



General Assembly

February Session, 2004

Raised Bill No. 386

LCO No. 1417

01417_____GAE

Referred to Committee on Government Administration and Elections

Introduced by:
(GAE)

AN ACT CONCERNING WHISTLEBLOWER COMPLAINTS AND CIVIL RECOVERY OF MISAPPROPRIATED FUNDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-61dd of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Any person having knowledge of any matter involving
4 corruption, unethical practices, violation of state laws or regulations,
5 mismanagement, gross waste of funds, abuse of authority or danger to
6 the public safety occurring in any state department or agency or any
7 quasi-public agency, as defined in section 1-120, or any person having
8 knowledge of any matter involving corruption, violation of state or
9 federal laws or regulations, gross waste of funds, abuse of authority or
10 danger to the public safety occurring in any large state contract, may
11 transmit all facts and information in [his] such person's possession
12 concerning such matter to the Auditors of Public Accounts. The
13 Auditors of Public Accounts shall review such matter and report their
14 findings and any recommendations to the Attorney General. Upon
15 receiving such a report, the Attorney General shall make such

16 investigation as [he] the Attorney General deems proper. At the
17 request of the Attorney General or on their own initiative, the auditors
18 shall assist in the investigation. The Attorney General shall have power
19 to summon witnesses, require the production of any necessary books,
20 papers or other documents and administer oaths to witnesses, where
21 necessary, for the purpose of an investigation pursuant to this section
22 or sections 2 to 5, inclusive, of this act. Upon the conclusion of [his] the
23 investigation, the Attorney General shall where necessary, report [his]
24 any findings to the Governor, or in matters involving criminal activity,
25 to the Chief State's Attorney. [The] In addition to the exempt records
26 provision of section 1-210, as amended, the Auditors of Public
27 Accounts and the Attorney General shall not, after receipt of any
28 information from a person under the provisions of this section or
29 sections 2 to 5, inclusive of this act, disclose the identity of such person
30 without [his] such person's consent unless the Auditors of Public
31 Accounts or the Attorney General determine that such disclosure is
32 unavoidable, and may withhold records of such investigation, during
33 the [course] pendency of the investigation.

34 (b) (1) No state officer or employee, as defined in section 4-141, no
35 quasi-public agency officer or employee, no officer or employee of a
36 large state contractor and no appointing authority shall take or
37 threaten to take: (A) [any] Any personnel action against any state or
38 quasi-public agency employee or any employee of a large state
39 contractor, or (B) any action to impede or terminate a contract between
40 a state agency and a large state contractor in retaliation for such
41 employee's or contractor's disclosure of information to an employee of
42 (i) the Auditors of Public Accounts or the Attorney General under the
43 provisions of subsection (a) of this section or sections or sections 2 to 5,
44 inclusive, of this act; (ii) the state agency or quasi-public agency where
45 such state officer or employee is employed; (iii) a state agency
46 pursuant to a mandated reporter statutes; or (iv) in the case of a large
47 state contractor, to an employee of the contracting state agency
48 concerning information involving the large state contract.

49 (2) If a state or quasi-public agency employee or an employee of a
50 large state contractor alleges that a personnel action has been
51 threatened or taken in [retaliation for such employee's disclosure of
52 information to the Auditors of Public Accounts or the Attorney
53 General under the provisions of subsection (a) of this section,]
54 violation of subdivision (1) of this subsection the employee may notify
55 the Attorney General, who shall investigate pursuant to subsection (a)
56 of this section. [After the conclusion of such investigation, the Attorney
57 General, the employee or]

58 [(3)] (A) Not later than thirty days after learning of the specific
59 incident giving rise to a claim that a personnel action has been
60 threatened or has occurred in violation of subdivision (1) of this
61 subsection, a state or quasi-public agency employee, an employee of a
62 large state contractor or the employee's attorney may file a complaint
63 concerning such personnel action with the Chief Human Rights
64 Referee designated under section 46a-57. The Chief Human Rights
65 Referee shall assign the complaint to a human rights referee appointed
66 under said section 46a-57, who shall conduct a hearing and issue a
67 decision concerning whether the officer or employee taking or
68 threatening to take the personnel action violated any provision of this
69 section. If the human rights referee finds such a violation, the referee
70 may award the aggrieved employee reinstatement to the employee's
71 former position, back pay and reestablishment of any employee
72 benefits to which the employee would otherwise have been eligible if
73 such violation had not occurred, reasonable attorneys' fees, and any
74 other damages. For the purposes of this subsection, such human rights
75 referee shall act as an independent hearing officer. The decision of a
76 human rights referee under this subsection may be appealed by any
77 person who was a party at such hearing, in accordance with the
78 provisions of section 4-183.

79 [(3)] (B) The Chief Human Rights Referee shall adopt regulations, in
80 accordance with the provisions of chapter 54, establishing the
81 procedure for filing complaints and noticing and conducting hearings

82 under [subdivision (2) of this subsection] subparagraph (A) of this
83 subdivision.

84 (4) As an alternative to the provisions of subdivisions (2) and (3) of
85 this subsection (A) a state or quasi-public agency employee who
86 alleges that a personnel action has been threatened or taken may file an
87 appeal within thirty days of knowledge of the specific incident giving
88 rise to such claim with the Employees' Review Board under section 5-
89 202, or, in the case of a state or quasi-public agency employee covered
90 by a collective bargaining contract, in accordance with the procedure
91 provided by such contract, or (B) an employee of a large state
92 contractor alleging that such action has been threatened or taken may,
93 after exhausting all available administrative remedies, bring a civil
94 action in accordance with the provisions of subsection (c) of section 31-
95 51m.

96 (5) In any proceeding under subdivision (2), (3) or (4) of this
97 subsection concerning a personnel action taken or threatened against
98 any state or quasi-public agency employee or any employee of a large
99 state contractor, which personnel action occurs within one year after
100 the employee first transmits facts and information concerning a matter
101 under subsection (a) of this section or sections 2 to 5, inclusive, of this
102 act to the Auditors of Public Accounts or the Attorney General, there
103 shall be a rebuttable presumption that the personnel action is in
104 retaliation for the action taken by the employee under subsection (a) of
105 this section.

106 (6) If a state officer or employee, as defined in section 4-141, a quasi-
107 public agency officer or employee, an officer or employee of a large
108 state contractor or an appointing authority takes or threatens to take
109 any action to impede or cancel a contract between a state agency and a
110 large state contractor, in violation of subdivision (1) of this subsection,
111 such person may, not later than ninety days from the date of such
112 violation, bring a civil action in the superior court for the judicial
113 district of Hartford to recover damages, attorney's fees and costs.

114 (c) Any employee of a state or quasi-public agency or large state
115 contractor, who is found to have knowingly and maliciously made
116 false charges under subsection (a) of this section shall be subject to
117 disciplinary action by [his] such employee's appointing authority up to
118 and including dismissal. In the case of a state or quasi-public agency
119 employee, such action shall be subject to appeal to the Employees'
120 Review Board in accordance with section 5-202, or in the case of state
121 or quasi-public agency employees included in collective bargaining
122 contracts, the procedure provided by such contracts.

123 (d) On or before September first, annually, the Auditors of Public
124 Accounts shall submit to the clerk of each house of the General
125 Assembly a report indicating the number of matters for which facts
126 and information were transmitted to the auditors pursuant to this
127 section during the preceding state fiscal year and the disposition of
128 each such matter.

129 (e) Each contract between a state or quasi-public agency and a large
130 state contractor shall provide that, if an officer, employee or
131 appointing authority of a large state contractor takes or threatens to
132 take any personnel action against any employee of the contractor in
133 retaliation for such employee's disclosure of information to any
134 employee of the contracting state or quasi-public agency or the
135 Auditors of Public Accounts or the Attorney General under the
136 provisions of subsection (a) of this section, the contractor shall be liable
137 for a civil penalty of not more than five thousand dollars for each
138 offense, up to a maximum of twenty per cent of the value of the
139 contract. Each violation shall be a separate and distinct offense and in
140 the case of a continuing violation each calendar day's continuance of
141 the violation shall be deemed to be a separate and distinct offense. The
142 executive head of the state or quasi-public agency may request the
143 Attorney General to bring a civil action in the superior court for the
144 judicial district of Hartford to seek imposition and recovery of such
145 civil penalty.

146 (f) Each large state contractor shall post a notice of the provisions of
147 this section relating to large state contractors in a conspicuous place
148 which is readily available for viewing by the employees of the
149 contractor.

150 (g) No person who, in good faith discloses information to the
151 Auditors of Public Accounts or the Attorney General in accordance
152 with this section shall be liable for any civil damages resulting from
153 such good faith disclosure.

154 (h) As used in this section:

155 (1) "Large state contract" means a contract between an entity and a
156 state or quasi-public agency, having a value of five million dollars or
157 more; [, except for a contract for the construction, alteration or repair of
158 any public building or public work;] and

159 (2) "Large state contractor" means an entity that has entered into a
160 large state contract with a state or quasi-public agency.

161 Sec. 2. (NEW) (*Effective October 1, 2004*) For purposes of sections 2 to
162 5, inclusive, of this act:

163 (1) "Claim" means any request or demand for money or property
164 made (A) to a state officer, state employee, state agent or any other
165 representative of the state, or (B) to a contractor, subcontractor, grantee
166 or other person if the state provides any portion of the money or
167 property requested or demanded, or if the state will reimburse directly
168 or indirectly such contractor, subcontractor, grantee or other person for
169 any portion of the money or property requested or demanded;

170 (2) "Knowing" and "knowingly" means a person, with respect to
171 information, does any of the following: (A) Has actual knowledge of
172 the information, (B) acts in deliberate ignorance of the truth or falsity
173 of the information, or (C) acts in reckless disregard of the truth or
174 falsity of the information;

175 (3) "Original source" means an individual who has direct and
176 independent knowledge of information that the individual voluntarily
177 provided to the Attorney General or the Auditors of Public Accounts,
178 without public disclosure, and on which the Attorney General has
179 based an action brought pursuant to section 4 of this act;

180 (4) "Person" means any natural person, corporation, partnership,
181 association, trust or other business or legal entity; and

182 (5) "State" means any state agency in the executive, legislative and
183 judicial branch, including any quasi-public authority as defined in
184 section 1-120 of the general statutes.

185 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) A person defrauds the
186 state when such person:

187 (1) Knowingly presents, or causes to be presented, to any state
188 official or employee a false or fraudulent claim;

189 (2) Knowingly makes, uses or causes to be made or used, a false
190 record or statement to obtain payment or approval of a claim by the
191 state;

192 (3) Conspires to defraud the state through the allowance or payment
193 of a false or fraudulent claim;

194 (4) Pursuant to a certificate or receipt, has possession, custody or
195 control of property or money used, or to be used, by the state and
196 knowingly delivers, or causes to be delivered, to the state less property
197 than the amount indicated on such certificate or receipt with the intent
198 to knowingly conceal the property;

199 (5) Is authorized to make or deliver a document certifying receipt of
200 property used, or to be used, by the state and with the intent to deceive
201 the state, knowingly makes or delivers the receipt without verifying
202 that the information on the receipt is true;

203 (6) Buys, or receives as a pledge of an obligation or debt, public
204 property from an officer or employee of the state knowing that such
205 officer or employee may not lawfully sell or pledge the property;

206 (7) Enters into an agreement, contract or understanding with an
207 official or employee of the state knowing the information contained
208 therein is false;

209 (8) Knowingly makes, uses or causes to be made or used a false
210 record or statement to conceal, avoid or decrease an obligation to pay
211 or transmit money or property to the state; or

212 (9) Is a beneficiary of an inadvertent submission of a false claim to
213 the state and subsequently discovers the falsity of the claim but
214 knowingly fails to disclose the false claim to the state within a
215 reasonable time after discovery of the falsity of the claim.

216 (b) This section shall not be construed to apply to an act that would
217 constitute workers' compensation fraud pursuant to section 31-290c of
218 the general statutes, an act that violates any provision of title 12 of the
219 general statutes or an act where the alleged loss to the state is less than
220 twenty-five thousand dollars.

221 Sec. 4. (NEW) (*Effective October 1, 2004*) (a) Whenever the Attorney
222 General has reason to believe that a person may have defrauded the
223 state, in violation of section 3 of this act, the Attorney General may
224 investigate such act and bring a civil action in the superior court
225 against such person to recover civil penalties and damages as provided
226 in this section and to obtain such equitable relief as the court deems
227 appropriate.

228 (b) Proof that a person acted with the specific intent to defraud the
229 state shall not be required for a finding that such person has defrauded
230 the state pursuant to section 3 of this act. Innocent mistake shall be an
231 affirmative defense to any action brought pursuant to this section.
232 The state shall prove all essential elements of such cause of action,

233 including damages, by a preponderance of the evidence. A
234 corporation, limited liability corporation, partnership or other person
235 shall be liable to the state for the acts of its agent where the agent acted
236 with apparent authority to defraud the state in violation of section 3 of
237 this act.

238 (c) Any person who is found by a court of competent jurisdiction to
239 have defrauded the state shall be liable to the state for (1) three times
240 the amount of damages that the state sustained due to the fraudulent
241 act, (2) a civil penalty of not less than five thousand dollars and not
242 more than ten thousand dollars for each act that constitutes a violation
243 of section 3 of this act, and (3) reasonable attorney's fees and costs.

244 (d) Notwithstanding the provisions of subsection (c) of this section,
245 a court may, within its discretion, reduce an award of damages to the
246 state upon finding any violation of section 3 of this act, provided such
247 award includes an award for the consequential damages the state
248 sustained as a result of the defendant's violation. The court may,
249 within its discretion, decide not to impose a civil penalty against such
250 defendant provided the court finds all of the following:

251 (1) The defendant committing the violation provided the Attorney
252 General with all the information known to such person about the
253 violation not later than thirty days after the date on which the person
254 first obtained the information;

255 (2) The defendant fully cooperated with any state investigation of
256 such violation; and

257 (3) At the time such defendant provided the Attorney General with
258 such information, no criminal prosecution, civil action or
259 administrative action had commenced with respect to the defrauding
260 of the state, and the defendant did not have actual knowledge of the
261 existence of an investigation into the defrauding of the state.

262

263 Sec. 5. (NEW) (*Effective October 1, 2004*) (a) The superior court shall
264 approve any settlement of an action brought under section 4 of this act.
265 In approving a settlement of, or rendering a judgment in, an action
266 brought under section 4 of this act, the court, upon application by the
267 Attorney General, may award to an original source not more than five
268 per cent of the award of actual damages paid to the state, taking into
269 consideration the significance of the information provided by the
270 original source to the court's finding of a violation of section 3 of this
271 act or the settlement of the action.

272 (b) Notwithstanding the provisions of subsection (a) of this section,
273 an original source is not entitled to receive a portion of any court
274 judgment or settlement if: (1) The action brought pursuant to section 4
275 of this act is based on allegations or transactions that are the subject of
276 another criminal, civil, administrative or legislative proceeding; (2) the
277 information provided by the original source is based on the public
278 disclosure of allegations or transactions in a criminal, civil,
279 administrative or legislative proceeding or hearing or from the news
280 media; (3) the original source is an individual who is or was employed
281 by the state whose scope of employment includes investigating or
282 prosecuting fraud against the state and the information was gathered
283 in the course of such employment; or (4) the original source planned,
284 initiated or knowingly participated in the defrauding of the state.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>

Statement of Purpose:

To extend the whistleblower provisions to contractors who file whistleblower complaints and to authorize the Attorney General to recover treble damages against a person who defrauds the state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]