

**ACT 131**

S.B. NO. 228

A Bill for an Act Relating to Fraud.

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

SECTION 1. The legislature finds that the house of representatives adopted House Resolution No. 9 Regular Session of 2022 to establish the

commission to improve standards of conduct. The resolution requested the commission to ensure that state laws and rules relating to standards of conduct for public officers and employees contain clear provisions for standards, enforcement, and penalties. The resolution also asked the commission to provide recommendations to increase awareness of, compliance with, and the deterrent effects of the code of ethics, lobbying laws, campaign finance laws, and other relevant laws and rules.

The legislature further finds that an essential goal of the commission was to provide recommendations that would help restore public trust in state government and increase the levels of government transparency and individual accountability. The strength and stability of our democratic government rely upon the public's trust in government institutions, including the expectation that officers act ethically and with prudence, integrity, and sound judgment.

The legislature notes that, pursuant to House Resolution No. 9, the commission to improve standards of conduct convened regularly throughout 2022 to diligently review, discuss, and consider the issues presented. The commission submitted an interim report to the house of representatives outlining areas of immediate and long-term focus and then continued its work with input from the public and invited individuals and agencies. The commission issued a final report with various recommendations and proposed legislation.

Accordingly, the purpose of this Act is to implement the commission's recommendations to improve standards of conduct relating to combatting fraud, waste, and corruption by:

- (1) Establishing a general fraud statute that is intended to cover schemes or artifices to obtain financial or other gains by means of false or fraudulent pretenses, representations, or promises;
- (2) Establishing the offense of making a false, fictitious, or fraudulent claim against the State or any county; and
- (3) Prohibiting the use of false statements or entries in matters within the jurisdiction of the executive, legislative, or judicial branches of the State.

The legislature also notes that this Act is modeled after the following federal fraud statutes:

- (1) Title 18 United States Code section 287 (false, fictitious, or fraudulent claims);
- (2) Title 18 United States Code section 1001 (false statements or entries);
- (3) Title 18 United States Code section 1341 (mail fraud);
- (4) Title 18 United States Code section 1343 (wire fraud);
- (5) Title 18 United States Code section 1344 (bank fraud); and
- (6) Title 18 United States Code section 1346 (definition of "scheme or artifice to defraud").

Therefore, in applying this Act, state courts and counsel should look to federal case law and precedent for direction. It should be noted that references in the federal statutes to "mail" and "wire" merely provide the nexus for federal jurisdiction.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**“§708- Fraud.** (1) A person commits the offense of fraud if, with the intent to defraud, the person executes or attempts to execute any scheme or

artifice to defraud or for the purpose of obtaining money or property by means of false or fraudulent pretenses, representations, or promises.

(2) For purposes of this section, “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

(3) Fraud shall be a class B felony.”

SECTION 3. Chapter 710, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§710- Making a false, fictitious, or fraudulent claim.** (1) A person commits the offense of making a false, fictitious, or fraudulent claim against the State or a county if the person makes or presents to any agent of the State, counties, or any department or agency thereof any claim upon or against the State, county, department, or agency that the person knows to be false, fictitious, or fraudulent.

(2) Making a false, fictitious, or fraudulent claim against the State or a county shall be a class C felony.

**§710- Use of false statements or entries; generally.** (1) Except as otherwise provided in this section, a person commits the offense of use of false statements or entries if, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the State, the person intentionally or knowingly:

- (a) Falsifies, conceals, or covers up a material fact by any trick, scheme, or device;
- (b) Makes any materially false, fictitious, or fraudulent statement or representation;
- (c) Makes any false writing or document knowing the writing or document contains any materially false, fictitious, or fraudulent statement or entry; or
- (d) Uses any false writing or document knowing the writing or document contains any materially false, fictitious, or fraudulent statement or entry for the purpose of presenting any statement or entry as true or for the purpose of substantiating any conclusion that is made more likely by any statement or entry.

(2) Subsection (1) shall not apply to a party to a judicial proceeding, or that party’s counsel, for statements, representations, writings, or documents submitted by the party or counsel to a judge or magistrate in the proceeding.

(3) With respect to any matter within the jurisdiction of the legislature, subsection (1) shall apply only to:

- (a) Administrative matters, including:
  - (i) A claim for payment;
  - (ii) A matter related to the procurement of property or services;
  - (iii) Personnel or employment practices;
  - (iv) Support services; or
  - (v) A document required by law or rule to be submitted to the legislature or any office or officer within the legislature; or
- (b) Any investigation or review conducted pursuant to the authority of any committee, subcommittee, commission, or office of the legislature, consistent with applicable rules of the senate or house of representatives.

(4) Use of false statements or entries shall be a class C felony.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 29, 2023.)

**Note**

1. Edited pursuant to HRS §23G-16.5.