



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1176, S.D. 2, RELATING TO FALSE CLAIMS TO THE STATE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICARY

DATE: Monday, March 11, 2019

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Dawn S. Shigezawa, Deputy Attorney General, or
Michael L. Parrish, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General supports this amendment to the Hawaii False Claims Act (HFCA). The bill proposes an increase in HFCA penalties, which have not changed since 2012. The HFCA penalty provisions are outdated and deficient because they do not meet a federal mandate that HFCA penalties match the Federal False Claims Act (FFCA) penalties. A consequence of the deficiency is that the State forfeits ten percent of its potential penalty in parallel state and federal proceedings. The amendment will realign the HFCA penalties with the FFCA, 31 U.S.C. § 3729(a), and will enable the State to again retain an additional ten percent penalty in every joint recovery.

The HFCA became law in 2001, and its penalty provisions were amended and increased in 2012. The purpose of that increase was, as it is here, to align the HFCA with the FFCA in order to retain additional penalties in joint actions with the Federal government. In 2016, the Federal government incorporated automatic, periodic, upward adjustments to its FFCA penalty provisions to account for inflation, rather than repeatedly proffering legislation designed to increase penalties. FFCA damages are now subject to periodic increases in accordance with section 1909(b)(4) of the Federal Civil Penalties Inflation Adjustment Act Improvements Act (Act). The State must periodically increase its penalty provisions to reflect changes in the FFCA or lose ten percent of its potential penalty in every case. Absent automatic upward adjustments, as

proposed in this amendment, the State will need to amend the HFCA repeatedly or risk forfeiture of the additional ten percent. This proposal simply incorporates the FFCA penalty provisions into the HFCA, thereby triggering automatic parallel increases consistent with the FFCA.

The amendment will cover any and all parallel HFCA and FFCA cases regardless of the government entity. The Office of the Inspector General of the United States Department of Health and Human Services (HHSOIG) granted Hawai'i a grace period until December 31, 2018, to amend the HFCA and resubmit it for approval in order to retain the ten percent in HFCA cases involving Medicaid Fraud. A similar bill offered last session did not make it out of committee. As a consequence the State will no longer receive the additional share unless and until the deficiency is addressed.

This bill will bring Hawai'i into compliance with the federal mandate by automatically matching the FFCA damages. It will enable incremental upward adjustments to the HFCA, as may occur from time to time in the FFCA, by simply referencing and adopting the FFCA civil monetary damages provision.

As introduced, this bill proposed to increase the maximum amount of civil penalty from \$11,000 to \$22,927, which is the expected amount for 2019 based on the cost-of-living adjustment multiplier for 2019 that was specified by the Office of Management and Budget (see the justification sheet attached to the original bill). The Senate Committee on Ways and Means changed the 2019 amount to the 2018 amount of \$22,363. To have HFCA the same 2019 amount as the FFCA when this bill is enacted, we recommend changing the maximum penalty amount on page 4, line 17, from \$22,363 to \$22,927.

For the foregoing reasons the Department of the Attorney General urges the recommended amendment and passage of this measure to conform to the federal mandate that the HFCA remain consistent with the penalty provisions of the FFCA in perpetuity in order to maximize HFCA recoveries.

SB-1176-SD-2

Submitted on: 3/9/2019 10:33:57 AM

Testimony for JUD on 3/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments: