



General Assembly

**Amendment**

February Session, 2008

LCO No. 5168

\*SB0044005168SD0\*

Offered by:

SEN. WILLIAMS, 29<sup>th</sup> Dist.  
SEN. LOONEY, 11<sup>th</sup> Dist.  
SEN. GAFFEY, 13<sup>th</sup> Dist.

SEN. HANDLEY, 4<sup>th</sup> Dist.  
SEN. STILLMAN, 20<sup>th</sup> Dist.  
SEN. MCDONALD, 27<sup>th</sup> Dist.

To: Subst. Senate Bill No. 440

File No. 423

Cal. No. 261

**"AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective July 1, 2008*) As used in this section and  
4 section 502 of this act:

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

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

13 money or property that is requested or demanded, or if the state will  
14 reimburse such contractor, grantee or other recipient for any portion of  
15 the money or property that is requested or demanded;

16 (3) "Person" means any natural person, corporation, limited liability  
17 company, firm, association, organization, partnership, business, trust  
18 or other legal entity;

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

22 Sec. 502. (NEW) (*Effective July 1, 2008*) (a) No person shall:

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

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

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

31 (4) Having possession, custody or control of property or money  
32 used, or to be used, by the state and intending to defraud the state or  
33 wilfully to conceal the property, deliver or cause to be delivered less  
34 property than the amount for which the person receives a certificate or  
35 receipt;

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

40 (6) Knowingly buy, or receive as a pledge of an obligation or debt,  
41 public property from an officer or employee of the state, who lawfully

42 may not sell or pledge the property; or

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

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

53 (c) Notwithstanding the provisions of subsection (b) of this section  
54 concerning treble damages, if the court finds that: (1) A person  
55 committing a violation of subsection (a) of this section furnished  
56 officials of the state responsible for investigating false claims violations  
57 with all information known to such person about the violation not later  
58 than thirty days after the date on which the person first obtained the  
59 information; (2) such person fully cooperated with an investigation by  
60 the state of such violation; and (3) at the time such person furnished  
61 the state with the information about the violation, no criminal  
62 prosecution, civil action or administrative action had commenced  
63 under sections 503 to 507, inclusive, of this act, with respect to such  
64 violation, and such person did not have actual knowledge of the  
65 existence of an investigation into such violation, the court may assess  
66 not less than two times the amount of damages which the state  
67 sustains because of the act of such person. Any information furnished  
68 pursuant to this subsection shall be exempt from disclosure under  
69 section 1-210 of the 2008 supplement to the general statutes, as  
70 amended by this act.

71 Sec. 503. (NEW) (*Effective July 1, 2008*) The Attorney General may  
72 investigate any violation of subsection (a) of section 502 of this act.  
73 Any information obtained pursuant to this investigation shall be

74 exempt from disclosure under section 1-210 of the 2008 supplement to  
75 the general statutes, as amended by this act. If the Attorney General  
76 finds that a person has violated or is violating any provision of  
77 subsection (a) of section 502 of this act, the Attorney General may  
78 bring a civil action in the superior court for the judicial district of  
79 Hartford under this section in the name of the state against such  
80 person.

81 Sec. 504. (NEW) (*Effective July 1, 2008*) (a) A person may bring a civil  
82 action in the superior court for the judicial district of Hartford against  
83 any person who violates subsection (a) of section 502 of this act, for the  
84 person who brings the action and for the state. Such civil action shall  
85 be brought in the name of the state. The action may thereafter be  
86 withdrawn only if the court and the Attorney General give written  
87 consent to the withdrawing of such action and their reasons for  
88 consenting.

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

104 (c) If the court orders that the complaint be unsealed and served, the  
105 Superior Court shall issue an appropriate order of notice requiring the  
106 same notice that is ordinarily required to commence a civil action. The

107 defendant shall not be required to respond to any complaint filed  
108 under this section until thirty days after the complaint is served upon  
109 the defendant.

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

113 Sec. 505. (NEW) (*Effective July 1, 2008*) (a) If the Attorney General,  
114 pursuant to section 504 of this act, elects to proceed with the action, the  
115 Attorney General shall have the primary responsibility for prosecuting  
116 the action and shall not be bound by any act of the person bringing the  
117 action. Such person shall have the right to continue as a party to the  
118 action, subject to the limitations set forth in this section.

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

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

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

139 may call, limiting the length of the testimony of any such witnesses,  
140 limiting the person's cross-examination of any such witnesses or  
141 otherwise limiting the participation by the person in the litigation.

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

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

169 Sec. 506. (NEW) (*Effective July 1, 2008*) (a) If the Attorney General  
170 declines to proceed with the action, the person who brought the action  
171 shall have the right to conduct the action. In the event that the

172 Attorney General declines to proceed with the action, upon the request  
173 of the Attorney General, the court shall order that copies of all  
174 pleadings filed in the action and copies of any deposition transcripts be  
175 provided to the state. When the person who brought the action  
176 proceeds with the action, the court, without limiting the status and  
177 rights of such person, may permit the Attorney General to intervene at  
178 a later date upon a showing of good cause.

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

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

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

205 subsection, the Chief State's Attorney or state's attorney for the  
206 appropriate judicial district may appear to explain to the court the  
207 potential impact of such discovery on a pending criminal investigation  
208 or prosecution.

209 Sec. 507. (NEW) (*Effective July 1, 2008*) Notwithstanding the  
210 provisions of section 504 of this act, the Attorney General may elect to  
211 pursue the state's claim through any alternate remedy available to the  
212 state, including any administrative proceeding to determine a civil  
213 penalty. If any such alternate remedy is pursued in another  
214 proceeding, the person bringing the action shall have the same rights  
215 in such proceeding as such person would have had if the action had  
216 continued under the provisions of sections 504 to 506, inclusive, of this  
217 act. Any finding of fact or conclusion of law made in such other  
218 proceeding that has become final shall be conclusive on all parties to  
219 an action under sections 504 to 506, inclusive, of this act. A finding or  
220 conclusion is final if it has been finally determined on appeal to the  
221 appropriate court of the state, if the time for filing such an appeal with  
222 respect to the finding or conclusion has expired or if the finding or  
223 conclusion is not subject to judicial review.

224 Sec. 508. (NEW) (*Effective July 1, 2008*) Notwithstanding the  
225 provisions of sections 505 and 506 of this act, if the court finds that the  
226 action was brought by a person who planned and initiated the  
227 violation of subsection (a) of section 502 of this act, upon which  
228 violation an action was brought, then the court may reduce the share  
229 of the proceeds of the action that the person would otherwise receive  
230 under section 505 or 506 of this act, taking into account the role of that  
231 person in advancing the case to litigation and any relevant  
232 circumstances pertaining to the violation. If a person bringing the  
233 action is convicted of criminal conduct arising from his or her role in  
234 the violation of subsection (a) of section 502 of this act, such person  
235 shall be dismissed from the civil action and shall not receive any share  
236 of the proceeds of the action. Such dismissal shall not prejudice the  
237 right of the Attorney General to continue the action.

238 Sec. 509. (NEW) (*Effective July 1, 2008*) (a) No court shall have  
239 jurisdiction over an action brought under section 504 of this act (1)  
240 against a member of the General Assembly, a member of the judiciary  
241 or an elected officer or department head of the state if the action is  
242 based on evidence or information known to the state when the action  
243 was brought; (2) that is based upon allegations or transactions that are  
244 the subject of a civil suit or an administrative civil penalty proceeding  
245 in which the state is already a party; or (3) that is based upon the  
246 public disclosure of allegations or transactions (A) in a criminal, civil  
247 or administrative hearing, (B) in a report, hearing, audit or  
248 investigation, conducted by the General Assembly, a committee of the  
249 General Assembly, the Auditors of Public Accounts, a state agency or a  
250 quasi-public agency, or (C) from the news media, unless such action is  
251 brought by the Attorney General or the person bringing the action is  
252 an original source of the information. For the purposes of this  
253 subsection, "original source" means an individual who has direct and  
254 independent knowledge of the information on which the allegations  
255 are based and has voluntarily provided the information to the state  
256 before filing an action under section 504 of this act based on such  
257 information.

258 (b) No court shall have jurisdiction over an action brought under  
259 section 504 of this act by a person who knew or had reason to know  
260 that the Attorney General or another state law enforcement official  
261 knew of the allegations or transactions prior to such person filing the  
262 action or serving the disclosure of material evidence.

263 Sec. 510. (NEW) (*Effective July 1, 2008*) The state of Connecticut shall  
264 not be liable for expenses which a person incurs in bringing an action  
265 under sections 504 to 507, inclusive, of this act.

266 Sec. 511. (NEW) (*Effective July 1, 2008*) Any employee who is  
267 discharged, demoted, suspended, threatened, harassed or in any other  
268 manner discriminated against in the terms and conditions of  
269 employment by his or her employer because of lawful acts done by the  
270 employee on behalf of the employee or others in furtherance of an

271 action under sections 503 to 507, inclusive, of this act, including  
272 investigation for, initiation of, testimony for or assistance in an action  
273 filed or to be filed under sections 503 to 507, inclusive, of this act, shall  
274 be entitled to all relief necessary to make the employee whole. Such  
275 relief shall include reinstatement with the same seniority status such  
276 employee would have had but for the discrimination, two times the  
277 amount of any back pay, interest on any back pay and compensation  
278 for any special damages sustained as a result of the discrimination,  
279 including litigation costs and reasonable attorneys' fees. An employee  
280 may bring an action in the Superior Court for the relief provided in  
281 this section.

282 Sec. 512. (NEW) (*Effective July 1, 2008*) A civil action under sections  
283 503 to 507, inclusive, of this act may not be brought: (1) More than six  
284 years after the date on which the violation of subsection (a) of section  
285 502 of this act is committed, or (2) more than three years after the date  
286 when facts material to the right of action are known or reasonably  
287 should have been known by the official of the state charged with  
288 responsibility to act in the circumstances, but in no event more than  
289 ten years after the date on which the violation is committed, whichever  
290 last occurs.

291 Sec. 513. (NEW) (*Effective July 1, 2008*) In any action brought under  
292 sections 503 to 507, inclusive, of this act, the Attorney General or the  
293 person initiating such action shall be required to prove all essential  
294 elements of the cause of action, including damages, by a  
295 preponderance of the evidence.

296 Sec. 514. (NEW) (*Effective July 1, 2008*) Notwithstanding any other  
297 provision of law, a final judgment rendered in favor of the state  
298 against a defendant in any criminal proceeding charging fraud or false  
299 statements, whether upon a verdict after trial or upon a plea of guilty  
300 or nolo contendere, shall estop such defendant from denying the  
301 essential elements of the offense in any action which involves the same  
302 transaction as in the criminal proceeding and which is brought in  
303 accordance with the provisions of sections 503 to 507, inclusive, of this

304 act.

305 Sec. 515. (NEW) (*Effective July 1, 2008*) The provisions of sections 501  
306 to 514, inclusive, of this act are not exclusive, and the remedies  
307 provided for shall be in addition to any other remedies provided for in  
308 any other provision of the general statutes or federal law or available  
309 under common law.

310 Sec. 516. Subsection (a) of section 4-61dd of the general statutes is  
311 repealed and the following is substituted in lieu thereof (*Effective July*  
312 *1, 2008*):

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

337 Attorney General shall have power to summon witnesses, require the  
338 production of any necessary books, papers or other documents and  
339 administer oaths to witnesses, where necessary, for the purpose of an  
340 investigation pursuant to this section or for the purpose of  
341 investigating a suspected violation of subsection (a) of section 502 of  
342 this act until such time as the Attorney General files a civil action  
343 pursuant to section 503 of this act or proceeds with a civil action  
344 pursuant to section 504 of this act. Upon the conclusion of the  
345 investigation, the Attorney General shall where necessary, report any  
346 findings to the Governor, or in matters involving criminal activity, to  
347 the Chief State's Attorney. In addition to the exempt records provision  
348 of section 1-210 of the 2008 supplement to the general statutes, as  
349 amended by this act, the Auditors of Public Accounts and the Attorney  
350 General shall not, after receipt of any information from a person under  
351 the provisions of this section or sections 503 to 507, inclusive, of this  
352 act, disclose the identity of such person without such person's consent  
353 unless the Auditors of Public Accounts or the Attorney General  
354 determines that such disclosure is unavoidable, and may withhold  
355 records of such investigation, during the pendency of the  
356 investigation.

357 Sec. 517. Subdivision (13) of subsection (b) of section 1-210 of the  
358 2008 supplement to the general statutes is repealed and the following  
359 is substituted in lieu thereof (*Effective July 1, 2008*):

360 (13) Records of an investigation or the name of an employee  
361 providing information under the provisions of section 4-61dd, as  
362 amended by this act, or sections 503 to 507, inclusive, of this act."