

S.B. NO. 2744

JAN 24 2018

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

3 “(a) Notwithstanding section 661-7 to the contrary, any
4 person who:

5 (1) Knowingly presents, or causes to be presented, a false
6 or fraudulent claim for payment or approval;

7 (2) Knowingly makes, uses, or causes to be made or used, a
8 false record or statement material to a false or
9 fraudulent claim;

10 (3) Has possession, custody, or control of property or
11 money used, or to be used, by the State and, intending
12 to defraud the State or to wilfully conceal the
13 property, delivers, or causes to be delivered, less
14 property than the amount for which the person receives
15 a certificate or receipt;

16 (4) Is authorized to make or deliver a document certifying
17 receipt of property used, or to be used by the State
18 and, intending to defraud the State, makes or delivers

S.B. NO. 2744

1 the receipt without completely knowing that the
2 information on the receipt is true;

3 (5) Knowingly buys, or receives as a pledge of an
4 obligation or debt, public property from any officer
5 or employee of the State who is not lawfully
6 authorized to sell or pledge the property;

7 (6) Knowingly makes, uses, or causes to be made or used, a
8 false record or statement material to an obligation to
9 pay or transmit money or property to the State, or
10 knowingly conceals, or knowingly and improperly avoids
11 or decreases an obligation to pay or transmit money or
12 property to the State;

13 (7) Is a beneficiary of an inadvertent submission of a
14 false claim to the State, who subsequently discovers
15 the falsity of the claim, and fails to disclose the
16 false claim to the State within a reasonable time
17 after discovery of the false claim; or

18 (8) Conspires to commit any of the conduct described in
19 this subsection,

20 shall be liable to the State for a civil penalty of not less
21 than \$5,500 and not more than \$11,000, [~~plus three times the~~
22 ~~amount of damages that the State sustains due to the act of that~~
23 ~~person.] except that these upper and lower limits on liability~~

S . B . N O . 2744

1 shall automatically increase to equal the civil penalty allowed
2 under the federal False Claims Act, 31 U.S.C. sec. 3729, et
3 seq., if and as the penalties in that federal act may be
4 adjusted for inflation as described in that act in accordance
5 with the federal Civil Penalties Inflation Adjustment Act of
6 1990, Pub. L. No. 101-410, plus three times the amount of
7 damages that the State sustains because of the act of that
8 person."


9 SECTION 2. Statutory material to be repealed is
10 bracketed and stricken. New statutory material is underscored.

11 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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BY REQUEST

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S.B. NO. 2744

Report Title:

False Claims to the State

Description:

Amends false claims to the State statute by increasing penalties to maintain consistency with the federal False Claims Act and in order to comply with the federal Civil Penalties Inflation Adjustment Act of 1990. Consistency will enable the State of Hawaii to receive a larger share of recoveries where parallel federal and state false claims cases produce penalties that are shared by the federal and state governments. Failure to maintain consistency could result in the State receiving a smaller share than would be permitted under the present model.

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

SB. NO. 2744

JUSTIFICATION SHEET

DEPARTMENT: ATG

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

PURPOSE: To satisfy the Federal Government mandate that Hawai'i's False Claims Act provide for monetary penalties equal to or greater than corresponding provisions in the Federal False Claims Act in order for Hawai'i to continue to recoup its maximum share of restitution and penalties in parallel False Claims Act cases prosecuted in both Federal court and Hawai'i State court.

MEANS: To amend Section 661-21(a)(8), Hawai'i Revised Statutes.

JUSTIFICATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, mandated an increase in the civil penalties authorized under the Federal False Claims Act. Effective August 1, 2016, the civil penalties authorized under the Federal False Claims Act increased to a range of \$10,781.00 to \$21,563.00 per false claim, while Hawai'i's remained at \$5,500.00 to \$11,000.00 per false claim. As a consequence the Federal Government forewarned that Hawai'i may fall out of compliance with the mandate that requires of Hawai'i that its penalties equal or exceed those provided for in the Federal False Claims Act. The Federal Government has allowed a grace period for Hawai'i to bring its penalty provisions in its False Claims Act in line with the Federal False Claims Act penalty provisions. That grace period will expire in December of 2018. Additionally, and prospectively, every August the Federal False Claims Act

penalties are expected to increase. It is incumbent on Hawai'i to ensure that its False Claims Act penalties increase commensurate with those increases in the Federal False Claims Act. In order to fulfill Hawai'i's obligation to match any and all penalty increases in the Federal False Claims Act there must be a corresponding mechanism that automatically tracks the Federal increases, or, in the alternative, the Hawai'i False Claims Act statute must be amended every time there is an increase in the Federal False Claims Act penalties. A corresponding mechanism is more efficient, practical, and preferred to frequent statutory amendments.

Impact on the public: The public will benefit from the amendment because the State will remain in position to maximize its recoveries in cases where State money is taken illegally and False Claims Act prosecution is successful.

Impact on the department and other agencies: There is no impact on the department. All State agencies will benefit from additional monetary recoveries involving fraud committed against the State and Federal governments simultaneously.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: None

OTHER AFFECTED

AGENCIES:

Potentially, any State agency that suffers monetary loss from fraudulent government contractors will benefit from the amendment.

EFFECTIVE DATE: Upon approval.