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## **OLR Bill Analysis**

### **SB 426**

#### ***AN ACT CONCERNING FALSE CLAIMS AND OTHER PROHIBITED ACTS.***

#### **SUMMARY**

This bill expands the scope of the False Claims Act by removing the limitation that it only applies to state-administered health and human services programs, therefore applying the law to all state programs and benefits. Examples of prohibited acts include knowingly falsifying or omitting information on an application (e.g., by a prospective recipient of a state benefit or the person processing an application) or billing for excessive or unnecessary services (e.g., by a provider seeking state reimbursement).

By law, the False Claims Act allows the attorney general or a person initiating the action (generally referred to as a whistleblower or relator) to bring an action against violators. It allows whistleblowers to share in the damages recovered because of the lawsuit.

Existing law requires the attorney general or whistleblower to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence. The False Claims Act's remedies are not exclusive and are in addition to other remedies provided under federal, state, and common law.

As under existing law, anyone who violates the False Claims Act is liable to the state for: (1) a civil penalty of between \$5,500 and \$11,000; (2) treble damages; and (3) investigation and prosecution costs of the violation. Liability is joint and several for any violation committed by two or more individuals or entities.

EFFECTIVE DATE: October 1, 2022

#### **CLAIMS**

By law, a “claim” is any request or demand for money or property, that (1) is presented to an officer, employee, or agent of the state, or (2) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state’s behalf or to advance a state program or interest, if the state provides or has provided any portion of the money or property that is requested or demanded, or if the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. A claim does not include a request or demand for money or property that the state has paid to someone as compensation for state employment or as an income subsidy with no restrictions on that person’s use of the money or property.

### **PROHIBITED ACTS**

The bill extends current law’s prohibition to fraud involving any state claim, rather than just claims related to a state-administered health and human services program. It prohibits:

1. knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
2. knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
3. having possession, custody, or control of property or money used, or to be used, by the state, knowingly deliver, or cause to be delivered, less property than the amount for which the person receives a certificate or receipt;
4. being authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, with intent to defraud the state, make or deliver the document without completely knowing that the information in it is true;
5. knowingly buying, or receiving as a pledge of an obligation or debt, public property from a state employee or officer who may not legally sell or pledge the property;

6. knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state;
7. knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state; or
8. conspiring to commit the above actions.

### **ATTORNEY GENERAL'S POWERS AND DUTIES**

Under the bill, the attorney general has the same powers and duties he does currently for claims involving health and human services programs. This includes:

1. the power to investigate prohibited acts and bring civil action in the Hartford Superior Court (CGS § 4-276);
2. pursuing the state's claim through any alternate remedy, including administrative proceedings to determine a civil penalty (CGS § 4-280); and
3. annually reporting to the General Assembly and the governor certain information for the previous fiscal year, including the number of civil actions he filed, the number of civil actions private individuals filed, and the amount the state recovered (CGS § 4-289).

### **WHISTLEBLOWER CAUSE OF ACTION**

As under current law, anyone may bring a civil action in the Hartford Superior Court against anyone who violated the False Claims Act. The attorney general must either (1) proceed with the action or (2) notify the court that he declines to take over the action in which case the whistleblower has the right to conduct the action (CGS § 4-277).

If the attorney general proceeds with the action, he has the primary responsibility for prosecuting the action and is not bound by any act by the whistleblower, including settling the action. If the court awards civil

penalties or damages or there is a settlement, the whistleblower must receive between 15% and 25% of the proceeds and reasonable expenses and attorney's fees and costs. If the action is based upon public information, the court may instead award the whistleblower up to 10% of the proceeds (CGS § 4-278).

If the attorney general declines to proceed, the whistleblower has the right to conduct the action. The law allows the attorney general to intervene later upon showing good cause. Upon settling the claim, the whistleblower may receive an amount the court determines is reasonable for collecting the civil penalty and damages, which must be between 25% and 30% (CGS § 4-279).

### **STATUTE OF LIMITATIONS**

As under current law, a civil action cannot be brought more than six years after a violation is committed or more than three years after material facts are known or reasonably should have been known, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last (CGS § 4-285).

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 24 Nay 14 (03/29/2022)