

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

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

11 **PART II**

12 SECTION 2. Section 661-21, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§661-21 Actions for false claims to the State; qui tam**
15 **actions.** (a) Notwithstanding section 661-7 to the contrary,
16 any person who:

- 17 (1) Knowingly presents, or causes to be presented, [~~to an~~
18 ~~officer or employee of the State]~~ a false or
19 fraudulent claim for payment or approval;
- 20 (2) Knowingly makes, uses, or causes to be made or used, a
21 false record or statement [~~to get a false or~~



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



1 transmit money or property to the State, or knowingly
2 conceals, or knowingly and improperly avoids or
3 decreases an obligation to pay or transmit money or
4 property to the State; [~~e~~

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

10 (8) Conspires to commit any of the conduct described in
11 this subsection,

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

16 (b) If the court finds that a person who has violated
17 subsection (a):

18 (1) Furnished officials of the State responsible for
19 investigating false claims violations with all
20 information known to the person about the violation
21 within thirty days after the date on which the
22 defendant first obtained the information;



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

3 (3) At the time the person furnished the State with the
4 information about the violation, no criminal
5 prosecution, civil action, or administrative action
6 had commenced under this title with respect to such
7 violation, and the person did not have actual
8 knowledge of the existence of an investigation into
9 such violation;

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

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

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

22 (e) For purposes of this section:



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

16 "Knowing" and "knowingly" means that a person, with respect
17 to information:

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



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

2 "Material" means having the natural tendency to influence,
3 or be capable of influencing, the payment or receipt of money or
4 property.

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

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

13 SECTION 3. Section 661-27, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~f~~]§661-27 [~~f~~] Awards to qui tam plaintiffs. (a) If the
16 State proceeds with an action brought by a person under section
17 661-25, the person shall receive at least fifteen per cent but
18 not more than twenty-five per cent of the proceeds of the action
19 or settlement of the claim, depending upon the extent to which
20 the person substantially contributed to the prosecution of the
21 action. Where the action is one that the court finds to be
22 based primarily on disclosures of specific information, other



1 than information provided by the person bringing the action,
2 relating to allegations or transactions in a criminal, civil, or
3 administrative hearing, in a legislative or administrative
4 report, hearing, audit, or investigation, or from the news
5 media, the court may award sums as it considers appropriate, but
6 in no case more than ten per cent of the proceeds, taking into
7 account the significance of the information and the role of the
8 person bringing the action in advancing the case to litigation.
9 Any payment to a person under this subsection shall be made from
10 the proceeds. [†]The[†] person shall also receive an amount for
11 reasonable expenses that the court finds to have been
12 necessarily incurred, plus reasonable attorneys' fees and costs.
13 All expenses, fees, and costs shall be awarded against the
14 defendant.

15 (b) If the State proceeds with an action brought under
16 section 661-21, the State may file its own complaint pursuant to
17 section 661-22 or amend the complaint of a person who has
18 brought an action under section 661-25 to clarify or add detail
19 to the claims in which the State is intervening and to add any
20 additional claims with respect to which the State contends it is
21 entitled to relief. For statute of limitations purposes, any
22 such state pleading shall relate back to the filing date of the



1 complaint of the person who originally brought the action, to
2 the extent that the claim of the State arises out of the
3 conduct, transactions, or occurrences set forth, or attempted to
4 be set forth, in the prior complaint of that person.

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

16 [~~(e)~~] (d) Whether or not the State proceeds with the
17 action, if the court finds that the action was brought by a
18 person who planned and initiated the violation of section 661-21
19 upon which the action was brought, then the court may, to the
20 extent the court considers appropriate, reduce the share of the
21 proceeds of the action that the person would otherwise receive
22 under subsection (a), taking into account the role of that



1 person in advancing the case to litigation and any relevant
2 circumstances pertaining to the violation. If the person
3 bringing the action is convicted of criminal conduct arising
4 from the person's role in the violation of section 661-21, that
5 person shall be dismissed from the civil action and shall not
6 receive any share of the proceeds of the action. The dismissal
7 shall not prejudice the right of the State to continue the
8 action.

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

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

18 (1) Against a member of the state senate or state house of
19 representatives, a member of the judiciary, or an
20 elected official in the executive branch of the State,
21 if the action is based on evidence or information
22 known to the State. For purposes of this section,



1 evidence or information known only to the person or
2 persons against whom an action is brought shall not be
3 considered to be known to the State;

4 ~~[-(2) When the person is a present or former employee of the~~
5 ~~State and the action is based upon information~~
6 ~~discovered by the employee during the course of the~~
7 ~~employee's employment, unless the employee first, in~~
8 ~~good faith, exhausted any existing internal procedures~~
9 ~~for reporting and seeking recovery of the falsely~~
10 ~~claimed sums through official channels and the State~~
11 ~~failed to act on the information provided within a~~
12 ~~reasonable period of time,] or~~

13 ~~[-(3)]~~ (2) That is based upon allegations or transactions
14 that are the subject of a ~~[civil or criminal~~
15 ~~investigation by the State,]~~ civil suit~~[,]~~ or an
16 administrative civil money penalty proceeding in which
17 the State is already a party."

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

20 "[+] §661-28 []- ~~Jurisdiction.~~ Certain actions barred. [No
21 court shall have jurisdiction over an action under this part
22 based upon the public disclosure of allegations or transactions



1 ~~in a criminal, civil, or administrative hearing, in a~~
2 ~~legislative or administrative report, hearing, audit, or~~
3 ~~investigation, or from the news media,]~~ (a) In no event may a
4 person bring an action under this part which is based upon
5 allegations or transactions which are the subject of a civil
6 suit or an administrative civil money penalty proceeding in
7 which the State is already a party.

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

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

14 (2) In a state legislative or other state report, hearing,
15 audit, or investigation; or

16 (3) By the news media,
17 unless the action is brought by the attorney general or the
18 person bringing the action is an original source of the
19 information.

20 (c) For purposes of this section[+

21 "Original], "original source" means an individual who [has
22 direct and independent knowledge of the information on which the



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



Report Title:

False Claims to the State

Description:

Brings the State's false claims laws in compliance with the federal False Claims Act to meet federal requirements that state laws provide the same or greater protections as those established under the Social Security Act. (SD2)

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