

ACT 68

S.B. NO. 1176

A Bill for an Act Relating to False Claims to the State.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 1909 of the Social Security Act, title 42 United States Code section 1396h, provides a ten-percentage-point increase in a state's share of any amounts recovered under a false claims act if the state's false claims act meets the requirements set forth in section 1909 to qualify for the financial incentive. Section 1909(b)(4) of the Social Security Act requires the civil penalty for false claims to the State to be not less than the amount of the civil penalty authorized under the federal False Claims Act, title 31 United States Code section 3729, as that civil monetary penalty amount may increase pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, title 31 United States Code section 3717. The Inspector General of the United States Department of Health and Human Services has determined that Hawaii's false claims act no longer meets the requirements of section 1909 of the Social Security Act because the penalty amounts in Hawaii's false claims act are less than the increased penalty amounts authorized by federal rule pursuant to the federal False Claims Act. The Department of Justice adopted this rule pursuant to federal law inflation adjustment provisions based on the United States Consumer Price Index for all urban consumers, as published by the United States Department of Labor Bureau of Labor Statistics and the cost-of-living inflation multiplier determined by the United States Office of Management and Budget.

The purpose of this Act is to continue to meet the qualifying financial incentive requirements provided by section 1909 of the Social Security Act by:

- (1) Increasing penalty amounts for false claims to the State to be the same as the penalty amounts for 2019 under the federal False Claims Act; and
- (2) Providing that the penalty amounts in Hawaii's false claims act for the year 2020 and thereafter shall be the same amounts and for the same effective dates as the penalty amounts adjusted and adopted by the United States Department of Justice for the federal False Claims Act.

SECTION 2. Section 661-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Notwithstanding section 661-7 to the contrary, any person who:
- (1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
 - (3) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or to wilfully conceal the property, delivers, or causes to be delivered, less

property than the amount for which the person receives a certificate or receipt;

- (4) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who is not lawfully authorized to sell or pledge the property;
- (6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State;
- (7) Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim; or
- (8) Conspires to commit any of the conduct described in this subsection, shall be liable to the State for a civil penalty of not less than ~~[\$5,500]~~ \$11,463 and not more than ~~[\$11,000;]~~ \$22,927, plus three times the amount of damages that the State sustains due to the act of that person[-]; provided that for 2020 and annually thereafter, the minimum and maximum penalty amounts shall be the same as the minimum and maximum civil monetary penalty amounts authorized for the federal False Claims Act, title 31 United States Code section 3729, adjusted for cost-of-living adjustments and for the same effective dates, as adopted by the United States Department of Justice by federal rule in title 28 Code of Federal Regulations part 85, pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, title 31 United States Code section 3717."

SECTION 3. The increased minimum and maximum civil penalty amounts in section 661-21(a), Hawaii Revised Statutes, as amended pursuant to section 2 of this Act shall apply to violations that occurred after November 2, 2015, and to assessments of civil penalties made after the effective date of this Act.

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2019.)