Hawaii False Claims Act (False Claims to the Counties)

(Haw. Rev. Stat. §§ 46-171 to 179)[i]

§ 46-171. Actions for false claims to the counties; qui tam actions.

(a) Any person who:

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

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

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

(4) Is authorized to make or deliver a document certifying receipt of property used, or to be used by a county and, intending to defraud a county, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(5) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of a county that the person knows is not lawfully authorized to sell or pledge the property;

(6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to a county, or knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a county;

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

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

shall be liable to the county for a civil penalty of not less than $5,500 and not more than $11,000, plus three times the amount of damages that the county sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

(1) Furnished officials of the county responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Fully cooperated with any county investigation of the violation; and

(3) At the time the person furnished the county with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

the court may assess not less than two times the amount of damages that the county sustains because of the act of the person. A person violating subsection (a), shall also be liable to the county for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

"Claim" means any request or demand, whether under a contract or otherwise, for money or property, and whether or not a county has title to the money or property, that is presented to an officer, employee, or agent of the county or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the county's behalf or to

advance a county program or interest, and if the county provides or has provided any portion of the money or property that is requested or demanded or will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. "Claim" shall not include requests or demands for money or property that a county has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"Knowing" and "knowingly" means that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

"Material" means having the tendency to influence or capability to influence the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute, regulation, or administrative rule, or from the retention of any overpayment.

§ 46-172. Civil actions for false claims.

The county corporation counsel or county attorney shall investigate any violation under section 46-171. If the corporation counsel or county attorney finds that a person has violated or is violating section 46-171, the corporation counsel or county attorney may bring a civil action under this section.

§ 46-173. Evidentiary determination; burden of proof.

A determination that a person has violated this part shall be based on a preponderance of the evidence.

§ 46-174. Statute of limitations.

An action for false claims to a county pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 46-171 is committed.

§ 46-175. Action by private persons.

(a) A person may bring a civil action for a violation of section 46-171 for the person and for a county. The action shall be brought in the name of the 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 public purposes behind this part.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the county in accordance with the Hawaii rules of civil procedure. The complaint:

(1) Shall be filed in camera;

(2) Shall remain under seal for at least sixty days; and

(3) Shall not be served on the defendant until the court so orders.

The county may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The county, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the county shall:

(1) Proceed with the action, in which case the action shall be conducted by the county and the seal shall be lifted; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the county may intervene or bring a related action based on the facts underlying the pending action.

§ 46-176. Rights of parties to qui tam actions.

(a) If a county proceeds with an action under section 46-175, the county shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:

(1) The county may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The county may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the county that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the county's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion, impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the county elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the county so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the county's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the county to intervene at a later date upon showing of good cause.

(d) Regardless of whether the county proceeds with the action, upon motion and a showing by the county that certain actions of discovery by the person initiating the action would interfere with the county's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty-day period upon a motion and showing by the county that the county has pursued the

investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 46-175, the county may elect to pursue its claim through any alternate remedy available to the county, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Regardless of whether the county elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

§ 46-177. Awards to qui tam plaintiffs.

(a) If a county proceeds with an action brought by a person under section 46-175, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If a county proceeds with an action brought under section 46-171, the county may file its own complaint or amend the complaint of a person who has brought an action under section 46-171 to clarify or add detail to the claims in which the county is intervening and to add any additional claims with respect to which the county contends it is entitled to relief. For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the county arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) If the county does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(d) Regardless of whether the county proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 46-171 upon which the action was brought, then the court, to the extent the court considers appropriate, may reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 46-171, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the county to continue the action.

(e) If the county does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(f) In no event may a person bring an action under section 46-175:

(1) Against any elected official of the county, if the action is based on evidence or information known to the county. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the county; or

(2) That is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the county is already a party.

§ 46-178. Repealed.

§ 46-179. Fees and costs of litigation.

A county shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.

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[i] Last updated June 26, 2014.