

H.B. NO. 1258

A BILL FOR AN ACT

RELATING TO ACTIONS FOR FALSE CLAIMS TO THE STATE.

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

1 SECTION 1. Section 661-26, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[[§661-26]] **Rights of parties to qui tam actions.** (a)

4 If the State proceeds with an action under section 661-25, the
5 State shall have the primary responsibility for prosecuting the
6 action and shall not be bound by an act of the person bringing
7 the action. The person shall have the right to continue as a
8 party to the action, subject to the following limitations:

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

13 (2) The State may settle the action with the defendant
14 notwithstanding the objections of the person
15 initiating the action if the court determines, after a
16 hearing, that the proposed settlement is fair,

1 adequate, and reasonable. Upon a showing of good
2 cause, the hearing may be held in camera;
3 (3) The court, upon a showing by the State that
4 unrestricted participation during the course of the
5 litigation by the person initiating the action would
6 interfere with or unduly delay the State's prosecution
7 of the case, or would be repetitious, irrelevant, or
8 for purposes of harassment, may, in its discretion
9 impose limitations on the person's participation by:
10 (A) Limiting the number of witnesses the person may
11 call;
12 (B) Limiting the length of the testimony of the
13 witnesses;
14 (C) Limiting the person's cross-examination of
15 witnesses; or
16 (D) Otherwise limiting the participation by the
17 person in the litigation.
18 (b) The defendant, by motion upon the court, may show that
19 unrestricted participation during the course of the litigation
20 by the person initiating the action would be for purposes of
21 harassment or would cause the defendant undue burden or

1 unnecessary expense. At the court's discretion, the court may
2 limit the participation by the person in the litigation.

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

12 (d) Whether or not the State proceeds with the action,
13 upon motion and a showing by the State that certain actions of
14 discovery by the person initiating the action would interfere
15 with the State's investigation or prosecution of a criminal or
16 civil matter arising out of the same facts, the court may stay
17 the discovery for a period of not more than sixty days. The
18 court may extend the sixty-day period upon a motion and showing
19 by the State that the State has pursued the investigation or
20 prosecution of the criminal or civil matter with reasonable
21 diligence and the proposed discovery would interfere with the

1 ongoing investigation or prosecution of the criminal or civil
2 matter.

3 (e) Notwithstanding section 661-25, the State may elect to
4 pursue its claim through any alternate remedy available to the
5 State, including any administrative proceedings to determine
6 civil monetary penalties. If any alternate remedy is pursued in
7 another proceeding, the person initiating the action shall have
8 the same rights in the proceedings as the person would have had
9 if the action had continued under this section. Any finding of
10 fact or conclusion of law made in the other proceeding that
11 becomes final shall be conclusive on all parties to an action
12 under this section.

13 (f) Whether or not the State elects to proceed with the
14 action, the parties to the action shall receive court approval
15 of any settlements reached.

16 (g) Whether or not the State proceeds with the action,
17 nothing in this part shall diminish any right of action or cause
18 for relief of any person who suffers retribution or
19 discrimination from an employer due to the person's reporting of
20 violations pursuant to section 661-21. A person who suffers
21 retribution or discrimination shall have all the rights and

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1 protections authorized by law, including those afforded under
2 the Whistleblowers' Protection Act, part V of chapter 378."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Colin K. Long
BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: To have our state false claims law meet the federal requirement that state law provide a cause of action for private persons who suffer retribution from employers for whistleblower activities related to the state false claims act.

MEANS: Amend section 661-26, Hawaii Revised Statutes.

JUSTIFICATION: Under the federal Deficit Reduction Act, states can receive a ten percent increase in its share of recoveries for false claims if the state false claims statute meets certain requirements. One requirement is that state law provide a cause of action for private persons who suffer retribution from employers for whistleblower activities related to the state false claims act. While the State provides protection to individuals under the Whistleblowers' Protection Act, the State false claims law does not specifically provide for such relief. This bill is intended to address concerns that the state false claims law may not meet federal requirements.

Impact on the public: Individuals may feel more protected and encouraged to participate in false claims actions against employers.

Impact on the department and other agencies: By putting the State in compliance with federal requirements, the State may be able to receive greater recoveries in false claims cases.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.