR FALSE CLAIMS

2 (a) Preliminary Provisions

3 Section 1401 D. Short title.

4 This article shall be known and may be cited as the
5 Commonwealth Fraud Prevention Act.

6 Section 1402 D. 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 that is
14 presented, submitted or otherwise made to:

15 (i) An employee, officer or agent of the
16 Commonwealth.

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

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

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

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

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

5 "Knowingly." As follows:

6 ~~(1) Whenever a person, with respect to information, does~~
7 ~~any of the following:~~

8 ~~(i) Has actual knowledge of the information.~~

9 ~~(ii) Acts in deliberate ignorance of the truth or~~
10 ~~falsity of the information.~~

11 ~~(iii) Acts in reckless disregard of the truth or~~
12 ~~falsity of the information.~~

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

14 "Legal claim." A claim for relief at law or equity, whether
15 contemplated or asserted, including any claim, demand, account,
16 note or any other cause of action or liability.

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

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

21 ~~(1) An express or implied contractual relationship.~~

22 ~~(2) An express or implied grantor grantee relationship.~~

23 ~~(3) An express or implied licensor licensee~~
24 ~~relationship.~~

25 ~~(4) A fee based or similar relationship.~~

26 ~~(5) A statute or regulation.~~

27 ~~(6) The retention of an overpayment.~~

28 "Official use." A use that is consistent with the law and
29 the regulations and policies of the Office of Attorney General,
30 including the following:

1 ~~(1) Use in connection with internal memoranda and~~
2 ~~reports.~~

3 ~~(2) Communications between the Office of Attorney~~
4 ~~General and a Federal, State or local government agency or a~~
5 ~~contractor of a Federal, State or local government agency,~~
6 ~~undertaken in furtherance of an investigation or prosecution~~
7 ~~of an action.~~

8 ~~(3) Interviews of a whistleblower or other witness.~~

9 ~~(4) Oral examinations.~~

10 ~~(5) Depositions.~~

11 ~~(6) Preparation for and response to civil discovery~~
12 ~~requests.~~

13 ~~(7) Introduction into the record of an action or~~
14 ~~proceeding.~~

15 ~~(8) Applications, motions, memoranda and briefs~~
16 ~~submitted to a court or other tribunal.~~

17 ~~(9) Communications with investigators, auditors,~~
18 ~~consultants and experts, the counsel of other parties,~~
19 ~~arbitrators and mediators, concerning an investigation,~~
20 ~~action or proceeding.~~

21 ~~"Original information." Either of the following:~~

22 ~~(1) Information voluntarily disclosed to the Office of~~
23 ~~Attorney General, prior to a public disclosure, on which the~~
24 ~~allegations or transactions in a claim are based.~~

25 ~~(2) Information that is independent of and materially~~
26 ~~adds to publicly disclosed allegations or transactions.~~

27 ~~"Person." A natural person, corporation, firm, association,~~
28 ~~organization, partnership, limited liability company, business,~~
29 ~~trust, business trust, estate or foundation.~~

30 ~~"Public disclosure." Disclosure of substantially the same~~

1 ~~allegations or transactions as alleged by a whistleblower, made~~
2 ~~in any of the following:~~

3 ~~(1) The news media.~~

4 ~~(2) A criminal, civil or administrative hearing in which~~
5 ~~the Commonwealth is or was a party.~~

6 ~~(3) A Federal, State or local legislative or other~~
7 ~~governmental report, hearing, audit or investigation.~~

8 ~~"Whistleblower." An individual who furnishes the Office of~~
9 ~~Attorney General with information concerning a violation of~~
10 ~~section 1411-D.~~

11 ~~(b) False Claims~~

12 ~~Section 1411 D. Acts subjecting persons to liability and~~
13 ~~damages.~~

14 ~~(a) Liability. Except as provided in subsection (b), a~~
15 ~~person who commits any of the following acts shall be liable to~~
16 ~~the Commonwealth for three times the amount of damages that the~~
17 ~~Commonwealth sustains because of the act of that person plus,~~
18 ~~subject to subsection (d), a civil penalty of \$8,000 for each~~
19 ~~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 property or~~
26 ~~money used or to be used by the Commonwealth and knowingly~~
27 ~~delivers or causes to be delivered less than all of the money~~
28 ~~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, intending to defraud the Commonwealth,~~
2 ~~makes or delivers a receipt without completely knowing that~~
3 ~~the information on the receipt is true.~~

4 ~~(5) Knowingly buys or receives as a pledge of an~~
5 ~~obligation or debt, public property from an officer or~~
6 ~~employee of the Commonwealth who lawfully may not sell or~~
7 ~~pledge the property.~~

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

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

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

21 ~~(9) Conspires to commit a violation of paragraph (1),~~
22 ~~(2), (3), (4), (5), (6), (7) or (8).~~

23 ~~(b) Safe harbor and limitation of damages.~~

24 ~~(1) Notwithstanding subsection (a), a person violating~~
25 ~~this section shall not be subject to more than one time the~~
26 ~~amount of damages under subsection (a) if all of the~~
27 ~~following apply:~~

28 ~~(i) The person committing the violation furnished~~
29 ~~the Office of Attorney General with all information known~~
30 ~~to that person about the violation within 30 days after~~

~~the date on which the person first obtained the information.~~

~~(ii) The person fully cooperated with an investigation by the Commonwealth.~~

~~(iii) At the time the person furnished the Office of Attorney General with information about the violation, no criminal prosecution, civil action or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.~~

~~(iv) Under terms that the Attorney General specifies or to which the Attorney General otherwise agrees, the person pays the Commonwealth for the total amount of damages that the Commonwealth sustained as a result of the violation, plus applicable civil penalties under subsection (a) and the Commonwealth's costs under subsection (c).~~

~~(2) This subsection shall not be construed to:~~

~~(i) limit the Attorney General's authority and discretion to investigate a violation of, or prosecute or settle an action brought under, section 1412 D; or~~

~~(ii) restrict the terms of a settlement respecting a violation of section 1412 D.~~

~~(c) Commonwealth costs. A person liable for damages or penalties under subsection (a) shall also be liable to the Commonwealth for the reasonable costs of investigating and prosecuting violations specified under subsection (a), including reasonable costs to the Office of Attorney General and, if applicable, a district attorney designated under section 1412 D(a)(2).~~

~~(d) Adjustment of penalties. The civil penalties payable under subsection (a) shall be adjusted from time to time consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410, 28 U.S.C. § 2461 note, as amended).~~

~~(e) Exemption from disclosure. Information furnished under subsection (b) shall be exempt from disclosure under the act of February 14, 2008 (P.L. 6, No.3), known as the Right to Know Law.~~

~~(f) Recipient liability restricted. A person who is a recipient of public support services shall not be liable for a violation under this section unless the individual intentionally violates subsection (a) and benefits financially from the violation.~~

~~Section 1412 D. Attorney General investigations, prosecutions and civil actions.~~

~~(a) Responsibilities. The following shall apply:~~

~~(1) The Attorney General shall have authority to investigate a violation of section 1411 D. If the Attorney General finds that a person has violated or is violating section 1411 D, the Attorney General may bring a civil action under this section against that person.~~

~~(2) The Attorney General may enter into an agreement with a district attorney to designate the district attorney to serve as the Attorney General's designee, investigate a violation of section 1411 D and bring a civil action under this section against a person that has violated or is violating section 1411 D. The Attorney General at any time may rescind the designation made under this paragraph.~~

~~(3) Nothing in section 1407 shall be construed to limit the authority of the Attorney General to investigate or~~

1 ~~prosecute violations under section 1411 D.~~

2 ~~(b) Information provided by whistleblowers. The following~~
3 ~~shall apply:~~

4 ~~(1) If the Commonwealth prosecutes an action under~~
5 ~~section 1411 D based on original information furnished by a~~
6 ~~whistleblower, the Attorney General may award the~~
7 ~~whistleblower a portion of the proceeds of the action or~~
8 ~~settlement of the legal claim, not to exceed 25% based on the~~
9 ~~following factors:~~

10 ~~(i) The extent to which the information~~
11 ~~substantially contributed to the prosecution of the~~
12 ~~action or settlement of the legal claim.~~

13 ~~(ii) Whether the action is based primarily on~~
14 ~~disclosures of specific information, other than~~
15 ~~information provided by the whistleblower, relating to~~
16 ~~allegations or transactions in a criminal, civil or~~
17 ~~administrative hearing in which the Commonwealth is a~~
18 ~~party or in a Federal, State or local legislative or~~
19 ~~governmental report, hearing, audit or investigation, or~~
20 ~~from the news media.~~

21 ~~(iii) If the whistleblower planned or initiated the~~
22 ~~violation.~~

23 ~~(iv) Whether the whistleblower complies with~~
24 ~~paragraph (2).~~

25 ~~(2) If a whistleblower is a relator or qui tam plaintiff~~
26 ~~in an action in another jurisdiction and the action is based~~
27 ~~on or related to information that the whistleblower furnishes~~
28 ~~or will furnish under this subsection, within 90 days after~~
29 ~~becoming a party to the action, the whistleblower must serve~~
30 ~~on the Office of Attorney General a copy of the complaint and~~

~~written disclosure of substantially all material evidence and information that the whistleblower possesses, including all material evidence and information adduced in the action.~~

~~(3) A whistleblower shall not be eligible to receive an award under this subsection if the whistleblower planned and initiated the violation of section 1411 D and is convicted of criminal conduct arising from the whistleblower's role in the violation. The conviction shall not prejudice the Commonwealth's authority to prosecute an action under section 1411 D.~~

~~(4) To qualify for an award under this subsection, if a whistleblower is an employee of a person suspected to have committed a violation under section 1411 D, the whistleblower must first inform the whistleblower's employer or the Office of Attorney General that the conduct may constitute a violation under this article. A whistleblower who so informs the employer shall qualify for the protections specified under section 1417 D.~~

~~(c) Commonwealth not liable for expenses. The Commonwealth is not liable for expenses that a whistleblower incurs in furnishing information described in subsection (b).~~

~~(d) Cooperation by agencies. Commonwealth agencies shall cooperate in the investigation and prosecution of false claims under this section.~~

~~Section 1413 D. Civil investigative demands.~~

~~(a) Issuance and service. The following shall apply:~~

~~(1) Whenever the Attorney General or, for the purposes of this subsection, the Attorney General's designee, has reason to believe that a person may be in possession, custody or control of documentary material or information relevant to~~

~~1 a false claims investigation under this article, the Attorney
2 General or designee may, before commencing a civil action
3 under section 1412 D(a), issue in writing and cause to be
4 served upon the person a civil investigative demand requiring
5 the person to:~~

~~6 (i) produce documentary material for inspection and
7 copying;~~

~~8 (ii) answer in writing written interrogatories with
9 respect to documentary material or information;~~

~~10 (iii) give oral testimony concerning documentary
11 material or information; or~~

~~12 (iv) furnish any combination of materials, answers
13 or testimony.~~

~~14 (2) Whenever a civil investigative demand is an express
15 demand for a product of discovery, the Attorney General or
16 the Attorney General's designee shall:~~

~~17 (i) cause to be served in any manner authorized by
18 this subsection a copy of the demand upon the person from
19 whom or which the discovery was obtained; and~~

~~20 (ii) notify the demand issuee of the date on which
21 the copy was served.~~

~~22 (b) Contents and deadlines. The following shall apply:~~

~~23 (1) A civil investigative demand shall state the nature
24 of the conduct constituting the alleged violation of this
25 article that is under investigation and the applicable
26 provisions of this article alleged to be violated.~~

~~27 (2) If the civil investigative demand is for the
28 production of documentary material, the demand shall:~~

~~29 (i) describe each class of documentary material to
30 be produced with definiteness and certainty as to permit~~

1 ~~the material to be fairly identified;~~

2 ~~(ii) prescribe a return date for each class that~~
3 ~~will provide a reasonable time period within which the~~
4 ~~material so demanded may be assembled and made available~~
5 ~~for inspection and copying; and~~

6 ~~(iii) identify the false claims investigator to whom~~
7 ~~the material shall be available.~~

8 ~~(3) If the civil investigative demand is for answers to~~
9 ~~written interrogatories, the demand shall:~~

10 ~~(i) set forth with specificity the written~~
11 ~~interrogatories to be answered;~~

12 ~~(ii) prescribe dates at which time the answers to~~
13 ~~the written interrogatories shall be submitted; and~~

14 ~~(iii) identify the false claims investigator to whom~~
15 ~~the answers shall be submitted.~~

16 ~~(4) If the civil investigative demand is for oral~~
17 ~~testimony, the demand shall:~~

18 ~~(i) prescribe a date, time and place at which the~~
19 ~~oral testimony shall be given;~~

20 ~~(ii) identify a false claims investigator who shall~~
21 ~~conduct the examination and the custodian to whom the~~
22 ~~transcript of the examination shall be submitted;~~

23 ~~(iii) specify that attendance and testimony are~~
24 ~~necessary to the conduct of the false claims~~
25 ~~investigation; and~~

26 ~~(iv) describe the general purpose for which the~~
27 ~~demand is being issued and general nature of the~~
28 ~~testimony, including the primary areas of inquiry, which~~
29 ~~will be taken under the demand.~~

30 ~~(5) A civil investigative demand shall contain the~~

1 ~~following statement printed at the beginning of the demand:~~
2 ~~"You have the right to seek the assistance of an attorney,~~
3 ~~who may represent you in all phases of the investigation of~~
4 ~~which this civil investigative demand is a part."~~

5 ~~(6) A civil investigative demand that is an express~~
6 ~~demand for a product of discovery shall not be returned or~~
7 ~~returnable until 20 days after a copy of the demand has been~~
8 ~~served upon the person from whom or which the discovery was~~
9 ~~obtained.~~

10 ~~(7) The date prescribed for commencement of oral~~
11 ~~testimony under a civil investigative demand shall not be~~
12 ~~less than seven days after the date on which the demand is~~
13 ~~served, unless the Attorney General or a designee determines~~
14 ~~that exceptional circumstances exist and warrant the~~
15 ~~commencement of testimony within a lesser time period.~~

16 ~~(8) The Attorney General, or a designee, may not~~
17 ~~authorize the issuance of more than one civil investigative~~
18 ~~demand for the same person's oral testimony unless:~~

19 ~~(i) the person requests otherwise; or~~

20 ~~(ii) the Attorney General or designee notifies the~~
21 ~~person in writing that an additional demand for oral~~
22 ~~testimony is necessary.~~

23 ~~(c) Protected material or information. The following shall~~
24 ~~apply:~~

25 ~~(1) A civil investigative demand may not require the~~
26 ~~production of documentary material, the submission of answers~~
27 ~~to written interrogatories or the giving of oral testimony if~~
28 ~~the material, answers or testimony would be protected from~~
29 ~~disclosure under:~~

30 ~~(i) the standards applicable to subpoenas or~~

1 ~~subpoenas duces tecum issued by a court of this~~
2 ~~Commonwealth to aid in a grand jury investigation; or~~
3 ~~(ii) the standards applicable to discovery under the~~
4 ~~Pennsylvania Rules of Civil Procedure or other applicable~~
5 ~~court rule, to the extent that the application of the~~
6 ~~standards to a demand is appropriate and consistent with~~
7 ~~the provisions and purposes of this section.~~

8 ~~(2) With respect to the effect on other orders, rules~~
9 ~~and laws:~~

10 ~~(i) Except where a statute explicitly precludes the~~
11 ~~superseding effect imposed by this paragraph, a civil~~
12 ~~investigative demand that is an express demand for a~~
13 ~~product of discovery supersedes an inconsistent order,~~
14 ~~rule or provision of law, other than in this section,~~
15 ~~that prevents or restrains disclosure of the product of~~
16 ~~discovery to any person.~~

17 ~~(ii) A person's disclosure of a product of discovery~~
18 ~~under an express demand does not constitute a waiver of~~
19 ~~any right or privilege to resist discovery of trial~~
20 ~~preparation materials that the person may be entitled to~~
21 ~~invoke.~~

22 ~~(d) Service and jurisdiction. Except as otherwise provided,~~
23 ~~the following apply to civil investigative demands issued and~~
24 ~~served under this section and petitions filed under subsection~~
25 ~~(j):~~

26 ~~(1) The following shall apply regarding by whom served:~~

27 ~~(i) A civil investigative demand may be served by a~~
28 ~~false claims investigator, a law enforcement officer or~~
29 ~~another individual authorized by law to serve process in~~
30 ~~the jurisdiction where the demand is served.~~

1 ~~(ii) A petition may be served by any person~~
2 ~~authorized to serve process under the Pennsylvania Rules~~
3 ~~of Civil Procedure or other applicable court rule.~~

4 ~~(2) The following shall apply regarding location of~~
5 ~~service:~~

6 ~~(i) A civil investigative demand or petition may be~~
7 ~~served upon a person or entity consistent with and in the~~
8 ~~manner prescribed by 42 Pa.C.S. Ch. 53 (relating to bases~~
9 ~~of jurisdiction and interstate and international~~
10 ~~procedure) and the Pennsylvania Rules of Civil Procedure~~
11 ~~or other applicable court rule, for personal service~~
12 ~~inside or outside this Commonwealth.~~

13 ~~(ii) To the extent that the courts of the~~
14 ~~Commonwealth can assert jurisdiction over a person~~
15 ~~outside this Commonwealth, a court with jurisdiction over~~
16 ~~an action filed under this article shall have the same~~
17 ~~jurisdiction to take action respecting the person's~~
18 ~~compliance with this section that it would have if the~~
19 ~~person resided within the court's jurisdiction.~~

20 ~~(3) The following shall apply regarding service upon~~
21 ~~legal entities and natural persons:~~

22 ~~(i) A civil investigative demand or petition may be~~
23 ~~served upon a legal entity by:~~

24 ~~(A) delivering an executed copy of the demand or~~
25 ~~petition to any partner, executive officer, managing~~
26 ~~agent or general agent of the legal entity or to an~~
27 ~~employee designated or agent authorized by~~
28 ~~appointment or law to receive service of process on~~
29 ~~behalf of the legal entity;~~

30 ~~(B) delivering an executed copy of the demand or~~

1 ~~petition to the legal entity's principal office or~~
2 ~~place of business;~~

3 ~~(C) depositing an executed copy of the demand or~~
4 ~~petition in the United States mail by registered or~~
5 ~~certified mail with a return receipt requested,~~
6 ~~addressed to the legal entity at its principal office~~
7 ~~or place of business; or~~

8 ~~(D) any other method provided by the~~
9 ~~Pennsylvania Rules of Civil Procedure or other~~
10 ~~applicable court rule.~~

11 ~~(ii) A civil investigative demand or petition may be~~
12 ~~served upon a natural person by:~~

13 ~~(A) delivering an executed copy of the demand or~~
14 ~~petition to the person;~~

15 ~~(B) depositing an executed copy of the demand or~~
16 ~~petition in the United States mail by registered or~~
17 ~~certified mail with a return receipt requested,~~
18 ~~addressed to the person at the person's residence or~~
19 ~~principal office or place of business; or~~

20 ~~(C) any other method provided by the~~
21 ~~Pennsylvania Rules of Civil Procedure or other~~
22 ~~applicable court rule.~~

23 ~~(4) A verified return by the individual serving a civil~~
24 ~~investigative demand or petition, setting forth the manner of~~
25 ~~service, shall be proof of service. In the case of service by~~
26 ~~registered or certified mail, the return post office receipt~~
27 ~~of the demand's or petition's delivery shall accompany the~~
28 ~~return.~~

29 ~~(e) Documentary material.~~

30 ~~(1) The following shall apply regarding verified~~

1 certificate:

2 ~~(i) The production of documentary material shall be~~
3 ~~made under a written and verified certificate, in the~~
4 ~~form as the demand designates, by the following~~
5 ~~individuals:~~

6 ~~(A) if the demand issuee is a natural person, by~~
7 ~~the demand issuee; and~~

8 ~~(B) if the demand issuee is not a natural~~
9 ~~person, by an individual who has knowledge of facts~~
10 ~~and circumstances relating to the production and is~~
11 ~~authorized to act on the demand issuee's behalf.~~

12 ~~(ii) The certificate shall state that all the~~
13 ~~documentary material required by the demand and in the~~
14 ~~demand issuee's possession, custody or control has been~~
15 ~~produced and made available to the false claims~~
16 ~~investigator identified in the demand.~~

17 ~~(2) The following shall apply regarding production of~~
18 ~~materials:~~

19 ~~(i) A demand issuee shall make the demanded material~~
20 ~~available for inspection and copy to the false claims~~
21 ~~investigator identified in the demand:~~

22 ~~(A) at the demand issuee's principal place of~~
23 ~~business;~~

24 ~~(B) at another place as the false claims~~
25 ~~investigator and the demand issuee thereafter may~~
26 ~~agree and prescribe in writing; or~~

27 ~~(C) as the court may direct under this section.~~

28 ~~(ii) The documentary material shall be made~~
29 ~~available on the return date specified in the demand or~~
30 ~~on a later date as the false claims investigator may~~

~~prescribe in writing. The demand issuee may, upon written agreement with the false claims investigator, substitute copies for originals of all or any part of the material.~~

~~(3) If the demand issuee objects to the production of any portion of the required documentary material or otherwise withholds any portion of the material, the issuee shall with particularity state the reasons for the objection or withholding and identify all withheld material.~~

~~(f) Interrogatories.~~

~~(1) With respect to answers and verified certificates, each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be submitted under a verified certificate, in the form as the demand designates stating that all information required by the demand and in the demand issuee's possession, custody, control or knowledge has been submitted by the following individuals:~~

~~(i) if the demand issuee is a natural person, by the demand issuee; and~~

~~(ii) if the demand issuee is not a natural person, by the individuals responsible for answering each interrogatory.~~

~~(2) With respect to objections and withholding of information, if the demand issuee objects to an interrogatory or any portion thereof, or otherwise withholds information, the demand issuee shall state with particularity the reasons for the objection or withholding and identify all withheld information.~~

~~(g) Oral examinations. The following shall apply:~~

~~(1) With respect to procedures:~~

1 ~~(i) The examination of a person under a civil~~
2 ~~investigative demand for oral testimony shall be taken~~
3 ~~before an officer authorized to administer oaths and~~
4 ~~affirmations by the laws of this Commonwealth or of the~~
5 ~~place where the examination is held.~~

6 ~~(ii) The officer shall put the witness on oath or~~
7 ~~affirmation and shall personally or by someone acting~~
8 ~~under the officer's direction and in the officer's~~
9 ~~presence, record the witness's testimony.~~

10 ~~(iii) The testimony shall be stenographically~~
11 ~~transcribed.~~

12 ~~(iv) When the transcribing is complete, the officer~~
13 ~~shall promptly transmit a copy of the transcript to the~~
14 ~~custodian.~~

15 ~~(v) This subsection shall not preclude the taking of~~
16 ~~testimony by any means authorized by, and in a manner~~
17 ~~consistent with, the Pennsylvania Rules of Civil~~
18 ~~Procedure or other applicable court rule.~~

19 ~~(2) With respect to persons present, the false claims~~
20 ~~investigator conducting the examination shall exclude from~~
21 ~~the place where the examination is held all persons except~~
22 ~~the following:~~

23 ~~(i) the witness giving the testimony;~~

24 ~~(ii) the attorney for the witness;~~

25 ~~(iii) the attorney for the Commonwealth;~~

26 ~~(iv) the officer before whom the testimony is to be~~
27 ~~taken;~~

28 ~~(v) the court reporter taking the testimony; and~~

29 ~~(vi) any other person agreed to by the witness and~~
30 ~~the attorney for the Commonwealth.~~

1 ~~(3) Oral testimony taken under a civil investigative~~
2 ~~demand shall be taken in the county or city within which the~~
3 ~~person resides, is found, or transacts business, or in a~~
4 ~~place to which the false claims investigator and the witness~~
5 ~~otherwise agree.~~

6 ~~(4) With respect to transcripts:~~

7 ~~(i) When the transcript of testimony is completed,~~
8 ~~the false claims investigator or the officer before whom~~
9 ~~the testimony is taken shall afford the witness, who may~~
10 ~~be accompanied by counsel, a reasonable opportunity to~~
11 ~~examine and read the transcript, unless the witness~~
12 ~~waives the reading and examination.~~

13 ~~(ii) The officer or false claims investigator shall~~
14 ~~enter and identify on the transcript any changes in form~~
15 ~~or substance that the witness desires to make with a~~
16 ~~statement of the reasons the witness gives for making the~~
17 ~~changes.~~

18 ~~(iii) The witness shall sign the transcript after~~
19 ~~the changes, if any, are made, unless the witness waives~~
20 ~~the signing in writing, is ill, cannot be found, or~~
21 ~~refuses to sign. If the witness does not sign the~~
22 ~~transcript within 30 days after being afforded a~~
23 ~~reasonable opportunity to sign it, the officer or false~~
24 ~~claims investigator shall sign it and state on the record~~
25 ~~the fact of the witness's waiver, illness, absence or~~
26 ~~refusal to sign, together with the reasons, if any, given~~
27 ~~for why the witness did not sign the transcript.~~

28 ~~(iv) The officer before whom the testimony is taken~~
29 ~~shall certify on the transcript that the witness was~~
30 ~~sworn by the officer and the transcript is a true record~~

1 ~~of the witness's testimony, and the officer shall~~
2 ~~promptly deliver the transcript or send the transcript by~~
3 ~~registered or certified mail to the custodian.~~

4 ~~(v) Upon receipt of payment of reasonable charges,~~
5 ~~the false claims investigator shall furnish a copy of the~~
6 ~~transcript to the witness only, except that the Attorney~~
7 ~~General or the Attorney General's designee may, for good~~
8 ~~cause, limit the witnesses to inspecting the official~~
9 ~~transcript.~~

10 ~~(5) With respect to the conduct of oral testimony, the~~
11 ~~following shall apply:~~

12 ~~(i) A witness compelled to appear for oral testimony~~
13 ~~may be accompanied, represented, and advised by counsel.~~
14 ~~Counsel may advise the witness in confidence with respect~~
15 ~~to any question asked of the witness.~~

16 ~~(ii) The witness or counsel may object on the record~~
17 ~~to any question, in whole or in part, and shall briefly~~
18 ~~state for the record the reason for the objection. An~~
19 ~~objection may be made, received and entered upon the~~
20 ~~record when the objection is claimed that the witness is~~
21 ~~entitled to refuse to answer on the grounds of any~~
22 ~~constitutional or legal right or privilege, including the~~
23 ~~privilege against self incrimination. The witness may not~~
24 ~~otherwise object to or refuse to answer any question and~~
25 ~~may not directly or through counsel otherwise interrupt~~
26 ~~the oral examination. If a witness refuses to answer a~~
27 ~~question, a petition may be filed with the court under~~
28 ~~this section for an order compelling the witness to~~
29 ~~answer the question.~~

30 ~~(6) With respect to fees, a witness appearing for oral~~

~~testimony under a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the courts of common pleas.~~

~~(h) Refusal to comply on self incrimination privilege grounds. The Attorney General may invoke the provisions of 42 Pa.C.S. § 5947 (relating to immunity of witnesses) if a demand issue on the grounds of privilege against self incrimination, refuses to:~~

~~(1) furnish documentary material or answer an interrogatory in response to a civil investigative demand;~~

~~(2) answer a question asked during oral examination made under a civil investigative demand; or~~

~~(3) otherwise comply with a civil investigative demand.~~

~~(i) Custody of documents, answers and transcripts.~~

~~(1) With respect to the designation of a custodian, unless the Attorney General designates another person, the false claims investigator identified on a civil investigative demand shall serve as custodian of documentary material, interrogatory answers and oral testimony transcripts received under this section. The Attorney General may designate additional persons as the Attorney General determines to be necessary to serve as deputy, alternative or successor custodians.~~

~~(2) With respect to responsibility for materials, copies and disclosure, a false claims investigator who receives documentary material, interrogatory answers or oral testimony transcripts under this section shall:~~

~~(i) if serving as custodian, take possession of the material, answers or transcripts and be responsible for their usage and for the return of documentary material;~~

1 ~~or~~

2 ~~(ii) if not serving as custodian, transmit the~~
3 ~~materials, answers or transcripts to the custodian, who~~
4 ~~shall take possession and responsibility for the~~
5 ~~materials, answers or transcripts.~~

6 ~~(3) With respect to custodian copies, the custodian may~~
7 ~~cause the preparation of copies of documentary material,~~
8 ~~interrogatory answers or oral testimony transcripts as may be~~
9 ~~required for official use by a false claims investigator or~~
10 ~~any other officer or employee of the Office of Attorney~~
11 ~~General authorized to use the materials, answers or~~
12 ~~transcripts in connection with the taking of oral testimony~~
13 ~~under this section.~~

14 ~~(4) With respect to restricted disclosure:~~

15 ~~(i) Except as otherwise provided in this section, no~~
16 ~~documentary material, interrogatory answers or oral~~
17 ~~testimony transcripts or copies of the foregoing shall be~~
18 ~~available for examination by any individual other than a~~
19 ~~false claims investigator or other officer or employee of~~
20 ~~the Office of Attorney General.~~

21 ~~(ii) The prohibition under subparagraph (i) shall~~
22 ~~not apply if the person producing material, answers or~~
23 ~~transcripts, or in the case of any product of discovery~~
24 ~~produced under an express demand for the material, the~~
25 ~~person from whom or which the discovery was obtained,~~
26 ~~consents.~~

27 ~~(iii) Nothing in this paragraph shall be construed~~
28 ~~to prevent disclosure to the General Assembly or to a~~
29 ~~Commonwealth agency in furtherance of statutory or~~
30 ~~constitutional obligations, except that any disclosure~~

1 ~~shall be subject to 18 Pa.C.S. Ch. 91.~~

2 ~~(iv) While in the custodian's possession and under~~
3 ~~reasonable terms and conditions as the Attorney General~~
4 ~~prescribes, documentary material, interrogatory answers~~
5 ~~and oral testimony transcripts shall be made available~~
6 ~~for examination by the person that produced them or by~~
7 ~~the person's authorized representative.~~

8 ~~(5) With respect to the use of documentary material,~~
9 ~~answers or transcripts in other proceedings:~~

10 ~~(i) Notwithstanding 18 Pa.C.S. Ch. 91, an attorney~~
11 ~~of the Office of Attorney General who is designated to~~
12 ~~appear before a court, grand jury or Commonwealth agency~~
13 ~~in a case or proceeding may, in connection with the case~~
14 ~~or proceeding, obtain from the custodian and use any~~
15 ~~documentary material, interrogatory answers or oral~~
16 ~~testimony transcripts that the attorney determines is~~
17 ~~required.~~

18 ~~(ii) Upon the case's or proceeding's completion, the~~
19 ~~attorney shall return to the custodian documentary~~
20 ~~material, interrogatory answers or oral testimony~~
21 ~~transcripts that have not passed into the court's, grand~~
22 ~~jury's or agency's control through introduction into the~~
23 ~~case or proceeding's record.~~

24 ~~(6) With respect to conditions for return of material,~~
25 ~~the following shall apply:~~

26 ~~(i) Subject to subparagraphs (ii) and (iii), upon~~
27 ~~the written request of a person producing documentary~~
28 ~~material in connection with a false claims investigation,~~
29 ~~the custodian shall return the material.~~

30 ~~(ii) The custodian shall be required to return the~~

1 ~~material only if:~~

2 ~~(A) all cases or proceedings arising out of the~~
3 ~~false claims investigation have been completed; or~~

4 ~~(B) no case or proceeding in which the material~~
5 ~~may be used has been commenced within a reasonable~~
6 ~~time after completion of the examination and analysis~~
7 ~~of all documentary material and other information~~
8 ~~assembled in the course of the false claims~~
9 ~~investigation.~~

10 ~~(iii) The custodian shall not return either of the~~
11 ~~following:~~

12 ~~(A) material that has passed into a court, grand~~
13 ~~jury or Commonwealth agency's control through~~
14 ~~introduction into a case or proceeding's record; or~~

15 ~~(B) copies furnished to the false claims~~
16 ~~investigator or made for the Attorney General under~~
17 ~~this subsection.~~

18 ~~(j) Judicial proceedings. The following shall apply:~~

19 ~~(1) With respect to a petition for enforcement, the~~
20 ~~Attorney General or the Attorney General's designee may file~~
21 ~~and serve upon a person a petition for a court order~~
22 ~~enforcing a civil investigative demand if:~~

23 ~~(i) the person fails to comply with a demand served~~
24 ~~upon the person; or~~

25 ~~(ii) satisfactory copying or reproduction of the~~
26 ~~material requested in the demand cannot be done and the~~
27 ~~person refuses to surrender the material.~~

28 ~~(2) With respect to a petition to modify or set aside a~~
29 ~~demand, the following shall apply:~~

30 ~~(i) A demand issued that has received a civil~~

~~investigative demand may file and serve upon the false claims investigator identified in the demand a petition for a court order modifying or setting aside the demand.~~

~~(ii) If a civil investigative demand is an express demand for a product of discovery, the person from whom or which discovery was obtained may, upon receipt of the demand, file and serve upon the false claims investigator identified in the demand a petition for a court order modifying or setting aside those portions of the demand requiring production of the product of discovery.~~

~~(iii) A petition under this paragraph must be filed within:~~

~~(A) The earlier of 20 days after the civil investigative demand is served on the person or at any time before the return date specified in the demand; or~~

~~(B) a longer period if the false claims investigator so prescribes in writing in the demand.~~

~~(iv) A petition under this paragraph shall specify each ground the petitioner relies on in seeking relief and may be based on either of the following:~~

~~(A) failure of the civil investigative demand, or any portion thereof, to comply with this section's provisions; or~~

~~(B) a constitutional or other legal right or privilege of the petitioner.~~

~~(v) During the pendency of a petition under this paragraph, the following apply:~~

~~(A) The court may stay, as it deems proper, compliance with all or part of the demand and the~~

1 ~~running of time allowed for compliance therewith.~~

2 ~~(B) The petitioner must comply with any portion~~
3 ~~of the demand that is not sought to be modified or~~
4 ~~set aside, or otherwise subject to a stay issued by~~
5 ~~the court.~~

6 ~~(3) With respect to a petition to require custodian's~~
7 ~~performance of duties, at any time a custodian possesses or~~
8 ~~is in custody or control of documentary material,~~
9 ~~interrogatory answers or transcripts of oral testimony given~~
10 ~~under a civil investigative demand, the following persons may~~
11 ~~file and serve upon the custodian a petition for a court~~
12 ~~order requiring the custodian to perform any duty imposed on~~
13 ~~the custodian by this section:~~

14 ~~(i) the demand issuer furnishing the material,~~
15 ~~answers or testimony; and~~

16 ~~(ii) in the case of an express demand for a product~~
17 ~~of discovery, the person from whom or which discovery was~~
18 ~~obtained.~~

19 ~~(4) With respect to jurisdiction and contempt, the~~
20 ~~following shall apply:~~

21 ~~(i) The court shall have jurisdiction to hear and~~
22 ~~determine a petition filed under this section and, after~~
23 ~~a hearing at which all parties have the opportunity to be~~
24 ~~heard, to enter orders as may be required to carry out~~
25 ~~the provisions of this section.~~

26 ~~(ii) A final order entered by Commonwealth Court~~
27 ~~under this section shall be subject to appeal to the~~
28 ~~Supreme Court under 42 Pa.C.S. § 723 (relating to appeals~~
29 ~~from Commonwealth Court).~~

30 ~~(k) Exemption from disclosure. Documentary material,~~

1 ~~interrogatory answers and oral testimony provided under a civil~~
2 ~~investigative demand are exempt from disclosure under the act of~~
3 ~~February 14, 2008 (P.L.6, No.3), known as the Right to Know Law.~~

4 ~~(1) Definitions. For purposes of this section, the~~
5 ~~following words and phrases shall have the meanings given to~~
6 ~~them in this subsection unless the context clearly indicates~~
7 ~~otherwise:~~

8 ~~"Custodian." The false claims investigator or other~~
9 ~~custodian or any deputy or alternate custodian designated by the~~
10 ~~Attorney General under subsection (i).~~

11 ~~"Demand issuee." A person to whom or which a civil~~
12 ~~investigative demand is issued or directed.~~

13 ~~"Documentary material." Includes the original or any copy of~~
14 ~~any book, record, report, memorandum, paper, communication,~~
15 ~~tabulation, chart or other document or data compilations stored~~
16 ~~or accessible through computer or other information retrieval~~
17 ~~systems, together with appropriate and succinct instructions and~~
18 ~~all other materials necessary to use or interpret the data~~
19 ~~compilations, and any product of discovery.~~

20 ~~"False claims investigation." Any inquiry conducted by a~~
21 ~~false claims investigator for the purposes of ascertaining~~
22 ~~whether any person is or has been engaged in a violation of this~~
23 ~~article.~~

24 ~~"False claims investigator." An attorney or investigator~~
25 ~~employed by the Office of Attorney General, or by a district~~
26 ~~attorney designated under section 1412 D(a)(2), who is charged~~
27 ~~with the duty of enforcing or carrying out the provisions of~~
28 ~~this article, or an officer or employee of the Commonwealth~~
29 ~~acting under the attorney or investigator's direction and~~
30 ~~supervision in connection with a false claims investigation.~~

1 ~~"Legal entity." A person other than a natural person.~~

2 ~~"Person." As defined in 1 Pa.C.S. § 1991 (relating to~~
3 ~~definitions).~~

4 ~~"Product of discovery." The term includes:~~

5 ~~(1) the original or duplicate of a deposition~~
6 ~~interrogatory, document, thing, result of the inspection of~~
7 ~~land or other property, examination or admission that is~~
8 ~~obtained by any method of discovery in a judicial or~~
9 ~~administrative proceeding of an adversarial nature;~~

10 ~~(2) a digest, analysis, selection, compilation or~~
11 ~~derivation of an item listed in paragraph (1); and~~

12 ~~(3) an index or other manner of access to an item listed~~
13 ~~in paragraph (1).~~

14 ~~"Verified." Supported by oath or affirmation and averred~~
15 ~~subject to the penalties of 18 Pa.C.S. § 4904 (relating to~~
16 ~~unsworn falsification to authorities).~~

17 ~~Section 1413.1 D. Access and sharing of information.~~

18 ~~(a) Recipients. Notwithstanding the provisions of 18~~
19 ~~Pa.C.S. Ch. 91 (relating to criminal history record information)~~
20 ~~or any other law, and as necessary to advance an investigation~~
21 ~~or prosecution of a potential or actual violations of section~~
22 ~~1411 D, the Attorney General may access and share data, records,~~
23 ~~documents or other information obtained during the course of a~~
24 ~~criminal investigation or prosecution, with the following:~~

25 ~~(1) A section, unit or individual employee or agent of~~
26 ~~the Office of Attorney General authorized and designated by~~
27 ~~the Attorney General to investigate or prosecute a potential~~
28 ~~or actual violation of section 1411 D, including a district~~
29 ~~attorney designated under section 1412 D(a)(2).~~

30 ~~(2) The United States Department of Justice.~~

1 ~~(3) The appropriate civil prosecutorial authority of~~
2 ~~another jurisdiction.~~

3 ~~(b) Limitation. A recipient under subsection (a) (1) shall~~
4 ~~be subject to the provisions of 18 Pa.C.S. Ch. 91 relating to~~
5 ~~further disclosure, dissemination and sharing of the information~~
6 ~~with noncriminal justice agencies, departments and individuals,~~
7 ~~except as permitted under subsection (a) (2) and (3).~~

8 ~~Section 1414 D. Disposition of Commonwealth's share of~~
9 ~~proceeds.~~

10 ~~(a) Distribution and division. The Commonwealth's share of~~
11 ~~the proceeds of an action or settlement under this article, not~~
12 ~~including the costs under section 1411 D(c) and less any amount~~
13 ~~legally required to be paid from the Commonwealth's share, shall~~
14 ~~be distributed in the following manner:~~

15 ~~(1) An amount equal to 10% of the total enforcement~~
16 ~~costs shall be distributed from the Commonwealth's share to~~
17 ~~the Office of Attorney General and, if applicable, a district~~
18 ~~attorney designated under section 1412 D(a) (2), in proportion~~
19 ~~equal to each office's percentage of the enforcements. Money~~
20 ~~distributed to the Office of Attorney General under this~~
21 ~~paragraph shall be reserved for use by the Medicaid Fraud~~
22 ~~Control Section.~~

23 ~~(2) After distribution under paragraph (1), an amount~~
24 ~~sufficient to reimburse the damages sustained by Commonwealth~~
25 ~~agencies as a result of a violation of section 1411 D shall~~
26 ~~be distributed from the Commonwealth's share to the agencies.~~
27 ~~A Commonwealth agency distributed money under this paragraph~~
28 ~~shall use the money to reimburse the programs administered by~~
29 ~~the agency whose funds were diminished as a result of the~~
30 ~~violation.~~

1 ~~(3) The amount from the Commonwealth's share remaining~~
2 ~~after distribution under paragraphs (1) and (2) shall be~~
3 ~~deposited into the Budget Stabilization Reserve Fund.~~

4 ~~(b) Definition. As used in this section, the term~~
5 ~~"enforcement costs" means the costs awarded under section 1411-~~
6 ~~D(c) to the Office of Attorney General and, if applicable, to a~~
7 ~~district attorney designated under section 1412 D(a)(2).~~

8 ~~Section 1415 D. Annual report.~~

9 ~~(a) Report required. The Attorney General shall prepare an~~
10 ~~annual report concerning actions taken under this article by~~
11 ~~December 31 each year, beginning December 31, 2021. The report~~
12 ~~shall be submitted to the following:~~

13 ~~(1) The Governor.~~

14 ~~(2) The Department of Auditor General.~~

15 ~~(3) The Independent Fiscal Office.~~

16 ~~(4) The Office of Inspector General.~~

17 ~~(5) The members of the General Assembly.~~

18 ~~(6) The Legislative Budget and Finance Committee.~~

19 ~~(b) Contents. The report shall include the following:~~

20 ~~(1) The number of actions filed under this article by~~
21 ~~the Attorney General.~~

22 ~~(2) The number of actions filed under this article by~~
23 ~~the Attorney General that were completed.~~

24 ~~(3) The amount that was recovered in actions filed under~~
25 ~~this article by the Attorney General through settlement or~~
26 ~~through a judgment and, if known, the amount recovered for~~
27 ~~damages, penalties and litigation costs.~~

28 ~~(4) The amount expended by the Office of Attorney~~
29 ~~General for investigation, litigation and all other costs for~~
30 ~~legal claims under this article.~~

1 ~~(5) A narrative describing the most notable or prevalent~~
2 ~~violations of section 1411-D and recommendations on how~~
3 ~~Commonwealth agencies may prevent similar violations from~~
4 ~~occurring.~~

5 ~~(6) Legislative recommendations that the Attorney~~
6 ~~General may have for amendments to this article and any other~~
7 ~~law as it relates to this article.~~

8 ~~Section 1416 D. Statute of limitations, burden of proof and~~
9 ~~estoppel.~~

10 ~~(a) Statute of limitations.~~

11 ~~(1) Except as otherwise provided under this section, a~~
12 ~~civil action under section 1412-D may not be brought more~~
13 ~~than 10 years after the date on which the violation was~~
14 ~~committed.~~

15 ~~(2) If a violation is part of a continuing course of~~
16 ~~conduct, a civil action under section 1412-D may not be~~
17 ~~brought more than 10 years after the date on which the last~~
18 ~~violation in the continuing course of conduct was committed.~~

19 ~~(b) Burden of proof. In an action brought under section~~
20 ~~1412-D, the Commonwealth shall be required to prove all~~
21 ~~essential elements of the cause of action, including damages, by~~
22 ~~a preponderance of the evidence.~~

23 ~~(c) Estoppel. Notwithstanding any other provision of law, a~~
24 ~~final judgment rendered in favor of the Commonwealth in a~~
25 ~~criminal proceeding charging false statements or fraud, whether~~
26 ~~upon a verdict after trial or upon a plea of guilty or nolo~~
27 ~~contendere, shall estop the defendant from denying the essential~~
28 ~~elements of the offense in an action brought under section 1412-~~
29 ~~D that involves the same transaction as in the criminal~~
30 ~~proceeding.~~

1 ~~Section 1417 D. Relief from retaliatory actions.~~

2 ~~(a) General rule. An employee, contractor or agent shall be~~
3 ~~entitled to all relief necessary to make the employee,~~
4 ~~contractor or agent whole, if the employee, contractor or agent~~
5 ~~is discharged, demoted, suspended, threatened, harassed or in~~
6 ~~any other manner discriminated against in the terms and~~
7 ~~conditions of employment, contract or agency because of lawful~~
8 ~~acts done by the employee, contractor, agent or associated~~
9 ~~others in furtherance of an action under this article or other~~
10 ~~efforts to stop one or more violations of this article.~~

11 ~~(b) Relief. Relief under subsection (a) shall include~~
12 ~~reinstatement with the same seniority status that the employee,~~
13 ~~contractor or agent would have had but for the discrimination,~~
14 ~~two times the amount of back pay, interest on the back pay and~~
15 ~~compensation for special damages sustained as a result of the~~
16 ~~discrimination, including litigation costs and reasonable~~
17 ~~attorney fees.~~

18 ~~(c) Limitation. An action under this section may not be~~
19 ~~brought more than three years after the date on which the~~
20 ~~retaliation occurred.~~

21 ~~Section 1418 D. Actions and remedies under other laws.~~

22 ~~(a) Actions and remedies not exclusive. The provisions of~~
23 ~~this article are not exclusive and the actions and remedies~~
24 ~~provided for in this article shall be in addition to any other~~
25 ~~actions and remedies provided for in any other law or available~~
26 ~~under the common law.~~

27 ~~(b) Construction. The availability of an action or remedy~~
28 ~~provided for in any other law or available under the common law~~
29 ~~shall not be construed to exclude, impair or limit the~~
30 ~~availability or use of the provisions of this article.~~

~~(c) Existing privileges and immunities unaffected. This article shall not abrogate or modify any existing statutory or common law privilege or immunity.~~

~~Section 1419 D. Rules of procedure.~~

~~Except as otherwise specified in, or where clearly inconsistent with, this article, proceedings under this article shall be governed by the Pennsylvania Rules of Civil Procedure or other applicable court rule.~~

~~Section 1420 D. Implementation.~~

~~(a) Regulations. The Attorney General is empowered and authorized to promulgate regulations as necessary to carry out the purpose of this article.~~

~~(b) Guidelines. The following shall apply:~~

~~(1) To facilitate the prompt implementation of this article, in lieu of initially promulgating regulations, the Attorney General may promulgate, adopt and use guidelines that shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. A guideline promulgated under this section shall not be subject to review under any of the following:~~

~~(i) Section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.~~

~~(ii) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.~~

~~(iii) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.~~

~~(iv) The act of June 25, 1982 (P.L.633, No.181),~~

1 ~~known as the Regulatory Review Act.~~

2 ~~(2) A guideline promulgated under this section shall be~~
3 ~~effective for three years after the effective date of this~~
4 ~~article, after which it shall be promulgated as a regulation.~~

5 ~~(c) Mandatory provisions. The Attorney General, whether by~~
6 ~~regulation, guideline or internal policy, shall implement~~
7 ~~provisions to:~~

8 ~~(1) control a person's disclosure, dissemination,~~
9 ~~sharing or use of information that is protected under 18~~
10 ~~Pa.C.S. Ch. 91 (relating to criminal history record~~
11 ~~information) and that the person lawfully obtains in~~
12 ~~connection with an investigation or prosecution of a~~
13 ~~potential or actual violation of section 1411 D; and~~

14 ~~(2) in accordance with section 1413.1 D(b), prevent the~~
15 ~~unauthorized further disclosure, dissemination, sharing or~~
16 ~~use of protected information.~~

17 ~~Section 1421 D. Jurisdiction and Attorney General as relator in~~
18 ~~Federal false claims actions.~~

19 ~~(a) Jurisdiction. An action or petition under this article~~
20 ~~shall be filed in a court of competent jurisdiction. The~~
21 ~~following shall apply:~~

22 ~~(1) An action or petition that is brought in the courts~~
23 ~~of the Commonwealth shall be filed in Commonwealth Court.~~

24 ~~(2) Commonwealth Court shall have jurisdiction over a~~
25 ~~legal claim asserted under the laws of the United States, any~~
26 ~~state or any local government, which arises from the same~~
27 ~~transaction or occurrence as an action brought under this~~
28 ~~article.~~

29 ~~(b) Attorney General as relator. To the extent permitted by~~
30 ~~Federal law the Attorney General may bring an action as a~~

1 ~~relator under 31 U.S.C. § 3730 (relating to civil actions for~~
2 ~~false claims) with respect to any act for which a person may be~~
3 ~~held liable under 31 U.S.C. Ch. 37 (relating to claims).~~

4 ~~(c) Definition. For purposes of this section, the term~~
5 ~~"state" includes the District of Columbia, the Commonwealth of~~
6 ~~Puerto Rico, the Virgin Islands and all insular territories of~~
7 ~~the United States.~~

8 ~~Section 1422 D. Expiration.~~

9 ~~(a) General rule. Subject to subsection (b), this article~~
10 ~~shall expire 20 years after the effective date of this section.~~

11 ~~(b) Exception. The expiration of this article shall not~~
12 ~~apply to or otherwise affect the following:~~

13 ~~(1) A violation of this article that occurred before the~~
14 ~~expiration of this article.~~

15 ~~(2) An investigation of an alleged violation of this~~
16 ~~article that commenced, but was not completed, before the~~
17 ~~expiration of this article.~~

18 ~~Section 2. This act shall take effect in 120 days.~~

19 CHAPTER 1

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20 PRELIMINARY PROVISIONS

21 SECTION 101. SHORT TITLE.

22 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE COMMONWEALTH
23 FRAUD PREVENTION AND COVID-19-RELATED LIABILITY ACT.

24 SECTION 102. DECLARATION OF POLICY.

25 THE GENERAL ASSEMBLY DECLARES THAT THIS ACT ADOPTS THE INTENT
26 OF THE CONGRESS OF THE UNITED STATES IN ENACTING THE FEDERAL
27 FALSE CLAIMS ACT (PUBLIC LAW 97-258, 31 U.S.C. §§ 3729-3733) ON
28 SEPTEMBER 13, 1982, INCLUDING THE AMENDMENTS ENACTED OCTOBER 27,
29 1986 (PUBLIC LAW 99-562, 100 STAT. 3153), AND ALL SUBSEQUENT
30 AMENDMENTS.

1 SECTION 103. DEFINITIONS.

2 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
3 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
4 CONTEXT CLEARLY INDICATES OTHERWISE:

5 "CLAIM." AS FOLLOWS:

6 (1) FROM THE EFFECTIVE DATE OF THIS SECTION THROUGH
7 DECEMBER 31, 2021, A REQUEST OR DEMAND FOR MONEY OR PROPERTY
8 UTILIZING FEDERAL OR STATE FUNDS APPROPRIATED IN RESPONSE TO
9 COVID-19.

10 (2) BEGINNING JANUARY 1, 2022, A REQUEST OR DEMAND FOR
11 MONEY OR PROPERTY, WHETHER UNDER CONTRACT OR OTHERWISE AND
12 REGARDLESS OF WHETHER THE COMMONWEALTH HAS TITLE TO THE MONEY
13 OR PROPERTY THAT IS PRESENTED, SUBMITTED OR OTHERWISE MADE
14 TO:

15 (I) AN EMPLOYEE, OFFICER OR AGENT OF THE
16 COMMONWEALTH.

17 (II) A CONTRACTOR, GRANTEE OR OTHER RECIPIENT, AND
18 ANY PORTION OF THE MONEY OR PROPERTY WILL BE SPENT OR
19 USED ON THE COMMONWEALTH'S BEHALF OR TO ADVANCE A PROGRAM
20 OR INTEREST OF THE COMMONWEALTH, AND THE COMMONWEALTH:

21 (A) PROVIDES OR HAS PROVIDED ANY PORTION OF THE
22 MONEY OR PROPERTY REQUESTED OR DEMANDED; OR

23 (B) WILL REIMBURSE THE CONTRACTOR, GRANTEE OR
24 OTHER RECIPIENT FOR ANY PORTION OF THE MONEY OR
25 PROPERTY THAT IS REQUESTED OR DEMANDED.

26 (3) THE TERM DOES NOT INCLUDE REQUESTS OR DEMANDS FOR
27 MONEY OR PROPERTY THAT THE COMMONWEALTH HAS PAID TO AN
28 INDIVIDUAL AS COMPENSATION FOR EMPLOYMENT OR AS AN INCOME
29 SUBSIDY WITH NO RESTRICTIONS ON THE INDIVIDUAL'S USE OF THE
30 MONEY OR PROPERTY.

1 (4) TO THE EXTENT IT IS NOT CONNECTED TO A REQUEST OR
2 DEMAND FOR MONEY OR PROPERTY, A FILING WITH THE COMMONWEALTH
3 PURSUANT TO THE COMMONWEALTH'S INSURANCE LAWS SHALL NOT
4 CONSTITUTE A CLAIM.

5 "COVID-19." THE NOVEL CORONAVIRUS AS IDENTIFIED IN THE
6 GOVERNOR'S PROCLAMATION OF DISASTER EMERGENCY ISSUED ON MARCH 6,
7 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020).

8 "KNOWINGLY." AS FOLLOWS:

9 (1) WHENEVER A PERSON, WITH RESPECT TO INFORMATION, DOES
10 ANY OF THE FOLLOWING:

11 (I) HAS ACTUAL KNOWLEDGE OF THE INFORMATION.

12 (II) ACTS IN DELIBERATE IGNORANCE OF THE TRUTH OR
13 FALSITY OF THE INFORMATION.

14 (III) ACTS IN RECKLESS DISREGARD OF THE TRUTH OR
15 FALSITY OF THE INFORMATION.

16 (2) PROOF OF SPECIFIC INTENT TO DEFRAUD IS NOT REQUIRED.

17 "LEGAL CLAIM." A CLAIM FOR RELIEF AT LAW OR EQUITY, WHETHER
18 CONTEMPLATED OR ASSERTED, INCLUDING ANY CLAIM, DEMAND, ACCOUNT,
19 NOTE OR ANY OTHER CAUSE OF ACTION OR LIABILITY.

20 "MATERIAL." A NATURAL TENDENCY TO INFLUENCE, OR BE CAPABLE
21 OF INFLUENCING, THE PAYMENT OR RECEIPT OF MONEY OR PROPERTY.

22 "OBLIGATION." AN ESTABLISHED DUTY, WHETHER OR NOT FIXED,
23 ARISING FROM ANY OF THE FOLLOWING:

24 (1) AN EXPRESS OR IMPLIED CONTRACTUAL RELATIONSHIP.

25 (2) AN EXPRESS OR IMPLIED GRANTOR-GRANTEE RELATIONSHIP.

26 (3) AN EXPRESS OR IMPLIED LICENSOR-LICENSEE
27 RELATIONSHIP.

28 (4) A FEE-BASED OR SIMILAR RELATIONSHIP.

29 (5) A STATUTE OR REGULATION.

30 (6) THE RETENTION OF AN OVERPAYMENT.

1 "OFFICIAL USE." A USE THAT IS CONSISTENT WITH THE LAW AND
2 THE REGULATIONS AND POLICIES OF THE OFFICE OF ATTORNEY GENERAL,
3 INCLUDING THE FOLLOWING:

4 (1) USE IN CONNECTION WITH INTERNAL MEMORANDA AND
5 REPORTS.

6 (2) COMMUNICATIONS BETWEEN THE OFFICE OF ATTORNEY
7 GENERAL AND A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY OR A
8 CONTRACTOR OF A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY,
9 UNDERTAKEN IN FURTHERANCE OF AN INVESTIGATION OR PROSECUTION
10 OF AN ACTION.

11 (3) INTERVIEWS OF A QUI TAM PLAINTIFF OR OTHER WITNESS.

12 (4) ORAL EXAMINATIONS.

13 (5) DEPOSITIONS.

14 (6) PREPARATION FOR AND RESPONSE TO CIVIL DISCOVERY
15 REQUESTS.

16 (7) INTRODUCTION INTO THE RECORD OF AN ACTION OR
17 PROCEEDING.

18 (8) APPLICATIONS, MOTIONS, MEMORANDA AND BRIEFS
19 SUBMITTED TO A COURT OR OTHER TRIBUNAL.

20 (9) COMMUNICATIONS WITH INVESTIGATORS, AUDITORS,
21 CONSULTANTS AND EXPERTS, THE COUNSEL OF OTHER PARTIES,
22 ARBITRATORS AND MEDIATORS, CONCERNING AN INVESTIGATION,
23 ACTION OR PROCEEDING.

24 "ORIGINAL SOURCE." AN INDIVIDUAL WHO:

25 (1) PRIOR TO A PUBLIC DISCLOSURE UNDER SECTION 302(F)

26 (2), HAS VOLUNTARILY DISCLOSED TO THE COMMONWEALTH THE
27 INFORMATION ON WHICH THE ALLEGATIONS OR TRANSACTIONS IN A
28 CLAIM ARE BASED; OR

29 (2) HAS KNOWLEDGE THAT IS INDEPENDENT OF AND MATERIALLY
30 ADDS TO THE PUBLICLY DISCLOSED ALLEGATIONS OR TRANSACTIONS

1 AND WHO HAS VOLUNTARILY PROVIDED THE INFORMATION TO THE
2 COMMONWEALTH BEFORE FILING AN ACTION UNDER SECTION 302.

3 "PERSON." A NATURAL PERSON, CORPORATION, FIRM, ASSOCIATION,
4 ORGANIZATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS,
5 TRUST, BUSINESS TRUST, ESTATE OR FOUNDATION.

6 "QUI TAM PLAINTIFF." A PERSON BRINGING A CIVIL ACTION UNDER
7 SECTION 302.

8 CHAPTER 3

9 FALSE CLAIMS

10 SECTION 301. ACTS SUBJECTING PERSONS TO LIABILITY AND DAMAGES.

11 (A) LIABILITY.--A PERSON WHO COMMITS AN ACT PROHIBITED UNDER
12 SUBSECTION (B) SHALL BE LIABLE TO THE COMMONWEALTH FOR THREE
13 TIMES THE AMOUNT OF DAMAGES THAT THE COMMONWEALTH SUSTAINS
14 BECAUSE OF THE ACT OF THAT PERSON.

15 (B) PROHIBITED ACTS.--A PERSON WHO COMMITS ANY OF THE
16 FOLLOWING ACTS SHALL ALSO BE LIABLE TO THE COMMONWEALTH, SUBJECT
17 TO SUBSECTION (F), FOR A CIVIL PENALTY OF NOT LESS THAN \$5,500
18 AND NOT MORE THAN \$11,000 FOR EACH VIOLATION:

19 (1) KNOWINGLY PRESENTS OR CAUSES TO BE PRESENTED A FALSE
20 OR FRAUDULENT CLAIM FOR PAYMENT OR APPROVAL.

21 (2) KNOWINGLY MAKES, USES OR CAUSES TO BE MADE OR USED,
22 A FALSE RECORD OR STATEMENT MATERIAL TO A FALSE OR FRAUDULENT
23 CLAIM.

24 (3) HAS POSSESSION, CUSTODY OR CONTROL OF PROPERTY OR
25 MONEY USED OR TO BE USED BY THE COMMONWEALTH AND KNOWINGLY
26 DELIVERS OR CAUSES TO BE DELIVERED LESS THAN ALL OF THE MONEY
27 OR PROPERTY.

28 (4) IS AUTHORIZED TO MAKE OR DELIVER A DOCUMENT
29 CERTIFYING RECEIPT OF PROPERTY USED OR TO BE USED BY THE
30 COMMONWEALTH AND, INTENDING TO DEFRAUD THE COMMONWEALTH,

1 MAKES OR DELIVERS A RECEIPT WITHOUT COMPLETELY KNOWING THAT
2 THE INFORMATION ON THE RECEIPT IS TRUE.

3 (5) KNOWINGLY BUYS OR RECEIVES AS A PLEDGE OF AN
4 OBLIGATION OR DEBT, PUBLIC PROPERTY FROM AN OFFICER OR
5 EMPLOYEE OF THE COMMONWEALTH WHO LAWFULLY MAY NOT SELL OR
6 PLEDGE THE PROPERTY.

7 (6) KNOWINGLY MAKES, USES OR CAUSES TO BE MADE OR USED,
8 A FALSE RECORD OR STATEMENT MATERIAL TO AN OBLIGATION TO PAY
9 OR TRANSMIT MONEY OR PROPERTY TO THE COMMONWEALTH OR
10 KNOWINGLY CONCEALS, OR KNOWINGLY AND IMPROPERLY AVOIDS OR
11 DECREASES, AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY
12 TO THE COMMONWEALTH.

13 (7) KNOWINGLY FAILS TO DISCLOSE A FACT, EVENT OR
14 OCCURRENCE MATERIAL TO AN OBLIGATION TO PAY OR TRANSMIT MONEY
15 OR PROPERTY TO COMMONWEALTH.

16 (8) IS A BENEFICIARY OF AN INADVERTENT SUBMISSION OF A
17 FALSE CLAIM, SUBSEQUENTLY DISCOVERS THE FALSITY OF THE CLAIM
18 AND FAILS TO DISCLOSE THE FALSE CLAIM TO THE COMMONWEALTH
19 WITHIN A REASONABLE TIME AFTER DISCOVERY OF THE FALSE CLAIM.

20 (9) CONSPIRES TO COMMIT A VIOLATION OF PARAGRAPH (1),
21 (2), (3), (4), (5), (6), (7) OR (8).

22 (C) DAMAGE LIMITATION.--NOTWITHSTANDING THE PROVISIONS OF
23 SUBSECTION (A), THE COURT MAY ASSESS NOT LESS THAN TWO TIMES THE
24 AMOUNT OF DAMAGES THAT THE COMMONWEALTH SUSTAINS BECAUSE OF THE
25 ACT OF THE PERSON IF THE COURT FINDS ALL OF THE FOLLOWING:

26 (1) THE PERSON THAT COMMITS THE VIOLATION UNDER THIS
27 SECTION FURNISHED TO THE COMMONWEALTH OFFICIALS WHO ARE
28 RESPONSIBLE FOR INVESTIGATING FALSE CLAIMS VIOLATIONS WITH
29 ALL INFORMATION KNOWN TO THAT PERSON ABOUT THE VIOLATION
30 WITHIN 45 DAYS AFTER THE DATE ON WHICH THE PERSON FIRST

1 OBTAINED THE INFORMATION.

2 (2) THE PERSON FULLY COOPERATED WITH AN INVESTIGATION BY
3 THE COMMONWEALTH.

4 (3) AT THE TIME WHEN THE PERSON FURNISHED THE
5 COMMONWEALTH WITH INFORMATION ABOUT THE VIOLATION UNDER THIS
6 SECTION OR AT THE TIME WHEN AN ADMINISTRATIVE ACTION IS
7 COMMENCED WITH RESPECT TO THE VIOLATION, THE PERSON DID NOT
8 HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF AN INVESTIGATION
9 INTO THE VIOLATION.

10 (D) EXCLUSION.--THIS SECTION DOES NOT APPLY TO CLAIMS,
11 RECORDS OR STATEMENTS MADE UNDER THE ACT OF MARCH 4, 1971
12 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971.

13 (E) ACTIONS TO RECOVER DAMAGES.--A PERSON WHO IS LIABLE FOR
14 DAMAGES OR CIVIL PENALTIES UNDER SUBSECTION (A) OR (B) SHALL
15 ALSO BE LIABLE TO THE COMMONWEALTH FOR THE REASONABLE COSTS OF A
16 CIVIL ACTION BROUGHT TO RECOVER THE DAMAGES OR CIVIL PENALTIES
17 UNDER SUBSECTION (A) OR (B), INCLUDING REASONABLE COSTS TO THE
18 OFFICE OF ATTORNEY GENERAL.

19 (F) ADJUSTMENTS.--THE CIVIL PENALTIES PAYABLE UNDER
20 SUBSECTION (B) SHALL BE ADJUSTED FROM TIME TO TIME CONSISTENT
21 WITH THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF
22 1990 (PUBLIC LAW 104-410, 28 U.S.C. § 2461).

23 (G) EXEMPTION FROM DISCLOSURE.--INFORMATION FURNISHED UNDER
24 SUBSECTION (C) SHALL BE EXEMPT FROM DISCLOSURE UNDER THE ACT OF
25 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

26 (H) RECIPIENT LIABILITY RESTRICTED.--A PERSON WHO IS A
27 RECIPIENT OF PUBLIC SUPPORT SERVICES SHALL NOT BE LIABLE UNDER
28 THIS SECTION UNLESS THE PERSON INTENTIONALLY VIOLATES SUBSECTION
29 (A) AND BENEFITS FINANCIALLY FROM THE VIOLATION.

30 SECTION 302. ATTORNEY GENERAL INVESTIGATIONS, PROSECUTIONS AND

1 CIVIL ACTIONS.

2 (A) RESPONSIBILITIES.--THE FOLLOWING SHALL APPLY:

3 (1) THE ATTORNEY GENERAL SHALL INVESTIGATE A VIOLATION
4 OF SECTION 301. IF THE ATTORNEY GENERAL FINDS THAT A PERSON
5 HAS VIOLATED OR IS VIOLATING SECTION 301, THE ATTORNEY
6 GENERAL MAY BRING A CIVIL ACTION UNDER THIS SECTION AGAINST
7 THAT PERSON. NOTHING UNDER SECTION 1407 OF THE ACT OF JUNE
8 13, 1967 (P.L.31, NO.21), KNOWN AS THE HUMAN SERVICES CODE,
9 SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE ATTORNEY
10 GENERAL TO INVESTIGATE OR PROSECUTE VIOLATIONS UNDER SECTION
11 301.

12 (2) THE ATTORNEY GENERAL MAY DESIGNATE A DISTRICT
13 ATTORNEY TO SERVE AS THE ATTORNEY GENERAL'S DESIGNEE,
14 INVESTIGATE A VIOLATION OF SECTION 301 AND BRING A CIVIL
15 ACTION UNDER THIS SECTION AGAINST A PERSON THAT HAS VIOLATED
16 OR IS VIOLATING SECTION 301. THE ATTORNEY GENERAL MAY RESCIND
17 THE DESIGNATION MADE UNDER THIS PARAGRAPH.

18 (B) ACTIONS BY QUI TAM PLAINTIFFS.--

19 (1) A QUI TAM PLAINTIFF MAY BRING A CIVIL ACTION FOR A
20 VIOLATION OF SECTION 301 FOR THE QUI TAM PLAINTIFF AND FOR
21 THE COMMONWEALTH IN THE NAME OF THE COMMONWEALTH. ONCE FILED,
22 THE ACTION MAY BE DISMISSED ONLY IF THE COURT AND THE
23 ATTORNEY GENERAL GIVE WRITTEN CONSENT TO THE DISMISSAL AND
24 THEIR REASONS FOR CONSENTING.

25 (2) A COPY OF THE COMPLAINT AND WRITTEN DISCLOSURE OF
26 SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THE QUI
27 TAM PLAINTIFF POSSESSES SHALL BE SERVED PROMPTLY ON THE
28 ATTORNEY GENERAL AS PROVIDED FOR IN THE PENNSYLVANIA RULES OF
29 CIVIL PROCEDURE OR APPLICABLE COURT RULES. THE COMPLAINT
30 SHALL BE FILED IN CAMERA AND SHALL REMAIN UNDER SEAL FOR AT

1 LEAST 120 DAYS AND SHALL NOT BE SERVED ON THE DEFENDANT UNTIL
2 THE COURT ORDERS THE SERVICE. THE COMMONWEALTH MAY ELECT TO
3 INTERVENE AND PROCEED WITH THE ACTION WITHIN 120 DAYS AFTER
4 THE COMMONWEALTH RECEIVES THE COMPLAINT AND THE MATERIAL
5 EVIDENCE AND INFORMATION.

6 (3) THE COMMONWEALTH MAY, FOR GOOD CAUSE SHOWN, MOVE THE
7 COURT FOR EXTENSIONS OF THE TIME DURING WHICH THE COMPLAINT
8 REMAINS UNDER SEAL UNDER PARAGRAPH (2). THE MOTIONS MAY BE
9 SUPPORTED BY AFFIDAVITS OR OTHER SUBMISSIONS IN CAMERA. THE
10 DEFENDANT SHALL NOT BE REQUIRED TO RESPOND TO A COMPLAINT
11 FILED UNDER THIS SECTION UNTIL THE COMPLAINT IS UNSEALED AND
12 SERVED UPON THE DEFENDANT UNDER THE PENNSYLVANIA RULES OF
13 CIVIL PROCEDURE OR APPLICABLE COURT RULE.

14 (4) BEFORE THE EXPIRATION OF THE 120-DAY PERIOD OR ANY
15 EXTENSIONS OBTAINED UNDER PARAGRAPH (3), THE COMMONWEALTH
16 SHALL:

17 (I) PROCEED WITH THE ACTION; OR

18 (II) NOTIFY THE COURT THAT THE COMMONWEALTH DECLINES
19 TO TAKE OVER THE ACTION, IN WHICH CASE THE QUI TAM
20 PLAINTIFF SHALL HAVE THE RIGHT TO CONDUCT THE ACTION.

21 (C) INTERVENTION.--WHEN A QUI TAM PLAINTIFF BRINGS AN ACTION
22 UNDER SUBSECTION (B), NO PERSON OTHER THAN THE COMMONWEALTH MAY
23 INTERVENE OR BRING A RELATED ACTION BASED ON THE FACTS
24 UNDERLYING THE PENDING ACTION.

25 (D) RIGHTS IN QUI TAM ACTIONS.--

26 (1) IF THE COMMONWEALTH PROCEEDS WITH THE ACTION, THE
27 COMMONWEALTH SHALL HAVE THE PRIMARY RESPONSIBILITY FOR
28 PROSECUTING THE ACTION AND SHALL NOT BE BOUND BY AN ACT OF
29 THE QUI TAM PLAINTIFF. THE QUI TAM PLAINTIFF SHALL HAVE THE
30 RIGHT TO CONTINUE AS A PARTY TO THE ACTION, SUBJECT TO THE

1 LIMITATIONS SET FORTH UNDER PARAGRAPH (2).

2 (2) THE FOLLOWING APPLY:

3 (I) UPON NOTICE PROVIDED TO THE QUI TAM PLAINTIFF,
4 THE COMMONWEALTH MAY MOVE TO DISMISS THE ACTION DESPITE
5 THE OBJECTIONS OF THE QUI TAM PLAINTIFF. THE COURT MAY
6 DISMISS THE ACTION UPON A SHOWING OF GOOD CAUSE IF THE
7 QUI TAM PLAINTIFF HAS BEEN NOTIFIED BY THE COMMONWEALTH
8 OF THE FILING OF THE MOTION AND THE COURT HAS PROVIDED
9 THE QUI TAM PLAINTIFF WITH AN OPPORTUNITY TO OPPOSE THE
10 MOTION AND PRESENT EVIDENCE AT A HEARING.

11 (II) THE COMMONWEALTH MAY SETTLE THE ACTION WITH THE
12 DEFENDANT DESPITE THE OBJECTIONS OF THE QUI TAM PLAINTIFF
13 IF THE COURT DETERMINES, AFTER A HEARING PROVIDING THE
14 QUI TAM PLAINTIFF AN OPPORTUNITY TO PRESENT EVIDENCE,
15 THAT THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND
16 REASONABLE UNDER THE CIRCUMSTANCES. UPON A SHOWING OF
17 GOOD CAUSE, THE HEARING MAY BE HELD IN CAMERA. UPON
18 MOTION OF THE COMMONWEALTH, THE COURT SHALL FOR GOOD
19 CAUSE SHOWN, ORDER A PARTIAL LIFTING OF THE SEAL TO
20 FACILITATE THE INVESTIGATIVE PROCESS OR SETTLEMENT.

21 (III) UPON A SHOWING BY THE COMMONWEALTH THAT
22 UNRESTRICTED PARTICIPATION OF THE QUI TAM PLAINTIFF
23 DURING THE COURSE OF THE ACTION BY THE QUI TAM PLAINTIFF
24 WOULD INTERFERE WITH OR UNDULY DELAY THE COMMONWEALTH'S
25 PROSECUTION OF THE CASE OR WOULD BE REPETITIOUS,
26 IRRELEVANT OR FOR PURPOSES OF HARASSMENT, THE COURT MAY,
27 IN ITS DISCRETION, IMPOSE LIMITATIONS ON THE QUI TAM
28 PLAINTIFF'S PARTICIPATION BY:

29 (A) LIMITING THE NUMBER OF WITNESSES THE QUI TAM
30 PLAINTIFF 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 QUI TAM PLAINTIFF IN THE ACTION.

7 (IV) UPON A SHOWING BY THE DEFENDANT THAT
8 UNRESTRICTED PARTICIPATION DURING THE ACTION BY THE QUI
9 TAM PLAINTIFF WOULD BE FOR THE PURPOSE OF HARASSMENT OR
10 WOULD CAUSE THE DEFENDANT UNDUE BURDEN OR UNNECESSARY
11 EXPENSE, THE COURT MAY LIMIT THE PARTICIPATION BY THE QUI
12 TAM PLAINTIFF IN THE ACTION.

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, THE COMMONWEALTH
16 SHALL BE SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE
17 ACTION AND SHALL BE SUPPLIED, AT THE EXPENSE OF THE
18 COMMONWEALTH, WITH COPIES OF ALL DEPOSITION TRANSCRIPTS AND
19 OTHER DISCOVERY PRODUCED IN THE ACTION. THE COURT, WITHOUT
20 LIMITING THE STATUS AND RIGHTS OF THE QUI TAM PLAINTIFF, MAY
21 PERMIT THE COMMONWEALTH TO INTERVENE AT A LATER DATE UPON A
22 SHOWING OF GOOD CAUSE.

23 (4) WHETHER OR NOT THE COMMONWEALTH PROCEEDS WITH THE
24 ACTION, UPON A SHOWING BY THE COMMONWEALTH THAT CERTAIN
25 ACTIONS OF DISCOVERY BY THE QUI TAM PLAINTIFF WOULD INTERFERE
26 WITH THE COMMONWEALTH'S INVESTIGATION OR PROSECUTION OF A
27 CRIMINAL OR CIVIL MATTER ARISING OUT OF THE SAME FACTS, THE
28 COURT MAY STAY THE DISCOVERY FOR A PERIOD OF NOT MORE THAN 60
29 DAYS. THE SHOWING SHALL BE CONDUCTED IN CAMERA. THE COURT MAY
30 EXTEND THE 60-DAY PERIOD UPON A FURTHER SHOWING IN CAMERA

1 THAT THE COMMONWEALTH HAS PURSUED THE CRIMINAL OR CIVIL
2 INVESTIGATION OR PROCEEDINGS WITH REASONABLE DILIGENCE AND
3 THAT THE DISCOVERY PROPOSED IN THE CIVIL ACTION WILL
4 INTERFERE WITH THE ONGOING CRIMINAL OR CIVIL INVESTIGATIONS
5 OR PROCEEDINGS.

6 (5) NOTWITHSTANDING THE PROVISIONS UNDER SUBSECTION (B),
7 THE COMMONWEALTH MAY ELECT TO PURSUE THE COMMONWEALTH'S LEGAL
8 CLAIM THROUGH AN ALTERNATE REMEDY AVAILABLE TO THE
9 COMMONWEALTH, INCLUDING AN ADMINISTRATIVE PROCEEDING TO
10 DETERMINE A CIVIL MONEY PENALTY. IF THE ALTERNATE REMEDY IS
11 PURSUED IN ANOTHER PROCEEDING, THE QUI TAM PLAINTIFF SHALL
12 HAVE THE SAME RIGHTS IN THE PROCEEDING AS IF THE ACTION HAD
13 CONTINUED UNDER THIS SECTION. A FINDING OF FACT OR CONCLUSION
14 OF LAW MADE IN THE OTHER PROCEEDING THAT HAS BECOME FINAL
15 SHALL BE CONCLUSIVE ON ALL PARTIES TO AN ACTION UNDER THIS
16 SECTION. A FINDING OR CONCLUSION IS FINAL IF IT HAS BEEN
17 FINALLY DETERMINED ON APPEAL TO THE APPROPRIATE COURT OF THE
18 COMMONWEALTH, IF THE TIME FOR FILING THE APPEAL REGARDING THE
19 FINDING OR CONCLUSION HAS EXPIRED WITHOUT AN APPEAL HAVING
20 BEEN FILED OR IF THE FINDING OR CONCLUSION IS NOT SUBJECT TO
21 JUDICIAL REVIEW.

22 (E) AWARD TO QUI TAM PLAINTIFF.--

23 (1) IF THE COMMONWEALTH PROCEEDS WITH AN ACTION BROUGHT
24 BY A QUI TAM PLAINTIFF, THE QUI TAM PLAINTIFF SHALL, SUBJECT
25 TO THE PROVISIONS OF THIS PARAGRAPH, RECEIVE AT LEAST 15% BUT
26 NOT MORE THAN 25% OF THE PROCEEDS OF THE ACTION OR SETTLEMENT
27 OF THE LEGAL CLAIM, DEPENDING UPON THE EXTENT TO WHICH THE
28 QUI TAM PLAINTIFF AND COUNSEL FOR THE QUI TAM PLAINTIFF
29 SUBSTANTIALLY CONTRIBUTED TO THE PROSECUTION OF THE ACTION.
30 IF THE COURT FINDS THAT THE ACTION IS BASED PRIMARILY ON

1 DISCLOSURES OF SPECIFIC INFORMATION, OTHER THAN INFORMATION
2 PROVIDED BY THE QUI TAM PLAINTIFF, RELATING TO ALLEGATIONS OR
3 TRANSACTIONS IN A CRIMINAL, CIVIL OR ADMINISTRATIVE HEARING
4 OR IN A LEGISLATIVE OR ADMINISTRATIVE REPORT, HEARING, AUDIT
5 OR INVESTIGATION OR FROM THE NEWS MEDIA, THE COURT MAY AWARD
6 A SUM THE COURT CONSIDERS APPROPRIATE, BUT IN NO CASE MORE
7 THAN 10% OF THE PROCEEDS, TAKING INTO ACCOUNT THE
8 SIGNIFICANCE OF THE INFORMATION AND THE ROLE OF THE QUI TAM
9 PLAINTIFF IN ADVANCING THE ACTION. A PAYMENT TO A QUI TAM
10 PLAINTIFF UNDER THIS SUBSECTION SHALL BE MADE FROM THE
11 PROCEEDS OF THE ACTION OR SETTLEMENT OF THE LEGAL CLAIM. THE
12 QUI TAM PLAINTIFF SHALL ALSO RECEIVE AN AMOUNT FOR REASONABLE
13 EXPENSES WHICH THE COURT FINDS WERE NECESSARILY INCURRED,
14 PLUS REASONABLE ATTORNEY FEES AND COSTS. THE EXPENSES, FEES
15 AND COSTS SHALL BE AWARDED AGAINST THE DEFENDANT.

16 (2) IF THE COMMONWEALTH DOES NOT PROCEED WITH AN ACTION
17 UNDER THIS SECTION, THE QUI TAM PLAINTIFF SHALL RECEIVE AT
18 LEAST 25% BUT NOT MORE THAN 30% OF THE PROCEEDS OF THE ACTION
19 OR SETTLEMENT OF THE LEGAL CLAIM, AS THE COURT DEEMS
20 REASONABLE. THE AMOUNT SHALL BE PAID FROM THE PROCEEDS OF THE
21 ACTION OR SETTLEMENT OF THE LEGAL CLAIM. THE QUI TAM
22 PLAINTIFF SHALL ALSO RECEIVE AN AMOUNT FOR REASONABLE
23 EXPENSES WHICH THE COURT FINDS TO HAVE BEEN NECESSARILY
24 INCURRED, PLUS REASONABLE ATTORNEY FEES AND COSTS. THE
25 EXPENSES, FEES AND COSTS SHALL BE AWARDED AGAINST THE
26 DEFENDANT.

27 (3) WHETHER OR NOT THE COMMONWEALTH PROCEEDS WITH AN
28 ACTION UNDER THIS SECTION, IF THE COURT FINDS THE QUI TAM
29 PLAINTIFF PLANNED AND INITIATED THE VIOLATION OF SECTION 301
30 UPON WHICH THE ACTION WAS FILED, THEN THE COURT MAY, TO THE

1 EXTENT THE COURT CONSIDERS APPROPRIATE, REDUCE THE SHARE OF
2 THE PROCEEDS OF THE ACTION WHICH THE QUI TAM PLAINTIFF WOULD
3 OTHERWISE RECEIVE UNDER PARAGRAPH (1) OR (2), TAKING INTO
4 ACCOUNT THE ROLE OF THE QUI TAM PLAINTIFF IN ADVANCING THE
5 ACTION AND ANY RELEVANT CIRCUMSTANCES PERTAINING TO THE
6 VIOLATION. IF THE QUI TAM PLAINTIFF IS CONVICTED OF CRIMINAL
7 CONDUCT ARISING FROM THE QUI TAM PLAINTIFF'S ROLE IN THE
8 VIOLATION, THE QUI TAM PLAINTIFF SHALL BE DISMISSED FROM THE
9 CIVIL ACTION AND SHALL NOT RECEIVE A SHARE OF THE PROCEEDS OF
10 THE ACTION. THE DISMISSAL SHALL NOT PREJUDICE THE RIGHT OF
11 THE COMMONWEALTH TO CONTINUE THE ACTION.

12 (4) IF THE COMMONWEALTH DOES NOT PROCEED WITH THE ACTION
13 UNDER THIS SECTION AND THE QUI TAM PLAINTIFF CONDUCTS THE
14 ACTION, THE COURT MAY AWARD TO THE DEFENDANT REASONABLE
15 ATTORNEY FEES AND EXPENSES IF THE DEFENDANT PREVAILS IN THE
16 ACTION AND THE COURT FINDS THE LEGAL CLAIM OF THE QUI TAM
17 PLAINTIFF WAS CLEARLY FRIVOLOUS, CLEARLY VEXATIOUS OR BROUGHT
18 PRIMARILY FOR PURPOSES OF HARASSMENT.

19 (F) CERTAIN ACTIONS BARRED.--

20 (1) A COURT DOES NOT HAVE JURISDICTION OVER AN ACTION
21 FILED UNDER THIS SECTION AGAINST THE GOVERNOR, THE LIEUTENANT
22 GOVERNOR, THE ATTORNEY GENERAL, THE AUDITOR GENERAL, THE
23 TREASURER, A CABINET MEMBER, A DEPUTY SECRETARY, A MEMBER OF
24 THE GENERAL ASSEMBLY OR A MEMBER OF THE JUDICIARY IF THE
25 ACTION IS BASED ON EVIDENCE OR INFORMATION KNOWN TO THE
26 COMMONWEALTH WHEN THE ACTION WAS BROUGHT.

27 (2) SUBJECT TO THE PROVISIONS UNDER PARAGRAPH (3), THE
28 COURT SHALL DISMISS AN ACTION OR LEGAL CLAIM BROUGHT UNDER
29 SUBSECTION (B) IF SUBSTANTIALLY THE SAME ALLEGATIONS OR
30 TRANSACTIONS ALLEGED IN THE ACTION OR LEGAL CLAIM WERE

1 PUBLICLY DISCLOSED THE NEWS MEDIA.

2 (3) THE COURT MAY NOT DISMISS AN ACTION UNDER PARAGRAPH
3 (2) IF:

4 (I) THE ACTION WAS BROUGHT BY THE ATTORNEY GENERAL;

5 (II) THE DISMISSAL IS OPPOSED BY THE ATTORNEY
6 GENERAL; OR

7 (III) THE QUI TAM PLAINTIFF IS AN ORIGINAL SOURCE OF
8 THE INFORMATION.

9 (4) IN NO EVENT MAY A PERSON BRING AN ACTION UNDER THIS
10 SECTION THAT IS BASED UPON ALLEGATIONS OR TRANSACTIONS WHICH
11 ARE THE SUBJECT OF A CIVIL SUIT OR AN ADMINISTRATIVE CIVIL
12 MONEY PENALTY PROCEEDING IN WHICH THE COMMONWEALTH IS ALREADY
13 A PARTY.

14 (G) COMMONWEALTH NOT LIABLE FOR EXPENSES.--THE COMMONWEALTH
15 SHALL NOT BE LIABLE FOR EXPENSES WHICH A QUI TAM PLAINTIFF
16 INCURS IN BRINGING AN ACTION UNDER THIS SECTION.

17 (H) (RESERVED).

18 (I) COOPERATION BY AGENCIES.--COMMONWEALTH AGENCIES SHALL
19 COOPERATE IN THE INVESTIGATION AND PROSECUTION OF FALSE CLAIMS
20 UNDER THIS ACT, WHETHER THE CLAIMS ARE BROUGHT BY THE ATTORNEY
21 GENERAL OR A QUI TAM PLAINTIFF.

22 SECTION 303. CIVIL INVESTIGATIVE DEMANDS.

23 (A) ISSUANCE AND SERVICE.--THE FOLLOWING SHALL APPLY:

24 (1) FOR THE PURPOSE OF THIS SUBSECTION, WHENEVER THE
25 ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE HAS
26 REASON TO BELIEVE THAT A PERSON MAY BE IN POSSESSION, CUSTODY
27 OR CONTROL OF DOCUMENTARY MATERIAL OR INFORMATION RELEVANT TO
28 A FALSE CLAIMS INVESTIGATION UNDER THIS ACT, THE ATTORNEY
29 GENERAL OR DESIGNEE MAY, BEFORE COMMENCING A CIVIL ACTION
30 UNDER SECTION 302(A) OR MAKING AN ELECTION UNDER SECTION

1 302 (B), ISSUE IN WRITING OR CAUSE TO BE SERVED UPON THE
2 PERSON A CIVIL INVESTIGATIVE DEMAND REQUIRING THE PERSON TO:

3 (I) PRODUCE DOCUMENTARY MATERIAL FOR INSPECTION AND
4 COPYING;

5 (II) ANSWER IN WRITING WRITTEN INTERROGATORIES WITH
6 RESPECT TO DOCUMENTARY MATERIAL OR INFORMATION;

7 (III) GIVE ORAL TESTIMONY CONCERNING DOCUMENTARY
8 MATERIAL OR INFORMATION; OR

9 (IV) FURNISH ANY COMBINATION OF MATERIALS, ANSWERS
10 OR TESTIMONY.

11 (2) WHENEVER A CIVIL INVESTIGATIVE DEMAND IS AN EXPRESS
12 DEMAND FOR A PRODUCT OF DISCOVERY, THE ATTORNEY GENERAL OR
13 THE ATTORNEY GENERAL'S DESIGNEE SHALL:

14 (I) CAUSE TO BE SERVED IN ANY MANNER AUTHORIZED BY
15 THIS SUBSECTION A COPY OF THE DEMAND UPON THE PERSON FROM
16 WHOM OR WHICH THE DISCOVERY WAS OBTAINED; AND

17 (II) NOTIFY THE DEMAND ISSUEE OF THE DATE ON WHICH
18 THE COPY WAS SERVED.

19 (3) EXCEPT AS OTHERWISE PROHIBITED BY THE LAWS OF THIS
20 COMMONWEALTH, ANY INFORMATION THE ATTORNEY GENERAL OR THE
21 ATTORNEY GENERAL'S DESIGNEE OBTAINS UNDER THIS SECTION MAY BE
22 SHARED WITH A QUI TAM PLAINTIFF, IF THE ATTORNEY GENERAL OR
23 DESIGNEE DETERMINES IT IS NECESSARY AS PART OF A FALSE CLAIM
24 INVESTIGATION CONDUCTED UNDER THIS ACT.

25 (4) NOTWITHSTANDING THE PROVISIONS OF 18 PA.C.S. CH. 91
26 (RELATING TO CRIMINAL HISTORY RECORD INFORMATION) OR ANY
27 OTHER LAW TO THE CONTRARY, THE ATTORNEY GENERAL MAY ACCESS
28 AND SHARE DATA, RECORDS, DOCUMENTS OR OTHER INFORMATION,
29 INCLUDING CRIMINAL HISTORY RECORD INFORMATION, INTELLIGENCE
30 INFORMATION, INVESTIGATIVE INFORMATION AND TREATMENT

1 INFORMATION OBTAINED DURING THE COURSE OF, AND AS NECESSARY
2 TO ADVANCE, AN INVESTIGATION OR PROSECUTION OF A POTENTIAL OR
3 ACTUAL VIOLATION OF SECTION 301 WITH THE FOLLOWING:

4 (I) A SECTION, UNIT, SUBUNIT OR INDIVIDUAL EMPLOYEE
5 OR AGENT OF THE OFFICE OF ATTORNEY GENERAL AUTHORIZED AND
6 DESIGNATED BY THE ATTORNEY GENERAL TO INVESTIGATE OR
7 PROSECUTE A POTENTIAL OR ACTUAL VIOLATION OF SECTION 301.

8 (II) THE UNITED STATES DEPARTMENT OF JUSTICE.

9 (III) THE APPROPRIATE CIVIL PROSECUTORIAL AUTHORITY
10 OF ANOTHER JURISDICTION.

11 (5) THE RECIPIENT DESCRIBED UNDER PARAGRAPH (4) (I) SHALL
12 BE SUBJECT TO THE PROVISIONS OF 18 PA.C.S. CH. 91 RELATING TO
13 FURTHER DISCLOSURE, DISSEMINATION AND SHARING OF THE
14 INFORMATION WITH NONCRIMINAL JUSTICE AGENCIES, DEPARTMENTS
15 AND INDIVIDUALS, EXCEPT AS MAY BE PERMITTED UNDER PARAGRAPH
16 (4) (II) AND (III).

17 (B) CONTENTS AND DEADLINES.--THE FOLLOWING SHALL APPLY:

18 (1) A CIVIL INVESTIGATIVE DEMAND SHALL STATE THE NATURE
19 OF THE CONDUCT CONSTITUTING THE ALLEGED VIOLATION OF THIS ACT
20 THAT IS UNDER INVESTIGATION AND THE APPLICABLE PROVISIONS OF
21 THIS ACT ALLEGED TO BE VIOLATED.

22 (2) IF THE CIVIL INVESTIGATIVE DEMAND IS FOR THE
23 PRODUCTION OF DOCUMENTARY MATERIAL, THE DEMAND SHALL:

24 (I) DESCRIBE EACH CLASS OF DOCUMENTARY MATERIAL TO
25 BE PRODUCED WITH DEFINITENESS AND CERTAINTY AS TO PERMIT
26 THE MATERIAL TO BE FAIRLY IDENTIFIED;

27 (II) PRESCRIBE A RETURN DATE FOR EACH CLASS THAT
28 WILL PROVIDE A REASONABLE TIME PERIOD WITHIN WHICH THE
29 MATERIAL DEMANDED MAY BE ASSEMBLED AND MADE AVAILABLE FOR
30 INSPECTION AND COPYING; AND

1 (III) IDENTIFY THE FALSE CLAIMS INVESTIGATOR TO WHOM
2 THE MATERIAL SHALL BE AVAILABLE.

3 (3) IF THE CIVIL INVESTIGATIVE DEMAND IS FOR ANSWERS TO
4 WRITTEN INTERROGATORIES, THE DEMAND SHALL:

5 (I) STATE WITH SPECIFICITY THE WRITTEN
6 INTERROGATORIES TO BE ANSWERED.

7 (II) PRESCRIBE DATES AT WHICH TIME THE ANSWERS TO
8 THE WRITTEN INTERROGATORIES SHALL BE SUBMITTED.

9 (III) IDENTIFY THE FALSE CLAIMS INVESTIGATOR TO WHOM
10 THE ANSWERS SHALL BE SUBMITTED.

11 (4) IF THE CIVIL INVESTIGATIVE DEMAND IS FOR ORAL
12 TESTIMONY, THE DEMAND SHALL:

13 (I) PRESCRIBE A DATE, TIME AND PLACE AT WHICH THE
14 ORAL TESTIMONY SHALL BE GIVEN.

15 (II) IDENTIFY A FALSE CLAIMS INVESTIGATOR WHO SHALL
16 CONDUCT THE EXAMINATION AND THE CUSTODIAN TO WHOM THE
17 TRANSCRIPT OF THE EXAMINATION SHALL BE SUBMITTED.

18 (III) SPECIFY THAT ATTENDANCE AND TESTIMONY ARE
19 NECESSARY TO THE CONDUCT OF THE FALSE CLAIMS
20 INVESTIGATION.

21 (IV) DESCRIBE THE GENERAL PURPOSE FOR WHICH THE
22 DEMAND IS BEING ISSUED AND GENERAL NATURE OF THE
23 TESTIMONY, INCLUDING THE PRIMARY AREAS OF INQUIRY, WHICH
24 WILL BE TAKEN UNDER THE DEMAND.

25 (5) A CIVIL INVESTIGATIVE DEMAND SHALL CONTAIN THE
26 FOLLOWING STATEMENT PRINTED AT THE BEGINNING OF THE DEMAND:

27 YOU HAVE THE RIGHT TO SEEK THE ASSISTANCE OF AN ATTORNEY,
28 WHO MAY REPRESENT YOU IN ALL PHASES OF THE INVESTIGATION
29 OF WHICH THIS CIVIL INVESTIGATIVE DEMAND IS A PART.

30 (6) A CIVIL INVESTIGATIVE DEMAND THAT IS AN EXPRESS

1 DEMAND FOR A PRODUCT OF DISCOVERY SHALL NOT BE RETURNED OR
2 RETURNABLE UNTIL 20 DAYS AFTER A COPY OF THE DEMAND HAS BEEN
3 SERVED UPON THE PERSON FROM WHOM OR WHICH THE DISCOVERY WAS
4 OBTAINED.

5 (7) THE DATE PRESCRIBED FOR COMMENCEMENT OF ORAL
6 TESTIMONY UNDER A CIVIL INVESTIGATIVE DEMAND SHALL NOT BE
7 LESS THAN SEVEN DAYS AFTER THE DATE ON WHICH THE DEMAND IS
8 SERVED, UNLESS THE ATTORNEY GENERAL OR A DESIGNEE DETERMINES
9 THAT EXCEPTIONAL CIRCUMSTANCES EXIST AND WARRANT THE
10 COMMENCEMENT OF TESTIMONY WITHIN A LESSER TIME PERIOD.

11 (8) THE ATTORNEY GENERAL, OR A DESIGNEE, MAY NOT
12 AUTHORIZE THE ISSUANCE OF MORE THAN ONE CIVIL INVESTIGATIVE
13 DEMAND FOR THE SAME PERSON'S ORAL TESTIMONY UNLESS:

14 (I) THE PERSON REQUESTS OTHERWISE; OR

15 (II) THE ATTORNEY GENERAL OR DESIGNEE NOTIFIES THE
16 PERSON IN WRITING THAT AN ADDITIONAL DEMAND FOR ORAL
17 TESTIMONY IS NECESSARY.

18 (C) PROTECTED MATERIAL OR INFORMATION.--THE FOLLOWING SHALL
19 APPLY:

20 (1) A CIVIL INVESTIGATIVE DEMAND MAY NOT REQUIRE THE
21 PRODUCTION OF DOCUMENTARY MATERIAL, THE SUBMISSION OF ANSWERS
22 TO WRITTEN INTERROGATORIES OR THE GIVING OF ORAL TESTIMONY IF
23 THE MATERIAL, ANSWERS OR TESTIMONY WOULD BE PROTECTED FROM
24 DISCLOSURE UNDER:

25 (I) THE STANDARDS APPLICABLE TO SUBPOENAS OR
26 SUBPOENAS DUCES TECUM ISSUED BY A COURT OF THIS
27 COMMONWEALTH TO AID IN A GRAND JURY INVESTIGATION; OR

28 (II) THE STANDARDS APPLICABLE TO DISCOVERY UNDER THE
29 PENNSYLVANIA RULES OF CIVIL PROCEDURE OR OTHER APPLICABLE
30 COURT RULE, TO THE EXTENT THAT THE APPLICATION OF THE

1 STANDARDS TO A DEMAND IS APPROPRIATE AND CONSISTENT WITH
2 THE PROVISIONS AND PURPOSES OF THIS SECTION.

3 (2) WITH RESPECT TO THE EFFECT ON OTHER ORDERS, RULES
4 AND LAWS:

5 (I) EXCEPT WHERE A STATUTE EXPLICITLY PRECLUDES THE
6 SUPERSEDING EFFECT IMPOSED BY THIS PARAGRAPH, A CIVIL
7 INVESTIGATIVE DEMAND THAT IS AN EXPRESS DEMAND FOR A
8 PRODUCT OF DISCOVERY SUPERSEDES AN INCONSISTENT ORDER,
9 RULE OR PROVISION OF LAW, OTHER THAN IN THIS SECTION,
10 THAT PREVENTS OR RESTRAINS DISCLOSURE OF THE PRODUCT OF
11 DISCOVERY TO ANY PERSON.

12 (II) A PERSON'S DISCLOSURE OF A PRODUCT OF DISCOVERY
13 UNDER AN EXPRESS DEMAND DOES NOT CONSTITUTE A WAIVER OF
14 ANY RIGHT OR PRIVILEGE TO RESIST DISCOVERY OF TRIAL
15 PREPARATION MATERIALS THAT THE PERSON MAY BE ENTITLED TO
16 INVOKE.

17 (D) SERVICE AND JURISDICTION.--EXCEPT AS OTHERWISE PROVIDED,
18 THE FOLLOWING APPLY TO CIVIL INVESTIGATIVE DEMANDS ISSUED AND
19 SERVED UNDER THIS SECTION AND PETITIONS FILED UNDER SUBSECTION
20 (J):

21 (1) THE FOLLOWING SHALL APPLY REGARDING BY WHOM SERVED:

22 (I) A CIVIL INVESTIGATIVE DEMAND MAY BE SERVED BY A
23 FALSE CLAIMS INVESTIGATOR, A LAW ENFORCEMENT OFFICER OR
24 ANOTHER INDIVIDUAL AUTHORIZED BY LAW TO SERVE PROCESS IN
25 THE JURISDICTION WHERE THE DEMAND IS SERVED.

26 (II) A PETITION MAY BE SERVED BY ANY PERSON
27 AUTHORIZED TO SERVE PROCESS UNDER THE PENNSYLVANIA RULES
28 OF CIVIL PROCEDURE OR OTHER APPLICABLE COURT RULE.

29 (2) THE FOLLOWING SHALL APPLY REGARDING LOCATION OF
30 SERVICE:

1 (I) A CIVIL INVESTIGATIVE DEMAND OR PETITION MAY BE
2 SERVED UPON A PERSON OR ENTITY CONSISTENT WITH AND IN THE
3 MANNER PRESCRIBED BY 42 PA.C.S. CH. 53 (RELATING TO BASES
4 OF JURISDICTION AND INTERSTATE AND INTERNATIONAL
5 PROCEDURE) AND THE PENNSYLVANIA RULES OF CIVIL PROCEDURE
6 OR OTHER APPLICABLE COURT RULE, FOR PERSONAL SERVICE
7 INSIDE OR OUTSIDE THIS COMMONWEALTH.

8 (II) TO THE EXTENT THAT THE COURTS OF THE
9 COMMONWEALTH CAN ASSERT JURISDICTION OVER A PERSON
10 OUTSIDE THIS COMMONWEALTH, A COURT WITH JURISDICTION OVER
11 AN ACTION FILED UNDER THIS ACT SHALL HAVE THE SAME
12 JURISDICTION TO TAKE ACTION RESPECTING THE PERSON'S
13 COMPLIANCE WITH THIS SECTION THAT IT WOULD HAVE IF THE
14 PERSON RESIDED WITHIN THE COURT'S JURISDICTION.

15 (3) THE FOLLOWING SHALL APPLY REGARDING SERVICE UPON
16 LEGAL ENTITIES AND NATURAL PERSONS:

17 (I) A CIVIL INVESTIGATIVE DEMAND OR PETITION MAY BE
18 SERVED UPON A LEGAL ENTITY BY:

19 (A) DELIVERING AN EXECUTED COPY OF THE DEMAND OR
20 PETITION TO ANY PARTNER, EXECUTIVE OFFICER, MANAGING
21 AGENT OR GENERAL AGENT OF THE LEGAL ENTITY OR TO AN
22 EMPLOYEE DESIGNATED OR AGENT AUTHORIZED BY
23 APPOINTMENT OR LAW TO RECEIVE SERVICE OF PROCESS ON
24 BEHALF OF THE LEGAL ENTITY;

25 (B) DELIVERING AN EXECUTED COPY OF THE DEMAND OR
26 PETITION TO THE LEGAL ENTITY'S PRINCIPAL OFFICE OR
27 PLACE OF BUSINESS;

28 (C) DEPOSITING AN EXECUTED COPY OF THE DEMAND OR
29 PETITION IN THE UNITED STATES MAIL BY REGISTERED OR
30 CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED,

1 ADDRESSED TO THE LEGAL ENTITY AT ITS PRINCIPAL OFFICE
2 OR PLACE OF BUSINESS; OR

3 (D) ANY OTHER METHOD PROVIDED BY THE
4 PENNSYLVANIA RULES OF CIVIL PROCEDURE OR OTHER
5 APPLICABLE COURT RULE.

6 (II) A CIVIL INVESTIGATIVE DEMAND OR PETITION MAY BE
7 SERVED UPON A NATURAL PERSON BY:

8 (A) DELIVERING AN EXECUTED COPY OF THE DEMAND OR
9 PETITION TO THE PERSON;

10 (B) DEPOSITING AN EXECUTED COPY OF THE DEMAND OR
11 PETITION IN THE UNITED STATES MAIL BY REGISTERED OR
12 CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED,
13 ADDRESSED TO THE PERSON AT THE PERSON'S RESIDENCE OR
14 PRINCIPAL OFFICE OR PLACE OF BUSINESS; OR

15 (C) ANY OTHER METHOD PROVIDED BY THE
16 PENNSYLVANIA RULES OF CIVIL PROCEDURE OR OTHER
17 APPLICABLE COURT RULE.

18 (4) A VERIFIED RETURN BY THE INDIVIDUAL SERVING A CIVIL
19 INVESTIGATIVE DEMAND OR PETITION, SPECIFYING THE MANNER OF
20 SERVICE, SHALL BE PROOF OF SERVICE. IN THE CASE OF SERVICE BY
21 REGISTERED OR CERTIFIED MAIL, THE RETURN POST OFFICE RECEIPT
22 OF THE DEMAND'S OR PETITION'S DELIVERY SHALL ACCOMPANY THE
23 RETURN.

24 (E) DOCUMENTARY MATERIAL.--

25 (1) THE FOLLOWING SHALL APPLY REGARDING VERIFIED
26 CERTIFICATE:

27 (I) THE PRODUCTION OF DOCUMENTARY MATERIAL SHALL BE
28 MADE UNDER A WRITTEN AND VERIFIED CERTIFICATE, IN THE
29 FORM AS THE DEMAND DESIGNATES, BY THE FOLLOWING
30 INDIVIDUALS:

1 (A) IF THE DEMAND ISSUEE IS A NATURAL PERSON, BY
2 THE DEMAND ISSUEE; AND

3 (B) IF THE DEMAND ISSUEE IS NOT A NATURAL
4 PERSON, BY AN INDIVIDUAL WHO HAS KNOWLEDGE OF FACTS
5 AND CIRCUMSTANCES RELATING TO THE PRODUCTION AND IS
6 AUTHORIZED TO ACT ON THE DEMAND ISSUEE'S BEHALF.

7 (II) THE CERTIFICATE SHALL STATE THAT ALL THE
8 DOCUMENTARY MATERIAL REQUIRED BY THE DEMAND AND IN THE
9 DEMAND ISSUEE'S POSSESSION, CUSTODY OR CONTROL HAS BEEN
10 PRODUCED AND MADE AVAILABLE TO THE FALSE CLAIMS
11 INVESTIGATOR IDENTIFIED IN THE DEMAND.

12 (2) THE FOLLOWING SHALL APPLY REGARDING PRODUCTION OF
13 MATERIALS:

14 (I) A DEMAND ISSUEE SHALL MAKE THE DEMANDED MATERIAL
15 AVAILABLE FOR INSPECTION AND COPY TO THE FALSE CLAIMS
16 INVESTIGATOR IDENTIFIED IN THE DEMAND:

17 (A) AT THE DEMAND ISSUEE'S PRINCIPAL PLACE OF
18 BUSINESS;

19 (B) AT ANOTHER PLACE AS THE FALSE CLAIMS
20 INVESTIGATOR AND THE DEMAND ISSUEE THEREAFTER MAY
21 AGREE AND PRESCRIBE IN WRITING; OR

22 (C) AS THE COURT MAY DIRECT UNDER THIS SECTION.

23 (II) THE DOCUMENTARY MATERIAL SHALL BE MADE
24 AVAILABLE ON THE RETURN DATE SPECIFIED IN THE DEMAND OR
25 ON A LATER DATE AS THE FALSE CLAIMS INVESTIGATOR MAY
26 PRESCRIBE IN WRITING. THE DEMAND ISSUEE MAY, UPON WRITTEN
27 AGREEMENT WITH THE FALSE CLAIMS INVESTIGATOR, SUBSTITUTE
28 COPIES FOR ORIGINALS OF ALL OR ANY PART OF THE MATERIAL.

29 (3) IF THE DEMAND ISSUEE OBJECTS TO THE PRODUCTION OF
30 ANY PORTION OF THE REQUIRED DOCUMENTARY MATERIAL OR OTHERWISE

1 WITHHOLDS ANY PORTION OF THE MATERIAL, THE ISSUEE SHALL WITH
2 PARTICULARITY STATE THE REASONS FOR THE OBJECTION OR
3 WITHHOLDING AND IDENTIFY ALL WITHHELD MATERIAL.

4 (F) INTERROGATORIES.--

5 (1) WITH RESPECT TO ANSWERS AND VERIFIED CERTIFICATES,
6 EACH INTERROGATORY IN A CIVIL INVESTIGATIVE DEMAND SHALL BE
7 ANSWERED SEPARATELY AND FULLY IN WRITING UNDER OATH AND SHALL
8 BE SUBMITTED UNDER A VERIFIED CERTIFICATE, IN THE FORM AS THE
9 DEMAND DESIGNATES STATING THAT ALL INFORMATION REQUIRED BY
10 THE DEMAND AND IN THE DEMAND ISSUEE'S POSSESSION, CUSTODY,
11 CONTROL OR KNOWLEDGE HAS BEEN SUBMITTED BY THE FOLLOWING
12 INDIVIDUALS:

13 (I) IF THE DEMAND ISSUEE IS A NATURAL PERSON, BY THE
14 DEMAND ISSUEE; AND

15 (II) IF THE DEMAND ISSUEE IS NOT A NATURAL PERSON,
16 BY THE INDIVIDUALS RESPONSIBLE FOR ANSWERING EACH
17 INTERROGATORY.

18 (2) WITH RESPECT TO OBJECTIONS AND WITHHOLDING OF
19 INFORMATION, IF THE DEMAND ISSUEE OBJECTS TO AN INTERROGATORY
20 OR ANY PORTION THEREOF, OR OTHERWISE WITHHOLDS INFORMATION,
21 THE DEMAND ISSUEE SHALL STATE WITH PARTICULARITY THE REASONS
22 FOR THE OBJECTION OR WITHHOLDING AND IDENTIFY ALL WITHHELD
23 INFORMATION.

24 (G) ORAL EXAMINATIONS.--THE FOLLOWING SHALL APPLY:

25 (1) WITH RESPECT TO PROCEDURES:

26 (I) THE EXAMINATION OF A PERSON UNDER A CIVIL
27 INVESTIGATIVE DEMAND FOR ORAL TESTIMONY SHALL BE TAKEN
28 BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS AND
29 AFFIRMATIONS BY THE LAWS OF THIS COMMONWEALTH OR OF THE
30 PLACE WHERE THE EXAMINATION IS HELD.

1 (II) THE OFFICER SHALL PUT THE WITNESS ON OATH OR
2 AFFIRMATION AND SHALL PERSONALLY OR BY SOMEONE ACTING
3 UNDER THE OFFICER'S DIRECTION AND IN THE OFFICER'S
4 PRESENCE, RECORD THE WITNESS'S TESTIMONY.

5 (III) THE TESTIMONY SHALL BE STENOGRAPHICALLY
6 TRANSCRIBED.

7 (IV) WHEN THE TRANSCRIBING IS COMPLETE, THE OFFICER
8 SHALL PROMPTLY TRANSMIT A COPY OF THE TRANSCRIPT TO THE
9 CUSTODIAN.

10 (V) THIS SUBSECTION SHALL NOT PRECLUDE THE TAKING OF
11 TESTIMONY BY ANY MEANS AUTHORIZED BY, AND IN A MANNER
12 CONSISTENT WITH, THE PENNSYLVANIA RULES OF CIVIL
13 PROCEDURE OR OTHER APPLICABLE COURT RULE.

14 (2) WITH RESPECT TO PERSONS PRESENT, THE FALSE CLAIMS
15 INVESTIGATOR CONDUCTING THE EXAMINATION SHALL EXCLUDE FROM
16 THE PLACE WHERE THE EXAMINATION IS HELD ALL PERSONS EXCEPT
17 THE FOLLOWING:

18 (I) THE WITNESS GIVING THE TESTIMONY.

19 (II) THE ATTORNEY FOR THE WITNESS.

20 (III) THE ATTORNEY FOR THE COMMONWEALTH.

21 (IV) THE OFFICER BEFORE WHOM THE TESTIMONY IS TO BE
22 TAKEN.

23 (V) THE COURT REPORTER TAKING THE TESTIMONY.

24 (VI) ANY OTHER PERSON AGREED TO BY THE WITNESS AND
25 THE ATTORNEY FOR THE COMMONWEALTH.

26 (3) ORAL TESTIMONY TAKEN UNDER A CIVIL INVESTIGATIVE
27 DEMAND SHALL BE TAKEN IN THE COUNTY OR CITY WITHIN WHICH THE
28 PERSON RESIDES, IS FOUND, OR TRANSACTS BUSINESS, OR IN A
29 PLACE TO WHICH THE FALSE CLAIMS INVESTIGATOR AND THE WITNESS
30 OTHERWISE AGREE.

1 (4) WITH RESPECT TO TRANSCRIPTS:

2 (I) WHEN THE TRANSCRIPT OF TESTIMONY IS COMPLETED,
3 THE FALSE CLAIMS INVESTIGATOR OR THE OFFICER BEFORE WHOM
4 THE TESTIMONY IS TAKEN SHALL AFFORD THE WITNESS, WHO MAY
5 BE ACCOMPANIED BY COUNSEL, A REASONABLE OPPORTUNITY TO
6 EXAMINE AND READ THE TRANSCRIPT, UNLESS THE WITNESS
7 WAIVES THE READING AND EXAMINATION.

8 (II) THE OFFICER OR FALSE CLAIMS INVESTIGATOR SHALL
9 ENTER AND IDENTIFY ON THE TRANSCRIPT ANY CHANGES IN FORM
10 OR SUBSTANCE THAT THE WITNESS DESIRES TO MAKE WITH A
11 STATEMENT OF THE REASONS THE WITNESS GIVES FOR MAKING THE
12 CHANGES.

13 (III) THE WITNESS SHALL SIGN THE TRANSCRIPT AFTER
14 THE CHANGES, IF ANY, ARE MADE, UNLESS THE WITNESS WAIVES
15 THE SIGNING IN WRITING, IS ILL, CANNOT BE FOUND, OR
16 REFUSES TO SIGN. IF THE WITNESS DOES NOT SIGN THE
17 TRANSCRIPT WITHIN 30 DAYS AFTER BEING AFFORDED A
18 REASONABLE OPPORTUNITY TO SIGN IT, THE OFFICER OR FALSE
19 CLAIMS INVESTIGATOR SHALL SIGN IT AND STATE ON THE RECORD
20 THE FACT OF THE WITNESS'S WAIVER, ILLNESS, ABSENCE OR
21 REFUSAL TO SIGN, TOGETHER WITH THE REASONS, IF ANY, GIVEN
22 FOR WHY THE WITNESS DID NOT SIGN THE TRANSCRIPT.

23 (IV) THE OFFICER BEFORE WHOM THE TESTIMONY IS TAKEN
24 SHALL CERTIFY ON THE TRANSCRIPT THAT THE WITNESS WAS
25 SWORN BY THE OFFICER AND THE TRANSCRIPT IS A TRUE RECORD
26 OF THE WITNESS'S TESTIMONY, AND THE OFFICER SHALL
27 PROMPTLY DELIVER THE TRANSCRIPT OR SEND THE TRANSCRIPT BY
28 REGISTERED OR CERTIFIED MAIL TO THE CUSTODIAN.

29 (V) UPON RECEIPT OF PAYMENT OF REASONABLE CHARGES,
30 THE FALSE CLAIMS INVESTIGATOR SHALL FURNISH A COPY OF THE

1 TRANSCRIPT TO THE WITNESS ONLY, EXCEPT THAT THE ATTORNEY
2 GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE MAY, FOR GOOD
3 CAUSE, LIMIT THE WITNESSES TO INSPECTING THE OFFICIAL
4 TRANSCRIPT.

5 (5) WITH RESPECT TO THE CONDUCT OF ORAL TESTIMONY, THE
6 FOLLOWING SHALL APPLY:

7 (I) A WITNESS COMPELLED TO APPEAR FOR ORAL TESTIMONY
8 MAY BE ACCOMPANIED, REPRESENTED, AND ADVISED BY COUNSEL.
9 COUNSEL MAY ADVISE THE WITNESS IN CONFIDENCE WITH RESPECT
10 TO ANY QUESTION ASKED OF THE WITNESS.

11 (II) THE WITNESS OR COUNSEL MAY OBJECT ON THE RECORD
12 TO ANY QUESTION, IN WHOLE OR IN PART, AND SHALL BRIEFLY
13 STATE FOR THE RECORD THE REASON FOR THE OBJECTION. AN
14 OBJECTION MAY BE MADE, RECEIVED AND ENTERED UPON THE
15 RECORD WHEN THE OBJECTION IS CLAIMED THAT THE WITNESS IS
16 ENTITLED TO REFUSE TO ANSWER ON THE GROUNDS OF ANY
17 CONSTITUTIONAL OR LEGAL RIGHT OR PRIVILEGE, INCLUDING THE
18 PRIVILEGE AGAINST SELF-INCRIMINATION. THE WITNESS MAY NOT
19 OTHERWISE OBJECT TO OR REFUSE TO ANSWER ANY QUESTION AND
20 MAY NOT DIRECTLY OR THROUGH COUNSEL OTHERWISE INTERRUPT
21 THE ORAL EXAMINATION. IF A WITNESS REFUSES TO ANSWER A
22 QUESTION, A PETITION MAY BE FILED WITH THE COURT UNDER
23 THIS SECTION FOR AN ORDER COMPELLING THE WITNESS TO
24 ANSWER THE QUESTION.

25 (6) WITH RESPECT TO FEES, A WITNESS APPEARING FOR ORAL
26 TESTIMONY UNDER A CIVIL INVESTIGATIVE DEMAND SHALL BE
27 ENTITLED TO THE SAME FEES AND ALLOWANCES THAT ARE PAID TO
28 WITNESSES IN THE COURTS OF COMMON PLEAS.

29 (H) REFUSAL TO COMPLY ON SELF-INCRIMINATION PRIVILEGE
30 GROUNDS.--THE ATTORNEY GENERAL MAY INVOKE THE PROVISIONS OF 42

1 PA.C.S. § 5947 (RELATING TO IMMUNITY OF WITNESSES) IF A DEMAND
2 ISSUE, ON THE GROUNDS OF PRIVILEGE AGAINST SELF-INCRIMINATION,
3 REFUSES TO:

4 (1) FURNISH DOCUMENTARY MATERIAL OR ANSWER AN
5 INTERROGATORY IN RESPONSE TO A CIVIL INVESTIGATIVE DEMAND;

6 (2) ANSWER A QUESTION ASKED DURING ORAL EXAMINATION MADE
7 UNDER A CIVIL INVESTIGATIVE DEMAND; OR

8 (3) OTHERWISE COMPLY WITH A CIVIL INVESTIGATIVE DEMAND.

9 (I) CUSTODY OF DOCUMENTS, ANSWERS AND TRANSCRIPTS.--

10 (1) WITH RESPECT TO THE DESIGNATION OF A CUSTODIAN,
11 UNLESS OTHERWISE SET FORTH BY RULE ADOPTED BY THE ATTORNEY
12 GENERAL UNDER SECTION 311, THE FALSE CLAIMS INVESTIGATOR
13 IDENTIFIED ON A CIVIL INVESTIGATIVE DEMAND SHALL SERVE AS
14 CUSTODIAN OF DOCUMENTARY MATERIAL, INTERROGATORY ANSWERS AND
15 ORAL TESTIMONY TRANSCRIPTS RECEIVED UNDER THIS SECTION. THE
16 ATTORNEY GENERAL MAY DESIGNATE ADDITIONAL PERSONS AS THE
17 ATTORNEY GENERAL DETERMINES TO BE NECESSARY TO SERVE AS
18 DEPUTY, ALTERNATIVE OR SUCCESSOR CUSTODIANS.

19 (2) WITH RESPECT TO RESPONSIBILITY FOR MATERIALS, COPIES
20 AND DISCLOSURE, A FALSE CLAIMS INVESTIGATOR WHO RECEIVES
21 DOCUMENTARY MATERIAL, INTERROGATORY ANSWERS OR ORAL TESTIMONY
22 TRANSCRIPTS UNDER THIS SECTION SHALL:

23 (I) IF SERVING AS CUSTODIAN, TAKE POSSESSION OF THE
24 MATERIAL, ANSWERS OR TRANSCRIPTS AND BE RESPONSIBLE FOR
25 THEIR USAGE AND FOR THE RETURN OF DOCUMENTARY MATERIAL;
26 OR

27 (II) IF NOT SERVING AS CUSTODIAN, TRANSMIT THE
28 MATERIALS, ANSWERS OR TRANSCRIPTS TO THE CUSTODIAN, WHO
29 SHALL TAKE POSSESSION AND RESPONSIBILITY FOR THE
30 MATERIALS, ANSWERS OR TRANSCRIPTS.

1 (3) WITH RESPECT TO CUSTODIAN COPIES, THE CUSTODIAN MAY
2 CAUSE THE PREPARATION OF COPIES OF DOCUMENTARY MATERIAL,
3 INTERROGATORY ANSWERS OR ORAL TESTIMONY TRANSCRIPTS AS MAY BE
4 REQUIRED FOR OFFICIAL USE BY A FALSE CLAIMS INVESTIGATOR OR
5 ANY OTHER OFFICER OR EMPLOYEE OF THE OFFICE OF ATTORNEY
6 GENERAL AUTHORIZED TO USE THE MATERIALS, ANSWERS OR
7 TRANSCRIPTS IN CONNECTION WITH THE TAKING OF ORAL TESTIMONY
8 UNDER THIS SECTION. EXCEPT AS OTHERWISE PROVIDED IN THIS
9 SECTION, NO DOCUMENTARY MATERIAL, INTERROGATORY ANSWERS OR
10 ORAL TESTIMONY TRANSCRIPTS OR COPIES OF THE FOREGOING SHALL
11 BE AVAILABLE FOR EXAMINATION BY ANY INDIVIDUAL OTHER THAN A
12 FALSE CLAIMS INVESTIGATOR OR OTHER OFFICER OR EMPLOYEE OF THE
13 OFFICE OF ATTORNEY GENERAL.

14 (4) WITH RESPECT TO RESTRICTED DISCLOSURE:

15 (I) THE PROHIBITION UNDER PARAGRAPH (3) SHALL NOT
16 APPLY IF THE PERSON PRODUCING MATERIAL, ANSWERS OR
17 TRANSCRIPTS, OR IN THE CASE OF ANY PRODUCT OF DISCOVERY
18 PRODUCED UNDER AN EXPRESS DEMAND FOR THE MATERIAL, THE
19 PERSON FROM WHOM OR WHICH THE DISCOVERY WAS OBTAINED,
20 CONSENTS.

21 (II) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO
22 PREVENT DISCLOSURE TO THE GENERAL ASSEMBLY OR TO A
23 COMMONWEALTH AGENCY IN FURTHERANCE OF STATUTORY OR
24 CONSTITUTIONAL OBLIGATIONS, EXCEPT THAT ANY DISCLOSURE
25 SHALL BE SUBJECT TO 18 PA.C.S. CH. 91.

26 (III) WHILE IN THE CUSTODIAN'S POSSESSION AND UNDER
27 REASONABLE TERMS AND CONDITIONS AS THE ATTORNEY GENERAL
28 PRESCRIBES, DOCUMENTARY MATERIAL, INTERROGATORY ANSWERS
29 AND ORAL TESTIMONY TRANSCRIPTS SHALL BE MADE AVAILABLE
30 FOR EXAMINATION BY THE PERSON THAT PRODUCED THEM OR BY

1 THE PERSON'S AUTHORIZED REPRESENTATIVE.

2 (5) WITH RESPECT TO THE USE OF DOCUMENTARY MATERIAL,
3 ANSWERS OR TRANSCRIPTS IN OTHER PROCEEDINGS:

4 (I) SUBJECT TO 18 PA.C.S. CH. 91 AND THE RULES,
5 GUIDELINES AND PROCEDURES ADOPTED BY THE ATTORNEY GENERAL
6 UNDER SECTION 311, AN ATTORNEY OF THE OFFICE OF ATTORNEY
7 GENERAL WHO IS DESIGNATED TO APPEAR BEFORE A COURT, GRAND
8 JURY OR COMMONWEALTH AGENCY IN A CASE OR PROCEEDING MAY,
9 IN CONNECTION WITH THE CASE OR PROCEEDING, OBTAIN FROM
10 THE CUSTODIAN AND USE ANY DOCUMENTARY MATERIAL,
11 INTERROGATORY ANSWERS OR ORAL TESTIMONY TRANSCRIPTS THAT
12 THE ATTORNEY DETERMINES IS REQUIRED.

13 (II) UPON THE CASE'S OR PROCEEDING'S COMPLETION, THE
14 ATTORNEY SHALL RETURN TO THE CUSTODIAN DOCUMENTARY
15 MATERIAL, INTERROGATORY ANSWERS OR ORAL TESTIMONY
16 TRANSCRIPTS THAT HAVE NOT PASSED INTO THE COURT'S, GRAND
17 JURY'S OR AGENCY'S CONTROL THROUGH INTRODUCTION INTO THE
18 CASE OR PROCEEDING'S RECORD.

19 (6) WITH RESPECT TO CONDITIONS FOR RETURN OF MATERIAL,
20 THE FOLLOWING SHALL APPLY:

21 (I) SUBJECT TO SUBPARAGRAPHS (II) AND (III), UPON
22 THE WRITTEN REQUEST OF A PERSON PRODUCING DOCUMENTARY
23 MATERIAL UNDER THIS SECTION, THE CUSTODIAN SHALL RETURN
24 THE MATERIAL TO THE PERSON.

25 (II) THE CUSTODIAN SHALL RETURN THE MATERIAL ONLY
26 IF:

27 (A) ALL CASES OR PROCEEDINGS ARISING OUT OF THE
28 FALSE CLAIMS INVESTIGATION HAVE BEEN COMPLETED; OR

29 (B) NO CASE OR PROCEEDING IN WHICH THE MATERIAL
30 MAY BE USED HAS BEEN COMMENCED WITHIN A REASONABLE

1 TIME AFTER COMPLETION OF THE EXAMINATION AND ANALYSIS
2 OF ALL DOCUMENTARY MATERIAL AND OTHER INFORMATION
3 ASSEMBLED IN THE COURSE OF THE FALSE CLAIMS
4 INVESTIGATION.

5 (III) THE CUSTODIAN SHALL NOT BE REQUIRED TO RETURN
6 EITHER OF THE FOLLOWING:

7 (A) MATERIAL THAT HAS PASSED INTO A COURT, GRAND
8 JURY OR COMMONWEALTH AGENCY'S CONTROL THROUGH
9 INTRODUCTION INTO A CASE OR PROCEEDING'S RECORD; OR

10 (B) COPIES FURNISHED TO THE FALSE CLAIMS
11 INVESTIGATOR OR MADE FOR THE ATTORNEY GENERAL UNDER
12 THIS SUBSECTION.

13 (J) JUDICIAL PROCEEDINGS.--THE FOLLOWING SHALL APPLY:

14 (1) WITH RESPECT TO A PETITION FOR ENFORCEMENT, THE
15 ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE MAY FILE
16 AND SERVE UPON A PERSON A PETITION FOR A COURT ORDER
17 ENFORCING A CIVIL INVESTIGATIVE DEMAND IF:

18 (I) THE PERSON FAILS TO COMPLY WITH A DEMAND SERVED
19 UPON THE PERSON; OR

20 (II) SATISFACTORY COPYING OR REPRODUCTION OF THE
21 MATERIAL REQUESTED IN THE DEMAND CANNOT BE DONE AND THE
22 PERSON REFUSES TO SURRENDER THE MATERIAL.

23 (2) WITH RESPECT TO A PETITION TO MODIFY OR SET ASIDE A
24 DEMAND, THE FOLLOWING SHALL APPLY:

25 (I) A DEMAND ISSUEE THAT HAS RECEIVED A CIVIL
26 INVESTIGATIVE DEMAND MAY FILE AND SERVE UPON THE FALSE
27 CLAIMS INVESTIGATOR IDENTIFIED IN THE DEMAND A PETITION
28 FOR A COURT ORDER MODIFYING OR SETTING ASIDE THE DEMAND.

29 (II) IF A CIVIL INVESTIGATIVE DEMAND IS AN EXPRESS
30 DEMAND FOR A PRODUCT OF DISCOVERY, THE PERSON FROM WHOM

1 OR WHICH DISCOVERY WAS OBTAINED MAY, UPON RECEIPT OF THE
2 DEMAND, FILE AND SERVE UPON THE FALSE CLAIMS INVESTIGATOR
3 IDENTIFIED IN THE DEMAND A PETITION FOR A COURT ORDER
4 MODIFYING OR SETTING ASIDE THOSE PORTIONS OF THE DEMAND
5 REQUIRING PRODUCTION OF THE PRODUCT OF DISCOVERY.

6 (III) A PETITION UNDER THIS PARAGRAPH MUST BE FILED
7 WITHIN:

8 (A) THE EARLIER OF 20 DAYS AFTER THE CIVIL
9 INVESTIGATIVE DEMAND IS SERVED ON THE PERSON OR AT
10 ANY TIME BEFORE THE RETURN DATE SPECIFIED IN THE
11 DEMAND; OR

12 (B) A LONGER PERIOD IF THE FALSE CLAIMS
13 INVESTIGATOR SO PRESCRIBES IN WRITING IN THE DEMAND.

14 (IV) A PETITION UNDER THIS PARAGRAPH SHALL SPECIFY
15 EACH GROUND THE PETITIONER RELIES ON IN SEEKING RELIEF
16 AND MAY BE BASED ON EITHER OF THE FOLLOWING:

17 (A) FAILURE OF THE CIVIL INVESTIGATIVE DEMAND,
18 OR ANY PORTION THEREOF, TO COMPLY WITH THIS SECTION'S
19 PROVISIONS; OR

20 (B) A CONSTITUTIONAL OR OTHER LEGAL RIGHT OR
21 PRIVILEGE OF THE PETITIONER.

22 (V) DURING THE PENDENCY OF A PETITION UNDER THIS
23 PARAGRAPH, THE FOLLOWING APPLY:

24 (A) THE COURT MAY STAY, AS IT DEEMS PROPER,
25 COMPLIANCE WITH ALL OR PART OF THE DEMAND AND THE
26 RUNNING OF TIME ALLOWED FOR COMPLIANCE THE DEMAND.

27 (B) THE PETITIONER MUST COMPLY WITH ANY PORTION
28 OF THE DEMAND THAT IS NOT SOUGHT TO BE MODIFIED OR
29 SET ASIDE, OR OTHERWISE SUBJECT TO A STAY ISSUED BY
30 THE COURT.

1 (3) WITH RESPECT TO A PETITION TO REQUIRE CUSTODIAN'S
2 PERFORMANCE OF DUTIES, AT ANY TIME A CUSTODIAN POSSESSES OR
3 IS IN CUSTODY OR CONTROL OF DOCUMENTARY MATERIAL,
4 INTERROGATORY ANSWERS OR TRANSCRIPTS OF ORAL TESTIMONY GIVEN
5 UNDER A CIVIL INVESTIGATIVE DEMAND, THE FOLLOWING PERSONS MAY
6 FILE AND SERVE UPON THE CUSTODIAN A PETITION FOR A COURT
7 ORDER REQUIRING THE CUSTODIAN TO PERFORM ANY DUTY IMPOSED ON
8 THE CUSTODIAN BY THIS SECTION:

9 (I) THE DEMAND ISSUEE FURNISHING THE MATERIAL,
10 ANSWERS OR TESTIMONY; AND

11 (II) IN THE CASE OF AN EXPRESS DEMAND FOR A PRODUCT
12 OF DISCOVERY, THE PERSON FROM WHOM OR WHICH DISCOVERY WAS
13 OBTAINED.

14 (4) WITH RESPECT TO JURISDICTION AND CONTEMPT, THE
15 FOLLOWING SHALL APPLY:

16 (I) THE COURT SHALL HAVE JURISDICTION TO HEAR AND
17 DETERMINE A PETITION FILED UNDER THIS SECTION AND, AFTER
18 A HEARING AT WHICH ALL PARTIES HAVE THE OPPORTUNITY TO BE
19 HEARD, TO ENTER ORDERS AS MAY BE REQUIRED TO CARRY OUT
20 THE PROVISIONS OF THIS SECTION.

21 (II) A FINAL ORDER ENTERED BY COMMONWEALTH COURT
22 UNDER THIS SECTION SHALL BE SUBJECT TO APPEAL TO THE
23 SUPREME COURT UNDER 42 PA.C.S. § 723 (RELATING TO APPEALS
24 FROM COMMONWEALTH COURT).

25 (K) EXEMPTION FROM DISCLOSURE.--DOCUMENTARY MATERIAL,
26 INTERROGATORY ANSWERS AND ORAL TESTIMONY PROVIDED UNDER A CIVIL
27 INVESTIGATIVE DEMAND ISSUED ARE EXEMPT FROM DISCLOSURE UNDER THE
28 ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-
29 KNOW LAW.

30 (L) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING

1 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
2 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

3 "CUSTODIAN." THE FALSE CLAIMS INVESTIGATOR OR OTHER
4 CUSTODIAN OR ANY DEPUTY OR ALTERNATE CUSTODIAN DESIGNATED BY THE
5 ATTORNEY GENERAL UNDER SUBSECTION (I).

6 "DEMAND ISSUEE." A PERSON TO WHOM OR WHICH A CIVIL
7 INVESTIGATIVE DEMAND IS ISSUED OR DIRECTED.

8 "DOCUMENTARY MATERIAL." INCLUDES THE ORIGINAL OR ANY COPY OF
9 ANY BOOK, RECORD, REPORT, MEMORANDUM, PAPER, COMMUNICATION,
10 TABULATION, CHART OR OTHER DOCUMENT OR DATA COMPILATIONS STORED
11 OR ACCESSIBLE THROUGH COMPUTER OR OTHER INFORMATION RETRIEVAL
12 SYSTEMS, TOGETHER WITH APPROPRIATE AND SUCCINCT INSTRUCTIONS AND
13 ALL OTHER MATERIALS NECESSARY TO USE OR INTERPRET THE DATA
14 COMPILATIONS, AND ANY PRODUCT OF DISCOVERY.

15 "FALSE CLAIMS INVESTIGATION." AN INQUIRY CONDUCTED BY A
16 FALSE CLAIMS INVESTIGATOR FOR THE PURPOSES OF ASCERTAINING
17 WHETHER ANY PERSON IS OR HAS BEEN ENGAGED IN A VIOLATION OF THIS
18 ACT.

19 "FALSE CLAIMS INVESTIGATOR." AN ATTORNEY OR INVESTIGATOR
20 EMPLOYED BY THE OFFICE OF ATTORNEY GENERAL, OR BY A DISTRICT
21 ATTORNEY DESIGNATED UNDER SECTION 302(A)(2), WHO IS CHARGED WITH
22 THE DUTY OF ENFORCING OR CARRYING OUT THE PROVISIONS OF THIS
23 ACT, OR AN OFFICER OR EMPLOYEE OF THE COMMONWEALTH ACTING UNDER
24 THE ATTORNEY OR INVESTIGATOR'S DIRECTION AND SUPERVISION IN
25 CONNECTION WITH A FALSE CLAIMS INVESTIGATION.

26 "LEGAL ENTITY." A PERSON OTHER THAN A NATURAL PERSON.

27 "PERSON." AS DEFINED IN 1 PA.C.S. § 1991 (RELATING TO
28 DEFINITIONS).

29 "PRODUCT OF DISCOVERY." THE TERM INCLUDES ALL OF THE
30 FOLLOWING:

1 (1) THE ORIGINAL OR DUPLICATE OF A DEPOSITION
2 INTERROGATORY, DOCUMENT, THING, RESULT OF THE INSPECTION OF
3 LAND OR OTHER PROPERTY, EXAMINATION OR ADMISSION THAT IS
4 OBTAINED BY ANY METHOD OF DISCOVERY IN A JUDICIAL OR
5 ADMINISTRATIVE PROCEEDING OF AN ADVERSARIAL NATURE.

6 (2) A DIGEST, ANALYSIS, SELECTION, COMPILATION OR
7 DERIVATION OF AN ITEM LISTED UNDER PARAGRAPH (1).

8 (3) AN INDEX OR OTHER MANNER OF ACCESS TO AN ITEM LISTED
9 UNDER PARAGRAPH (1).

10 "VERIFIED." SUPPORTED BY OATH OR AFFIRMATION AND AVERRED
11 SUBJECT TO THE PENALTIES OF 18 PA.C.S. § 4904 (RELATING TO
12 UNSWORN FALSIFICATION TO AUTHORITIES).
13 SECTION 304. DISPOSITION OF COMMONWEALTH'S PROCEEDS.

14 THE COMMONWEALTH'S SHARE OF THE PROCEEDS OF AN ACTION UNDER
15 THIS ACT, NOT INCLUDING THE COSTS OF A CIVIL ACTION PAID TO THE
16 COMMONWEALTH UNDER SECTION 301(E) AND LESS ANY AMOUNT LEGALLY
17 REQUIRED TO BE PAID FROM THE SHARE, SHALL BE DISTRIBUTED AS
18 FOLLOWS:

19 (1) THE COMMONWEALTH'S SHARE OF THE PROCEEDS SHALL BE
20 ALLOCATED TO REIMBURSE THE OFFICE OF ATTORNEY GENERAL OR A
21 DISTRICT ATTORNEY DESIGNATED UNDER SECTION 302 FOR THE ACTUAL
22 COSTS INCURRED TO RECOVER DAMAGES OR PENALTIES UNDER THIS
23 ACT.

24 (2) IF ANY AMOUNT OF THE COMMONWEALTH'S SHARE OF THE
25 PROCEEDS OR SETTLEMENT OF A LEGAL CLAIM REMAIN AFTER
26 REIMBURSING THE OFFICE OF ATTORNEY GENERAL FOR ACTUAL COSTS
27 INCURRED, THE PROCEEDS OF THE COMMONWEALTH'S SHARE SHALL BE
28 ALLOCATED TO REIMBURSE THE COMMONWEALTH FOR THE ACTUAL COSTS
29 INCURRED AS A RESULT OF A VIOLATION UNDER SECTION 301.

30 (3) ANY REMAINING FUNDS OF THE COMMONWEALTH'S SHARE OF

1 THE PROCEEDS OR SETTLEMENT OF A LEGAL CLAIM AFTER THE OFFICE
2 OF THE ATTORNEY GENERAL AND THE COMMONWEALTH ARE REIMBURSED
3 FOR ACTUAL COSTS INCURRED SHALL BE DEPOSITED INTO THE BUDGET
4 STABILIZATION RESERVE FUND.

5 SECTION 305. REPORT.

6 (A) REPORT REQUIRED.--THE ATTORNEY GENERAL SHALL PREPARE A
7 REPORT WITHIN TWO YEARS OF THE PUBLICATION OF THE TEMPORARY
8 REGULATIONS UNDER SECTION 311. THE REPORT SHALL INCLUDE ACTIONS
9 TAKEN UNDER THIS ACT AND SHALL BE SUBMITTED TO THE FOLLOWING:

- 10 (1) THE GOVERNOR.
- 11 (2) THE DEPARTMENT OF AUDITOR GENERAL.
- 12 (3) THE INDEPENDENT FISCAL OFFICE.
- 13 (4) THE OFFICE OF INSPECTOR GENERAL.
- 14 (5) THE MEMBERS OF THE GENERAL ASSEMBLY.
- 15 (6) THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE.

16 (B) CONTENTS.--THE REPORT SHALL INCLUDE THE FOLLOWING:

- 17 (1) THE NUMBER OF ACTIONS FILED UNDER THIS ACT BY THE
18 ATTORNEY GENERAL.
- 19 (2) THE NUMBER OF ACTIONS FILED UNDER THIS ACT BY THE
20 ATTORNEY GENERAL THAT WERE COMPLETED.
- 21 (3) THE AMOUNT THAT WAS RECOVERED IN ACTIONS FILED UNDER
22 THIS ACT BY THE ATTORNEY GENERAL THROUGH SETTLEMENT OR
23 THROUGH A JUDGMENT AND, IF KNOWN, THE AMOUNT RECOVERED FOR
24 DAMAGES, PENALTIES AND LITIGATION COSTS.
- 25 (4) THE NUMBER OF ACTIONS FILED BY A PERSON OTHER THAN
26 THE ATTORNEY GENERAL UNDER THIS ACT.
- 27 (5) THE NUMBER OF ACTIONS FILED UNDER THIS ACT BY A
28 PERSON OTHER THAN THE ATTORNEY GENERAL THAT WERE COMPLETED.
- 29 (6) THE AMOUNTS THAT WERE RECOVERED IN ACTIONS FILED
30 UNDER THIS ACT BY A PERSON OTHER THAN THE ATTORNEY GENERAL

1 THROUGH SETTLEMENT OR THROUGH A JUDGMENT AND, IF KNOWN, THE
2 AMOUNT RECOVERED FOR DAMAGES, PENALTIES AND LITIGATION COSTS
3 AND THE AMOUNT RECOVERED BY THE COMMONWEALTH AND THE PERSON.

4 (7) THE NUMBER OF ACTIONS FILED UNDER THIS ACT RELATED
5 TO FUNDS APPROPRIATED IN RESPONSE TO COVID-19, INCLUDING THE
6 FOLLOWING:

7 (I) THE PROVIDER RELIEF FUND.

8 (II) THE PAYCHECK PROTECTION PROGRAM.

9 (III) THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT
10 (PUBLIC LAW 116-127, 134 STAT. 178).

11 (IV) THE UNEMPLOYMENT COMPENSATION FUND.

12 (V) ANY OTHER STIMULUS PROGRAMS PUT INTO PLACE BY
13 THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
14 (PUBLIC LAW 116-136, 134 STAT. 281).

15 (8) THE AMOUNT EXPENDED BY THE OFFICE OF ATTORNEY
16 GENERAL FOR INVESTIGATION, LITIGATION AND ALL OTHER COSTS FOR
17 LEGAL CLAIMS UNDER THIS ACT.

18 (9) A NARRATIVE DESCRIBING THE MOST NOTABLE OR PREVALENT
19 VIOLATIONS OF SECTION 301 AND RECOMMENDATIONS ON HOW
20 COMMONWEALTH AGENCIES MAY PREVENT SIMILAR VIOLATIONS FROM
21 OCCURRING.

22 (10) LEGISLATIVE RECOMMENDATIONS THAT THE ATTORNEY
23 GENERAL MAY HAVE FOR AMENDMENTS TO THIS ACT AND ANY OTHER LAW
24 AS IT RELATES TO THIS ACT.

25 SECTION 306. STATUTE OF LIMITATIONS, BURDEN OF PROOF AND
26 ESTOPPEL.

27 (A) STATUTE OF LIMITATIONS.--

28 (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION, A
29 CIVIL ACTION UNDER SECTION 302 MAY NOT BE BROUGHT MORE THAN
30 10 YEARS AFTER THE DATE ON WHICH THE VIOLATION WAS COMMITTED.

1 (2) IF A VIOLATION IS PART OF A CONTINUING COURSE OF
2 CONDUCT, A CIVIL ACTION UNDER SECTION 302 MAY NOT BE BROUGHT
3 MORE THAN 10 YEARS AFTER THE DATE ON WHICH THE LAST VIOLATION
4 IN THE CONTINUING COURSE OF CONDUCT WAS COMMITTED.

5 (3) IF THE COMMONWEALTH ELECTS TO INTERVENE AND PROCEED
6 WITH AN ACTION BROUGHT UNDER SECTION 302(B), THEN ALL OF THE
7 FOLLOWING APPLY:

8 (I) THE COMMONWEALTH MAY FILE ITS OWN COMPLAINT OR
9 AMEND THE COMPLAINT OF THE QUI TAM PLAINTIFF WHO BROUGHT
10 THE ACTION IN ORDER TO CLARIFY OR ADD DETAIL TO THE
11 CLAIMS AND TO ADD ANY ADDITIONAL CLAIMS WITH RESPECT TO
12 WHICH THE COMMONWEALTH CONTENDS IT IS ENTITLED TO RELIEF.

13 (II) THE COMMONWEALTH PLEADING SHALL RELATE BACK TO
14 THE FILING DATE OF THE COMPLAINT OF THE QUI TAM PLAINTIFF
15 TO THE EXTENT THAT THE CLAIM OF THE COMMONWEALTH ARISES
16 OUT OF THE CONDUCT, TRANSACTIONS OR OCCURRENCES
17 SPECIFIED, OR ATTEMPTED TO BE SPECIFIED, IN THE QUI TAM
18 PLAINTIFF'S COMPLAINT.

19 (B) BURDEN OF PROOF.--IN AN ACTION BROUGHT UNDER SECTION
20 302, THE COMMONWEALTH OR THE QUI TAM PLAINTIFF SHALL BE REQUIRED
21 TO PROVE ALL ESSENTIAL ELEMENTS OF THE CAUSE OF ACTION,
22 INCLUDING DAMAGES, BY A PREPONDERANCE OF THE EVIDENCE.

23 (C) ESTOPPEL.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
24 FINAL JUDGMENT RENDERED IN FAVOR OF THE COMMONWEALTH IN A
25 CRIMINAL PROCEEDING CHARGING FALSE STATEMENTS OR FRAUD, WHETHER
26 UPON A VERDICT AFTER TRIAL OR UPON A PLEA OF GUILTY OR NOLO
27 CONTENDERE, SHALL ESTOP THE DEFENDANT FROM DENYING THE ESSENTIAL
28 ELEMENTS OF THE OFFENSE IN AN ACTION BROUGHT UNDER SECTION 302
29 THAT INVOLVES THE SAME TRANSACTION AS IN THE CRIMINAL
30 PROCEEDING.

1 SECTION 307. RELIEF FROM RETALIATORY ACTIONS.

2 (A) GENERAL RULE.--AN EMPLOYEE, CONTRACTOR OR AGENT SHALL BE
3 ENTITLED TO ALL RELIEF NECESSARY TO MAKE THE EMPLOYEE,
4 CONTRACTOR OR AGENT WHOLE, IF THE EMPLOYEE, CONTRACTOR OR AGENT
5 IS DISCHARGED, DEMOTED, SUSPENDED, THREATENED, HARASSED OR IN
6 ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND
7 CONDITIONS OF EMPLOYMENT, CONTRACT OR AGENCY BECAUSE OF LAWFUL
8 ACTS DONE BY THE EMPLOYEE, CONTRACTOR, AGENT OR ASSOCIATED
9 OTHERS IN FURTHERANCE OF AN ACTION UNDER THIS ACT OR OTHER
10 EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS ACT.

11 (B) RELIEF.--RELIEF UNDER SUBSECTION (A) SHALL INCLUDE
12 REINSTATEMENT WITH THE SAME SENIORITY STATUS THAT THE EMPLOYEE,
13 CONTRACTOR OR AGENT WOULD HAVE HAD BUT FOR THE DISCRIMINATION,
14 TWO TIMES THE AMOUNT OF BACK PAY, INTEREST ON THE BACK PAY AND
15 COMPENSATION FOR SPECIAL DAMAGES SUSTAINED AS A RESULT OF THE
16 DISCRIMINATION, INCLUDING LITIGATION COSTS AND REASONABLE
17 ATTORNEY FEES.

18 (C) LIMITATION.--AN ACTION UNDER THIS SECTION MAY NOT BE
19 BROUGHT MORE THAN THREE YEARS AFTER THE DATE ON WHICH THE
20 RETALIATION OCCURRED.

21 SECTION 308. ACTIONS AND REMEDIES UNDER OTHER LAWS.

22 (A) ACTIONS AND REMEDIES NOT EXCLUSIVE.--THE PROVISIONS OF
23 THIS ACT ARE NOT EXCLUSIVE AND THE ACTIONS AND REMEDIES PROVIDED
24 FOR IN THIS ACT SHALL BE IN ADDITION TO ANY OTHER ACTIONS AND
25 REMEDIES PROVIDED FOR IN ANY OTHER LAW OR AVAILABLE UNDER THE
26 COMMON LAW.

27 (B) CONSTRUCTION.--THE AVAILABILITY OF AN ACTION OR REMEDY
28 PROVIDED FOR IN ANY OTHER LAW OR AVAILABLE UNDER THE COMMON LAW
29 SHALL NOT BE CONSTRUED TO EXCLUDE, IMPAIR OR LIMIT THE
30 AVAILABILITY OR USE OF THE PROVISIONS OF THIS ACT.

1 (C) EXISTING PRIVILEGES AND IMMUNITIES UNAFFECTED.--THIS ACT
2 SHALL NOT ABROGATE OR MODIFY ANY EXISTING STATUTORY OR COMMON
3 LAW PRIVILEGE OR IMMUNITY.

4 SECTION 309. QUALIFICATION OF ACT FOR INCREASE SHARE OF
5 RECOVERIES.

6 (A) SUBMISSION.--WITHIN 30 DAYS OF THE EFFECTIVE DATE OF
7 THIS ACT, THE ATTORNEY GENERAL SHALL SUBMIT A COPY OF THIS ACT
8 AND ANY OTHER RELEVANT INFORMATION TO THE OFFICE OF INSPECTOR
9 GENERAL, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
10 AND REQUEST A DETERMINATION THAT THIS ACT MEETS THE REQUIREMENTS
11 OF SECTION 1909(B) OF THE SOCIAL SECURITY ACT (49 STAT. 620, 42
12 U.S.C. § 1396H(B)), IN ORDER TO QUALIFY THE COMMONWEALTH FOR AN
13 INCREASED SHARE OF AMOUNTS RECOVERED UNDER THIS ACT WITH RESPECT
14 TO FALSE OR FRAUDULENT CLAIMS SUBMITTED TO THE MEDICAL
15 ASSISTANCE PROGRAM.

16 (B) REVIEW AND RECOMMENDATIONS.--IF THE OFFICE OF INSPECTOR
17 GENERAL, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
18 DETERMINES THAT THIS ACT DOES NOT MEET THE REQUIREMENTS OF
19 SECTION 1909(B) OF THE SOCIAL SECURITY ACT, THE ATTORNEY GENERAL
20 SHALL PREPARE A REPORT EXPLAINING THE REASONS FOR THE DENIAL AND
21 SUGGESTED REVISIONS TO THIS ACT WHICH WOULD CAUSE THIS ACT TO
22 MEET THE REQUIREMENTS OF SECTION 1909(B) OF THE SOCIAL SECURITY
23 ACT. A COPY OF THE REPORT SHALL BE TRANSMITTED TO THE OFFICIALS
24 DESIGNATED TO RECEIVE THE REPORT REQUIRED UNDER SECTION 305(A).
25 SECTION 310. RULES OF PROCEDURE.

26 EXCEPT AS OTHERWISE SPECIFIED IN, OR WHERE CLEARLY
27 INCONSISTENT WITH, THIS ACT, PROCEEDINGS UNDER THIS ACT SHALL BE
28 GOVERNED BY THE PENNSYLVANIA RULES OF CIVIL PROCEDURE OR OTHER
29 APPLICABLE COURT RULE.

30 SECTION 311. IMPLEMENTATION.

1 (A) TEMPORARY REGULATIONS.--IN ORDER TO FACILITATE THE
2 PROMPT IMPLEMENTATION OF THIS CHAPTER, THE ATTORNEY GENERAL
3 SHALL PROMULGATE TEMPORARY REGULATIONS WITHIN SIX MONTHS OF THE
4 EFFECTIVE DATE OF THIS SECTION. THE ATTORNEY GENERAL SHALL
5 PROMULGATE TEMPORARY REGULATIONS NOT SUBJECT TO:

6 (1) SECTION 612 OF THE ACT OF APRIL 9, 1929 (P.L.177,
7 NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

8 (2) SECTIONS 201, 202, 203, 204 AND 205 OF THE ACT OF
9 JULY 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE
10 COMMONWEALTH DOCUMENTS LAW.

11 (3) SECTIONS 204(B) AND 301(10) OF THE ACT OF OCTOBER
12 15, 1980 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH
13 ATTORNEYS ACT.

14 (4) THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS
15 THE REGULATORY REVIEW ACT.

16 (B) PUBLICATION.--THE ATTORNEY GENERAL SHALL TRANSMIT THE
17 TEMPORARY REGULATIONS TO THE LEGISLATIVE REFERENCE BUREAU FOR
18 PUBLICATION IN THE PENNSYLVANIA BULLETIN NO LATER THAN SIX
19 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION.

20 (B.1) FINAL REGULATIONS.--THE ATTORNEY GENERAL SHALL
21 PROMULGATE FINAL REGULATIONS WITHIN TWO YEARS OF THE EFFECTIVE
22 DATE OF THIS SECTION. THE TEMPORARY REGULATIONS PROMULGATED
23 UNDER THIS SECTION SHALL EXPIRE UPON PROMULGATION OF THE FINAL
24 REGULATIONS.

25 (C) MANDATORY PROVISIONS.--THE ATTORNEY GENERAL, WHETHER BY
26 REGULATION, GUIDELINE OR INTERNAL POLICY, SHALL IMPLEMENT
27 PROVISIONS TO:

28 (1) CONTROL A PERSON'S DISCLOSURE, DISSEMINATION,
29 SHARING OR USE OF INFORMATION THAT IS PROTECTED UNDER 18
30 PA.C.S. CH. 91 (RELATING TO CRIMINAL HISTORY RECORD

1 INFORMATION) AND THAT THE PERSON LAWFULLY OBTAINS IN
2 CONNECTION WITH AN INVESTIGATION OR PROSECUTION OF A
3 POTENTIAL OR ACTUAL VIOLATION OF SECTION 301.

4 (2) PREVENT THE DISCLOSURE, DISSEMINATION, SHARING OR
5 USE OF PROTECTED INFORMATION IN ACCORDANCE WITH SECTION
6 303(A)(4).

7 SECTION 312. JURISDICTION AND ATTORNEY GENERAL AS RELATOR IN
8 FEDERAL FALSE CLAIMS ACTIONS.

9 (A) JURISDICTION.--AN ACTION OR PETITION UNDER THIS ACT
10 SHALL BE FILED IN A COURT OF COMPETENT JURISDICTION. THE
11 FOLLOWING SHALL APPLY:

12 (1) AN ACTION OR PETITION THAT IS BROUGHT IN THE COURTS
13 OF THE COMMONWEALTH SHALL BE FILED IN COMMONWEALTH COURT.

14 (2) THE COMMONWEALTH COURT SHALL HAVE JURISDICTION OVER
15 A LEGAL CLAIM ASSERTED UNDER THE LAWS OF THE UNITED STATES,
16 ANY STATE OR ANY LOCAL GOVERNMENT WHICH ARISES FROM THE SAME
17 TRANSACTION OR OCCURRENCE AS AN ACTION BROUGHT UNDER THIS
18 ACT.

19 (B) ATTORNEY GENERAL AS RELATOR.--TO THE EXTENT PERMITTED BY
20 FEDERAL LAW, THE ATTORNEY GENERAL MAY BRING AN ACTION AS A
21 RELATOR UNDER 31 U.S.C. § 3730 (RELATING TO CIVIL ACTIONS FOR
22 FALSE CLAIMS) WITH RESPECT TO ANY ACT FOR WHICH A PERSON MAY BE
23 HELD LIABLE UNDER 31 U.S.C. CH. 37 (RELATING TO CLAIMS).

24 (C) SERVICE ON OTHER AUTHORITIES.--WITH RESPECT TO THE
25 FEDERAL GOVERNMENT OR ANY STATE OR LOCAL GOVERNMENT THAT IS
26 NAMED AS A COPLAINTIFF WITH THE COMMONWEALTH IN AN ACTION
27 BROUGHT UNDER THIS ACT, A SEAL ON ACTION ORDERED BY THE COURT
28 UNDER SECTION 302(B) SHALL NOT PRECLUDE THE COMMONWEALTH OR THE
29 PERSON BRINGING THE ACTION FROM SERVING THE COMPLAINT, ANY OTHER
30 PLEADINGS OR THE WRITTEN DISCLOSURE OF SUBSTANTIALLY ALL

1 MATERIAL EVIDENCE AND INFORMATION POSSESSED BY THE PERSON
2 BRINGING THE ACTION UPON THE LAW ENFORCEMENT AUTHORITIES THAT
3 ARE AUTHORIZED UNDER THE LAW OF THAT FEDERAL, STATE OR LOCAL
4 GOVERNMENT TO INVESTIGATE AND PROSECUTE THE ACTIONS ON BEHALF OF
5 THE GOVERNMENTS. A SEAL ORDERED UNDER SECTION 302(B) SHALL APPLY
6 TO THE LAW ENFORCEMENT AUTHORITIES SO SERVED TO THE SAME EXTEND
7 AS THE SEAL APPLIES TO OTHER PARTIES IN THE ACTION.

8 (D) DEFINITION.--AS USED IN THIS SECTION, THE TERM "STATE"
9 INCLUDES THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO
10 RICO, THE VIRGIN ISLANDS AND ALL INSULAR TERRITORIES OF THE
11 UNITED STATES.

12 CHAPTER 5

13 COVID-19-RELATED LIABILITY

14 SECTION 501. DEFINITIONS.

15 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
16 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
17 CONTEXT CLEARLY INDICATES OTHERWISE:

18 "BUSINESS OR GOVERNMENT SERVICES." A LAWFUL ACTIVITY
19 CONDUCTED BY A TRADE, BUSINESS, NONPROFIT ORGANIZATION OR LOCAL
20 GOVERNMENTAL UNIT THAT IS PERMITTED BY THE TERMS OF THE
21 PROCLAMATION OF DISASTER EMERGENCY TO HOLD ITSELF OUT AS OPEN TO
22 MEMBERS OF THE PUBLIC.

23 "CHILD-CARE FACILITY." ANY OF THE FOLLOWING:

24 (1) A CHILD-CARE CENTER AS DEFINED IN SECTION 1001 OF
25 THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE HUMAN
26 SERVICES CODE.

27 (2) A CHILDREN'S INSTITUTION AS DEFINED IN SECTION 901
28 OF THE HUMAN SERVICES CODE.

29 (3) A FAMILY CHILD CARE HOME AS DEFINED IN SECTION 1001
30 OF THE HUMAN SERVICES CODE.

1 (4) AN INDIVIDUAL EMPLOYED OR CONTRACTED BY AN
2 INDIVIDUAL OR ENTITY UNDER PARAGRAPH (1), (2) OR (3).
3 "COVERED PROVIDER." ANY OF THE FOLLOWING:

4 (1) A HEALTH CARE PRACTITIONER AS DEFINED IN SECTIONS
5 103 AND 802.1 OF THE ACT OF JULY 19, 1979 (P.L.130, NO.48),
6 KNOWN AS THE HEALTH CARE FACILITIES ACT, OR A HEALTH CARE
7 PRACTITIONER OR PROVIDER, INCLUDING A REGISTERED NURSE,
8 LICENSED BY A STATE OR A POLITICAL DIVISION OF THE UNITED
9 STATES, INCLUDING PURSUANT TO A WAIVER OF A LAW OR A
10 REGULATION ISSUED BY THE UNITED STATES, THE COMMONWEALTH OR A
11 LOCAL GOVERNMENTAL AUTHORITY.

12 (2) A HEALTH CARE FACILITY AS DEFINED IN THE HEALTH CARE
13 FACILITIES ACT OR A TEMPORARY SITE OPERATED BY A HEALTH CARE
14 FACILITY DURING THE PROCLAMATION OF DISASTER EMERGENCY,
15 INCLUDING A FACILITY AUTHORIZED TO OPERATE PURSUANT TO A
16 WAIVER OF A LAW OR A REGULATION ISSUED BY THE UNITED STATES,
17 THE COMMONWEALTH OR A LOCAL GOVERNMENTAL AUTHORITY.

18 (3) A HEALTH CARE PROVIDER AS DEFINED IN THE HEALTH CARE
19 FACILITIES ACT OR OTHER LEGAL ENTITY WHOSE PRIMARY PURPOSE IS
20 THE PROVISION OF MEDICAL CARE FOR A HEALTH CARE PROVIDER.

21 (4) A FACILITY AS DEFINED IN SECTION 1001 OF THE HUMAN
22 SERVICES CODE, OR A PARENT ORGANIZATION OF THE FACILITY.

23 (5) A BUSINESS, INSTITUTION OF HIGHER EDUCATION,
24 FACILITY OR ORGANIZATION THAT PROVIDES A VENUE FOR THE
25 PROVISION OF MEDICAL CARE.

26 (6) A LICENSED, CERTIFIED, REGISTERED OR AUTHORIZED
27 PERSON PROVIDING EMERGENCY MEDICAL SERVICES AS DEFINED IN 35
28 PA.C.S. § 8103 (RELATING TO DEFINITIONS), INCLUDING AN EMS
29 VEHICLE OPERATOR.

30 (7) AN EMS AGENCY AS DEFINED IN 35 PA.C.S. § 8103,

1 INCLUDING A PARENT ORGANIZATION OF THE EMS AGENCY.

2 (8) A PERSON ENGAGED IN NURSING CARE AS DEFINED IN 28
3 PA. CODE CH. 201 (RELATING TO APPLICABILITY, DEFINITIONS,
4 OWNERSHIP AND GENERAL OPERATION OF LONG-TERM CARE NURSING
5 FACILITIES), IF THE NURSING CARE IS IN SUPPORT OF THE
6 ACTIVITIES OF DAILY LIVING AND OTHER INSTRUMENTAL ACTIVITIES
7 OF DAILY LIVING AS DEFINED IN 55 PA. CODE CHS. 2600 (RELATING
8 TO PERSONAL CARE HOMES) AND 2800 (RELATING TO ASSISTED LIVING
9 RESIDENCES), OR SERVICES COVERED THAT NURSING CARE PROVIDERS
10 ARE OBLIGATED TO DELIVER OR ARRANGE UNDER THEIR REQUIREMENTS
11 OF LICENSURE.

12 (9) A CLINICAL LABORATORY CERTIFIED UNDER THE FEDERAL
13 CLINICAL LABORATORY AMENDMENTS IN SECTION 353 OF THE PUBLIC
14 HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. § 201 ET SEQ.),
15 OR LICENSED UNDER THE ACT OF SEPTEMBER 26, 1951 (P.L.1539,
16 NO.389), KNOWN AS THE CLINICAL LABORATORY ACT.

17 (10) AN INDIVIDUAL EMPLOYED OR CONTRACTED BY AN
18 INDIVIDUAL OR ENTITY UNDER PARAGRAPH (1), (2), (3), (4), (5),
19 (6), (7), (8) OR (9), WHO IS INVOLVED IN PROVIDING MEDICAL
20 CARE.

21 "DIRECT COST." THE DIRECT LABOR AND DIRECT MATERIAL COSTS OF
22 PRODUCING PERSONAL PROTECTIVE EQUIPMENT, EXCLUDING ANY
23 MANUFACTURING OVERHEAD COSTS.

24 "INSTITUTION OF HIGHER EDUCATION." THE TERM INCLUDES ANY OF
25 THE FOLLOWING:

26 (1) A COMMUNITY COLLEGE OPERATING UNDER ARTICLE XIX-A.

27 (2) A UNIVERSITY WITHIN THE STATE SYSTEM OF HIGHER
28 EDUCATION.

29 (3) THE PENNSYLVANIA STATE UNIVERSITY, THE UNIVERSITY OF
30 PITTSBURGH, TEMPLE UNIVERSITY, LINCOLN UNIVERSITY OR ANY

1 OTHER INSTITUTION DESIGNATED AS STATE-RELATED BY THE
2 COMMONWEALTH.

3 (4) THE THADDEUS STEVENS COLLEGE OF TECHNOLOGY AND THE
4 PENNSYLVANIA COLLEGE OF TECHNOLOGY.

5 (5) A COLLEGE ESTABLISHED UNDER ARTICLE XIX-G.

6 (6) AN INSTITUTION OF HIGHER EDUCATION LOCATED IN AND
7 INCORPORATED OR CHARTERED BY THE COMMONWEALTH AND ENTITLED TO
8 CONFER DEGREES UNDER 24 PA.C.S. § 6505 (RELATING TO POWER TO
9 CONFER DEGREES) AND AS PROVIDED FOR BY THE STANDARDS AND
10 QUALIFICATIONS PRESCRIBED BY THE STATE BOARD OF EDUCATION
11 UNDER 24 PA.C.S. CH. 65 (RELATING TO PRIVATE COLLEGES,
12 UNIVERSITIES AND SEMINARIES).

13 (7) A PRIVATE SCHOOL LICENSED UNDER THE ACT OF DECEMBER
14 15, 1986 (P.L.1585, NO.174), KNOWN AS THE PRIVATE LICENSED
15 SCHOOLS ACT.

16 (8) A FOREIGN CORPORATION APPROVED TO OPERATE AN
17 EDUCATIONAL ENTERPRISE UNDER 22 PA. CODE CH. 36 (RELATING TO
18 FOREIGN CORPORATION STANDARDS).

19 "LOCAL GOVERNMENTAL UNIT." A MUNICIPALITY OR LOCAL
20 AUTHORITY.

21 "PERSONAL PROTECTIVE EQUIPMENT." A DEVICE, EQUIPMENT,
22 SUBSTANCE OR MATERIAL RECOMMENDED BY THE CENTERS FOR DISEASE
23 CONTROL AND PREVENTION, FOOD AND DRUG ADMINISTRATION,
24 ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT OF HOMELAND
25 SECURITY, ANOTHER FEDERAL AUTHORITY OR THE DEPARTMENT OF HEALTH
26 TO PREVENT, LIMIT OR SLOW THE SPREAD OF COVID-19, SUCH AS
27 RESPIRATORS, MASKS, SURGICAL APPAREL, GOWNS, GLOVES AND OTHER
28 APPAREL INTENDED FOR A MEDICAL PURPOSE. THE TERM INCLUDES
29 SANITIZERS AND DISINFECTANTS.

30 "PROCLAMATION OF DISASTER EMERGENCY." A PROCLAMATION OF

1 DISASTER EMERGENCY ISSUED BY THE GOVERNOR RELATING TO COVID-19
2 AND ANY RENEWAL OF THE STATE OF DISASTER EMERGENCY, SUCH AS THE
3 PROCLAMATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR ON
4 MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020), AND
5 RENEWED ON JUNE 3, 2020, AND AUGUST 31, 2020.

6 "PUBLIC HEALTH DIRECTIVES." ORDERS OR GUIDELINES LAWFULLY
7 ISSUED BY THE FEDERAL OR STATE GOVERNMENT REGARDING:

8 (1) THE MANUFACTURING OR USE OF PERSONAL PROTECTIVE
9 EQUIPMENT DURING THE PROCLAMATION OF DISASTER EMERGENCY.

10 (2) TREATMENT OR TESTING OF INDIVIDUALS WITH OR
11 REASONABLY BELIEVED TO HAVE COVID-19.

12 (3) STEPS NECESSARY OR RECOMMENDED TO PREVENT, LIMIT OR
13 SLOW THE SPREAD OF COVID-19.

14 "SCHOOL ENTITY." A PUBLIC SCHOOL, INCLUDING A CHARTER SCHOOL
15 OR CYBER CHARTER SCHOOL, PRIVATE SCHOOL, NONPUBLIC SCHOOL, PRE-
16 KINDERGARTEN, INTERMEDIATE UNIT, AREA CAREER AND TECHNICAL
17 SCHOOL, APPROVED PRIVATE SCHOOL OR INSTITUTION OF HIGHER
18 EDUCATION OPERATING WITHIN THE COMMONWEALTH. THE TERM INCLUDES
19 AN INDIVIDUAL EMPLOYED BY OR CONTRACTED BY A SCHOOL ENTITY.

20 SECTION 501.1. SCHOOL AND CHILD CARE LIABILITY.

21 (A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION
22 OF LAW, A SCHOOL ENTITY OR CHILD CARE FACILITY SHALL NOT BE
23 CIVILLY LIABLE FOR DAMAGES OR PERSONAL INJURY RELATING TO AN
24 ACTUAL OR ALLEGED EXPOSURE TO COVID-19, ABSENT A SHOWING, BY
25 CLEAR AND CONVINCING EVIDENCE, OF GROSS NEGLIGENCE,
26 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
27 HARM.

28 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
29 OMISSION IN COMPLIANCE WITH, OR IN A GOOD FAITH BELIEF THAT THE
30 ACT OR OMISSION IS IN COMPLIANCE WITH, PUBLIC HEALTH DIRECTIVES

1 SHALL NOT BE CONSIDERED GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
2 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

3 SECTION 502. PERSONAL PROTECTIVE EQUIPMENT LIABILITY.

4 (A) MANUFACTURER, DISTRIBUTOR, LABELER AND DONOR.--THE
5 FOLLOWING APPLY:

6 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON
7 THAT MANUFACTURES, DISTRIBUTES, LABELS OR DONATES PERSONAL
8 PROTECTIVE EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGES
9 OR PERSONAL INJURY RELATED TO ACTUAL OR ALLEGED EXPOSURE TO
10 COVID-19, IN CONNECTION WITH THE USE OF PERSONAL PROTECTIVE
11 EQUIPMENT THAT, DURING THE PROCLAMATION OF DISASTER
12 EMERGENCY, IS DONATED OR SOLD AT DIRECT COST, TO A CHARITABLE
13 ORGANIZATION, THE COMMONWEALTH, A LOCAL GOVERNMENTAL UNIT OR
14 COVERED PROVIDER, ABSENT A SHOWING BY CLEAR AND CONVINCING
15 EVIDENCE OF RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
16 INFLICTION OF HARM.

17 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD
18 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
19 PUBLIC HEALTH DIRECTIVES, SHALL NOT BE CONSIDERED
20 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
21 HARM.

22 (B) OTHER MANUFACTURERS, DISTRIBUTORS AND LABELERS.--EXCEPT
23 AS PROVIDED UNDER SUBSECTION (A), THE FOLLOWING APPLY:

24 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON
25 THAT MANUFACTURES, DISTRIBUTES OR LABELS PERSONAL PROTECTIVE
26 EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGES OR PERSONAL
27 INJURY RELATED TO ACTUAL OR ALLEGED EXPOSURE TO COVID-19 IN
28 CONNECTION WITH THE USE OF PERSONAL PROTECTIVE EQUIPMENT
29 ABSENT A SHOWING, BY CLEAR AND CONVINCING EVIDENCE, OF GROSS
30 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL

1 INFLICTION OF HARM IF THE PERSON COMMENCED MANUFACTURING,
2 DISTRIBUTING OR LABELING:

3 (I) ONLY IN CONNECTION WITH A PROCLAMATION OF
4 DISASTER EMERGENCY; OR

5 (II) TO THE SAME STANDARDS THAT IT MANUFACTURED,
6 DISTRIBUTED OR LABELED THE EQUIPMENT BEFORE A
7 PROCLAMATION OF DISASTER EMERGENCY, UNLESS THE EQUIPMENT
8 IS CLEARLY LABELED TO INDICATE OTHERWISE.

9 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD
10 FAITH BELIEF THAT THE ACT OF OMISSION WAS IN COMPLIANCE WITH,
11 PUBLIC HEALTH DIRECTIVES SHALL NOT BE CONSIDERED GROSS
12 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
13 INFLECTION OF HARM.

14 (C) USERS.--THE FOLLOWING APPLY:

15 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON
16 THAT USED OR EMPLOYED PERSONAL PROTECTIVE EQUIPMENT DURING
17 THE PROCLAMATION OF DISASTER EMERGENCY IN COMPLIANCE WITH
18 PUBLIC HEALTH DIRECTIVES RELATED TO THE PERSONAL PROTECTIVE
19 EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGES OR PERSONAL
20 INJURY RELATED TO USE OF THE PERSONAL PROTECTIVE EQUIPMENT
21 ABSENT A SHOWING, BY CLEAR AND CONVINCING EVIDENCE, OF GROSS
22 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
23 INFLECTION OF HARM.

24 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD
25 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
26 PUBLIC HEALTH DIRECTIVES, SHALL NOT BE CONSIDERED GROSS
27 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
28 INFLECTION OF HARM.

29 SECTION 503. BUSINESS OR GOVERNMENT SERVICES LIABILITY.

30 (A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION

1 OF LAW, A PERSON PROVIDING BUSINESS OR GOVERNMENT SERVICES SHALL
2 NOT BE CIVILLY LIABLE FOR DAMAGES OR PERSONAL INJURY RELATING TO
3 AN ACTUAL OR ALLEGED EXPOSURE TO COVID-19, ABSENT A SHOWING, BY
4 CLEAR AND CONVINCING EVIDENCE, OF GROSS NEGLIGENCE,
5 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
6 HARM.

7 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
8 OMISSION IN COMPLIANCE WITH, OR IN A GOOD FAITH BELIEF THAT THE
9 ACT OR OMISSION IS IN COMPLIANCE WITH, PUBLIC HEALTH DIRECTIVES,
10 SHALL NOT BE CONSIDERED GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
11 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

12 SECTION 504. COVERED PROVIDER LIABILITY.

13 (A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION
14 OF LAW, A COVERED PROVIDER SHALL NOT BE CIVILLY LIABLE FOR
15 DAMAGES OR PERSONAL INJURY RELATING TO THE FOLLOWING ABSENT A
16 SHOWING, BY CLEAR AND CONVINCING EVIDENCE, OF GROSS NEGLIGENCE,
17 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
18 HARM:

19 (1) THE PROVISION OF TREATMENT OR TESTING FOR COVID-19
20 TO PATIENTS THAT HAVE BEEN EXPOSED TO OR WHOM A COVERED
21 PROVIDER REASONABLY BELIEVES MAY HAVE BEEN EXPOSED TO COVID-
22 19; OR

23 (2) AN ACT OR OMISSION PROXIMATELY CAUSED BY ANY OF THE
24 FOLLOWING:

25 (I) EQUIPMENT, SUPPLIES OR PERSONNEL SHORTAGES
26 CAUSED BY THE DEMAND FOR TESTING FOR OR TREATMENT OF
27 COVID-19 AND WHICH WAS BEYOND THE REASONABLE CONTROL OF
28 THE COVERED PROVIDER;

29 (II) A NUMBER OF PATIENTS IN EXCESS OF THE CAPACITY
30 OF A DEPARTMENT OR OF A UNIT OF A COVERED PROVIDER AS A

1 DIRECT RESULT OF THE NEED TO TEST FOR OR TREAT COVID-19;
2 OR

3 (III) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES
4 REGARDING THE TESTING FOR AND TREATMENT OF COVID-19.

5 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
6 OMISSION BY A COVERED PROVIDER IN COMPLIANCE WITH, OR IN A GOOD
7 FAITH BELIEF THAT THE ACT OF OMISSION WAS IN COMPLIANCE WITH,
8 PUBLIC HEALTH DIRECTIVES, SHALL NOT BE CONSIDERED GROSS
9 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
10 INFLECTION OF HARM.

11 SECTION 505. APPLICATION OF CHAPTER.

12 (A) VICARIOUS LIABILITY.--VICARIOUS LIABILITY SHALL NOT
13 ATTACH TO THE EMPLOYER OF A PERSON WHO IS OTHERWISE IMMUNE UNDER
14 THIS CHAPTER OR AN EXECUTIVE ORDER.

15 (B) PUBLIC HEALTH DIRECTIVES.--IN DETERMINING CIVIL
16 LIABILITY UNDER THIS CHAPTER, A COURT SHALL:

17 (1) FOR A MANUFACTURER, DISTRIBUTOR, LABELER OR DONOR,
18 CONSIDER PUBLIC HEALTH DIRECTIVES THAT WERE IN EFFECT AT THE
19 TIME, EITHER OF THE MANUFACTURE, DISTRIBUTION, LABELING OR
20 SALE OF THE PERSONAL PROTECTIVE EQUIPMENT.

21 (2) FOR A PERSON PROVIDING BUSINESS OR GOVERNMENT
22 SERVICES, USER OF PERSONAL PROTECTIVE EQUIPMENT, SCHOOL
23 ENTITY OR CHILD CARE FACILITY, CONSIDER PUBLIC HEALTH
24 DIRECTIVES THAT WERE IN EFFECT AT THE TIME OF AN ALLEGED ACT
25 OR OMISSION OCCURRED.

26 (3) FOR A COVERED PROVIDER, CONSIDER PUBLIC HEALTH
27 DIRECTIVES THAT WERE IN EFFECT AT THE TIME AN ALLEGED ACT OR
28 OMISSION OCCURRED.

29 (C) PROCLAMATION OF DISASTER EMERGENCY.--THIS CHAPTER SHALL
30 APPLY TO ACTS OR OMISSIONS DURING A PROCLAMATION OF DISASTER

1 EMERGENCY.

2 SECTION 506. CONSTRUCTION OF CHAPTER.

3 THIS CHAPTER SHALL NOT:

4 (1) BE CONSTRUED TO CREATE A NEW CAUSE OF ACTION OR
5 EXPAND A CIVIL OR CRIMINAL LIABILITY OTHERWISE IMPOSED, LIMIT
6 A DEFENSE OR AFFECT THE APPLICABILITY OF A LAW THAT AFFORDS
7 GREATER PROTECTIONS TO DEFENDANTS THAN ARE PROVIDED UNDER
8 THIS CHAPTER.

9 (2) PREVENT AN INDIVIDUAL FROM FILING A CLAIM FOR
10 WORKERS' COMPENSATION OR RECEIVING BENEFITS UNDER THE ACT OF
11 JUNE 2, 1915 (P.L.736, NO.338), KNOWN AS THE WORKERS'
12 COMPENSATION ACT, IF OTHERWISE AVAILABLE.

13 CHAPTER 7

14 MISCELLANEOUS PROVISIONS

15 SECTION 701. NONSEVERABILITY.

16 THE PROVISIONS OF THIS ACT ARE NONSEVERABLE. IF ANY PROVISION
17 OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS
18 HELD INVALID, THE REMAINING PROVISIONS OR APPLICATIONS OF THIS
19 ACT ARE VOID.

20 SECTION 702. EXPIRATION.

21 (A) GENERAL RULE.--SUBJECT TO SUBSECTION (B), THIS ACT SHALL
22 EXPIRE 20 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION.

23 (B) EXCEPTION.--THE EXPIRATION OF THIS ACT SHALL NOT APPLY
24 TO OR OTHERWISE AFFECT THE FOLLOWING:

25 (1) A VIOLATION OF THIS ACT THAT OCCURRED BEFORE THE
26 EXPIRATION OF THIS ACT.

27 (2) AN INVESTIGATION OF AN ALLEGED VIOLATION OF THIS ACT
28 THAT COMMENCED, BUT WAS NOT COMPLETED, BEFORE THE EXPIRATION
29 OF THIS ACT.

30 SECTION 703. EFFECTIVE DATE.

1 THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

2 (1) THE FOLLOWING SHALL TAKE EFFECT IMMEDIATELY:

3 (I) THIS SECTION.

4 (II) CHAPTER 5.

5 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 120

6 DAYS.