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## The Hawaii False Claims Act

### Executive Summary

The Hawaii False Claims Act ("HFCA") helps the state government combat fraud and recover losses resulting from fraud in state programs, purchases, or contracts. Haw. Rev. Stat. §§ 661-21 to 661-29. Hawaii has also enacted a separate law applying false claims to counties. Haw. Rev. Stat. §§ 46-171 to 46-179.

### Liability and Damages/Statute of Limitations

- The actions that violate the HFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the HFCA if he or she does not disclose the false claim soon after he or she discovers it.
- Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state or county for HFCA violations may be imposed.
- A civil suit must be filed within six years after the violation was discovered, but no more than ten years after the violation was committed.

### *Qui Tam Actions*

- An individual (or *qui tam* plaintiff) can sue for violations of the HFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The HFCA contains no special protections for whistleblowers.

### County False Claims Law

The county false claims law is virtually identical to that of the state false claims law, except that its provisions reflect the fact that the government is a county.

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## Summary of Key Provisions

### False Claims § 661-21; § 46-171

#### **Liability § 661-21(a); § 46-171(a)**

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim to the state or county for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the state or county;
- Conspiring to get a false claim allowed or paid by the state or county;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the state or county money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the state or county;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the state or county who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or county; or
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or county within a reasonable time after discovery.

A person will be liable for:

- A civil penalty \$5,000 to \$10,000 for each false claim;
- Three times the amount of damages that the state or county sustains because of the violations; and
- The costs of a civil suit for recovery of damages.

#### **Eligibility for Reduction in Penalty § 661-21(b); § 46-171(b)**

The court may reduce the damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the state or county responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the state or county investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

#### **Joint and Several Liability § 661-21(c); § 46-171(c)**

Liability is joint and several for any act committed by two or more persons.

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**Exclusion § 661-21(d); § 46-171(d)**

The law does not apply to controversies of less than \$500 or to claims filed under the tax code.

**Definitions § 661-21(e); § 46-171(e)**

**Knowing and Knowingly**

"Knowing" and "Knowingly" means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

**Claim**

"Claim" includes any request or demand for money or property made to the state or county government (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the state or county.

**Civil Actions for False Claims**

**Responsibilities of the Attorney General or County Counsel § 661-22; § 46-172**

The Attorney General or county counsel is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

**Actions by Private Persons or *Qui Tam* Plaintiffs § 661-25; § 46-175**

An individual also has the right to file a civil suit for him or herself and for the state or county. The suit must be filed in the name of the state or county. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the purpose of the law. § 661-25(a); § 46-175(a).

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the state or county. § 661-25(b); § 46-175(b). Once the action is filed, no person other than the state or county is allowed to intervene or file a lawsuit based on the same facts. § 661-25(e); § 46-175(e).

**Rights of the Parties to *Qui Tam* Actions § 661-26; § 46-176**

If the state or county decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. § 661-26(a); § 46-176(a).

If the state or county decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The state or county can intervene later upon a showing of good cause. § 661-26(c); § 46-176(c).

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**Award to *Qui Tam* Plaintiff § 661-27; § 46-177**

If the state or county prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery § 661-27(a)

If the state or county decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. § 661-27(b). In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs. § 46-177(b).

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the ***qui tam*** plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award. § 661-27(c); § 46-177(c).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. § 661-27(d); § 46-177(d).

**Certain Actions Barred § 661-27 - § 661-28; § 46-177- § 46-178**

An individual cannot bring a *qui tam* action against a member of the state or county senate or house of representatives, a member of the judiciary, or an elected official in the executive branch of the state or county, based on evidence already known to the state or county. § 661-27(e)(1); § 46-177(e)(1).

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or county is already a party. § 661-27(e)(3); § 46-177(e)(3).

An individual cannot bring an *qui tam* action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based, who has voluntarily provided the information to the state or county before filing a civil action, and whose information was the catalyst for the investigation, report, audit or hearing that led to the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative or administrative report, hearing, audit, or investigation; or from the news media. § 661-28; § 46-178.

**Statute of Limitations § 661-24; § 46-174**

A civil suit must be brought within six years after the violation is discovered or should have been discovered, but no more than ten years after the violation was committed.

**Burden of Proof § 661-23; § 46-173**

The state or county or *qui tam* plaintiff must prove all essential elements of the cause of action by a preponderance of the evidence.

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**Government Not Liable for Certain Expenses § 661-29; § 46-179**

The state or county is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.