



PA 23-129—HB 6826

*Government Administration and Elections Committee
Appropriations Committee*

AN ACT CONCERNING LIABILITY FOR FALSE AND FRAUDULENT CLAIMS

SUMMARY: This act 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 prior law that limited it to state-administered health and human services programs and making conforming changes. The act 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 act (1) eliminates a provision in prior law that made a False Claims Act violator liable for investigation costs and (2) requires that the attorney general's False Claims Act 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 generally liable to the state for: (1) a civil penalty that is periodically adjusted for inflation in accordance with federal law (e.g., a penalty from \$13,508 to \$27,018 for violations assessed after January 30, 2023); (2) treble damages; and (3) prosecution costs of the violation. (The act removes liability for investigation costs; see above.) Liability is joint and several for any violation committed by two or more individuals or entities.

EFFECTIVE DATE: July 1, 2023

FALSE CLAIMS ACT

The act expands the False Claims Act's scope 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

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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. In the latter case, 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 and the state (1) provides or has provided any portion of the money or property that is requested or demanded or (2) will reimburse the contractor, grantee, or other recipient for any portion of the requested or demanded amount.

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 act extends the False Claims Act’s prohibitions 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. (a) having possession, custody, or control of property or money used, or to be used, by the state and (b) knowingly delivering, or causing to be delivered, less property than the amount for which the person receives a certificate or receipt;
4. (a) being authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and (b) with intent to defraud the state, making or delivering 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 act, the attorney general generally has the same powers and duties he did previously for claims involving health and human services programs. The attorney general’s powers and duties under the False Claims Act include the following:

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1. investigating prohibited acts and bringing civil actions in the Hartford Superior Court (the act 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 prior 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. Among other things, the attorney general may settle the action even if the whistleblower objects.

If the court awards civil penalties or damages or there is a settlement, the whistleblower generally must receive between 15% and 25% of the proceeds and reasonable expenses and attorney's fees and costs. If the action is based primarily on public information, the court may instead award the whistleblower up to 10% of the proceeds plus reasonable expenses and attorney's fees and costs (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 prevailing in the action or settling the claim, the whistleblower may receive an amount the court determines is reasonable for collecting the civil penalty and damages, which generally must be between 25% and 30% of the proceeds plus reasonable expenses and attorney's fees and costs (CGS § 4-279).

Statute of Limitations

As under prior 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 to the responsible state official, but in no event more than 10 years after the date of the violation, whichever occurs last (CGS § 4-285).