



House of Representatives

File No. 765

General Assembly

January Session, 2023

(Reprint of File No. 283)

House Bill No. 6826
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 11, 2023

AN ACT CONCERNING LIABILITY FOR FALSE AND FRAUDULENT CLAIMS.

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

1 Section 1. Section 4-274 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2023*):

3 As used in this section and section 4-275, as amended by this act:

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

9 (2) "Claim" (A) means any request or demand, whether under a
10 contract or otherwise, for money or property and whether or not the
11 state has title to the money or property, that (i) is presented to an officer,
12 employee or agent of the state, or (ii) is made to a contractor, grantee or

13 other recipient, if the money or property is to be spent or used on the
14 state's behalf or to advance a state program or interest, and if the state
15 provides or has provided any portion of the money or property that is
16 requested or demanded, or if the state will reimburse such contractor,
17 grantee or other recipient for any portion of the money or property that
18 is requested or demanded, and (B) does not include a request or demand
19 for money or property that the state has paid to an individual as
20 compensation for state employment or as an income subsidy with no
21 restrictions on that individual's use of the money or property;

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

25 (4) "State" means the state of Connecticut, any agency or department
26 of the state or any quasi-public agency, as defined in section 1-120;

27 (5) "Obligation" means an established duty, whether fixed or not,
28 arising from (A) an express or implied contractual, grantor-grantee or
29 licensor-licensee relationship, (B) a fee-based or similar relationship, (C)
30 statute or regulation, or (D) the retention of an overpayment; and

31 (6) "Material" means having a natural tendency to influence, or be
32 capable of influencing, the payment or receipt of money or property.];
33 and

34 (7) "State-administered health or human services program" means
35 programs administered by any of the following: The Department of
36 Children and Families, the Department of Developmental Services, the
37 Department of Mental Health and Addiction Services, the Department
38 of Public Health, the Department of Aging and Disability Services, the
39 Department of Social Services, the Office of Early Childhood, and the
40 Office of the State Comptroller, for the State Employee and Retiree
41 Health programs, as well as other health care programs administered
42 by the Office of the State Comptroller, and the Department of
43 Administrative Services, for Workers' Compensation medical claims,
44 including such programs reimbursed in whole or in part by the federal

45 government.]

46 Sec. 2. Section 4-275 of the general statutes is repealed and the
47 following is substituted in lieu thereof (*Effective July 1, 2023*):

48 (a) No person shall:

49 (1) Knowingly present, or cause to be presented, a false or fraudulent
50 claim for payment or approval; [under a state-administered health or
51 human services program;]

52 (2) Knowingly make, use or cause to be made or used, a false record
53 or statement material to a false or fraudulent claim; [under a state-
54 administered health or human services program;]

55 (3) Conspire to commit a violation of this section;

56 (4) Having possession, custody or control of property or money used,
57 or to be used, by the state, [relative to a state-administered health or
58 human services program,] knowingly deliver, or cause to be delivered,
59 less property than the amount for which the person receives a certificate
60 or receipt;

61 (5) Being authorized to make or deliver a document certifying receipt
62 of property used, or to be used, by the state [relative to a state-
63 administered health or human services program] and intending to
64 defraud the state, make or deliver such document without completely
65 knowing that the information on the document is true;

66 (6) Knowingly buy, or receive as a pledge of an obligation or debt,
67 public property from an officer or employee of the state [relative to a
68 state-administered health or human services program, who lawfully]
69 who may not lawfully sell or pledge the property;

70 (7) Knowingly make, use or cause to be made or used, a false record
71 or statement material to an obligation to pay or transmit money or
72 property to the state; [under a state-administered health or human
73 services program;] or

74 (8) Knowingly conceal or knowingly and improperly avoid or
75 decrease an obligation to pay or transmit money or property to the state,
76 [under a state-administered health or human services program.]

77 (b) Any person who violates the provisions of subsection (a) of this
78 section shall be liable to the state for: (1) A civil penalty of not less than
79 five thousand five hundred dollars or more than eleven thousand
80 dollars, or as adjusted from time to time by the federal Civil Penalties
81 Inflation Adjustment Act of 1990, 28 USC 2461, (2) three times the
82 amount of damages that the state sustains because of the act of that
83 person, and (3) the costs of [investigation and] prosecution of such
84 violation. Liability under this section shall be joint and several for any
85 violation of this section committed by two or more persons.

86 (c) Notwithstanding the provisions of subsection (b) of this section
87 concerning treble damages, if the court finds that: (1) A person
88 committing a violation of subsection (a) of this section furnished
89 officials of the state responsible for investigating false claims violations
90 with all information known to such person about the violation not later
91 than thirty days after the date on which the person first obtained the
92 information; (2) such person fully cooperated with an investigation by
93 the state of such violation; and (3) at the time such person furnished the
94 state with the information about the violation, no criminal prosecution,
95 civil action or administrative action had commenced under sections 4-
96 276 to 4-280, inclusive, as amended by this act, with respect to such
97 violation, and such person did not have actual knowledge of the
98 existence of an investigation into such violation, the court may assess
99 not less than two times the amount of damages which the state sustains
100 because of the act of such person. Any information furnished pursuant
101 to this subsection shall be exempt from disclosure under section 1-210.

102 (d) In any civil action, arbitration or other civil proceeding in which
103 the state is a defendant, the state shall not assert a counterclaim, set-off
104 or defense alleging a violation of this section.

105 (e) The provisions of this section shall not apply to any claim, record

106 or statement made under any tax law administered by this state or a
107 political subdivision of this state.

108 Sec. 3. Section 4-276 of the general statutes is repealed and the
109 following is substituted in lieu thereof (*Effective July 1, 2023*):

110 The Attorney General may, within available appropriations,
111 investigate any violation of subsection (a) of section 4-275, as amended
112 by this act. Any information obtained pursuant to such an investigation
113 shall be exempt from disclosure under section 1-210. If the Attorney
114 General finds that a person has violated or is violating any provision of
115 subsection (a) of section 4-275, as amended by this act, the Attorney
116 General may bring a civil action in the superior court for the judicial
117 district of Hartford under this section in the name of the state against
118 such person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023</i>	4-274
Sec. 2	<i>July 1, 2023</i>	4-275
Sec. 3	<i>July 1, 2023</i>	4-276

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Attorney General	GF - Cost	584,432	798,724
State Comptroller - Fringe Benefits ¹	GF - Cost	250,254	342,014

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in costs to the state of \$834,686 beginning in FY 24 and approximately \$1.1 million in FY 25 and annually thereafter, as it expands the False Claims Act by removing the limitation that it only applies to state-administered health and human services programs. Consequently, complaints regarding fraud in other types of state programs will be newly eligible for investigation by the attorney general

It is anticipated that in order to handle this program expansion, the Office of the Attorney General (OAG) will hire seven staff: five Assistant Attorneys General and two Forensics Fraud Examiners. The cost components contained in this estimate are: (1) costs to OAG of \$584,432 in FY 24 (adjusting for the October 1, 2023 effective date of the bill) and \$798,724 in FY 25 for salaries of the seven staff; and (2) costs to the Office of the State Comptroller of \$250,254 in FY 24 and \$342,014 in FY 25 for associated fringe benefits.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

House "A" eliminates a violator's liability for investigation costs which reduces the potential revenue gain to the state in the out years. It also made other various changes that have no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to changes in employee wages and benefits. There may also potentially be a revenue gain to the state in the out years (after the staff are brought on) to the extent a settlement or judgment is reached. Penalties under the bill are: (1) a civil penalty of between \$5,500 and \$11,000; (2) treble damages; and (3) prosecution costs of the violation.

OLR Bill Analysis**HB 6826 (as amended by House "A")******AN ACT CONCERNING LIABILITY FOR FALSE AND FRAUDULENT CLAIMS.*****SUMMARY**

This bill expands the scope of the state False Claims Act by applying it to most state programs and benefits. It does so by removing provisions in current law that limit it to state-administered health and human services programs and making conforming changes. The bill excludes from the False Claims Act's scope claims, records, or statements made under any tax law administered by the state or one of its political subdivisions.

Separately, the bill (1) eliminates a provision in current law that makes a False Claims Act violator liable for investigation costs and (2) requires that the attorney general's investigations be within available appropriations. It also prohibits the state, when it is a defendant in a civil action, an arbitration, or another civil proceeding, from asserting a counterclaim, set-off, or defense alleging a False Claims Act violation.

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. The attorney general or whistleblower must 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) prosecution costs of the violation. (The bill removes liability for investigation costs; see above.) Liability is joint and several for any violation committed by two or more individuals or entities.

*House Amendment "A" (1) eliminates a violator's liability for investigation costs; (2) requires that the attorney general's investigations be within available appropriations; (3) expands the underlying bill's exemption for tax payments to include taxes paid to political subdivisions; (4) changes the effective date from October 1, 2023, to July 1, 2023; and (5) makes technical changes.

EFFECTIVE DATE: July 1, 2023

FALSE CLAIMS ACT

The bill expands the scope of the False Claims Act to include claims relating to most state programs and benefits. In doing so, it subjects these additional claims to the False Claims Act's existing prohibitions and procedural requirements, as described below.

Claims

By law, a "claim" is any request or demand for money or property, that is (1) presented to an officer, employee, or agent of the state, or (2) made to a contractor, grantee, or other recipient. The definition applies 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 other than those relating to taxes the state or its political subdivisions administer, rather than just claims related to a state-administered health and human services program.

The False Claims Act prohibits the following:

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 generally has the same powers and duties he does currently for claims involving health and human services programs. The attorney general's powers under the False Claims Act include the following:

1. investigating prohibited acts and bringing civil action in the Hartford Superior Court (the bill requires that the investigations be within available appropriations) (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 someone who violates 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 may 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 may 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% of the proceeds (CGS § 4-279).

STATUTE OF LIMITATIONS

As under current law, a civil action may not 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 of the violation, whichever occurs last (CGS § 4-285).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 17 Nay 2 (03/15/2023)

Appropriations Committee

Joint Favorable

Yea 43 Nay 9 (05/01/2023)