



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 21, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY
For more information contact, Dawn S. Shigezawa, Deputy
Attorney General or Michael L. Parrish, Deputy Attorney General

Chair Dela Cruz 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 The HFCA penalty provisions are outdated and deficient because they do not meet a federal mandate that HFCA penalties match the Federal False Claims Act (FFCA) penalties.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 civil penalties 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 on 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 civil penalty amounts. 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 penalty amounts adopted by the United States Department of Justice.

For the foregoing reasons the Department of the Attorney General urges 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.