



ATTORNEY GENERAL WILLIAM TONG
STATE OF CONNECTICUT

**Testimony in Support of Senate Bill No. 426:
An Act Concerning False Claims And Other Prohibited Acts
Judiciary Committee
Friday, March 18, 2022**

Chairman Winfield, Ranking Member Kissel, Chairman Stafstrom, Ranking Member Fishbein, and distinguished members of the Judiciary Committee, thank you for the opportunity to testify before you today on S.B. 426, *An Act Concerning False Claims and Other Prohibited Acts*.

Like many Connecticut residents, I am concerned about fraudulent spending of the State's CARES Act funds in West Haven and the FBI's ongoing investigation of the State's school construction projects and the State pier project.

To address these issues, it is clear that we need to expand the Connecticut False Claims Act.

The Office of the Attorney General ("Office") strongly supports this legislation, which seeks to expand the scope of Connecticut's False Claims Act by removing provisions that limit application of these statutes to state-administered health or human services programs. Just a few deletions from the text of Conn. Gen. Stat. §§ 4-274 and 4-275 that currently limit this law to health and human services programs would allow my Office to pursue fraud and abuse of tax dollars anywhere in State government. Equally important, these amendments will protect and encourage insiders to blow the whistle when fraud and abuse occurs in any State spending.

The federal False Claims Act (31 U.S.C. §§ 3729 – 3733) is a Civil War-era statute passed in response to concerns that contractors and suppliers were regularly defrauding the Union Army by selling items such as moth-eaten blankets, injured cavalry horses, and boxes of sawdust instead of guns. In 1863, at President Lincoln's urging, Congress passed the federal False Claims Act, known as "Lincoln's Law." Today, the majority of states, the District of Columbia, the territory of Puerto Rico, and many municipalities have enacted their own False Claims Act modeled on the federal law.

The federal False Claims Act, as well as the majority of other states' False Claims Acts, establish liability for anyone who submits a "false or fraudulent" claim for payment to the government regardless of the agency or program paying the claim. All of the states bordering Connecticut -- New York (NY CLS St Fin § 189), Massachusetts (ALM GL ch. 12, § 5B), and Rhode Island (R.I. Gen. Laws § 9-1.1-3), as well as New Jersey (N.J. Stat. § 2A:32C-3) and Vermont (32 V.S.A. § 631) -- have broad False Claims Acts resembling the federal law. In stark contrast, however, the Connecticut False Claims Act only covers fraud occurring in a "state-administered health or human services program." Unfortunately, when it comes to this important and effective anti-fraud law, Connecticut is stuck in the bottom third of states.

More than one hundred different agencies, offices, and quasi-public agencies spend tax dollars on behalf of the government of the State of Connecticut. The current Connecticut False Claims Act covers programs at just nine agencies. This leaves billions of tax dollars vulnerable to fraud and abuse in programs administered at all the other State agencies, including the state departments of



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Transportation and Administrative Services where spending is about to quickly and substantially increase as a result of Connecticut's \$5.38 billion share of the Infrastructure Investment and Jobs Act.

We understand that some in Connecticut's construction industry believe this bill singles them out. This bill does not target the construction industry or any other industry or business. All it does is make the False Claims Act apply to everybody doing business with Connecticut, not just health and human services contractors. The vast majority of government contractors are responsible, honest and trustworthy. Still, False Claims Act enforcement activity in other states demonstrates there are outliers across every type of industry and business who will try to defraud the government. For example, in Massachusetts, New York, and New Jersey, recent False Claims Act cases have involved businesses:

- charging a state for N95 masks needed for the pandemic that were never provided¹,
- delivering substandard fuel that clogged heating systems in state buildings²,
- selling defective software for a state's security cameras³,
- obtaining contracts by faking compliance with state diversity requirements⁴ or misrepresenting the wages paid to workers⁵,
- delivering unreliable environmental testing results⁶,
- overstating bus trips made⁷,
- concealing late deliveries to avoid paying refunds⁸,
- falsely certifying the safety and substantial completion of the "Big Dig" tunnel that later collapsed⁹, and

¹ <https://www.mass.gov/news/salem-company-to-pay-35-million-for-false-claims-about-its-ability-to-refund-the-state-for-masks-not-delivered-during-covid-19-pandemic>

² <https://www.mass.gov/news/worcester-fuel-company-resolves-claims-it-knowingly-sold-noncompliant-heating-oil-that-violated-state-contracts>

³ <https://ag.ny.gov/press-release/2019/attorney-general-james-secures-6-million-cisco-systems-multistate-settlement>

⁴ <https://ag.ny.gov/press-release/2020/attorney-general-james-secures-200000-contractor-who-faked-diversity-metrics>

⁵ <https://www.njoag.gov/acting-ag-bruck-announces-175000-false-claims-act-settlement-with-telecommunications-contractor-accused-of-failing-to-pay-prevailing-wages/>

⁶ <https://www.njoag.gov/acting-attorney-general-hoffman-announces-2-million-settlement-of-false-claims-act-litigation-with-environmental-testing-firm-2/>

⁷ <https://www.njoag.gov/acting-ag-bruck-announces-20-5-million-settlement-over-allegations-academy-bus-fraudulently-billed-nj-transit/>

⁸ <https://www.njoag.gov/acting-attorney-general-hoffman-announces-740000-settlement-of-false-claims-act-litigation-with-united-parcel-service/>

⁹ <https://docslib.org/doc/677789/big-dig-458-2-million-global-agreement>



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- delivering hand sanitizer with no alcohol to school children in the midst of the COVID-19 pandemic¹⁰.

No government program is immune from fraud and abuse. And although some object to the False Claims Act applying to public works projects, there is no rational basis for carving out public works from Connecticut's anti-fraud laws. Such a carve out would be different from federal law, the laws of all Connecticut's neighbor states, and the laws of the majority of states with False Claims Acts. Below, we briefly respond to the some of the common objections:

- **The Connecticut False Claims Act would not be overly broad and overreaching.**

All of the provisions of the federal False Claims Act have been litigated extensively in the federal courts. There is a very large body of case law interpreting False Claims Acts. This bill will make the text of the Connecticut False Claims Act identical to the federal law except for a few Connecticut specific references. The federal courts have upheld as lawful and proper the procedures, causes of action, and remedies established by the same statutory text proposed here.

The Connecticut False Claims Acts is not a "catch all" or "dragnet" law. The elements of the causes of action are clearly set out in the statute. The elements must be proven by a preponderance of the evidence, which is the standard applicable to most civil actions, including statutory theft claims. To be "false," a claim for payment must not be payable, although the party requesting the payment passes off the claim as though it is. In addition, the statute specifically defines the meaning of the terms "knowledge," "claim," "state," "obligation," and "material." Conn. Gen. Stat. § 4-275. The knowledge of the defendant must be proven.

Contrary to assertions, materiality is defined in the statute and proof of materiality is required in False Claims Act cases. What this means is that not every falsehood or false statement is actionable under the False Claims Act. Materiality requires that the falsehood or fraud alleged relate to the essence of that for which the State agreed to pay. The falsehood must be so significant that had the State known the truth it would not have paid the claim. Minor technicalities, innocent mistakes, or acts of mere negligence are not False Claims Act violations.

- **False Claims Acts are not a threat to jobs or reputable contractors.**

The current Connecticut False Claims Act has been in effect for more than twelve years (2009 – 2022). The original law, enacted in 2009, applied only to Connecticut Medicaid. Conn. Gen. Stat. § 17b-301b (repealed 2014). The current version enacted in 2014 reaches all state-administered health

¹⁰ <https://www.mass.gov/news/ag-healey-sues-distributor-for-falsely-marketing-and-selling-fake-hand-sanitizer-to-local-schools#:~:text=BOSTON%20%E2%80%94%20Attorney%20General%20Maura%20Healey,without%20the%20need%20for%20reapplication.>



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and human services programs. As a result, the current Connecticut False Claims Act applies to over 30,000 Connecticut Medicaid providers and, through the Comptroller's healthcare programs, virtually every other medical provider in Connecticut. This is a very large group of State contractors that includes hospitals, nursing homes, pharmacies, medical supply companies, home health agencies, physicians, dentists, and behavioral health clinicians.

The last 12 years conclusively demonstrate that a False Claims Act does not cause an increase in meritless lawsuits. There has been no False Claims Act crisis in the health and human services sector. Innocent medical providers have not lost their jobs. Innocent businesses have not shut down or fled Connecticut. The health and human services providers have not called for the repeal of the False Claims Act. The health and human services providers have not complained about abuse or overreach related to the False Claims Act. This is because like all State contractors, the vast majority of health and human services contractors are responsible, honest, and trustworthy. And they benefit from a level playing field without unfair competition from fraudsters.

An expanded Connecticut False Claims Act is not a threat to responsible public works contractors. Many Connecticut construction businesses already operate subject to state False Claims Acts because they do work in Massachusetts, New York, or Rhode Island. Federal Highway Association and the Federal Transit Administration often fund up to 80% of our DOT's public works projects. This means many -- if not all -- of Connecticut public works contractors have already worked on projects in Connecticut subject to a False Claims Act.

Simply put, the False Claims Act is not an issue for responsible contractors. The vast majority of Connecticut's public works contractors have complied with False Claims Acts for years with no issue. Outliers who try to defraud the State in any business or industry should be investigated and prosecuted.

- **Private plaintiffs will not take advantage of innocent businesses**

Some claim that whistleblowers—called relators in this context—are going to flood the courts with frivolous private lawsuits, but that has not been Connecticut's experience in the last 12 years. Protecting and encouraging insiders to blow the whistle on fraud and abuse is an important anti-fraud measure that should apply to all State spending. There is no reason for a public works carve out.

The proposed version of the Connecticut False Claims Act protects innocent people and reputable businesses. The law contains a process for weeding out cases lacking merit and punishing private plaintiffs who make frivolous charges. A relator must first file his or her complaint under seal and disclose all evidence to the State. Defendants are not served and are not burdened with responding to or defending against the complaint during this phase. Thereafter, the State investigates the legal and factual merits of the relator's complaint. The State can intervene and civilly prosecute cases that have merit. The law also authorizes the State to withdraw (dismiss) complaints notwithstanding the objections of relators. If my Office determines that we will not intervene or dismiss a complaint, the



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relator may litigate the complaint. However, in such cases if the court finds the relator's complaint was frivolous, the court can award reasonable attorneys' fees and expenses to the defendant.

A few deletions from the text of Conn. Gen. Stat. §§ 4-274 and 4-275 that currently limit this law to health and human services programs would allow my Office to pursue fraud and abuse of tax dollars anywhere in State government. It will enable my Office to summon witnesses and require the production of documents for the purpose of an investigation. In those cases where the investigation establishes a solid factual and legal foundation for a False Claims Act violation, it will enable my Office to seek recovery of the costs of the investigation and prosecution, three times the amount of damages sustained by the State, and civil penalties.

We appreciate the opportunity to weigh in on this important bill and urge its passage. We look forward to working with the Committee as the bill progresses.

For additional information, please contact Cara Passaro, Chief Counsel to the Attorney General and Director of Legislative Affairs at cara.passaro@ct.gov.