



June 9, 2009

Honorable Dwight Evans
Pennsylvania House of Representatives
512-E Main
PO Box 202203
Harrisburg, PA 17120-2203

RE: False Claims Act

Dear Representative Evans:

On behalf of the Pennsylvania Chamber of Business and Industry, I ask for your opposition to the proposed False Claims Act (FCA) as proposed by Governor Rendell and contained in HB 1351 (D. Evans), which amends the Public Welfare Code in numerous aspects.

Despite arguments to the contrary, enacting state false claims provisions will not lead to additional settlements in Pennsylvania nor will it raise additional revenue for the Commonwealth. While proponents, primarily trial lawyers, argue that enactment will trigger more verdicts, thereby increasing the number of damages paid to the Commonwealth, no one has been able to demonstrate that a state FCA would provide any enhanced revenues for Pennsylvania. In fact, data from the states that have enacted FCAs suggest that there is no change in litigation outcomes.

In addition, enacting a state FCA would actually have a negative impact on Commonwealth revenues. Currently, Pennsylvania receives 100 percent of its share of any settlement or judgment obtained under the Federal False Claims Act, and any payments to the whistleblower's trial lawyer comes only out of the federal share of a judgment. If a state FCA were enacted, however, the Commonwealth would have to pay the whistleblower's trial lawyer 20 percent out of its share of the revenues. The result would be a net loss for Pennsylvania.

Enacting a state FCA simply represents a give-away to trial lawyers. Plaintiffs' lawyers currently receive, on average, 20 percent of the *relator's* share of any settlement or judgment. Under a state FCA, trial lawyers

would receive 20% of the *entire* settlement or judgment. A state FCA, therefore, not only will cost the Commonwealth money, but it would create a windfall for trial lawyers.

Furthermore, within the last month, Congress amended and President Obama signed dramatic changes to the Federal FCA, which has significantly muddied the waters for states with FCAs in place, as well as,

for states that have FCAs pending for approval or otherwise considering a state FCA, as Governor Rendell proposes. The Deficit Reduction Act of 2005 (DRA) references the federal FCA as the minimum standards that states must meet in order to be eligible for any benefit. The Office of Inspector General (OIG) is charged with certifying that state FCAs are compliant with the federal act. Since the DRA never contemplated changes to the FCA, states have no guidance for compliance to the amended FCA. In fact, it's uncertain whether the 13 states with FCAs that OIG had certified as compliant will remain so under the new changes.

With the uncertainty and confusion generated following Congressional changes to the federal FCA, and legitimate concerns regarding the negative impact of a state FCA on Commonwealth revenues, we urge you to oppose the adoption of HB 1351, or any other attempt to establish a state false claims act in Pennsylvania, and communicate your opposition to your legislative leaders and Governor Rendell to ensure that a state FCA does not become part of a negotiated General Fund Budget for Fiscal Year 2009-10.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Barr". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gene Barr
Vice President, Government and Public Affairs