



# House of Representatives

General Assembly

**File No. 550**

January Session, 2009

House Bill No. 6299

*House of Representatives, April 8, 2009*

The Committee on Government Administration and Elections reported through REP. SPALLONE of the 36th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***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, 2009*) 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, 2009*) (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 general statutes, as amended by this act.

68 Sec. 3. (NEW) (*Effective July 1, 2009*) The Attorney General may  
69 investigate any violation of subsection (a) of section 2 of this act. Any  
70 information obtained pursuant to this investigation shall be exempt  
71 from disclosure under section 1-210 of the general statutes, as  
72 amended by this act. If the Attorney General finds that a person has  
73 violated or is violating any provision of subsection (a) of section 2 of  
74 this act, the Attorney General may bring a civil action in the superior  
75 court for the judicial district of Hartford under this section in the name  
76 of the state against such person.

77       Sec. 4. (NEW) (*Effective July 1, 2009*) (a) A person may bring a civil  
78 action in the superior court for the judicial district of Hartford against  
79 any person who violates subsection (a) of section 2 of this act, for the  
80 person who brings the action and for the state. Such civil action shall  
81 be brought in the name of the state. The action may thereafter be  
82 withdrawn only if the court and the Attorney General give written  
83 consent to the withdrawing of such action and their reasons for  
84 consenting.

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

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

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

109       Sec. 5. (NEW) (*Effective July 1, 2009*) (a) If the Attorney General,

110 pursuant to section 4 of this act, elects to proceed with the action, the  
111 Attorney General shall have the primary responsibility for prosecuting  
112 the action and shall not be bound by any act of the person bringing the  
113 action. Such person shall have the right to continue as a party to the  
114 action, subject to the limitations set forth in this section.

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

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

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

138 (e) If the court awards civil penalties or damages to the state or if the  
139 Attorney General settles with the defendant and receives civil  
140 penalties or damages, the person bringing such action shall receive  
141 from the proceeds not less than fifteen per cent but not more than  
142 twenty-five per cent of such proceeds of the action or settlement of the

143 claim, based upon the extent to which the person substantially  
144 contributed to the prosecution of the action. Any such person shall also  
145 receive an amount for reasonable expenses which the court finds to  
146 have been necessarily incurred, plus reasonable attorneys' fees and  
147 costs. All such expenses, fees and costs shall be awarded against the  
148 defendant.

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

165 Sec. 6. (NEW) (*Effective July 1, 2009*) (a) If the Attorney General  
166 declines to proceed with the action, the person who brought the action  
167 shall have the right to conduct the action. In the event that the  
168 Attorney General declines to proceed with the action, upon the request  
169 of the Attorney General, the court shall order that copies of all  
170 pleadings filed in the action and copies of any deposition transcripts be  
171 provided to the state. When the person who brought the action  
172 proceeds with the action, the court, without limiting the status and  
173 rights of such person, may permit the Attorney General to intervene at  
174 a later date upon a showing of good cause.

175 (b) A person bringing an action under this section or settling the

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

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

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

205 Sec. 7. (NEW) (*Effective July 1, 2009*) Notwithstanding the provisions  
206 of section 4 of this act, the Attorney General may elect to pursue the  
207 state's claim through any alternate remedy available to the state,  
208 including any administrative proceeding to determine a civil penalty.

209 If any such alternate remedy is pursued in another proceeding, the  
210 person bringing the action shall have the same rights in such  
211 proceeding as such person would have had if the action had continued  
212 under the provisions of sections 4 to 6, inclusive, of this act. Any  
213 finding of fact or conclusion of law made in such other proceeding that  
214 has become final shall be conclusive on all parties to an action under  
215 sections 4 to 6, inclusive, of this act. A finding or conclusion is final if it  
216 has been finally determined on appeal to the appropriate court of the  
217 state, if the time for filing such an appeal with respect to the finding or  
218 conclusion has expired or if the finding or conclusion is not subject to  
219 judicial review.

220 Sec. 8. (NEW) (*Effective July 1, 2009*) Notwithstanding the provisions  
221 of sections 5 and 6 of this act, if the court finds that the action was  
222 brought by a person who planned and initiated the violation of  
223 subsection (a) of section 2 of this act, upon which violation an action  
224 was brought, then the court may reduce the share of the proceeds of  
225 the action that the person would otherwise receive under section 5 or 6  
226 of this act, taking into account the role of that person in advancing the  
227 case to litigation and any relevant circumstances pertaining to the  
228 violation. If a person bringing the action is convicted of criminal  
229 conduct arising from his or her role in the violation of subsection (a) of  
230 section 2 of this act, such person shall be dismissed from the civil  
231 action and shall not receive any share of the proceeds of the action.  
232 Such dismissal shall not prejudice the right of the Attorney General to  
233 continue the action.

234 Sec. 9. (NEW) (*Effective July 1, 2009*) (a) No court shall have  
235 jurisdiction over an action brought under section 4 of this act (1)  
236 against a member of the General Assembly, a member of the judiciary  
237 or an elected officer or department head of the state if the action is  
238 based on evidence or information known to the state when the action  
239 was brought; (2) that is based upon allegations or transactions that are  
240 the subject of a civil suit or an administrative civil penalty proceeding  
241 in which the state is already a party; or (3) that is based upon the  
242 public disclosure of allegations or transactions (A) in a criminal, civil

243 or administrative hearing, (B) in a report, hearing, audit or  
244 investigation, conducted by the General Assembly, a committee of the  
245 General Assembly, the Auditors of Public Accounts, a state agency or a  
246 quasi-public agency, or (C) from the news media, unless such action is  
247 brought by the Attorney General or the person bringing the action is  
248 an original source of the information. For the purposes of this  
249 subsection, "original source" means an individual who has direct and  
250 independent knowledge of the information on which the allegations  
251 are based and has voluntarily provided the information to the state  
252 before filing an action under section 4 of this act based on such  
253 information.

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

259 Sec. 10. (NEW) (*Effective July 1, 2009*) The state of Connecticut shall  
260 not be liable for expenses which a person incurs in bringing an action  
261 under sections 4 to 7, inclusive, of this act.

262 Sec. 11. (NEW) (*Effective July 1, 2009*) Any employee who is  
263 discharged, demoted, suspended, threatened, harassed or in any other  
264 manner discriminated against in the terms and conditions of  
265 employment by his or her employer because of lawful acts done by the  
266 employee on behalf of the employee or others in furtherance of an  
267 action under sections 3 to 7, inclusive, of this act, including  
268 investigation for, initiation of, testimony for or assistance in an action  
269 filed or to be filed under sections 3 to 7, inclusive, of this act, shall be  
270 entitled to all relief necessary to make the employee whole. Such relief  
271 shall include reinstatement with the same seniority status such  
272 employee would have had but for the discrimination, two times the  
273 amount of any back pay, interest on any back pay and compensation  
274 for any special damages sustained as a result of the discrimination,  
275 including litigation costs and reasonable attorneys' fees. An employee

276 may bring an action in the Superior Court for the relief provided in  
277 this section.

278 Sec. 12. (NEW) (*Effective July 1, 2009*) A civil action under sections 3  
279 to 7, inclusive, of this act may not be brought: (1) More than six years  
280 after the date on which the violation of subsection (a) of section 2 of  
281 this act is committed, or (2) more than three years after the date when  
282 facts material to the right of action are known or reasonably should  
283 have been known by the official of the state charged with  
284 responsibility to act in the circumstances, but in no event more than  
285 ten years after the date on which the violation is committed, whichever  
286 last occurs.

287 Sec. 13. (NEW) (*Effective July 1, 2009*) In any action brought under  
288 sections 3 to 7, inclusive, of this act, the Attorney General or the person  
289 initiating such action shall be required to prove all essential elements  
290 of the cause of action, including damages, by a preponderance of the  
291 evidence.

292 Sec. 14. (NEW) (*Effective July 1, 2009*) Notwithstanding any other  
293 provision of law, a final judgment rendered in favor of the state  
294 against a defendant in any criminal proceeding charging fraud or false  
295 statements, whether upon a verdict after trial or upon a plea of guilty  
296 or nolo contendere, shall estop such defendant from denying the  
297 essential elements of the offense in any action which involves the same  
298 transaction as in the criminal proceeding and which is brought in  
299 accordance with the provisions of sections 3 to 7, inclusive, of this act.

300 Sec. 15. (NEW) (*Effective July 1, 2009*) The provisions of sections 1 to  
301 14, inclusive, of this act are not exclusive, and the remedies provided  
302 for shall be in addition to any other remedies provided for in any other  
303 provision of the general statutes or federal law or available under  
304 common law.

305 Sec. 16. Subsection (a) of section 4-61dd of the general statutes is  
306 repealed and the following is substituted in lieu thereof (*Effective July*  
307 *1, 2009*):

308 (a) Any person having knowledge of any matter involving  
309 corruption, unethical practices, violation of state laws or regulations,  
310 mismanagement, gross waste of funds, abuse of authority or danger to  
311 the public safety occurring in any state department or agency or any  
312 quasi-public agency, as defined in section 1-120, or any person having  
313 knowledge of any matter involving corruption, violation of state or  
314 federal laws or regulations, gross waste of funds, abuse of authority or  
315 danger to the public safety occurring in any large state contract, may  
316 transmit all facts and information in such person's possession  
317 concerning such matter to the Auditors of Public Accounts. The  
318 Auditors of Public Accounts shall review such matter and report their  
319 findings and any recommendations to the Attorney General. Upon  
320 receiving such a report, the Attorney General shall make such  
321 investigation as the Attorney General deems proper regarding such  
322 report and any other information that may be reasonably derived from  
323 such report. Prior to conducting an investigation of any information  
324 that may be reasonably derived from such report, the Attorney  
325 General shall consult with the Auditors of Public Accounts concerning  
326 the relationship of such additional information to the report that has  
327 been issued pursuant to this subsection. Any such subsequent  
328 investigation deemed appropriate by the Attorney General shall only  
329 be conducted with the concurrence and assistance of the Auditors of  
330 Public Accounts. At the request of the Attorney General or on their  
331 own initiative, the auditors shall assist in the investigation. The  
332 Attorney General shall have power to summon witnesses, require the  
333 production of any necessary books, papers or other documents and  
334 administer oaths to witnesses, where necessary, for the purpose of an  
335 investigation pursuant to this section or for the purpose of  
336 investigating a suspected violation of subsection (a) of section 2 of this  
337 act until such time as the Attorney General files a civil action pursuant  
338 to section 4 of this act. Upon the conclusion of the investigation, the  
339 Attorney General shall where necessary, report any findings to the  
340 Governor, or in matters involving criminal activity, to the Chief State's  
341 Attorney. In addition to the exempt records provision of section 1-210,  
342 as amended by this act, the Auditors of Public Accounts and the

343 Attorney General shall not, after receipt of any information from a  
 344 person under the provisions of this section or sections 3 to 7, inclusive,  
 345 of this act, disclose the identity of such person without such person's  
 346 consent unless the Auditors of Public Accounts or the Attorney  
 347 General determines that such disclosure is unavoidable, and may  
 348 withhold records of such investigation, during the pendency of the  
 349 investigation.

350 Sec. 17. Subdivision (13) of subsection (b) of section 1-210 of the  
 351 general statutes is repealed and the following is substituted in lieu  
 352 thereof (*Effective July 1, 2009*):

353 (13) Records of an investigation or the name of an employee  
 354 providing information under the provisions of section 4-61dd, as  
 355 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, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	New section
Sec. 5	<i>July 1, 2009</i>	New section
Sec. 6	<i>July 1, 2009</i>	New section
Sec. 7	<i>July 1, 2009</i>	New section
Sec. 8	<i>July 1, 2009</i>	New section
Sec. 9	<i>July 1, 2009</i>	New section
Sec. 10	<i>July 1, 2009</i>	New section
Sec. 11	<i>July 1, 2009</i>	New section
Sec. 12	<i>July 1, 2009</i>	New section
Sec. 13	<i>July 1, 2009</i>	New section
Sec. 14	<i>July 1, 2009</i>	New section
Sec. 15	<i>July 1, 2009</i>	New section
Sec. 16	<i>July 1, 2009</i>	4-61dd(a)
Sec. 17	<i>July 1, 2009</i>	1-210(b)(13)

**GAE**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Attorney General, Judicial Department	GF - Cost	None	None
Attorney General	GF - Revenue Gain	over \$1.0 million	over \$1.0 million

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The Office of the Attorney General and the Judicial Department would not require additional resources to handle potential cases brought under the bill.

The bill results in a revenue gain to the state as it will meet federal criteria for state qui tam legislation. Under the federal 2005 Deficit Reduction Act, the state’s share of Medicaid fraud recoveries would increase from 50% of recovery to 60% of recovery. The total state dollars will increase by 20%. In fiscal year 2007-2008, state Medicaid fraud recoveries were \$5,409,179. In fiscal year 2006-2007, state recoveries were \$6,066,332. If the same number of fraud cases are brought next year, the bill will increase state revenues up to \$1 to 1.2 million. In addition, there may be increased recoveries due to cases being brought under the bill.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of cases brought under the bill.

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**OLR Bill Analysis****HB 6299*****AN ACT CONCERNING FRAUD AGAINST THE STATE.*****SUMMARY:**

This bill establishes procedures for recovering certain state losses caused by fraud, including the presentation of false claims. A “claim” is a request or demand for money or property from the state or a state agency, department, or quasi-public agency by a contractor, grantee, or other person if the state provides at least part of the money or property or at least partially reimburses the person who provides it.

It authorizes the attorney general to investigate and sue in state court anyone he believes has defrauded the state. It gives the attorney general subpoena power in the conduct of the investigation. Since the law already authorizes the attorney general to recover state losses caused by fraud, the bill effectively specifies numerous instances in which a person, corporation, partnership, association, trust, or other business or legal entity (hereafter “person”) is subjected to greater penalties for defrauding the state. Under the bill, a person found to have defrauded the state may be liable for damages, civil penalties, and other costs. These remedies are in addition to any other remedies provided for under state, federal, or common law.

The bill also allows a third party to file an action based on fraud against the state on his or her own behalf and on behalf of the state. It establishes a procedure for these so-called *qui tam* actions and provides that the state is not liable for the expenses incurred by the plaintiff in such actions.

Fraud actions, whether brought by the state or the *qui tam* plaintiff, must be filed within six years of the violation or within three years of the date that material facts were known or reasonably should have

been known by the state, whichever occurs later. However, in no event can the action be filed more than 10 years after the violation.

The bill provides that a final judgment rendered in favor of the state against a defendant in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or *nolo contendere* (no contest), stops the defendant from denying the essential elements of the offense in any fraud action that involves the same transaction.

The bill exempts from disclosure under the Freedom of Information Act (FOIA) investigation records and the names of employees providing information in a fraud investigation or proceeding.

Lastly, the bill protects employees who participate in a fraud investigation or action against negative employment actions.

EFFECTIVE DATE: July 1, 2009

### **FRAUD ACTIONS**

Under the bill, the attorney general can investigate and bring an action for penalties, damages, and other equitable relief in Hartford Superior Court against anyone he believes may have defrauded the state. He must prove the state's case by a preponderance of the evidence. Information obtained during the investigation is exempt from disclosure under FOIA.

A person defrauds the state under the bill by:

1. knowingly presenting, or causing to be presented, a false or fraudulent claim to any state officer or employee;
2. knowingly making, using, or causing to be made or used, a false record or statement to get the state to pay or approve a false or fraudulent claim;
3. conspiring to defraud the state by allowing or paying a false or fraudulent claim;

4. having possession, custody, or control of property or money the state used or will use with the intent to defraud the state or willfully concealing the property or delivering or causing to be delivered less property than that specified in the certificate or receipt the person received;
5. using his or her authority to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, making or delivering the receipt without verifying that the information on it is true;
6. knowingly buying or receiving, as a pledge of an obligation or debt, public property from a state officer or employee who may not lawfully sell or pledge it; or
7. knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

Under the bill, a person acts knowingly when he or she (1) has actual knowledge of information; (2) acts in deliberate ignorance of the truth or falsity of it; or (3) acts in reckless disregard of its truth or falsity, regardless of the intent to defraud.

### ***Penalties***

A court may order anyone found to have defrauded the state to pay three times the amount of actual damages the state sustained due to the fraudulent act; a \$5,000 to \$10,000 civil penalty; and investigation and prosecution costs. If two or more people act together to commit a violation, liability is joint and several.

The court can order double, rather than triple, damages if it finds the defendant:

1. gave all of the information known to him or her about the fraud within 30 days after obtaining it;
2. provided the information before he or she had actual

knowledge of the fraud investigation and before the start of any criminal prosecution, civil action, or administrative action regarding the fraud; and

3. fully cooperated with the state's fraud investigation.

Furnished information is exempt from disclosure under FOIA.

### **QUI TAM ACTIONS**

The bill authorizes anyone to bring a fraud action in Hartford Superior Court on his or her behalf and on behalf of the state against someone alleged to have defrauded the state. This action must be filed in the name of the state. Actions of fraud against the state filed by third parties that result in the third party sharing in the proceeds of the action are typically referred to as "*qui tam*" actions. Once filed, a *qui tam* action cannot be withdrawn except upon the written consent of the court and the attorney general, which must include their reasons for doing so.

However, with one exception, no court has jurisdiction over an action of fraud against the state brought:

1. against a legislator, member of the judiciary, or state elected officer or department head based on evidence or information known to the state when the action was brought;
2. based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which the state is already a party; or
3. based upon the public disclosure of allegations or transactions (a) in a criminal, civil, or administrative hearing; (b) in a report, hearing, audit, or investigation conducted by the legislature, a legislative committee, the state auditors, or a state or quasi-public agency; or (c) from the news media.

The exception applies when the action is brought by the attorney general or the *qui tam* plaintiff is the original source of the information.

“Original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing the *qui tam* action based on it.

Courts also do not have jurisdiction over a false claim action brought by a person who knew or had reason to know that the attorney general or another state law enforcement official knew of the allegations or transactions before the person filed the action or served the disclosure of material evidence (see below).

### **Complaint**

The plaintiff must serve a copy of the complaint and written disclosure of substantially all material evidence and information in his or her possession on the attorney general by leaving the copies at, or mailing them to, his Hartford office. The complaint must (1) be filed in camera (privately), (2) remain under seal for at least 60 days, and (3) not be served on the defendant until the court orders it. The court may extend the duration of the seal for an unspecified period of time if the attorney general asks and good cause is shown. The attorney general’s request may be supported by affidavits or other submissions in camera. Before the complaint is unsealed, the attorney general must either decide to (1) bring the action himself on behalf of the state or (2) notify the court that he will not take over the action.

If the court orders that the complaint be unsealed and served on the defendant, it must require the same notice that is ordinarily required to start a civil action. The defendant is not required to respond to the complaint until 30 days after it is served on him.

No one, other than the state, may intervene in a *qui tam* action or bring a related action based on the same facts.

If the attorney general declines to proceed with the false claims action, the *qui tam* plaintiff has the right to conduct it. However, if the attorney general asks, the court must order that the state get copies of all pleadings filed in the action and any deposition transcripts. The

court may permit the attorney general to intervene in the *qui tam* action upon a showing of good cause and without limiting the status and rights of the *qui tam* plaintiff.

### **ACTIONS BY THE ATTORNEY GENERAL**

Despite his decision not to conduct the action, the attorney general may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil penalty. If he pursues an alternate remedy, the *qui tam* plaintiff has the same rights in such a proceeding as he or she would have had if the *qui tam* action had continued in court. Any final decisions are conclusive on all parties to a false claim action in Superior Court. A finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if the time for filing the appeal has expired, or if the finding or conclusion is not subject to judicial review.

Irrespective of whether the attorney general proceeds with the action, if he requests and shows that certain motions or requests for discovery by the *qui tam* plaintiff would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for up to 60 days from the date of the stay order. The showing must be conducted in camera. The court may extend the stay for an additional 60 days upon a further showing, in camera, that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings. The chief state's attorney or the state's attorney for the appropriate judicial district may appear to explain to the court the potential impact of the discovery on a pending criminal investigation or prosecution.

### **FALSE CLAIMS ACTIONS BROUGHT BY THE ATTORNEY GENERAL**

If the attorney general elects to proceed with the false claim action, he has primary prosecuting responsibility and is not bound by any act

of the *qui tam* plaintiff who has the right to continue as a party to the action, subject to limitations the bill sets.

The attorney general may drop or settle the action even if the *qui tam* plaintiff objects. Before abandoning the action, he must give the plaintiff notice of his intention to do so and the court must provide the plaintiff with an opportunity for a hearing. He may settle the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

The court may limit the *qui tam* plaintiff's participation in the litigation, including limiting the number of witnesses he or she may call, the length of the testimony of any such witnesses, and his or her cross-examination of witnesses if the:

1. attorney general shows that unrestricted participation would interfere with or unduly delay prosecution or be repetitious or
2. defendant shows that unrestricted participation would be for the purpose of harassment or would cause the defendant undue burden or unnecessary expense.

## **PAYMENT TO PREVAILING QUI TAM PLAINTIFFS**

### ***Qui Tam Plaintiff Conducts the Action***

The court must award a plaintiff who wins a favorable judgment or settlement in a *qui tam* action a reasonable amount for collecting the civil penalty and damages. The amount must be at least 25% and not more than 30% of the proceeds of the action or settlement. The plaintiff must also receive from the defendant necessary and reasonable expenses, reasonable attorneys' fees, and costs.

If a defendant prevails in the action and the court finds that the plaintiff's claim was clearly frivolous, clearly vexatious, or brought primarily to harass, it may award the defendant reasonable attorneys' fees and expenses.

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**Action Brought By the Attorney General**

If the court awards civil penalties or damages to the state or if the attorney general settles with the defendant and receives civil penalties or damages, the *qui tam* plaintiff receives at least 15% but not more than 25% of proceeds, based on the extent to which he or she substantially contributed to the prosecution of the action. The *qui tam* plaintiff also receives, in an award against the defendant, reasonable and necessary expenses, reasonable attorneys' fees, and costs.

The court may award the *qui tam* plaintiff a reduced sum of up to 10% of the proceeds if it finds that the action is based primarily on disclosures of specific information relating to allegations or transactions:

1. in a criminal, civil, or administrative hearing;
2. in a report, hearing, audit, or investigation conducted by the legislature, a legislative committee, the state auditors, a state agency, or a quasi-public agency; or
3. from the news media.

The court must take into account the significance of the information and the *qui tam* plaintiff's role in advancing the case to litigation. The plaintiff also receives, in an award against the defendant, reasonable and necessary expenses, reasonable attorneys' fees, and costs.

**Qui Tam Plaintiff Planned or Initiated the Violation**

If the court finds that *qui tam* plaintiff planned and initiated the fraud against the state, it may reduce his or her share of the proceeds of the action, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the plaintiff is convicted of criminal conduct arising from his or her role in the fraud against the state, he or she must be dismissed from the civil action and cannot receive any share of the proceeds of the action. The dismissal does not prejudice the attorney general's right to continue the action.

**RETALIATION**

The bill protects employees against retaliation for participating in a fraud investigation or lawsuit. Any employee who is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against by his or her employer in the terms and conditions of employment because of lawful acts in the furtherance of a false claims action, including the investigation, initiating the lawsuit, testifying for or assisting in the action filed or to be filed, may bring an action in Superior Court for any relief necessary to make him or her whole. The relief may include reinstatement with the same seniority status he or she would have had but for the discrimination; twice the amount of any back pay; interest on any back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 11      Nay 3      (03/20/2009)