
A BILL FOR AN ACT

RELATING TO THE DEFENSE OF 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 circumstances under which the State has a duty
6 to defend professionally licensed or certified state employees.

7 The purpose of this Act is to:

- 8 (1) Declare that the State shall have a duty to defend
9 professionally licensed or certified state employees
10 from civil actions when the employee's actions were
11 within the scope of employment and were not grossly
12 negligent or wanton, as long as the employee is
13 cooperating with the State's defense;
- 14 (2) Clarify that professionally licensed or certified
15 state employees may employ their own attorney at the
16 employee's own expense;



1 (3) Require that, if the State declines to defend any
2 state employee from a civil action on certain grounds
3 when the State would generally do so, the attorney
4 general shall work with the professionally licensed or
5 certified state employee to amicably transfer
6 representation to the replacement counsel chosen by
7 the professionally licensed or certified state
8 employee;

9 (4) Require that, if the attorney general and the
10 professionally licensed or certified state employee
11 cannot amicably transfer representation to the
12 replacement counsel and the attorney general
13 determines that a motion to withdrawal as counsel is
14 required to be filed, the attorney general shall file
15 a motion to withdraw as counsel in a manner that will
16 not prejudice the professionally licensed or certified
17 state employee in the action or proceeding;

18 (5) Establish a procedure that allows the attorney general
19 to withdraw from representing a professionally
20 licensed or certified state employee without



1 prejudicing the professionally licensed or certified
2 state employee in the action or proceeding; and
3 (6) Confirm that the legislature finds that the prejudice
4 that the professionally licensed or certified state
5 employee will suffer from the public disclosure of the
6 reasons why the attorney general is withdrawing from
7 representation outweighs the public's right to access
8 said information.

9 SECTION 2. Chapter 662, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§662- Defense of state employees; professionally
13 licensed; certified; decision not to defend. (a) The attorney
14 general, on behalf of the State, shall defend any civil action
15 or proceeding brought in any court against any professionally
16 licensed or certified employee of the State for damage to
17 property or personal injury, including death, resulting from the
18 act or omission of the professionally licensed or certified
19 state employee while acting within the scope of the employee's
20 employment; provided that the attorney general shall have no
21 obligation to defend when the civil action or proceeding results



1 from the professionally licensed or certified state employee's
2 gross negligence or wanton act or omission, or if the employee
3 does not provide all information and assistance that the
4 attorney general deems necessary to the defense of the employee.

5 (b) The professionally licensed or certified state
6 employee may employ an attorney at the employee's own expense,
7 in lieu of the attorney general, to defend any civil action or
8 proceeding brought in any court against the employee.

9 (c) If the attorney general declines to defend a civil
10 action or proceeding against a state employee on the grounds
11 that the civil action or proceeding results from the employee's
12 gross negligence or wanton act or omission or that the employee
13 will not provide all information and assistance that the
14 attorney general deems necessary, and the employee would
15 otherwise be entitled to representation by the attorney general,
16 the attorney general shall work with the professionally licensed
17 or certified state employee to amicably transfer representation
18 to the replacement counsel chosen by the professionally licensed
19 or certified state employee.

20 (d) If the attorney general and the professionally
21 licensed or certified state employee cannot amicably transfer



1 representation to the replacement counsel and the attorney
2 general determines that a motion to withdraw as counsel is
3 required to be filed, the attorney general shall file a motion
4 to withdraw as counsel not less than thirty days before the
5 close of discovery in the action or proceeding.

6 (e) Any motion to withdraw as counsel, and all related
7 pleadings, records, notices, exhibits, and other evidence
8 regarding the motion, shall be designated as confidential and
9 shall be submitted by means of a confidential information form
10 or other appropriate manner pursuant to court rule.

11 (f) After the motion to withdraw as counsel is filed, the
12 employee shall have not less than thirty days to respond to the
13 motion.

14 (g) Upon the attorney general's motion to withdraw as
15 counsel, the court shall conduct a hearing regarding the
16 attorney general's duty to defend the employee in the civil
17 action or proceeding.

18 (h) At any proceeding regarding the motion to withdraw as
19 counsel, only the court, court personnel, attorney general,
20 employees of and counsel retained by the department of the
21 attorney general, employee, and employee's attorney, if



1 retained, and other individuals approved by the court may be
2 present."

3 SECTION 3. 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 4. New statutory material is underscored.

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



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, or failing to cooperate. Clarifies that the employee may employ their own attorney at the employee's own expense. Requires that if the State refuses to defend a state employee from civil actions on certain grounds, the Attorney General shall first work with the employee to amicably transfer representation to the replacement counsel, and if necessary, file a motion to withdraw as counsel as a confidential document. (SD1)

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

