
A BILL FOR AN ACT

RELATING TO GOVERNMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
3 by adding two new sections to part X to be appropriately
4 designated and to read as follows:

5 "§46- Relief from retaliatory actions. (a)

6 Notwithstanding any law to the contrary, any employee,
7 contractor, or agent shall be entitled to all relief necessary
8 to make that employee, contractor, or agent whole, if that
9 employee, contractor, or agent is discharged, demoted,
10 suspended, threatened, harassed, or in any other manner
11 discriminated against in the terms and conditions of employment,
12 contract, or agency relationship because of lawful acts done by
13 the employee, contractor, agent or associated others in
14 furtherance of an action under section 46-175 or other efforts
15 to stop or address any conduct described in section 46-171(a).

16 (b) Relief under subsection (a) shall include
17 reinstatement with the same seniority status that the employee,
18 contractor, or agent would have had but for the discrimination,



1 two times the amount of back pay, interest on the back pay, and
 2 compensation for any special damages sustained as a result of
 3 the discrimination, including litigation costs and reasonable
 4 attorney's fees. An action for relief from retaliatory actions
 5 under subsection (a) may be brought in the appropriate court of
 6 this State for the relief provided in this part.

7 (c) An action for relief from retaliatory actions under
 8 subsection (a) shall be brought within three years of the
 9 retaliatory conduct upon which the action is based.

10 **§46- Certain actions barred.** (a) In no event may a
 11 person bring an action under this part that is based upon
 12 allegations or transactions which are the subject of a civil
 13 suit or an administrative civil money penalty proceeding in
 14 which a county is already a party.

15 (b) The court shall dismiss an action or claim under this
 16 part, unless opposed by a county, if the allegations or
 17 transactions alleged in the action or claim are substantially
 18 the same as those publicly disclosed:

19 (1) In a criminal, civil, or administrative hearing in
 20 which a county or its agent is a party;

21 (2) In a county council or other county report, hearing,
 22 audit, or investigation; or



1 (3) By the news media,
 2 unless the action is brought by the county attorney or the
 3 person bringing the action is an original source of the
 4 information.

5 (c) For purposes of this section, "original source" means
 6 an individual who:

7 (1) Prior to public disclosure under subsection (b), has
 8 voluntarily disclosed to a county the information on
 9 which the allegations or transactions in a claim are
 10 based; or

11 (2) Has knowledge that is independent of and materially
 12 adds to the publicly disclosed allegations or
 13 transactions, and who has voluntarily provided the
 14 information to a county before filing an action under
 15 this part."

16 SECTION 2. Section 46-171, Hawaii Revised Statutes, is
 17 amended as follows:

18 1. By amending subsection (a) to read:

19 "(a) Any person who:

20 (1) Knowingly presents, or causes to be presented, [~~to an~~
 21 ~~officer or employee of a county]~~ a false or fraudulent
 22 claim for payment or approval;



- 1 (2) Knowingly makes, uses, or causes to be made or used, a
2 false record or statement [~~to get a false or~~
3 ~~fraudulent claim paid or approved by a county,~~]
4 material to a false or fraudulent claim;
- 5 ~~[(3) Conspires to defraud a county by getting a false or~~
6 ~~fraudulent claim allowed or paid;~~
- 7 ~~+(4)]~~ (3) Has possession, custody, or control of property
8 or money used, or to be used, by a county and,
9 intending to defraud a county or [~~wilfully~~] to
10 wilfully conceal the property, delivers, or causes to
11 be delivered, less property than the amount for which
12 the person receives a certificate or receipt;
- 13 ~~+(5)]~~ (4) Is authorized to make or deliver a document
14 certifying receipt of property used, or to be used by
15 a county and, intending to defraud a county, makes or
16 delivers the receipt without completely knowing that
17 the information on the receipt is true;
- 18 ~~+(6)]~~ (5) Buys, or receives as a pledge of an obligation or
19 debt, public property from any officer or employee of
20 a county that the person knows [~~may~~] is not lawfully
21 authorized to sell or pledge the property;



1 ~~[(7)]~~ (6) Knowingly makes, uses, or causes to be made or
 2 used, a false record or statement ~~[to conceal, avoid,~~
 3 ~~or decrease]~~ material to an obligation to pay or
 4 transmit money or property to a county, or knowingly
 5 conceals, or knowingly and improperly avoids or
 6 decreases an obligation to pay or transmit money or
 7 property to a county; ~~[or~~

8 ~~+(8)]~~ (7) Is a beneficiary of an inadvertent submission of
 9 a false claim to a county, who subsequently discovers
 10 the falsity of the claim, and fails to disclose the
 11 false claim to the county within a reasonable time
 12 after discovery of the false claim; or

13 (8) Conspires to commit any of the conduct described in
 14 this subsection,
 15 shall be liable to the county for a civil penalty of not less
 16 than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000,]~~ \$11,000, plus
 17 three times the amount of damages that the county sustains due
 18 to the act of that person."

19 2. By amending subsection (e) to read:

20 "(e) For purposes of this section:

21 "Claim" ~~[includes]~~ means any request or demand, whether
 22 under a contract or otherwise, for money or property and whether



1 or not a county has title to the money or property, that is
2 presented to an officer, employee, or agent of the county made
3 to a contractor, grantee, or other recipient, if the money or
4 property is to be spent or used on the county's behalf or to
5 advance a county program or interest, and if the county provides
6 or has provided any portion of the money or property that is
7 requested or demanded[, or if the government] or will reimburse
8 the contractor, grantee, or other recipient for any portion of
9 the money or property that is requested or demanded. "Claim"
10 does not include requests or demands for money or property that
11 a county has paid to an individual as compensation for
12 employment or as an income subsidy with no restrictions on that
13 individual's use of the money or property.

14 "Knowing" and "knowingly" means that a person, with respect
15 to information:

- 16 (1) Has actual knowledge of the information;
- 17 (2) Acts in deliberate ignorance of the truth or falsity
18 of the information; or
- 19 (3) Acts in reckless disregard of the truth or falsity of
20 the information;

21 and no proof of specific intent to defraud is required.



1 "Material" means having the tendency to influence or
2 capability to influence the payment or receipt of money or
3 property.

4 "Obligation" means an established duty, whether or not
5 fixed, arising from an express or implied contractual, grantor-
6 grantee, or licensor-licensee relationship, from a fee-based or
7 similar relationship, from statute, regulation, or
8 administrative rule, or from the retention of any overpayment."

9 SECTION 3. Section 46-177, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"[+]§46-177[+] Awards to qui tam plaintiffs.** (a) If a
12 county proceeds with an action brought by a person under section
13 46-175, the person shall receive at least fifteen per cent but
14 not more than twenty-five per cent of the proceeds of the action
15 or settlement of the claim, depending upon the extent to which
16 the person substantially contributed to the prosecution of the
17 action. Where the action is one that the court finds to be
18 based primarily on disclosures of specific information, other
19 than information provided by the person bringing the action,
20 relating to allegations or transactions in a criminal, civil, or
21 administrative hearing, in a legislative or administrative
22 report, hearing, audit, or investigation, or from the news



1 media, the court may award sums as it considers appropriate, but
2 in no case more than ten per cent of the proceeds, taking into
3 account the significance of the information and the role of the
4 person bringing the action in advancing the case to litigation.
5 Any payment to a person under this subsection shall be made from
6 the proceeds. The person shall also receive an amount for
7 reasonable expenses that the court finds to have been
8 necessarily incurred, plus reasonable attorneys' fees and costs.
9 All expenses, fees, and costs shall be awarded against the
10 defendant.

11 (b) If a county proceeds with an action brought under
12 section 46-171, the county may file its own complaint or amend
13 the complaint of a person who has brought an action under
14 section 46-171 to clarify or add detail to the claims in which
15 the county is intervening and to add any additional claims with
16 respect to which the county contends it is entitled to relief.
17 For statute of limitations purposes, any such pleading shall
18 relate back to the filing date of the complaint of the person
19 who originally brought the action, to the extent that the claim
20 of the county arises out of the conduct, transactions, or
21 occurrences set forth, or attempted to be set forth, in the
22 prior complaint of that person.



1 [~~(b)~~] (c) If the county does not proceed with an action
2 under this section, the person bringing the action or settling
3 the claim shall receive an amount that the court decides is
4 reasonable for collecting the civil penalty and damages. The
5 amount shall be not less than twenty-five per cent and not more
6 than thirty per cent of the proceeds of the action or settlement
7 and shall be paid out of the proceeds. The person shall also
8 receive an amount for reasonable expenses that the court finds
9 to have been necessarily incurred, plus reasonable attorneys'
10 fees and costs. All expenses, fees, and costs shall be awarded
11 against the defendant.

12 [~~(e)~~] (d) Regardless of whether the county proceeds with
13 the action, if the court finds that the action was brought by a
14 person who planned and initiated the violation of section 46-171
15 upon which the action was brought, then the court, to the extent
16 the court considers appropriate, may reduce the share of the
17 proceeds of the action that the person would otherwise receive
18 under subsection (a), taking into account the role of that
19 person in advancing the case to litigation and any relevant
20 circumstances pertaining to the violation. If the person
21 bringing the action is convicted of criminal conduct arising
22 from the person's role in the violation of section 46-171, that



1 person shall be dismissed from the civil action and shall not
2 receive any share of the proceeds of the action. The dismissal
3 shall not prejudice the right of the county to continue the
4 action.

5 ~~[(d)]~~ (e) If the county does not proceed with the action
6 and the person bringing the action conducts the action, the
7 court may award to the defendant its reasonable attorneys' fees
8 and expenses if the defendant prevails in the action and the
9 court finds that the claim of the person bringing the action was
10 frivolous, vexatious, or brought primarily for purposes of
11 harassment.

12 ~~[(e)]~~ (f) In no event may a person bring an action under
13 section 46-175:

14 (1) Against any elected official of the county, if the
15 action is based on evidence or information known to
16 the county. For purposes of this section, evidence or
17 information known only to the person or persons
18 against whom an action is brought shall not be
19 considered to be known to the county;

20 ~~[(2) When the person is a present or former employee of the~~
21 ~~county and the action is based upon information~~
22 ~~discovered by the employee during the course of the~~



1 ~~employee's employment, unless the employee first, in~~
 2 ~~good faith, exhausted any existing internal procedures~~
 3 ~~for reporting and seeking recovery of the falsely~~
 4 ~~claimed sums through official channels and the county~~
 5 ~~failed to act on the information provided within a~~
 6 ~~reasonable period of time,] or~~

7 [+3+] (2) That is based upon allegations or transactions
 8 that are the subject of a [~~civil or criminal~~
 9 ~~investigation by the county,~~] civil suit[7] or an
 10 administrative civil money penalty proceeding in which
 11 the county is already a party."

12 SECTION 4. Section 46-178, Hawaii Revised Statutes, is
 13 repealed.

14 ["~~§46-178~~ **Jurisdiction.** (a) ~~No court shall have~~
 15 ~~jurisdiction over an action under this part based upon the~~
 16 ~~public disclosure of allegations or transactions in a criminal,~~
 17 ~~civil, or administrative hearing, in a legislative or~~
 18 ~~administrative report, hearing, audit, or investigation, or from~~
 19 ~~the news media, unless the action is brought by a county~~
 20 ~~corporation counsel or county attorney or the person bringing~~
 21 ~~the action is an original source of the information.~~

22 ~~(b) For purposes of this section:~~



1 (b) Relief under subsection (a) shall include
2 reinstatement with the same seniority status that the employee,
3 contractor, or agent would have had but for the discrimination,
4 two times the amount of back pay, interest on the back pay, and
5 compensation for any special damages sustained as a result of
6 the discrimination, including litigation costs and reasonable
7 attorney's fees. An action for relief from retaliatory actions
8 under subsection (a) may be brought in the appropriate court of
9 this State for the relief provided in this part.

10 (c) An action for relief from retaliatory actions under
11 subsection (a) shall be brought within three years of the
12 retaliatory conduct upon which the action is based.

13 **§661- Certain actions barred.** (a) In no event may a
14 person bring an action under this part that is based upon
15 allegations or transactions which are the subject of a civil
16 suit or an administrative civil money penalty proceeding in
17 which the State is already a party.

18 (b) The court shall dismiss an action or claim under this
19 part, unless opposed by the State, if the allegations or
20 transactions alleged in the action or claim are substantially
21 the same as those publicly disclosed:



1 (1) In a state criminal, civil, or administrative hearing
2 in which the State or its agent is a party;

3 (2) In a state legislative or other State report, hearing,
4 audit, or investigation; or

5 (3) By the news media,
6 unless the action is brought by the attorney general or the
7 person bringing the action is an original source of the
8 information.

9 (c) For purposes of this section, "original source" means
10 an individual who:

11 (1) Prior to public disclosure under subsection (b), has
12 voluntarily disclosed to the State the information on
13 which the allegations or transactions in a claim are
14 based; or

15 (2) Has knowledge that is independent of and materially
16 adds to the publicly disclosed allegations or
17 transactions, and who has voluntarily provided the
18 information to the State before filing an action under
19 this part."

20 SECTION 6. Section 661-21, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§661-21 **Actions for false claims to the State; qui tam**
2 **actions.** (a) Notwithstanding section 661-7 to the contrary,
3 any person who:

4 (1) Knowingly presents, or causes to be presented, [~~to an~~
5 ~~officer or employee of the State]~~ a false or
6 fraudulent claim for payment or approval;

7 (2) Knowingly makes, uses, or causes to be made or used, a
8 false record or statement [~~to get a false or~~
9 ~~fraudulent claim paid or approved by the State;~~]
10 material to a false or fraudulent claim;

11 ~~[(3) Conspires to defraud the State by getting a false or~~
12 ~~fraudulent claim allowed or paid;~~

13 ~~+(4)]~~ (3) Has possession, custody, or control of property
14 or money used, or to be used, by the State and,
15 intending to defraud the State or [~~wilfully~~] to
16 wilfully conceal the property, delivers, or causes to
17 be delivered, less property than the amount for which
18 the person receives a certificate or receipt;

19 ~~+(5)]~~ (4) Is authorized to make or deliver a document
20 certifying receipt of property used, or to be used by
21 the State and, intending to defraud the State, makes



1 or delivers the receipt without completely knowing
2 that the information on the receipt is true;

3 ~~[(+6)]~~ (5) Knowingly buys, or receives as a pledge of an
4 obligation or debt, public property from any officer
5 or employee of the State who ~~[may]~~ is not lawfully
6 authorized to sell or pledge the property;

7 ~~[(+7)]~~ (6) Knowingly makes, uses, or causes to be made or
8 used, a false record or statement ~~[to conceal, avoid,~~
9 ~~or decrease]~~ material to an obligation to pay or
10 transmit money or property to the State, or knowingly
11 conceals, or knowingly and improperly avoids or
12 decreases an obligation to pay or transmit money or
13 property to the State; ~~[or~~

14 ~~[(+8)]~~ (7) Is a beneficiary of an inadvertent submission of
15 a false claim to the State, who subsequently discovers
16 the falsity of the claim, and fails to disclose the
17 false claim to the State within a reasonable time
18 after discovery of the false claim; or

19 (8) Conspires to commit any of the conduct described in
20 this subsection,

21 shall be liable to the State for a civil penalty of not less
22 than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000,]~~ \$11,000, plus



1 three times the amount of damages that the State sustains due to
2 the act of that person.

3 (b) If the court finds that a person who has violated
4 subsection (a):

5 (1) Furnished officials of the State responsible for
6 investigating false claims violations with all
7 information known to the person about the violation
8 within thirty days after the date on which the
9 defendant first obtained the information;

10 (2) Fully cooperated with any state investigation of such
11 violation; and

12 (3) At the time the person furnished the State with the
13 information about the violation, no criminal
14 prosecution, civil action, or administrative action
15 had commenced under this title with respect to such
16 violation, and the person did not have actual
17 knowledge of the existence of an investigation into
18 such violation;

19 the court may assess not less than two times the amount of
20 damages that the State sustains because of the act of the
21 person. A person violating subsection (a), shall also be liable



1 to the State for the costs and attorneys' fees of a civil action
2 brought to recover the penalty or damages.

3 (c) Liability under this section shall be joint and
4 several for any act committed by two or more persons.

5 (d) This section shall not apply to any controversy
6 involving an amount of less than \$500 in value. For purposes of
7 this subsection, "controversy" means the aggregate of any one or
8 more false claims submitted by the same person in violation of
9 this part. Proof of specific intent to defraud is not required.

10 (e) For purposes of this section:

11 "Claim" [~~includes~~] means any request or demand, whether
12 under a contract or otherwise, for money or property and whether
13 or not the State has title to the money or property, that is
14 presented to an officer, employee, or agent of the State or is
15 made to a contractor, grantee, or other recipient, if the money
16 or property is to be spent or used on the State's behalf or to
17 advance a state program or interest, and if the State provides
18 or has provided any portion of the money or property that is
19 requested or demanded [~~, or if the government~~] or will reimburse
20 the contractor, grantee, or other recipient for any portion of
21 the money or property that is requested or demanded. "Claim"
22 does not include requests or demands for money or property that



1 the State has paid to an individual as compensation for
2 employment or as an income subsidy with no restrictions on that
3 individual's use of the money or property.

4 "Knowing" and "knowingly" means that a person, with respect
5 to information:

- 6 (1) Has actual knowledge of the information;
- 7 (2) Acts in deliberate ignorance of the truth or falsity
8 of the information; or
- 9 (3) Acts in reckless disregard of the truth or falsity of
10 the information;

11 and no proof of specific intent to defraud is required.

12 "Material" means having the tendency to influence or
13 capability to influence the payment or receipt of money or
14 property.

15 "Obligation" means an established duty, whether or not
16 fixed, arising from an express or implied contractual, grantor-
17 grantee, or licensor-licensee relationship, from a fee-based or
18 similar relationship, from statute, regulation, or
19 administrative rule, or from the retention of any overpayment.

20 [~~(f) This section shall not apply to claims, records, or~~
21 ~~statements for which procedures and remedies are otherwise~~
22 ~~specifically provided for under chapter 231.]"~~



1 SECTION 7. Section 661-27, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§661-27[+] Awards to qui tam plaintiffs. (a) If the
4 State proceeds with an action brought by a person under section
5 661-25, the person shall receive at least fifteen per cent but
6 not more than twenty-five per cent of the proceeds of the action
7 or settlement of the claim, depending upon the extent to which
8 the person substantially contributed to the prosecution of the
9 action. Where the action is one that the court finds to be
10 based primarily on disclosures of specific information, other
11 than information provided by the person bringing the action,
12 relating to allegations or transactions in a criminal, civil, or
13 administrative hearing, in a legislative or administrative
14 report, hearing, audit, or investigation, or from the news
15 media, the court may award sums as it considers appropriate, but
16 in no case more than ten per cent of the proceeds, taking into
17 account the significance of the information and the role of the
18 person bringing the action in advancing the case to litigation.
19 Any payment to a person under this subsection shall be made from
20 the proceeds. [+]The[+] person shall also receive an amount for
21 reasonable expenses that the court finds to have been
22 necessarily incurred, plus reasonable attorneys' fees and costs.



1 All expenses, fees, and costs shall be awarded against the
2 defendant.

3 (b) If the State proceeds with an action brought under
4 section 661-21, the State may file its own complaint or amend
5 the complaint of a person who has brought an action under
6 section 661-21 to clarify or add detail to the claims in which
7 the State is intervening and to add any additional claims with
8 respect to which the State contends it is entitled to relief.
9 For statute of limitations purposes, any such state pleading
10 shall relate back to the filing date of the complaint of the
11 person who originally brought the action, to the extent that the
12 claim of the State arises out of the conduct, transactions, or
13 occurrences set forth, or attempted to be set forth, in the
14 prior complaint of that person.

15 [~~(b)~~] (c) If the State does not proceed with an action under
16 this section, the person bringing the action or settling the
17 claim shall receive an amount that the court decides is
18 reasonable for collecting the civil penalty and damages. The
19 amount shall be not less than twenty-five per cent and not more
20 than thirty per cent of the proceeds of the action or settlement
21 and shall be paid out of the proceeds. The person shall also
22 receive an amount for reasonable expenses that the court finds



1 to have been necessarily incurred, plus reasonable attorneys'
2 fees and costs. All expenses, fees, and costs shall be awarded
3 against the defendant.

4 [~~e~~] (d) Whether or not the State proceeds with the action,
5 if the court finds that the action was brought by a person who
6 planned and initiated the violation of section 661-21 upon which
7 the action was brought, then the court may, to the extent the
8 court considers appropriate, reduce the share of the proceeds of
9 the action that the person would otherwise receive under
10 subsection (a), taking into account the role of that person in
11 advancing the case to litigation and any relevant circumstances
12 pertaining to the violation. If the person bringing the action
13 is convicted of criminal conduct arising from the person's role
14 in the violation of section 661-21, that person shall be
15 dismissed from the civil action and shall not receive any share
16 of the proceeds of the action. The dismissal shall not
17 prejudice the right of the State to continue the action.

18 [~~d~~] (e) If the State does not proceed with the action and
19 the person bringing the action conducts the action, the court
20 may award to the defendant its reasonable attorneys' fees and
21 expenses if the defendant prevails in the action and the court
22 finds that the claim of the person bringing the action was



1 frivolous, vexatious, or brought primarily for purposes of
2 harassment.

3 ~~[(e)]~~ (f) In no event may a person bring an action under
4 section 661-25:

5 (1) Against a member of the state senate or state house of
6 representatives, a member of the judiciary, or an
7 elected official in the executive branch of the State,
8 if the action is based on evidence or information
9 known to the State. For purposes of this section,
10 evidence or information known only to the person or
11 persons against whom an action is brought shall not be
12 considered to be known to the State;

13 ~~[(2) When the person is a present or former employee of the
14 State and the action is based upon information
15 discovered by the employee during the course of the
16 employee's employment, unless the employee first, in
17 good faith, exhausted any existing internal procedures
18 for reporting and seeking recovery of the falsely
19 claimed sums through official channels and the State
20 failed to act on the information provided within a
21 reasonable period of time,]~~ or



1 ~~[(3)]~~ (2) That is based upon allegations or transactions
2 that are the subject of a ~~[civil or criminal~~
3 ~~investigation by the State,]~~ civil suit~~[,]~~ or an
4 administrative civil money penalty proceeding in which
5 the State is already a party."

6 SECTION 8. Section 661-28, Hawaii Revised Statutes, is
7 repealed.

8 ~~["~~§661-28~~ Jurisdiction. No court shall have~~
9 ~~jurisdiction over an action under this part based upon the~~
10 ~~public disclosure of allegations or transactions in a criminal,~~
11 ~~civil, or administrative hearing, in a legislative or~~
12 ~~administrative report, hearing, audit, or investigation, or from~~
13 ~~the news media, unless the action is brought by the attorney~~
14 ~~general or the person bringing the action is an original source~~
15 ~~of the information. For purposes of this section:~~

16 ~~"Original source" means an individual who has direct and~~
17 ~~independent knowledge of the information on which the~~
18 ~~allegations are based and has voluntarily provided the~~
19 ~~information to the State before filing an action under this part~~
20 ~~that is based on the information, and whose information provided~~
21 ~~the basis or catalyst for the investigation, hearing, audit, or~~
22 ~~report that led to the public disclosure."]~~



1 PART III

2 SECTION 9. This Act does not affect rights and duties that
3 matured, penalties that were incurred, and proceedings that were
4 begun, before the effective date of this Act.

5 SECTION 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon its approval.



Report Title:

False Claims to the State and Counties

Description:

Brings laws relating to false claims to the state and to the counties into compliance with the federal False Claims Act in order to meet federal requirements that state laws provide the same or greater protections as those established under section 1909 of the Social Security Act. (HB1181 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

