



General Assembly

January Session, 2007

Raised Bill No. 1428

LCO No. 5416

05416_____GAE

Referred to Committee on Government Administration and Elections

Introduced by:
(GAE)

AN ACT CONCERNING FRAUD AGAINST THE STATE.

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

1 Section 1. (NEW) (*Effective July 1, 2007*) As used in this section and
2 section 2 of this act:

3 (1) "Knowing" and "knowingly" means that a person, with respect to
4 information: (1) Has actual knowledge of the information; (2) acts in
5 deliberate ignorance of the truth or falsity of the information; or (3)
6 acts in reckless disregard of the truth or falsity of the information,
7 without regard to whether the person intends to defraud;

8 (2) "Claim" means any request or demand, whether under a contract
9 or otherwise, for money or property that is made to a contractor,
10 grantee or other recipient if the state provides any portion of the
11 money or property that is requested or demanded, or if the state will
12 reimburse such contractor, grantee or other recipient for any portion of
13 the money or property that is requested or demanded;

14 (3) "Person" means any natural person, corporation, limited liability

15 company, firm, association, organization, partnership, business, trust
16 or other legal entity;

17 (4) "State" means the state of Connecticut, any agency or department
18 of the state or any quasi-public agency, as defined in section 1-120 of
19 the general statutes.

20 Sec. 2. (NEW) (*Effective July 1, 2007*) (a) No person shall:

21 (1) Knowingly present, or cause to be presented, to an officer or
22 employee of the state a false or fraudulent claim for payment or
23 approval;

24 (2) Knowingly make, use or cause to be made or used, a false record
25 or statement to secure the payment or approval by the state of a false
26 or fraudulent claim;

27 (3) Conspire to defraud the state by securing the allowance or
28 payment of a false or fraudulent claim;

29 (4) Have possession, custody or control of property or money used,
30 or to be used, by the state and knowingly deliver or cause to be
31 delivered less property than the amount for which the person receives
32 a certificate or receipt;

33 (5) Knowingly make or deliver a document certifying receipt of
34 property used, or to be used, by the state without completely knowing
35 that the information on the receipt is true;

36 (6) Knowingly buy, or receive as a pledge of an obligation or debt,
37 public property from an officer or employee of the state, who lawfully
38 may not sell or pledge the property; or

39 (7) Knowingly make, use or cause to be made or used, a false record
40 or statement to conceal, avoid or decrease an obligation to pay or
41 transmit money or property to the state.

42 (b) Any person who violates the provisions of subsection (a) of this

43 section shall be liable to the state for: (1) A civil penalty of not less than
44 five thousand dollars and not more than ten thousand dollars, (2) three
45 times the amount of damages which the state sustains because of the
46 act of that person, and (3) the costs of investigation and prosecution of
47 such violation. Liability under this section shall be joint and several for
48 any violation of this section committed by two or more persons.

49 (c) Notwithstanding the provisions of subsection (b) of this section
50 concerning treble damages, if the court finds that: (1) A person
51 committing a violation of subsection (a) of this section furnished
52 officials of the state responsible for investigating false claims violations
53 with all information known to such person about the violation not later
54 than thirty days after the date on which the person first obtained the
55 information; (2) such person fully cooperated with an investigation by
56 the state of such violation; and (3) at the time such person furnished
57 the state with the information about the violation, no criminal
58 prosecution, civil action or administrative action had commenced
59 under sections 3 to 7, inclusive, of this act, with respect to such
60 violation, and such person did not have actual knowledge of the
61 existence of an investigation into such violation, the court may assess
62 not less than two times the amount of damages which the state
63 sustains because of the act of the person. Any information furnished
64 pursuant to this subsection shall be exempt from disclosure under
65 section 1-210 of the general statutes, as amended by this act.

66 Sec. 3. (NEW) (*Effective July 1, 2007*) The Attorney General may
67 investigate any violation of subsection (a) of section 2 of this act. Any
68 information obtained pursuant to this investigation shall be exempt
69 from disclosure under section 1-210 of the general statutes, as
70 amended by this act. If the Attorney General finds that a person has
71 violated or is violating any provision of subsection (a) of section 2 of
72 this act, the Attorney General may bring a civil action in the superior
73 court for the judicial district of Hartford under this section in the name
74 of the state against such person.

75 Sec. 4. (NEW) (*Effective July 1, 2007*) (a) A person may bring a civil
76 action in the superior court of the judicial district of Hartford against
77 any person who violates subsection (a) of section 2 of this act, for the
78 person who brings the action and for the state. Such civil action shall
79 be brought in the name of the state. The action may thereafter be
80 withdrawn only if the court and the Attorney General give written
81 consent to the withdrawing of such action and their reasons for
82 consenting.

83 (b) A copy of the complaint and written disclosure of substantially
84 all material evidence and information the person possesses shall be
85 served on the state by serving the Attorney General in the manner
86 prescribed in section 52-64 of the general statutes. The complaint shall
87 be filed in camera, remain under seal for at least sixty days and shall
88 not be served on the defendant until the court so orders. The court,
89 upon a motion of the Attorney General may, for good cause shown,
90 extend the time during which the complaint remains under seal. Such
91 motion may be supported by affidavits or other submissions in
92 camera. Prior to the expiration of the time during which the complaint
93 remains under seal, the Attorney General shall: (1) Proceed with the
94 action in which case the action shall be conducted by the Attorney
95 General, or (2) notify the court that the Attorney General declines to
96 take over the action in which case the person bringing the action shall
97 have the right to conduct the action.

98 (c) If the court orders that the complaint be unsealed and served, the
99 Superior Court shall issue an appropriate order of notice requiring the
100 same notice that is ordinarily required to commence a civil action. The
101 defendant shall not be required to respond to any complaint filed
102 under this section until thirty days after the complaint is served upon
103 the defendant.

104 (d) If a person brings an action under this section, no person other
105 than the state may intervene or bring a related action based on the facts
106 underlying the pending action.

107 Sec. 5. (NEW) (*Effective July 1, 2007*) (a) If the Attorney General,
108 pursuant to section 4 of this act, elects to proceed with the action, the
109 Attorney General shall have the primary responsibility for prosecuting
110 the action and shall not be bound by any act of the person bringing the
111 action. Such person shall have the right to continue as a party to the
112 action, subject to the limitations set forth in this section.

113 (b) The Attorney General may withdraw such action
114 notwithstanding the objections of the person bringing the action if the
115 Attorney General has notified the person of the filing of the motion
116 and the court has provided the person with an opportunity for a
117 hearing on the motion.

118 (c) The Attorney General may settle the action with the defendant
119 notwithstanding the objections of the person bringing the action if the
120 court determines, after a hearing, that the proposed settlement is fair,
121 adequate and reasonable under all the circumstances. Upon a showing
122 of good cause, such hearing may be held in camera.

123 (d) Upon a showing by (1) the Attorney General that unrestricted
124 participation during the course of the litigation by the person bringing
125 the action would (A) interfere with or unduly delay the Attorney
126 General's prosecution of the case, or (B) be repetitious, irrelevant or for
127 purposes of harassment; or (2) the defendant that unrestricted
128 participation during the course of the litigation by the person bringing
129 the action would be for purposes of harassment or would cause the
130 defendant undue burden or unnecessary expense, the court may, in its
131 discretion, impose limitations on the person's participation, including,
132 but not limited to, limiting the number of witnesses that such person
133 may call, limiting the length of the testimony of any such witnesses,
134 limiting the person's cross-examination of any such witnesses or
135 otherwise limiting the participation by the person in the litigation.

136 (e) If the court awards civil penalties or damages to the state or if the
137 Attorney General settles with the defendant and receives civil
138 penalties or damages, the person bringing such action shall receive

139 from the proceeds not less than fifteen per cent but not more than
140 twenty-five per cent of such proceeds of the action or settlement of the
141 claim, based upon the extent to which the person substantially
142 contributed to the prosecution of the action. Any such person shall also
143 receive an amount for reasonable expenses which the court finds to
144 have been necessarily incurred, plus reasonable attorneys' fees and
145 costs. All such expenses, fees and costs shall be awarded against the
146 defendant.

147 (f) Notwithstanding the provisions of subsection (e) of this section,
148 where the action is one that the court finds to be based primarily on
149 disclosures of specific information relating to allegations or
150 transactions (1) in a criminal, civil or administrative hearing, (2) in a
151 report, hearing, audit or investigation conducted by the General
152 Assembly, a committee of the General Assembly, the Auditors of
153 Public Accounts, a state agency or a quasi-public agency, or (3) from
154 the news media, the court may award from such proceeds to the
155 person bringing the action such sums as it considers appropriate, but
156 in no case more than ten per cent of the proceeds, taking into account
157 the significance of the information and the role of the person bringing
158 the action in advancing the case to litigation. Any such person shall
159 also receive an amount for reasonable expenses that the court finds to
160 have been necessarily incurred, plus reasonable attorneys' fees and
161 costs. All such expenses, fees and costs shall be awarded against the
162 defendant.

163 Sec. 6. (NEW) (*Effective July 1, 2007*) (a) If the Attorney General
164 declines to proceed with the action, the person who brought the action
165 shall have the right to conduct the action. In the event that the
166 Attorney General declines to proceed with the action, upon the request
167 of the Attorney General, the court shall order that copies of all
168 pleadings filed in the action and copies of any deposition transcripts be
169 provided to the state. When the person who brought the action
170 proceeds with the action, the court, without limiting the status and
171 rights of such person, may permit the Attorney General to intervene at

172 a later date upon a showing of good cause.

173 (b) A person bringing an action under this section or settling the
174 claim shall receive an amount which the court decides is reasonable for
175 collecting the civil penalty and damages. The amount shall be not less
176 than twenty-five per cent but not more than thirty per cent of the
177 proceeds of the action or settlement and shall be paid out of such
178 proceeds. Such person shall also receive an amount for reasonable
179 expenses that the court finds to have been necessarily incurred, plus
180 reasonable attorneys' fees and costs. All such expenses, fees and costs
181 shall be awarded against the defendant.

182 (c) If a defendant prevails in the action conducted under this section
183 and the court finds that the claim of the person bringing the action was
184 clearly frivolous, clearly vexatious or brought primarily for purposes
185 of harassment, the court may award reasonable attorneys' fees and
186 expenses to the defendant.

187 (d) Irrespective of whether the Attorney General proceeds with the
188 action, upon request and showing by the Attorney General that certain
189 motions or requests for discovery by a person bringing the action
190 would interfere with the state's investigation or prosecution of a
191 criminal or civil matter arising out of the same facts, the court may stay
192 such discovery for a period of not more than sixty-days from the date
193 of the order of the stay. Such a showing shall be conducted in camera.
194 The court may extend the stay for an additional sixty-day period upon
195 a further showing in camera that the state has pursued the criminal or
196 civil investigation or proceedings with reasonable diligence and any
197 proposed discovery in the civil action will interfere with the ongoing
198 criminal or civil investigation or proceedings. For the purposes of this
199 subsection, the Chief State's Attorney or state's attorney for the
200 appropriate judicial district may appear to explain to the court the
201 potential impact of such discovery on a pending criminal investigation
202 or prosecution.

203 Sec. 7. (NEW) (*Effective July 1, 2007*) Notwithstanding the provisions

204 of section 4 of this act, the Attorney General may elect to pursue its
205 claim through any alternate remedy available to the state, including
206 any administrative proceeding to determine a civil penalty. If any such
207 alternate remedy is pursued in another proceeding, the person
208 bringing the action shall have the same rights in such proceeding as
209 such person would have had if the action had continued under the
210 provisions of sections 4 to 6, inclusive, of this act. Any finding of fact
211 or conclusion of law made in such other proceeding that has become
212 final shall be conclusive on all parties to an action under sections 4 to 6,
213 inclusive, of this act. A finding or conclusion is final if it has been
214 finally determined on appeal to the appropriate court of the state, if all
215 time for filing such an appeal with respect to the finding or conclusion
216 has expired or if the finding or conclusion is not subject to judicial
217 review.

218 Sec. 8. (NEW) (*Effective July 1, 2007*) Notwithstanding the provisions
219 of sections 5 and 6 of this act, if the court finds that the action was
220 brought by a person who planned and initiated the violation of
221 subsection (a) of section 2 of this act, upon which violation an action
222 was brought, then the court may reduce the share of the proceeds of
223 the action that the person would otherwise receive under section 5 or 6
224 of this act, taking into account the role of that person in advancing the
225 case to litigation and any relevant circumstances pertaining to the
226 violation. If a person bringing the action is convicted of criminal
227 conduct arising from his or her role in the violation of subsection (a) of
228 section 2 of this act, such person shall be dismissed from the civil
229 action and shall not receive any share of the proceeds of the action.
230 Such dismissal shall not prejudice the right of the Attorney General to
231 continue the action.

232 Sec. 9. (NEW) (*Effective July 1, 2007*) No court shall have jurisdiction
233 over an action brought under section 4 of this act (1) against a member
234 of the General Assembly, a member of the judiciary or an elected
235 officer or department head of the state if the action is based on
236 evidence or information known to the state when the action was

237 brought; (2) that is based upon allegations or transactions that are the
238 subject of a civil suit or an administrative civil penalty proceeding in
239 which the state of Connecticut is already a party; or (3) that is based
240 upon the public disclosure of allegations or transactions (A) in a
241 criminal, civil or administrative hearing, (B) in a report, hearing, audit
242 or investigation, conducted by the General Assembly, a committee of
243 the General Assembly, the Auditors of Public Accounts, a state agency
244 or a quasi-public agency, or (C) from the news media, unless such
245 action is brought by the Attorney General or the person bringing the
246 action is an original source of the information. For purposes of this
247 section, "original source" means an individual who has direct and
248 independent knowledge of the information on which the allegations
249 are based and has voluntarily provided the information to the state
250 before filing an action under this section based on such information.

251 Sec. 10. (NEW) (*Effective July 1, 2007*) The state of Connecticut shall
252 not be liable for expenses which a person incurs in bringing an action
253 under sections 4 to 7, inclusive, of this act.

254 Sec. 11. (NEW) (*Effective July 1, 2007*) Any employee who is
255 discharged, demoted, suspended, threatened, harassed or in any other
256 manner discriminated against in the terms and conditions of
257 employment by his or her employer because of lawful acts done by the
258 employee on behalf of the employee or others in furtherance of an
259 action under sections 3 to 7, inclusive, of this act, including
260 investigation for, initiation of, testimony for or assistance in an action
261 filed or to be filed under sections 3 to 7, inclusive, of this act, shall be
262 entitled to all relief necessary to make the employee whole. Such relief
263 shall include reinstatement with the same seniority status such
264 employee would have had but for the discrimination, two times the
265 amount of any back pay, interest on any back pay and compensation
266 for any special damages sustained as a result of the discrimination,
267 including litigation costs and reasonable attorneys' fees. An employee
268 may bring an action in the Superior Court for the relief provided in
269 this section.

270 Sec. 12. (NEW) (*Effective July 1, 2007*) A civil action under sections 3
271 to 7, inclusive, of this act may not be brought: (1) More than six years
272 after the date on which the violation of subsection (a) of section 2 of
273 this act is committed, or (2) more than three years after the date when
274 facts material to the right of action are known or reasonably should
275 have been known by the official of the state charged with
276 responsibility to act in the circumstances, but in no event more than
277 ten years after the date on which the violation is committed, whichever
278 last occurs.

279 Sec. 13. (NEW) (*Effective July 1, 2007*) In any action brought under
280 sections 3 to 7, inclusive, of this act, the Attorney General or the person
281 initiating such action shall be required to prove all essential elements
282 of the cause of action, including damages, by a preponderance of the
283 evidence.

284 Sec. 14. (NEW) (*Effective July 1, 2007*) Notwithstanding any other
285 provision of law, a final judgment rendered in favor of the state
286 against a defendant in any criminal proceeding charging fraud or false
287 statements, whether upon a verdict after trial or upon a plea of guilty
288 or nolo contendere, shall estop such defendant from denying the
289 essential elements of the offense in any action which involves the same
290 transaction as in the criminal proceeding and which is brought in
291 accordance with the provisions of sections 3 to 7, inclusive, of this act.

292 Sec. 15. (NEW) (*Effective July 1, 2007*) (a) The provisions of sections 1
293 to 15, inclusive, of this act are not exclusive, and the remedies
294 provided for shall be in addition to any other remedies provided for in
295 any other provision of the general statutes or federal law or available
296 under common law.

297 (b) The provisions of sections 1 to 15, inclusive, of this act shall be
298 liberally construed and applied to promote the public interest.

299 Sec. 16. Subsection (a) of section 4-61dd of the general statutes is
300 repealed and the following is substituted in lieu thereof (*Effective July*

301 1, 2007):

302 (a) Any person having knowledge of any matter involving
303 corruption, unethical practices, violation of state laws or regulations,
304 mismanagement, gross waste of funds, abuse of authority or danger to
305 the public safety occurring in any state department or agency or any
306 quasi-public agency, as defined in section 1-120, or any person having
307 knowledge of any matter involving corruption, violation of state or
308 federal laws or regulations, gross waste of funds, abuse of authority or
309 danger to the public safety occurring in any large state contract, may
310 transmit all facts and information in such person's possession
311 concerning such matter to the Auditors of Public Accounts. The
312 Auditors of Public Accounts shall review such matter and report their
313 findings and any recommendations to the Attorney General. Upon
314 receiving such a report, the Attorney General shall make such
315 investigation as the Attorney General deems proper regarding such
316 report and any other information that may be reasonably derived from
317 such report. Prior to conducting an investigation of any information
318 that may be reasonably derived from such report, the Attorney
319 General shall consult with the Auditors of Public Accounts concerning
320 the relationship of such additional information to the report that has
321 been issued pursuant to this subsection. Any such subsequent
322 investigation deemed appropriate by the Attorney General shall only
323 be conducted with the concurrence and assistance of the Auditors of
324 Public Accounts. At the request of the Attorney General or on their
325 own initiative, the auditors shall assist in the investigation. The
326 Attorney General shall have power to summon witnesses, require the
327 production of any necessary books, papers or other documents and
328 administer oaths to witnesses, where necessary, for the purpose of an
329 investigation pursuant to this section or for the purpose of
330 investigating a suspected violation of subsection (a) of section 2 of this
331 act. Upon the conclusion of the investigation, the Attorney General
332 shall where necessary, report any findings to the Governor, or in
333 matters involving criminal activity, to the Chief State's Attorney. In
334 addition to the exempt records provision of section 1-210, as amended

335 by this act, the Auditors of Public Accounts and the Attorney General
 336 shall not, after receipt of any information from a person under the
 337 provisions of this section or sections 3 to 7, inclusive, of this act,
 338 disclose the identity of such person without such person's consent
 339 unless the Auditors of Public Accounts or the Attorney General
 340 determines that such disclosure is unavoidable, and may withhold
 341 records of such investigation, during the pendency of the
 342 investigation.

343 Sec. 17. Subdivision (13) of subsection (b) of section 1-210 of the
 344 general statutes is repealed and the following is substituted in lieu
 345 thereof (*Effective July 1, 2007*):

346 (13) Records of an investigation or the name of an employee
 347 providing information under the provisions of section 4-61dd, as
 348 amended by this act, or sections 3 to 7, inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2007</i>	New section
Sec. 3	<i>July 1, 2007</i>	New section
Sec. 4	<i>July 1, 2007</i>	New section
Sec. 5	<i>July 1, 2007</i>	New section
Sec. 6	<i>July 1, 2007</i>	New section
Sec. 7	<i>July 1, 2007</i>	New section
Sec. 8	<i>July 1, 2007</i>	New section
Sec. 9	<i>July 1, 2007</i>	New section
Sec. 10	<i>July 1, 2007</i>	New section
Sec. 11	<i>July 1, 2007</i>	New section
Sec. 12	<i>July 1, 2007</i>	New section
Sec. 13	<i>July 1, 2007</i>	New section
Sec. 14	<i>July 1, 2007</i>	New section
Sec. 15	<i>July 1, 2007</i>	New section
Sec. 16	<i>July 1, 2007</i>	4-61dd(a)
Sec. 17	<i>July 1, 2007</i>	1-210(b)(13)

Statement of Purpose:

To prevent fraud against 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.]