



General Assembly
February Session, 2008

Amendment
LCO No. 5168

SB0044005168SDO

Offered by:

SEN. WILLIAMS, 29th Dist.

SEN. HANDLEY, 4th Dist.

SEN. LOONEY, 11th Dist.

SEN. STILLMAN, 20th Dist.

SEN. GAFFEY, 13th Dist.

SEN. MCDONALD, 27th Dist.

To: Subst. Senate Bill No. 440

File No. 423

Cal. No. 261

"AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT. "

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

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

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

(2) "Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee or other recipient if the state provides any portion of the money or property that is requested or demanded, or if the state will reimburse such contractor, grantee or other recipient for any portion of the money or property that is requested or demanded;

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

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

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

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

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

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

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

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

(6) Knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the state, who lawfully may not sell or pledge the property; or

(7) Knowingly make, use or cause 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.

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

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

Sec. 503. (NEW) (*Effective July 1, 2008*) The Attorney General may investigate any violation of subsection (a) of section 502 of this act. Any information obtained pursuant to this investigation shall be exempt from disclosure under section 1-210 of the 2008 supplement to the general statutes, as amended by this act. If the Attorney General finds that a person has violated or is violating any provision of subsection (a) of section 502 of this act, the Attorney General may bring a civil action in the superior court for the judicial district of Hartford under this section in the name of the state against such person.

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

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

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

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

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

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

(c) The Attorney General may settle the action with the defendant notwithstanding the objections of the person bringing 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, such hearing may be held in camera.

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

(e) 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 person bringing such action shall receive from the proceeds not less than fifteen per cent but not more than twenty-five per cent of such proceeds of the action or settlement of the claim, based upon the extent to which the person substantially contributed to the prosecution of the action. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

(f) Notwithstanding the provisions of subsection (e) of this section, where the action is one that the court finds to be 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 General Assembly, a committee of the General Assembly, the Auditors of Public Accounts, a state agency or a quasi-public agency, or (3) from the news media, the court may award from such proceeds to the person bringing the action such sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

Sec. 506. (NEW) (*Effective July 1, 2008*) (a) If the Attorney General declines to proceed with the action, the person who brought the action shall have the right to conduct the action. In the event that the Attorney General declines to proceed with the action, upon the request of the Attorney General, the court shall order that copies of all pleadings filed in the action and copies of any deposition transcripts be provided to the state. When the person who brought the action proceeds with the action, the court, without limiting the status and rights of such person, may permit the Attorney General to intervene at a later date upon a showing of good cause.

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

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

(d) Irrespective of whether the Attorney General proceeds with the action, upon request and showing by the Attorney General that certain motions or requests for discovery by a person bringing the action 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 such discovery for a period of not more than sixty days from the date of the order of the stay. Such a showing shall be conducted in camera. The court may extend the stay for an additional sixty-day period 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. For the purposes of this subsection, the Chief State's Attorney or state's attorney for the appropriate judicial district may appear to explain to the court the potential impact of such discovery on a pending criminal investigation or prosecution.

Sec. 507. (NEW) (*Effective July 1, 2008*) Notwithstanding the provisions of section 504 of this act, 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 any such alternate remedy is pursued in another proceeding, the person bringing the action shall have the same rights in such proceeding as such person would have had if the action had continued under the provisions of sections 504 to 506, inclusive, of this act. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under sections 504 to 506, inclusive, of this act. 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 such an appeal with respect to the finding or conclusion has expired or if the finding or conclusion is not subject to judicial review.

Sec. 508. (NEW) (*Effective July 1, 2008*) Notwithstanding the provisions of sections 505 and 506 of this act, if the court finds that the action was brought by a person who planned and initiated the violation of subsection (a) of section 502 of this act, upon which violation an action was brought, then the court may reduce the share of the proceeds of the action that the person would otherwise receive under section 505 or 506 of this act, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If a person bringing the action is convicted of criminal conduct arising from his or her role in the violation of subsection (a) of section 502 of this act, such person shall be

dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Attorney General to continue the action.

Sec. 509. (NEW) (*Effective July 1, 2008*) (a) No court shall have jurisdiction over an action brought under section 504 of this act (1) against a member of the General Assembly, a member of the judiciary or an elected officer or department head of the state if the action is based on evidence or information known to the state when the action was brought; (2) that is 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) that is 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 General Assembly, a committee of the General Assembly, the Auditors of Public Accounts, a state agency or a quasi-public agency, or (C) from the news media, unless such action is brought by the Attorney General or the person bringing the action is an original source of the information. For the purposes of this subsection, "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 an action under section 504 of this act based on such information.

(b) No court shall have jurisdiction over an action brought under section 504 of this act 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 prior to such person filing the action or serving the disclosure of material evidence.

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

Sec. 511. (NEW) (*Effective July 1, 2008*) Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under sections 503 to 507, inclusive, of this act, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under sections 503 to 507, inclusive, of this act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times 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. An employee may bring an action in the Superior Court for the relief provided in this section.

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

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

Sec. 514. (NEW) (*Effective July 1, 2008*) Notwithstanding any other provision of law, 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, shall estop such defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought in accordance with the provisions of sections 503 to 507, inclusive, of this act.

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

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

(a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section or for the purpose of investigating a suspected violation of subsection (a) of section 502 of this act until such time as the Attorney General files a civil action pursuant to section 503 of this act or proceeds with a civil action pursuant to section 504 of this act. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210 of the 2008

supplement to the general statutes, as amended by this act, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section or sections 503 to 507, inclusive, of this act, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

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

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

OFFICE OF FISCAL ANALYSIS

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sSB-440

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.

AMENDMENT

LCO No.: 5168

File Copy No.: 423

Senate Calendar No.: 261

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$	
Attorney General	GF - Revenue Gain	Potential Significant	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None**Explanation**

The amendment permits the Office of the Attorney General (OAG) to expand the scope of its investigations into large public works contracts beyond any specific allegations or information transmitted by a whistleblower. The OAG could accommodate the amendment's increased investigatory powers without requiring additional appropriations. The amendment provides a financial incentive for individuals to voluntarily provide information concerning alleged fraud and establishes civil penalties for defrauding the state which include treble damages, attorney's fees and costs. The likelihood and regularity of future recoveries is uncertain, but could be significant (i.e., greater than \$100,000) in any given year.

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.