



General Assembly

February Session, 2008

Raised Bill No. 5923

LCO No. 2807

02807_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

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, 2008*) 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: (A) Has actual knowledge of the information; (B) acts in
5 deliberate ignorance of the truth or falsity of the information; or (C)
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, 2008*) (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) Having possession, custody or control of property or money
30 used, or to be used, by the state and intending to defraud the state or
31 wilfully to conceal the property, deliver or cause to be delivered less
32 property than the amount for which the person receives a certificate or
33 receipt;

34 (5) Being authorized to make or deliver a document certifying
35 receipt of property used, or to be used, by the state and intending to
36 defraud the state, make or deliver such document without completely
37 knowing that the information on the document is true;

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

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

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

51 (c) Notwithstanding the provisions of subsection (b) of this section
52 concerning treble damages, if the court finds that: (1) A person
53 committing a violation of subsection (a) of this section furnished
54 officials of the state responsible for investigating false claims violations
55 with all information known to such person about the violation not later
56 than thirty days after the date on which the person first obtained the
57 information; (2) such person fully cooperated with an investigation by
58 the state of such violation; and (3) at the time such person furnished
59 the state with the information about the violation, no criminal
60 prosecution, civil action or administrative action had commenced
61 under sections 3 to 7, inclusive, of this act, with respect to such
62 violation, and such person did not have actual knowledge of the
63 existence of an investigation into such violation, the court may assess
64 not less than two times the amount of damages which the state
65 sustains because of the act of such person. Any information furnished
66 pursuant to this subsection shall be exempt from disclosure under
67 section 1-210 of the 2008 supplement to the general statutes, as
68 amended by this act.

69 Sec. 3. (NEW) (*Effective July 1, 2008*) The Attorney General may
70 investigate any violation of subsection (a) of section 2 of this act. Any
71 information obtained pursuant to this investigation shall be exempt
72 from disclosure under section 1-210 of the 2008 supplement to the
73 general statutes, as amended by this act. If the Attorney General finds
74 that a person has violated or is violating any provision of subsection
75 (a) of section 2 of this act, the Attorney General may bring a civil action
76 in the superior court for the judicial district of Hartford under this

77 section in the name of the state against such person.

78 Sec. 4. (NEW) (*Effective July 1, 2008*) (a) A person may bring a civil
79 action in the superior court for the judicial district of Hartford against
80 any person who violates subsection (a) of section 2 of this act, for the
81 person who brings the action and for the state. Such civil action shall
82 be brought in the name of the state. The action may thereafter be
83 withdrawn only if the court and the Attorney General give written
84 consent to the withdrawing of such action and their reasons for
85 consenting.

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

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

107 (d) If a person brings an action under this section, no person other
108 than the state may intervene or bring a related action based on the facts

109 underlying the pending action.

110 Sec. 5. (NEW) (*Effective July 1, 2008*) (a) If the Attorney General,
111 pursuant to section 4 of this act, elects to proceed with the action, the
112 Attorney General shall have the primary responsibility for prosecuting
113 the action and shall not be bound by any act of the person bringing the
114 action. Such person shall have the right to continue as a party to the
115 action, subject to the limitations set forth in this section.

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

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

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

139 (e) If the court awards civil penalties or damages to the state or if the

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

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

166 Sec. 6. (NEW) (*Effective July 1, 2008*) (a) If the Attorney General
167 declines to proceed with the action, the person who brought the action
168 shall have the right to conduct the action. In the event that the
169 Attorney General declines to proceed with the action, upon the request
170 of the Attorney General, the court shall order that copies of all
171 pleadings filed in the action and copies of any deposition transcripts be
172 provided to the state. When the person who brought the action

173 proceeds with the action, the court, without limiting the status and
174 rights of such person, may permit the Attorney General to intervene at
175 a later date upon a showing of good cause.

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

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

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

205 or prosecution.

206 Sec. 7. (NEW) (*Effective July 1, 2008*) Notwithstanding the provisions
207 of section 4 of this act, the Attorney General may elect to pursue the
208 state's claim through any alternate remedy available to the state,
209 including any administrative proceeding to determine a civil penalty.
210 If any such alternate remedy is pursued in another proceeding, the
211 person bringing the action shall have the same rights in such
212 proceeding as such person would have had if the action had continued
213 under the provisions of sections 4 to 6, inclusive, of this act. Any
214 finding of fact or conclusion of law made in such other proceeding that
215 has become final shall be conclusive on all parties to an action under
216 sections 4 to 6, inclusive, of this act. A finding or conclusion is final if it
217 has been finally determined on appeal to the appropriate court of the
218 state, if the time for filing such an appeal with respect to the finding or
219 conclusion has expired or if the finding or conclusion is not subject to
220 judicial review.

221 Sec. 8. (NEW) (*Effective July 1, 2008*) Notwithstanding the provisions
222 of sections 5 and 6 of this act, if the court finds that the action was
223 brought by a person who planned and initiated the violation of
224 subsection (a) of section 2 of this act, upon which violation an action
225 was brought, then the court may reduce the share of the proceeds of
226 the action that the person would otherwise receive under section 5 or 6
227 of this act, taking into account the role of that person in advancing the
228 case to litigation and any relevant circumstances pertaining to the
229 violation. If a person bringing the action is convicted of criminal
230 conduct arising from his or her role in the violation of subsection (a) of
231 section 2 of this act, such person shall be dismissed from the civil
232 action and shall not receive any share of the proceeds of the action.
233 Such dismissal shall not prejudice the right of the Attorney General to
234 continue the action.

235 Sec. 9. (NEW) (*Effective July 1, 2008*) (a) No court shall have
236 jurisdiction over an action brought under section 4 of this act (1)

237 against a member of the General Assembly, a member of the judiciary
238 or an elected officer or department head of the state if the action is
239 based on evidence or information known to the state when the action
240 was brought; (2) that is based upon allegations or transactions that are
241 the subject of a civil suit or an administrative civil penalty proceeding
242 in which the state is already a party; or (3) that is based upon the
243 public disclosure of allegations or transactions (A) in a criminal, civil
244 or administrative hearing, (B) in a report, hearing, audit or
245 investigation, conducted by the General Assembly, a committee of the
246 General Assembly, the Auditors of Public Accounts, a state agency or a
247 quasi-public agency, or (C) from the news media, unless such action is
248 brought by the Attorney General or the person bringing the action is
249 an original source of the information. For the purposes of this
250 subsection, "original source" means an individual who has direct and
251 independent knowledge of the information on which the allegations
252 are based and has voluntarily provided the information to the state
253 before filing an action under section 4 of this act based on such
254 information.

255 (b) No court shall have jurisdiction over an action brought under
256 section 4 of this act by a person who knew or had reason to know that
257 the Attorney General or another state law enforcement official knew of
258 the allegations or transactions prior to such person filing the action or
259 serving the disclosure of material evidence.

260 Sec. 10. (NEW) (*Effective July 1, 2008*) The state of Connecticut shall
261 not be liable for expenses which a person incurs in bringing an action
262 under sections 4 to 7, inclusive, of this act.

263 Sec. 11. (NEW) (*Effective July 1, 2008*) Any employee who is
264 discharged, demoted, suspended, threatened, harassed or in any other
265 manner discriminated against in the terms and conditions of
266 employment by his or her employer because of lawful acts done by the
267 employee on behalf of the employee or others in furtherance of an
268 action under sections 3 to 7, inclusive, of this act, including

269 investigation for, initiation of, testimony for or assistance in an action
270 filed or to be filed under sections 3 to 7, inclusive, of this act, shall be
271 entitled to all relief necessary to make the employee whole. Such relief
272 shall include reinstatement with the same seniority status such
273 employee would have had but for the discrimination, two times the
274 amount of any back pay, interest on any back pay and compensation
275 for any special damages sustained as a result of the discrimination,
276 including litigation costs and reasonable attorneys' fees. An employee
277 may bring an action in the Superior Court for the relief provided in
278 this section.

279 Sec. 12. (NEW) (*Effective July 1, 2008*) A civil action under sections 3
280 to 7, inclusive, of this act may not be brought: (1) More than six years
281 after the date on which the violation of subsection (a) of section 2 of
282 this act is committed, or (2) more than three years after the date when
283 facts material to the right of action are known or reasonably should
284 have been known by the official of the state charged with
285 responsibility to act in the circumstances, but in no event more than
286 ten years after the date on which the violation is committed, whichever
287 last occurs.

288 Sec. 13. (NEW) (*Effective July 1, 2008*) In any action brought under
289 sections 3 to 7, inclusive, of this act, the Attorney General or the person
290 initiating such action shall be required to prove all essential elements
291 of the cause of action, including damages, by a preponderance of the
292 evidence.

293 Sec. 14. (NEW) (*Effective July 1, 2008*) Notwithstanding any other
294 provision of law, a final judgment rendered in favor of the state
295 against a defendant in any criminal proceeding charging fraud or false
296 statements, whether upon a verdict after trial or upon a plea of guilty
297 or nolo contendere, shall estop such defendant from denying the
298 essential elements of the offense in any action which involves the same
299 transaction as in the criminal proceeding and which is brought in
300 accordance with the provisions of sections 3 to 7, inclusive, of this act.

301 Sec. 15. (NEW) (*Effective July 1, 2008*) The provisions of sections 1 to
302 14, inclusive, of this act are not exclusive, and the remedies provided
303 for shall be in addition to any other remedies provided for in any other
304 provision of the general statutes or federal law or available under
305 common law.

306 Sec. 16. Subsection (a) of section 4-61dd of the general statutes is
307 repealed and the following is substituted in lieu thereof (*Effective July*
308 *1, 2008*):

309 (a) Any person having knowledge of any matter involving
310 corruption, unethical practices, violation of state laws or regulations,
311 mismanagement, gross waste of funds, abuse of authority or danger to
312 the public safety occurring in any state department or agency or any
313 quasi-public agency, as defined in section 1-120, or any person having
314 knowledge of any matter involving corruption, violation of state or
315 federal laws or regulations, gross waste of funds, abuse of authority or
316 danger to the public safety occurring in any large state contract, may
317 transmit all facts and information in such person's possession
318 concerning such matter to the Auditors of Public Accounts. The
319 Auditors of Public Accounts shall review such matter and report their
320 findings and any recommendations to the Attorney General. Upon
321 receiving such a report, the Attorney General shall make such
322 investigation as the Attorney General deems proper regarding such
323 report and any other information that may be reasonably derived from
324 such report. Prior to conducting an investigation of any information
325 that may be reasonably derived from such report, the Attorney
326 General shall consult with the Auditors of Public Accounts concerning
327 the relationship of such additional information to the report that has
328 been issued pursuant to this subsection. Any such subsequent
329 investigation deemed appropriate by the Attorney General shall only
330 be conducted with the concurrence and assistance of the Auditors of
331 Public Accounts. At the request of the Attorney General or on their
332 own initiative, the auditors shall assist in the investigation. The
333 Attorney General shall have power to summon witnesses, require the

334 production of any necessary books, papers or other documents and
335 administer oaths to witnesses, where necessary, for the purpose of an
336 investigation pursuant to this section or for the purpose of
337 investigating a suspected violation of subsection (a) of section 2 of this
338 act until such time as the Attorney General files a civil action pursuant
339 to section 3 of this act or proceeds with a civil action pursuant to
340 section 4 of this act. Upon the conclusion of the investigation, the
341 Attorney General shall where necessary, report any findings to the
342 Governor, or in matters involving criminal activity, to the Chief State's
343 Attorney. In addition to the exempt records provision of section 1-210
344 of the 2008 supplement to the general statutes, as amended by this act,
345 the Auditors of Public Accounts and the Attorney General shall not,
346 after receipt of any information from a person under the provisions of
347 this section or sections 3 to 7, inclusive, of this act, disclose the identity
348 of such person without such person's consent unless the Auditors of
349 Public Accounts or the Attorney General determines that such
350 disclosure is unavoidable, and may withhold records of such
351 investigation, during the pendency of the investigation.

352 Sec. 17. Subdivision (13) of subsection (b) of section 1-210 of the 2008
353 supplement to the general statutes is repealed and the following is
354 substituted in lieu thereof (*Effective July 1, 2008*):

355 (13) Records of an investigation or the name of an employee
356 providing information under the provisions of section 4-61dd, as
357 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, 2008</i>	New section
Sec. 2	<i>July 1, 2008</i>	New section
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>July 1, 2008</i>	New section
Sec. 5	<i>July 1, 2008</i>	New section
Sec. 6	<i>July 1, 2008</i>	New section
Sec. 7	<i>July 1, 2008</i>	New section

Sec. 8	<i>July 1, 2008</i>	New section
Sec. 9	<i>July 1, 2008</i>	New section
Sec. 10	<i>July 1, 2008</i>	New section
Sec. 11	<i>July 1, 2008</i>	New section
Sec. 12	<i>July 1, 2008</i>	New section
Sec. 13	<i>July 1, 2008</i>	New section
Sec. 14	<i>July 1, 2008</i>	New section
Sec. 15	<i>July 1, 2008</i>	New section
Sec. 16	<i>July 1, 2008</i>	4-61dd(a)
Sec. 17	<i>July 1, 2008</i>	1-210(b)(13)

Statement of Purpose:

To establish a right of action by the state or a private individual for the recovery of treble damages against any person who knowingly commits fraud against the state and authorize the Attorney General to intervene and take over the prosecution of any civil action brought by such private individual.

[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.]