
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 Act 44 also did not establish a procedure that would allow the
8 attorney general to confidentially withdraw from representing a
9 professionally licensed or certified state employee. The
10 legislature believes that the prejudice that the professionally
11 licensed or certified state employee would suffer from the
12 public disclosure of the attorney general's reasons for
13 withdrawing from representation outweighs the public's right to
14 access said information.

15 Accordingly, the purpose of this Act is to:

- 16 (1) Declare that the State has a duty to defend
17 professionally licensed or certified state employees



1 from civil actions when the employee's actions were
2 within the scope of employment and were not grossly
3 negligent or wanton, as long as the employee is
4 cooperating with the State's defense;

5 (2) Clarify that professionally licensed or certified
6 state employees may employ their own attorneys at
7 their own expense;

8 (3) Require the attorney general to work with the
9 professionally licensed or certified state employee to
10 amicably transfer representation to the successor
11 counsel chosen by the employee if the State declines
12 to defend the employee from a civil action on certain
13 grounds; and

14 (4) Require the attorney general to file a confidential
15 motion to withdraw as counsel if the attorney general
16 and professionally licensed or certified state
17 employee cannot amicably transfer representation to
18 the successor counsel.

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



1 "§662- Defense of professionally licensed or certified
2 state employees; decision not to defend. (a) The attorney
3 general, on behalf of the State, shall defend any civil action
4 or proceeding brought in any court against any professionally
5 licensed or certified employee of the State for damage to
6 property or personal injury, including death, resulting from the
7 act or omission of the professionally licensed or certified
8 state employee while acting within the scope of the employee's
9 employment; provided that the attorney general shall have no
10 obligation to defend when the civil action or proceeding results
11 from the professionally licensed or certified state employee's
12 gross negligence or wanton act or omission, or if the employee
13 does not provide all information and assistance that the
14 attorney general deems necessary to the defense of the employee.

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

19 (c) If the attorney general declines to defend a civil
20 action or proceeding against a professionally licensed or
21 certified state employee who was acting within the scope of the



1 employee's employment on the grounds that the civil action or
2 proceeding results from the employee's gross negligence or
3 wanton act or omission or that the employee is not providing all
4 information and assistance that the attorney general deems
5 necessary, the attorney general shall work with the
6 professionally licensed or certified state employee to amicably
7 transfer representation to the successor counsel chosen by the
8 professionally licensed or certified state employee.

9 (d) If the attorney general and the professionally
10 licensed or certified state employee cannot amicably transfer
11 representation to the successor counsel, the attorney general
12 shall file a motion to withdraw as counsel not less than thirty
13 days before the close of discovery in the action or proceeding.

14 (e) Any motion to withdraw as counsel, and all related
15 pleadings, records, notices, exhibits, and other evidence
16 regarding the motion, shall be designated as confidential and
17 shall be submitted by means of a confidential information form
18 or other appropriate manner pursuant to court rules.

19 (f) After the attorney general's motion to withdraw as
20 counsel is filed, the professionally licensed or certified state



1 employee shall have not less than thirty days to respond to the
2 motion.

3 (g) Upon the filing of the attorney general's motion to
4 withdraw as counsel, the court shall conduct a hearing regarding
5 the attorney general's duty to defend the professionally
6 licensed or certified state employee in the civil action or
7 proceeding.

8 (h) At any proceeding regarding the motion to withdraw as
9 counsel, only the court, court personnel, attorney general,
10 employees of and counsel retained by the department of the
11 attorney general, professionally licensed or certified state
12 employee and the employee's attorney, if retained, and other
13 individuals approved by the court may be present."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2025.



Report Title:

AG; State Employees; Professionally Licensed; Certified; Duty to Defend

Description:

Requires the Attorney General, on behalf of the State, to defend professionally licensed or certified state employees from civil actions or proceedings, under certain circumstances. Clarifies that the employee may employ their own attorney at the employee's own expense. Establishes a process for the Attorney General to transfer or withdraw representation if the Attorney General declines to defend the employee. (CD1)

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