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# 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 rule.

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

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

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

16 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY: 



# S.B. NO. 336

**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 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.

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

