

ACT 164

H. B. NO. 2047-72

A Bill for an Act Relating to Actions By and Against the State, Amending Chapters 661 and 662 of the Hawaii Revised Statutes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 661 of the Hawaii Revised Statutes is amended as follows:

(a) Section 661-1 is amended by deleting from the second and third lines the words “and exceptions to the supreme court in the manner now” and inserting in lieu thereof the word “as”; by deleting from the ninth line the words “either house of”; by deleting from the tenth line the word “suit” and inserting in lieu thereof “action”; and by deleting from the fourteenth line the words and punctuation “setoffs,” and the words and punctuation “claims for damages,”.

(b) Section 661-2 is amended to read as follows:

**“Sec. 661-2. Judgment against claimant when.** Upon the trial of any cause in which any counterclaim or other demand is set up on the part of the State against any person making claim against the State, the court shall, without the intervention of a jury, hear and determine the claim or demand both for and against the State and claimant; and if upon the whole case it finds that the claimant is indebted to the State, it shall render judgment to that effect.”

(c) Section 661-3 is amended to read as follows:

**“Sec. 661-3. No jurisdiction, when.** No person shall file or prosecute under this chapter any claim for or in respect to which he or any assignee of his has pending an action against a person who, at the time when the claim alleged in the action arose, was, in respect thereto, acting or professing to act, directly or indirectly, under the authority of the State.”

(d) Section 661-4 is amended by changing the word "Suit" in the caption to read "Action", by deleting from the second line the word "any" and inserting in lieu thereof the word "a", and by deleting from the last line the words "as aforesaid" and inserting in lieu thereof "under this chapter".

(e) Section 661-5 is amended to read as follows:

**"Sec. 661-5. Limitations on action.** Every claim against the State, cognizable under this chapter, shall be forever barred unless the action is commenced within two years after the claim first accrues; provided, that the claims of persons under legal disability shall not be barred if the action is commenced within one year after the disability has ceased."

(f) Section 661-6 is amended to read as follows:

**"Sec. 661-6. Complaint; assignments.** The claimant shall, in all cases, in addition to setting forth his claim, show:

- (1) What persons are owners of the claim or interested therein, with their citizenship.
- (2) The names and citizenship of all persons who have been at any time owners of the claim or any part thereof or interest therein, all of whom shall be citizens of the United States or persons eligible under section 661-4.
- (3) That no assignment or transfer of the claim, or of any part thereof or interest therein, has been made, except as stated in the complaint. Section 634-31 shall be applicable."

(g) Section 661-9 is amended by deleting from the second line the words "exceptions or".

(h) Section 661-10 is amended by changing the word "Suits" in the caption to read "Actions", by deleting from the sixth and seventh lines the words "a suit or suits" and inserting in lieu thereof "an action or actions", by deleting from the eighth line the word "suits" and inserting in lieu thereof "actions", and by deleting from the next to the last line and the last line the words "or respondents".

(i) Section 661-11 is amended to read as follows:

**"Sec. 661-11. Tort claims against State where covered by insurance.** This section applies to an action where (1) the State is a party defendant; (2) the subject matter of the claim is covered by an insurance policy entered into by the State or any of its agencies; and (3) chapter 662 does not apply. No defense of sovereign immunity shall be raised in an action under this section. However, the State's liability under this section shall not exceed the amount of, and shall be defrayed by, such insurance policy.

An action under this section is not subject to the provisions of sections 661-1 to 661-10."

(j) The word "SUITS" in the chapter heading is changed to read "ACTIONS".

SECTION 2. Chapter 662 of the Hawaii Revised Statutes is amended as follows:

(a) Section 662-2 is amended by deleting the second sentence.

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(b) Section 662-6 is amended by adding a new paragraph to read as follows:

“Sections 661-2 and 661-9 shall apply to actions under this chapter.”

(c) Section 662-9 is amended to read as follows:

“**Sec. 662-9. Costs.** In an action under this chapter, court costs and fees as set by law shall be allowed to the successful claimant. Attorney’s fees may be allowed as provided by section 662-12.”

(d) Section 662-14 is amended to read as follows:

“**Sec. 662-14. Exclusiveness of remedy.** The authority of the State or any state agency to sue and be sued in its own name shall not be construed to authorize any other actions against the State or such agency on claims for torts of its employees, and the rights and remedies provided by this chapter and section 661-11 shall be exclusive.”

(e) Section 662-15 is amended by deleting from the third line of paragraph numbered (1) the words “whether such statute or regulation be valid” and inserting in lieu thereof “whether or not such statute or regulation is valid”, and by deleting from the last line of paragraph numbered (1) the word “be” and inserting in lieu thereof the words “has been”.

**SECTION 3.** The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

**SECTION 4.** This Act upon its approval shall take effect July 1, 1973, provided that the amendment of section 662-2 shall apply to all actions commenced or pending on or after July 1, 1973.

(Approved June 1, 1972.)