

JAN 24 2019

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 1909 of the Social Security Act (42
2 U.S.C. § 1396h), provides a ten-percentage-point increase in a
3 state's share of any amounts recovered under false claims act if
4 the state's false claims act meets the requirements set forth in
5 section 1909 to qualify for the financial incentive. Section
6 1909(b)(4) of the Social Security Act requires the penalties for
7 false claims to the State to be not less than the amounts of the
8 civil penalty authorized under the Federal False Claims Act (31
9 U.S.C. § 3729), as those civil monetary penalty amounts may
10 increase pursuant to the Federal Civil Penalties Inflation
11 Adjustment Act of 1990 (P.L. 101-410), as amended and codified
12 at title 28 United States Code section 2461 note. The Inspector
13 General of the United States Department of Health and Human
14 Services has determined that Hawaii's false claims act no longer
15 meets the requirements of section 1909 of the Social Security
16 Act, because the penalty amounts in Hawaii's false claims act
17 are less than the increased penalty amounts authorized for the
18 Federal False Claims Act that were adopted by federal rule by

S.B. NO. 1176

1 the United States Department of Justice pursuant to federal law
2 inflation adjustment provisions that are based on the United
3 States Consumer Price Index for all urban consumers published by
4 the Bureau of Statistics of the United States Department of
5 Labor and the cost-of-living inflation multiplier determined by
6 the United States Office of Management and Budget of the
7 Executive Office of the President.

8 The purposes of this Act are to increase penalty amounts
9 for false claims to the State to be the same as the penalty
10 amounts for 2019 under the Federal False Claims Act and to
11 provide that the penalty amounts in Hawaii's false claims act
12 for the year 2020 and thereafter be the same amounts and for the
13 same effective dates as the penalty amounts adjusted and adopted
14 by the United States Department of Justice for the Federal False
15 Claims Act, in order to continue to meet the requirements to
16 qualify for the financial incentive provided by section 1909 of
17 the Social Security Act.

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

20 "(a) Notwithstanding section 661-7 to the contrary, any
21 person who:

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

S.B. NO. 1176

- 1 (2) Knowingly makes, uses, or causes to be made or used, a
2 false record or statement material to a false or
3 fraudulent claim;
- 4 (3) Has possession, custody, or control of property or
5 money used, or to be used, by the State and, intending
6 to defraud the State or to wilfully conceal the
7 property, delivers, or causes to be delivered, less
8 property than the amount for which the person receives
9 a certificate or receipt;
- 10 (4) Is authorized to make or deliver a document certifying
11 receipt of property used, or to be used by the State
12 and, intending to defraud the State, makes or delivers
13 the receipt without completely knowing that the
14 information on the receipt is true;
- 15 (5) Knowingly buys, or receives as a pledge of an
16 obligation or debt, public property from any officer
17 or employee of the State who is not lawfully
18 authorized to sell or pledge the property;
- 19 (6) Knowingly makes, uses, or causes to be made or used, a
20 false record or statement material to an obligation to
21 pay or transmit money or property to the State, or
22 knowingly conceals, or knowingly and improperly avoids

1 or decreases an obligation to pay or transmit money or
2 property to the State;

3 (7) Is a beneficiary of an inadvertent submission of a
4 false claim to the State, who subsequently discovers
5 the falsity of the claim, and fails to disclose the
6 false claim to the State within a reasonable time
7 after discovery of the false claim; or

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

10 shall be liable to the State for a civil penalty of not less
11 than [~~\$5,500~~] \$11,463 and not more than [~~\$11,000,~~] \$22,927, plus
12 three times the amount of damages that the State sustains due to
13 the act of that person[-]; provided that, for 2020 and annually
14 thereafter, the minimum and maximum penalty amounts shall be the
15 same as the civil monetary penalty minimum and maximum amounts
16 authorized for the Federal False Claims Act (31 U.S.C. § 3729)
17 adjusted for cost-of-living adjustments and for the same
18 effective dates, as adopted by the United States Department of
19 Justice by federal rule in title 28 Code of Federal Regulations
20 part 85, pursuant to the Federal Civil Penalties Inflation
21 Adjustment Act of 1990 (P.L. 101-410), as amended and codified
22 at title 28 United States Code section 2461 note."

S.B. NO. 1176

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

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

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

9

10

INTRODUCED BY: *M. W. M.*

11

BY REQUEST

S.B. NO. 1176

Report Title:

False Claims to the State

Description:

Amends false claims statute, section 661-21 (a), Hawaii Revised Statutes, to increase civil monetary penalty minimum and maximum amounts to maintain consistency with federal law so that the State can continue to maximize it's recoveries in cases where State money is taken illegally and False Claims Act prosecution is successful.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: To amend the Hawaii false claims statute, section 661-21(a), Hawaii Revised Statutes, to increase the civil monetary penalty minimum and maximum amounts to maintain consistency with the Federal False Claims Act as adjusted for cost-of-living adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended and codified at 28 U.S.C. section 2461 note, and to provide for the minimum and maximum penalty amounts for 2020 and annually thereafter to be same civil penalty amounts and for the same effective dates as adopted by the United States Department of Justice for the Federal False Claims Act, to meet requirements for the federal financial incentive provided by section 1909 of the Social Security Act.

MEANS: Amend section 661-21(a), Hawaii Revised Statutes.

JUSTIFICATION: Section 1909 of the Social Security Act (42 U.S.C. § 1396h) provides a ten-percentage-point increase in the State's share of any amount recovered under a state action under a false or fraudulent claim law if the State has a false claims act that meets the requirements set forth in section 1909. While amounts are not consistent from year to year, for example for recoveries from fiscal years 2016 and 2017, Hawaii received \$877,625 more due to the ten-percentage-point financial incentive.

However, section 1909(b)(4) of the Social Security Act requires that the State's false

or fraudulent claims law contain a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code, the Federal False Claims Act. The civil monetary penalty amounts in Hawaii's statute, section 661-21(a), Hawaii Revised Statutes, are less than the civil monetary penalty authorized under the Federal False Claims Act and 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.

The Inspector General of the United States Department of Health and Human Services granted Hawaii a grace period expiring on December 31, 2018, to amend Hawaii's false claims act. During the regular session of 2018, S.B. No. 2744 and H.B. No. 2317 were introduced to amend Hawaii's false claims act, but neither bill passed.

The Federal False Claims Act in section 3729 sets forth the civil penalty as "not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person." The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410), as amended, requires federal agencies to annually apply a cost-of-living adjustment. As previously adjusted, the civil monetary penalty amounts of the Federal False Claims Act have increased to a minimum amount of \$11,181 and a maximum amount of \$22,363 as of January 29, 2018.

The Office of Management and Budget Memorandum specified that the cost-of-living adjustment multiplier for 2019 is 1.02522. Applying that multiplier to the 2018 minimum and maximum federal civil monetary penalty amounts for the Federal False Claims Act

indicates that the United States Department of Justice will amend 28 Code of Federal Regulations part 85, "Civil Monetary Penalties Inflation Adjustment," to establish the 2019 civil monetary penalty amounts to be a minimum of \$11,463 and a maximum of \$22,927, which amounts are set forth as the new minimum and maximum penalty amounts in the bill for section 661-21(a).

In addition, the federal rule will specify the effective dates of the adjusted civil penalty amounts. This bill will also make the effective dates adopted for the Federal False Claims Act civil monetary penalty by the United States Department of Justice to be applicable to the adjusted minimum and maximum penalty amounts for Hawaii's false claims act.

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.