

JAN 19 2023

A BILL FOR AN ACT

RELATING TO FRAUD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the house of
2 representatives adopted House Resolution No. 9 (2022) to
3 establish the commission to improve standards of conduct. The
4 resolution requested the commission to ensure that state laws
5 and rules relating to standards of conduct for public officers
6 and employees contain clear provisions for standards,
7 enforcement, and penalties. The resolution also asked the
8 commission to provide recommendations to increase awareness of,
9 compliance with, and the deterrent effects of the code of
10 ethics, lobbying laws, campaign finance laws, and other relevant
11 laws and rules.

12 The legislature further finds that an essential goal of the
13 commission was to provide recommendations that would help
14 restore public trust in state government and increase the levels
15 of government transparency and individual accountability. The
16 strength and stability of our democratic government rely upon
17 the public's trust in government institutions, including the



1 expectation that officers act ethically and with prudence,
2 integrity, and sound judgment.

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

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

- 15 (1) Establishing the offense of making a false, frivolous,
16 or fraudulent claim against the State or any county;
- 17 (2) Prohibiting the use or making of false statements or
18 entries in matters within the jurisdiction of the
19 executive, legislative, or judicial branches of the
20 State; and



1 (3) Establishing a general fraud statute that is intended
2 to cover schemes to obtain financial or other gains by
3 means of false statements, misrepresentations,
4 concealment of important information, or deception.

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

7 (1) Title 18 United States Code section 287 (false
8 claims);

9 (2) Title 18 United States Code section 1001 (false
10 statements);

11 (3) Title 18 United States Code section 1341 (mail fraud);

12 (4) Title 18 United States Code section 1343 (wire fraud);

13 (5) Title 18 United States Code section 1344 (bank fraud);
14 and

15 (6) Title 18 United States Code section 1346 (definition
16 of "scheme or artifice to defraud").

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



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

4 "§708- Fraud. (1) A person commits the offense of
5 fraud if, with the intent to defraud, the person executes or
6 attempts to execute any scheme or artifice to defraud or for the
7 purpose of obtaining money or property by means of false or
8 fraudulent pretenses, representations, or promises.

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

12 (3) Fraud is a class B felony, and a person convicted
13 under this section shall be sentenced to a mandatory minimum
14 term of imprisonment of one year, without the possibility of
15 probation."

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

19 "§710- False, fictitious, or fraudulent claims. (1) A
20 person commits the offense of making a false, fictitious, or
21 fraudulent claim against the State or a county if the person



1 makes or presents to any agent of the State, counties, or any
2 department or agency thereof, any claim upon or against the
3 State, county, department, or agency, that the person knows to
4 be false, fictitious, or fraudulent.

5 (2) Any person charged under this section shall not be
6 eligible for a deferred acceptance of guilty plea or nolo
7 contendere plea under chapter 853.

8 (3) Making a false, fictitious, or fraudulent claim
9 against the State or a county is a class C felony.

10 **§710- Use of false statements or entries; generally.**

11 (1) Except as otherwise provided in this section, a person
12 commits the offense of using or making false statements or
13 entries if, in any matter within the jurisdiction of the
14 executive, legislative, or judicial branch of the State, the
15 person knowingly and wilfully:

16 (a) Falsifies, conceals, or covers up a material fact by
17 any trick, scheme, or device;

18 (b) Makes any materially false, fictitious, or fraudulent
19 statement or representation; or



1 (c) Makes or uses any false writing or document knowing
2 the writing or document contains any materially false,
3 fictitious, or fraudulent statement or entry.

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

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

10 (a) Administrative matters, including:

11 (i) A claim for payment;

12 (ii) A matter related to the procurement of property
13 or services;

14 (iii) Personnel or employment practices;

15 (iv) Support services; or

16 (v) A document required by law, rule, or regulation
17 to be submitted to the legislature or any office
18 or officer within the legislature; or

19 (b) Any investigation or review conducted pursuant to the
20 authority of any committee, subcommittee, commission,
21 or office of the legislature, consistent with



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1 applicable rules of the senate or house of
 2 representatives."

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

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

12 SECTION 6. New statutory material is underscored.

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

14

INTRODUCED BY: *M. J. ...*
 By Request



S.B. NO. 228

Report Title:

Honolulu Prosecuting Attorney Package; Public Corruption; Fraud; Criminal Offenses; Penalties

Description:

Establishes the offense of fraud as a class B felony.
Establishes the offense of making a false, fictitious, or fraudulent claim against the State or a county as a class C felony. Establishes the offense of the use of false statements or entries in matters within the jurisdiction of the executive, legislative, or judicial branches of the State as a class C felony.

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

