

JAN 25 2012

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**A BILL FOR AN ACT**

RELATING TO FALSE CLAIMS TO THE STATE.

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

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

4           "§661-       Relief from retaliatory actions. (a)

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

15           (b) Relief under subsection (a) shall include  
16 reinstatement with the same seniority status that the employee,  
17 contractor, or agent would have had but for the discrimination,  
18 two times the amount of back pay, interest on the back pay, and

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

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

9 SECTION 2. Section 661-21, Hawaii Revised Statutes, is  
10 amended as follows:

11 (1) By amending subsection (a) to read as follows:

12 "(a) Notwithstanding section 661-7 to the contrary, any  
13 person who:

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

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

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

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1       ~~(4)~~ (3) Has possession, custody, or control of property  
2                   or money used, or to be used, by the State and,  
3                   intending to defraud the State or wilfully to conceal  
4                   the property, delivers, or causes to be delivered,  
5                   less property than the amount for which the person  
6                   receives a certificate or receipt;

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

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

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

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1        ~~[-(8)]~~ (7) Is a beneficiary of an inadvertent submission of  
2                    a false claim to the State, who subsequently discovers  
3                    the falsity of the claim, and fails to disclose the  
4                    false claim to the State within a reasonable time  
5                    after discovery of the false claim; or

6        (8) Conspires to commit any of the conduct described in  
7                    this subsection,

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

12        (2) By amending subsection (e) to read as follows:

13        "(e) For purposes of this section:

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

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1 the contractor, grantee, or other recipient for any portion of  
2 the money or property that is requested or demanded[-]; but  
3 "claim" does not include requests or demands for money or  
4 property that the State has paid to an individual as  
5 compensation for employment or as an income subsidy with no  
6 restrictions on that individual's use of the money or property.

7 "Knowing" and "knowingly" means that a person, with respect  
8 to information:

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

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

15 "Material" means having the natural tendency to influence,  
16 or be capable of influencing, the payment or receipt of money or  
17 property.

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

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1 SECTION 3. 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

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

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



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1 court finds that the claim of the person bringing the action was  
2 frivolous, vexatious, or brought primarily for purposes of  
3 harassment.

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

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

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

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

8           "~~[-4] §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,]~~ **Certain Actions Barred.** (a) In no event may  
14 a person bring an action under this part which 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 substantially the same  
20 allegations or transactions as alleged in the action or claim  
21 were publicly disclosed:

22           (1) In a State criminal, civil, or administrative hearing

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1           in which the State or its agent is a party;

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

4           (3) By the news media,

5 unless the action is brought by the attorney general or the  
6 person bringing the action is an original source of the  
7 information.

8           (c) For purposes of this section[+], "[Ø]original source"  
9 means an individual who [~~has direct and independent knowledge of~~  
10 ~~the information on which the allegations are based and has~~  
11 ~~voluntarily provided the information to the State before filing~~  
12 ~~an action under this part that is based on the information, and~~  
13 ~~whose information provided the basis or catalyst for the~~  
14 ~~investigation, hearing, audit, or report that led to the public~~  
15 ~~disclosure-]:~~

16           (1) Prior to public disclosure under subsection (b), has  
17           voluntarily disclosed to the State the information on  
18           which the allegations or transactions in a claim are  
19           based; or

20           (2) Has knowledge that is independent of and materially  
21           adds to the publicly disclosed allegations or  
22           transactions, and who has voluntarily provided the



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**Report Title:**

False Claims to the State

**Description:**

Brings the State's false claims law 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. 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.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO FALSE CLAIMS TO THE STATE.

PURPOSE: To bring Hawaii's false claims law 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. By meeting the federal requirements, Hawaii will be able to continue to retain an additional ten percent of civil recoveries in cases brought under Hawaii's false claims law involving federal programs.

MEANS: Add a new section to part II of chapter 661 and amend sections 661-21, 661-27, and 661-28, Hawaii Revised Statutes.

JUSTIFICATION: The false claims law under part II of chapter 661, Hawaii Revised Statutes, establishes causes of action that result in civil penalties and damages against individuals or entities claiming or collecting money from the State under false pretenses. Until recently the State's law was in conformance with the federal requirements, and thus enabled the State to obtain a greater share of the recovery in cases where federal dollars were at stake.

This bill will ensure that Hawaii updates its law to comply with section 1909 of the Social Security Act, which was amended by the Fraud Enforcement and Recovery Act, the Federal False Claims Act, the Affordable Care Act, the Patient Protection and Affordable Care Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act. It will enable the State to continue to

retain an additional ten percent of any civil recovery in cases involving federal programs. Hawaii must comply with the federal law changes by March 31, 2013.

The changes, which bring chapter 661, Hawaii Revised Statutes, in compliance with the Federal False Claims Act, are all designed to give greater protection to individuals who allege fraud against the State. Of particular import is the proposed new section to part II of chapter 661, which provides special protection and relief to **individuals who try to stop others from committing false claims violations against the State by their own conduct or through the conduct of any of their associates.**

This section provides to these individuals far greater protection against retaliation than the protections afforded by Hawaii's Whistleblowers' Protection Act. The Whistleblowers' Protection Act, part V of chapter 378, Hawaii Revised Statutes, gives rise to causes of action by **employees** who are retaliated against by **employers** for providing information of wrongdoing. The new section in part II of chapter 661 protects a far greater class of individuals, including **employees, contractors, and agents**, from retaliatory actions by **anyone who has the authority to affect the individual's status as an employee, contractor, or agent.** These categories of protected individuals are not defined, and intentionally left for very broad interpretation. While this is an expanded class of individuals who will receive greater protection, it is limited only to individuals who take action under chapter 661 to stop false claims against the State.

Impact on the public: Individuals and entities who violate the false claims law, as amended, will face stiffer penalties. Persons who file suit under the law will receive greater protection.

Impact on the department and other agencies:

The amendments will allow greater latitude to the Department of the Attorney General in prosecution of cases under the law. The amendments will also allow the State to retain greater sums of money than would otherwise be permitted in cases involving federal programs.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.