

JAN 25 2023

A BILL FOR AN ACT

RELATING TO STATE EMPLOYEES.

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

1 SECTION 1. The legislature finds that Act 44, Session Laws
2 of Hawaii 2022 (Act 44), clarified the personal liability
3 requirements for professionally licensed or certified employees
4 of the State. However, the legislature notes that Act 44 did
5 not clarify the circumstance under which the State will have a
6 duty to defend professionally licensed or certified state
7 employees.

8 The purpose of this Act is to:

- 9 (1) Clarify that the State shall have a duty to defend
10 professionally licensed or certified state employees
11 from civil actions when the employee was acting within
12 the scope of their employment and was not grossly
13 negligent or wanton; and
- 14 (2) Clarify that if the State refuses to defend any state
15 or county employee from civil actions on certain
16 grounds when the State would generally do so, that the



1 State is required to file a motion to be heard with
2 the court.

3 SECTION 2. Chapter 662, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§662- Defense of state employees; professionally
7 licensed; certified. The attorney general shall defend any
8 civil action or proceeding brought in any court against any
9 professionally licensed or certified employee of the State for
10 damage to property or personal injury, including death,
11 resulting from the act or omission of the professionally
12 licensed or certified state employee while acting within the
13 scope of the employee's employment; provided that the attorney
14 general shall have no obligation to defend when the civil action
15 or proceeding results from the professionally licensed or
16 certified state employee's gross negligence or wanton act or
17 omission; provided further that the professionally licensed or
18 certified state employee may employ an attorney, in lieu of the
19 attorney general, to defend any civil action or proceeding
20 brought in any court against the state employee at the
21 employee's own expense.



1 §662- Attorney general; decision not to defend, state
2 and county employees. If the attorney general refuses to defend
3 a civil action or proceeding against a state or county employee,
4 on the grounds that the civil action or proceeding results from
5 the employee's gross negligence or wanton act or omission, and
6 the employee would otherwise be entitled to a defense by the
7 attorney general, the attorney general shall file a motion
8 within thirty days of the close of discovery in the action or
9 proceeding. After the motion is filed, the employee shall have
10 not less than thirty days to respond to the motion. Upon the
11 attorney general's motion, the court shall conduct a hearing
12 regarding the attorney general's duty to defend the employee in
13 that civil action or proceeding."

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY: _____

Kal Rhoad



S.B. NO. 1490

Report Title:

State Employees; Professionally Licensed; Certified; Duty to Defend

Description:

Requires the State to defend professionally licensed or certified state employees from civil actions when the employee was acting within the scope of their employment and was not grossly negligent or wanton. Requires that if the State refuses to defend a state or county employee from civil actions on certain grounds, that the State file a motion to be heard with the court.

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