
A BILL FOR AN ACT

RELATING TO FALSE CLAIMS TO THE STATE.

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

PART I.

SECTION 1. Chapter 661, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

"§661- Relief from retaliatory actions. (a)
Notwithstanding any law to the contrary, any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment, contract, or agency relationship because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under section 661-25 or other efforts to stop or address any conduct described in section 661-21(a).

(b) Relief under subsection (a) shall include reinstatement with the same seniority status that the employee, 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 by this part.

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

10 **PART II.**

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

13 1. By amending the title and subsection (a) to read:

14 **"[~~§~~§46-171[~~§~~] Actions for false claims to the counties;**
15 **qui tam actions. (a) Any person who:**

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

19 (2) Knowingly makes, uses, or causes to be made or used, a
20 false record or statement [~~to get a false or~~
21 ~~fraudulent claim paid or approved by a county,~~]
22 material to a false or fraudulent claim;



1 ~~[(3)]~~ ~~Conspires to defraud a county by getting a false or~~
2 ~~fraudulent claim allowed or paid;~~

3 ~~+(4)]~~ (3) Has possession, custody, or control of property
4 or money used, or to be used, by a county and,
5 intending to defraud a county or wilfully to conceal
6 the property, delivers, or causes to be delivered,
7 less property than the amount for which the person
8 receives a certificate or receipt;

9 ~~+(5)]~~ (4) Is authorized to make or deliver a document
10 certifying receipt of property used, or to be used by
11 a county and, intending to defraud a county, makes or
12 delivers the receipt without completely knowing that
13 the information on the receipt is true;

14 ~~+(6)]~~ (5) Buys, or receives as a pledge of an obligation or
15 debt, public property from any officer or employee of
16 a county that the person knows may not lawfully sell
17 or pledge the property;

18 ~~+(7)]~~ (6) Knowingly makes, uses, or causes to be made or
19 used, a false record or statement ~~[to conceal, avoid,~~
20 ~~or decrease]~~ material to an obligation to pay or
21 transmit money or property to a county, or knowingly
22 conceals, or knowingly and improperly avoids or



1 decreases an obligation to pay or transmit money or
2 property to a county; [~~or~~
3 ~~(8)]~~ (7) Is a beneficiary of an inadvertent submission of
4 a false claim to a county, who subsequently discovers
5 the falsity of the claim, and fails to disclose the
6 false claim to the county within a reasonable time
7 after discovery of the false claim; or
8 (8) Conspires to commit any of the conduct described in
9 this subsection,
10 shall be liable to the county for a civil penalty of not less
11 than [~~\$5,000~~] \$5,500 and not more than [~~\$10,000,~~] \$11,000, plus
12 three times the amount of all damages, including consequential
13 damages, that the county sustains due to the act of that
14 person."

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

16 "(e) For purposes of this section:

17 "Claim" [~~includes~~] means any request or demand, whether
18 under a contract or otherwise, for money or property and whether
19 or not a county has title to the money or property, that is
20 presented to an officer, employee, or agent of a county or is
21 made to a contractor, grantee, or other recipient, if the money
22 or property is to be spent or used on a county's behalf or to



1 advance a county program or interest, and if the county provides
2 or has provided any portion of the money or property that is
3 requested or demanded~~[, or if the government]~~ or will reimburse
4 the contractor, grantee, or other recipient for any portion of
5 the money or property that is requested or demanded.

6 "Claim" does not mean requests or demands for money or
7 property that a county has paid to an individual as compensation
8 for employment or as an income subsidy with no restrictions on
9 that individual's use of the money or property.

10 "Knowing" and "knowingly" means that a person, with respect
11 to information:

12 (1) Has actual knowledge of the information;

13 (2) Acts in deliberate ignorance of the truth or falsity
14 of the information; or

15 (3) Acts in reckless disregard of the truth or falsity of
16 the information;

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

18 "Material" means having the natural tendency to influence,
19 or be capable of influencing, the payment or receipt of money or
20 property.

21 "Obligation means an established duty, whether or not
22 fixed, arising from an express or implied contractual, grantor-



1 grantee, or licensor-licensee relationship, from a fee-based or
2 similar relationship, from statute, regulation, or
3 administrative rule, or from the retention of any overpayment."

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

6 **"[+]§46-177[+] Awards to qui tam plaintiffs.** (a) If a
7 county proceeds with an action brought by a person under section
8 46-175, the person shall receive at least fifteen per cent but
9 not more than twenty-five per cent of the proceeds of the action
10 or settlement of the claim, depending upon the extent to which
11 the person substantially contributed to the prosecution of the
12 action. Where the action is one that the court finds to be
13 based primarily on disclosures of specific information, other
14 than information provided by the person bringing the action,
15 relating to allegations or transactions in a criminal, civil, or
16 administrative hearing, in a legislative or administrative
17 report, hearing, audit, or investigation, or from the news
18 media, the court may award sums as it considers appropriate, but
19 in no case more than ten per cent of the proceeds, taking into
20 account the significance of the information and the role of the
21 person bringing the action in advancing the case to litigation.
22 Any payment to a person under this subsection shall be made from



1 the proceeds. The person shall also receive an amount for
2 reasonable expenses that the court finds to have been
3 necessarily incurred, plus reasonable attorneys' fees and costs.
4 All expenses, fees, and costs shall be awarded against the
5 defendant.

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

18 ~~[(b)]~~ (c) If the county does not proceed with an action
19 under this section, the person bringing the action or settling
20 the claim shall receive an amount that the court decides is
21 reasonable for collecting the civil penalty and damages. The
22 amount shall be not less than twenty-five per cent and not more



1 than thirty per cent of the proceeds of the action or settlement
2 and shall be paid out of the proceeds. The person shall also
3 receive an amount for reasonable expenses that the court finds
4 to have been necessarily incurred, plus reasonable attorneys'
5 fees and costs. All expenses, fees, and costs shall be awarded
6 against the defendant.

7 ~~[(e)]~~ (d) Regardless of whether the county proceeds with
8 the action, if the court finds that the action was brought by a
9 person who planned and initiated the violation of section 46-171
10 upon which the action was brought, then the court, to the extent
11 the court considers appropriate, may reduce the share of the
12 proceeds of the action that the person would otherwise receive
13 under subsection (a), taking into account the role of that
14 person in advancing the case to litigation and any relevant
15 circumstances pertaining to the violation. If the person
16 bringing the action is convicted of criminal conduct arising
17 from the person's role in the violation of section 46-171, that
18 person shall be dismissed from the civil action and shall not
19 receive any share of the proceeds of the action. The dismissal
20 shall not prejudice the right of the county to continue the
21 action.



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

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

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

16 ~~[(2) When the person is a present or former employee of the~~
17 ~~county and the action is based upon information~~
18 ~~discovered by the employee during the course of the~~
19 ~~employee's employment, unless the employee first, in~~
20 ~~good faith, exhausted any existing internal procedures~~
21 ~~for reporting and seeking recovery of the falsely~~
22 ~~claimed sums through official channels and the county~~



1 ~~failed to act on the information provided within a~~
2 ~~reasonable period of time,~~ or

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

8 SECTION 4. Section 46-178, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[(1)]~~ **§46-178 [1] Jurisdiction.** **Certain actions barred.** ~~[(a)]~~
11 ~~No court shall have jurisdiction over an action under this part~~
12 ~~based upon the public disclosure of allegations or transactions~~
13 ~~in a criminal, civil, or administrative hearing, in a~~
14 ~~legislative or administrative report, hearing, audit, or~~
15 ~~investigation, or from the news media,~~] (a) In no event may a
16 person bring an action under this part which is based upon
17 allegations or transactions which are the subject of a civil
18 suit or an administrative civil money penalty proceeding in
19 which the county is already a party.

20 (b) The court shall dismiss an action or claim under this
21 part, unless opposed by the county, if substantially the same



1 allegations or transactions as alleged in the action or claim
2 were publicly disclosed:

3 (1) In a county criminal, civil, or administrative hearing
4 in which the county or its agent is a party;

5 (2) In a county legislative or other county report,
6 hearing, audit, or investigation; or

7 (3) By the news media,

8 unless the action is brought by a county corporation counsel or
9 county attorney or the person bringing the action is an original
10 source of the information.

11 ~~[(b)]~~ (c) For purposes of this section[+

12 ~~"Original"], "original source" means an individual [who has~~
13 ~~direct and independent knowledge of the information on which the~~
14 ~~allegations are based and has voluntarily provided the~~
15 ~~information to the county before filing an action under this~~
16 ~~part that is based on the information, and whose information~~
17 ~~provided the basis or catalyst for the investigation, hearing,~~
18 ~~audit, or report that led to the public disclosure.]:~~

19 (1) Prior to public disclosure under subsection (b), has
20 voluntarily disclosed to the county the information on
21 which the allegations or transactions in a claim are
22 based; or



PART III.

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

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

~~(4)~~] (3) Has possession, custody, or control of property
or money used, or to be used, by the State and,

1 intending to defraud the State or wilfully to conceal
2 the property, delivers, or causes to be delivered,
3 less property than the amount for which the person
4 receives a certificate or receipt;

5 ~~[(+5)]~~ (4) Is authorized to make or deliver a document
6 certifying receipt of property used, or to be used by
7 the State and, intending to defraud the State, makes
8 or delivers the receipt without completely knowing
9 that the information on the receipt is true;

10 ~~[(+6)]~~ (5) Knowingly buys, or receives as a pledge of an
11 obligation or debt, public property from any officer
12 or employee of the State who may not lawfully sell or
13 pledge the property;

14 ~~[(+7)]~~ (6) Knowingly makes, uses, or causes to be made or
15 used, a false record or statement ~~[to conceal, avoid,~~
16 ~~or decrease]~~ material to an obligation to pay or
17 transmit money or property to the State, or knowingly
18 conceals, or knowingly and improperly avoids or
19 decreases an obligation to pay or transmit money or
20 property to the State; ~~[or~~

21 ~~[(+8)]~~ (7) Is a beneficiary of an inadvertent submission of
22 a false claim to the State, who subsequently discovers



1 the falsity of the claim, and fails to disclose the
2 false claim to the State within a reasonable time
3 after discovery of the false claim; or

4 (8) Conspires to commit any of the conduct described in
5 this subsection,

6 shall be liable to the State for a civil penalty of not less
7 than [~~\$5,000~~] \$5,500 and not more than [~~\$10,000,~~] \$11,000 plus
8 three times the amount of all damages, including consequential
9 damages, that the State sustains due to the act of that person.

10 (b) If the court finds that a person who has violated
11 subsection (a):

12 (1) Furnished officials of the State responsible for
13 investigating false claims violations with all
14 information known to the person about the violation
15 within thirty days after the date on which the
16 defendant first obtained the information;

17 (2) Fully cooperated with any state investigation of such
18 violation; and

19 (3) At the time the person furnished the State with the
20 information about the violation, no criminal
21 prosecution, civil action, or administrative action
22 had commenced under this title with respect to such



1 violation, and the person did not have actual
2 knowledge of the existence of an investigation into
3 such violation;

4 the court may assess not less than two times the amount of
5 damages that the State sustains because of the act of the
6 person. A person violating subsection (a), shall also be liable
7 to the State for the costs and attorneys' fees of a civil action
8 brought to recover the penalty or damages.

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

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

16 (e) For purposes of this section:

17 "Claim" [~~includes~~] means any request or demand, whether
18 under a contract or otherwise, for money or property and whether
19 or not the State has title to the money or property, that is
20 presented to an officer, employee, or agent of the State or is
21 made to a contractor, grantee, or other recipient, if the money
22 or property is to be spent or used on the State's behalf or to



1 advance a state program or interest, and if the State provides
2 or has provided any portion of the money or property that is
3 requested or demanded[, ~~or if the government~~] or will reimburse
4 the contractor, grantee, or other recipient for any portion of
5 the money or property that is requested or demanded. "Claim"
6 does not mean requests or demands for money or property that the
7 State has paid to an individual as compensation for employment
8 or as an income subsidy with no restrictions on that
9 individual's use of the money or property.

10 "Knowing" and "knowingly" means that a person, with respect
11 to information:

12 (1) Has actual knowledge of the information;

13 (2) Acts in deliberate ignorance of the truth or falsity
14 of the information; or

15 (3) Acts in reckless disregard of the truth or falsity of
16 the information;

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

18 "Material" means having the natural tendency to influence,
19 or be capable of influencing, the payment or receipt of money or
20 property.

21 "Obligation" means an established duty, whether or not
22 fixed, arising from an express or implied contractual, grantor-



1 grantee, or licensor-licensee relationship, from a fee-based or
2 similar relationship, from statute, regulation, or
3 administrative rule, or from the retention of any overpayment.

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

7 SECTION 6. Section 661-27, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"[+]§661-27[+] Awards to qui tam plaintiffs.** (a) If the
10 State proceeds with an action brought by a person under section
11 661-25, the person shall receive at least fifteen per cent but
12 not more than twenty-five per cent of the proceeds of the action
13 or settlement of the claim, depending upon the extent to which
14 the person substantially contributed to the prosecution of the
15 action. Where the action is one that the court finds to be
16 based primarily on disclosures of specific information, other
17 than information provided by the person bringing the action,
18 relating to allegations or transactions in a criminal, civil, or
19 administrative hearing, in a legislative or administrative
20 report, hearing, audit, or investigation, or from the news
21 media, the court may award sums as it considers appropriate, but
22 in no case more than ten per cent of the proceeds, taking into



1 account the significance of the information and the role of the
2 person bringing the action in advancing the case to litigation.
3 Any payment to a person under this subsection shall be made from
4 the proceeds. ~~[+]The[+]~~ person shall also receive an amount for
5 reasonable expenses that the court finds to have been
6 necessarily incurred, plus reasonable attorneys' fees and costs.
7 All expenses, fees, and costs shall be awarded against the
8 defendant.

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

21 ~~[(b)]~~ (c) If the State does not proceed with an action
22 under this section, the person bringing the action or settling



1 the claim shall receive an amount that the court decides is
2 reasonable for collecting the civil penalty and damages. The
3 amount shall be not less than twenty-five per cent and not more
4 than thirty per cent of the proceeds of the action or settlement
5 and shall be paid out of the proceeds. The person shall also
6 receive an amount for reasonable expenses that the court finds
7 to have been necessarily incurred, plus reasonable attorneys'
8 fees and costs. All expenses, fees, and costs shall be awarded
9 against the defendant.

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



1 shall not prejudice the right of the State to continue the
2 action.

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

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

12 (1) Against a member of the state senate or state house of
13 representatives, a member of the judiciary, or an
14 elected official in the executive branch of the State,
15 if the action is based on evidence or information
16 known to the State. For purposes of this section,
17 evidence or information known only to the person or
18 persons against whom an action is brought shall not be
19 considered to be known to the State;

20 ~~[(2) When the person is a present or former employee of the~~
21 ~~State 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 State~~
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 State,] civil suit[7] or an~~
10 administrative civil money penalty proceeding in which
11 the State is already a party."

12 SECTION 7. Section 661-28, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~§~~§661-28[~~]~~ ~~Jurisdiction.~~] Certain actions barred. [No
15 ~~court shall have jurisdiction over an action under this part~~
16 ~~based upon the public disclosure of allegations or transactions~~
17 ~~in a criminal, civil, or administrative hearing, in a~~
18 ~~legislative or administrative report, hearing, audit, or~~
19 ~~investigation, or from the news media,] (a) In no event may a
20 person bring an action under this part which is based upon
21 allegations or transactions which are the subject of a civil~~



1 suit or an administrative civil money penalty proceeding in
2 which the State is already a party.

3 (b) The court shall dismiss an action or claim under this
4 part, unless opposed by the State, if substantially the same
5 allegations or transactions as alleged in the action or claim
6 were publicly disclosed:

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

9 (2) In a state legislative or other state report, hearing,
10 audit, or investigation; or

11 (3) By the news media,

12 unless the action is brought by the attorney general or the
13 person bringing the action is an original source of the
14 information.

15 (c) For purposes of this section[+

16 ~~"Original]~~, "original source" means an individual who [has
17 ~~direct and 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 (1) Prior to public disclosure under subsection (b), has
2 voluntarily disclosed to the State the information on
3 which the allegations or transactions in a claim are
4 based; or

5 (2) Has knowledge that is independent of and materially
6 adds to the publicly disclosed allegations or
7 transactions, and who has voluntarily provided the
8 information to the State before filing an action under
9 this part."

10 **PART IV.**

11 SECTION 8. The provisions of this Act are not exclusive
12 and are in addition to any other applicable law or remedy. This
13 Act shall be liberally construed and applied to promote the
14 public interest.

15 SECTION 9. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

21 SECTION 10. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



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



Report Title:

False Claims to the State

Description:

Brings the State's false claims laws, as well as similar laws that apply to the counties, in 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 the Social Security Act. By meeting the federal requirements, the State will be able to continue to retain an additional ten percent of civil recoveries in cases brought under the false claims law that involve federal programs. (SD1)

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