

Good morning Chairman Clark and members of the House Judiciary Committee's Subcommittee on Courts. Thank you for the opportunity to appear before you today on House Bill 1671, the proposed Pennsylvania False Claims Act.

At the outset, I want to commend Rep. Kenney for introducing this important piece of legislation which, if enacted into law, will enable both my office and the district attorneys across Pennsylvania to recover thousands and, in some cases, millions of dollars from individuals or businesses who have submitted fraudulent claims to Pennsylvania and its local governments. The authority granted under a False Claims Act will be an important addition to my office's financial enforcement, contract review, medicaid fraud and public protection programs. These programs all have the goal of recovering moneys due the Commonwealth and to ensure that the agencies of the Commonwealth are doing business with reputable, law-abiding vendors and businesses. I strongly believe a state False Claims Act is an important fraud fighting tool which will lead to substantial recoveries of taxpayers' dollars.

Unfortunately, state and local governments are easy targets for those who want to make an easy buck off of taxpayer dollars. In an article entitled "*Fighting Fraud With a State False Claims Law*," special counsel to the Florida Attorney General's Office, Mark Schlein, notes that there are at least three very good reasons why governments are an easy target. First, most governments have a lot of money to steal. Second, governments are not good at catching people who steal from them. And third, in the unlikely event that you do get caught, "as long as you use an invoice instead of a gun the odds are good you will never see the inside of a prison cell."¹ This observation is particularly pertinent when we consider that more and more government programs and services are being offered at the state level as opposed to the federal. This means that states are responsible for the

¹ Schlein, Mark H., FIGHTING FRAUD WITH A STATE FALSE CLAIMS LAW, National Association of Attorneys General, Health Care Fraud Report, March/April 1997, p. 9-11.

oversight of more contracts and more money than ever before.

The General Accounting Office estimates that at least 10% of the federal budget is lost as the result of over-billing and fraud. If this statistic holds true in Pennsylvania, we could potentially recover \$1.8 billion of our 1998-1999 General Fund budget, which totals \$18 billion. We must take proactive steps to detect and prevent this pervasive fraud, waste and abuse.

That is why I believe that we should enact a statute in Pennsylvania modeled after the successful federal False Claims Act. I should also note that a growing number of states including California, Florida, Illinois, Tennessee, Texas, and Utah, have enacted similar measures to protect against fraud.

These hard hitting statutes not only recover millions of dollars of lost revenue but also create a significant deterrent against future fraudulent conduct. In fact, it is estimated that the enforcement of the federal statute has resulted in a dramatic decrease in fraudulent claims resulting in a net savings estimated at somewhere between \$150 billion and \$300 billion between 1986-1996. It is also estimated that during the next ten years the savings could be as high as \$480 billion.²

HISTORY

Before I discuss the highlights of the legislation being considered by this committee today, I want to provide you with a brief history behind the highly successful federal False Claims Act. In 1863, Congress enacted the Civil False Claims Act, known as the "Lincoln Law," in response to profiteers who had defrauded the Union during the Civil War by over-billing for war materials. The 1863 law penalized anyone who submitted a false claim to the United States for double the amount the government suffered plus a \$2,000 fine for each false claim. The law also contained a "qui tam" or whistleblower provision, which encouraged citizens to expose individuals who had defrauded the government. A significant reward was also built

² Stringer, William L., THE 1986 FALSE CLAIMS ACT AMENDMENTS: AN ASSESSMENT OF ECONOMIC IMPACT, Sept. 1996.

into the statute for whistleblowers. Fifty percent of any monies recovered by the government were retained by the person who exposed the crime.

The Lincoln Law, however, contained a significant "loophole"; the language of the statute did not require the whistleblower to have independent knowledge of the crime. Consequently, virtually anyone could bring a false claim case - and, at a very substantial gain. This led to an abuse of the statute. As a result, in 1943, Congress amended the False Claims statute by reducing the role of the whistleblower, which substantially weakened the law as an effective tool for fighting fraud.

In 1986, at the height of an exploding federal deficit, skyrocketing healthcare costs and \$7,000 coffee makers at the Pentagon, Congress amended the False Claims statute to again provide whistleblowers with easier access to the courts. And for the first time, it allowed private attorneys to participate directly in the process. It also lowered the burden of proof to a "preponderance of the evidence."

As a result, the federal government has made tremendous strides in combating fraud through the use of the Act, particularly within the defense and health care industries. The statute now provides for the recovery of three times the amount of damages sustained by the federal government, plus a civil penalty ranging from \$5,000 - \$10,000 for **each** false claim submitted.

Since 1986, the United States has obtained over **three billion dollars** in false claim recoveries. About one third of this amount is the result of whistleblower litigation. The success of the federal model is evident when one compares this three billion dollar figure to the estimated \$25 to \$27 million recovered annually by the federal government prior to the 1986 amendments.

I firmly believe that if Pennsylvania had its own False Claims Law, we could expect to recover a significant amount of money lost to fraudulent claims. Although there is a natural delay from the time the statute is enacted to any significant return, California, which was the first state to enact a false claims act in 1987, has realized an estimated \$20 million recovery since 1991. Again, I believe that this type of no nonsense, hard

hitting legislation would not only serve to recover millions of taxpayer dollars but would also help deter future false claims within Pennsylvania.

The proposed legislation has the broad reach to recover “any request or demand for money, property or services made to any employee, officer or agent of the Commonwealth, or any political subdivision.” For example, the act would cover a construction agreement with PennDOT, as well as demands for payment by a sanitation company collecting trash pursuant to a contract with a municipality. Firms doing environmental clean-up work with state funds also would be covered. Hospitals and universities receiving state research grants; physicians, home health care agencies and testing laboratories submitting claims to Medicaid; and vendors of the state and municipal governments likewise would be subject to the Act. Currently, we do not have a sufficient remedy to combat fraud occurring in these areas.³

KEY PROVISIONS

1. House Bill 1671 provides for Treble Damages. The individual or business caught filing a false claim would be liable for 3 times the amount of the actual damages suffered by the government entity.
2. The individual or business would also be liable for a substantial penalty - \$5,000-\$10,000 - for each false claim submitted. This is a key weapon for deterrence.
3. This legislation would provide a measure of clemency for those who voluntarily disclose a false claim. Voluntary disclosure would reduce damages from triple to double with no additional penalties levied.
4. The bill does not require the government to prove that the individual or business had specific intent to defraud. In other words, a person cannot hide behind a claim of ignorance or recklessly disregard business practices which result in over-billing.

³Under current law, the state’s remedy would be limited to bringing a civil action under the provisions of the contract or a criminal action through the theft by deception statute.

5. A substantial portion of the funds recovered under the proposed statute would be returned to the General Fund of the state or local government.

Qui Tam or Whistleblower

At the heart of the proposed legislation is the qui tam, or whistleblower provisions. An examination of its tremendous success on the federal level, exemplifies why this is a necessary part of this law.

The bill would allow any individual who has independent knowledge of fraud against the government to bring a lawsuit on behalf of the government. The suit itself is filed *ex parte*, under seal, to protect the identity of the whistleblower, as well as to avoid alerting the accused who might try to destroy any evidence. Once the suit is filed, the Attorney General and/or the District Attorney would have 90 days to review the claim and determine whether to intervene and prosecute the case. If the prosecuting authority is successful in bringing the action, the whistleblower would be entitled to collect anywhere from 20% to 33% of the proceeds. In addition, the Attorney General or District Attorney is entitled to retain a third of the recovered funds to support future investigation and prosecution of these kinds of complaints.

A Pennsylvania False Claims Act would greatly enhance the ability of the Commonwealth and its political subdivisions to combat fraud and significantly expand their resources. Once implemented, the Commonwealth and its political subdivisions will have a proven comprehensive program to recover money wrongfully paid out due to any false claim, regardless of its nature.