

ACT 181

H.B. NO. 2097

A Bill for an Act Relating to Lifeguards.

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

SECTION 1. The legislature finds that the State contracts with the counties to provide lifeguards at various state beach parks. The purpose of this Act is for the State to more fully assume the risk of posting county lifeguards at designated state beach parks under an agreement between the State and a county. This Act is not intended to alter the current standard of care nor require the State to defend against claims that result from a lifeguard's gross negligence or wanton act or omission.

SECTION 2. Section 662-16, Hawaii Revised Statutes, is amended to read as follows:

“§662-16 Defense of state employees[-]; county lifeguards. (a) The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury,

including death, resulting from the act or omission of any state employee while acting within the scope of the employee's employment.

(b) The attorney general shall defend any civil action or proceeding brought in any court against any person who is employed by a county as a lifeguard, designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county, and acting within the scope of the county lifeguard's employment at a designated state beach park; provided that the attorney general shall have no obligation to defend when the civil action or proceeding results from a county lifeguard's gross negligence or wanton act or omission; provided further that the county lifeguard may employ an attorney, in lieu of the attorney general, to defend any civil action or proceeding brought in any court against the county lifeguard at the lifeguard's own expense.

(c) The employee against whom ~~[such]~~ a civil action or proceeding is brought under this section shall deliver, within the time after the date of service or knowledge of service as determined by the attorney general, all process or complaint served upon the employee or an attested true copy thereof to the employee's immediate superior or to whomever was designated by the head of the employee's department to receive ~~[such]~~ the papers, and ~~[such]~~ the person shall promptly furnish copies of the pleadings and process therein to the department of the attorney general.

(d) No judgment by default shall be entered against a ~~[state employee]~~ person under this section based on a cause of action arising out of an act or omission of ~~[such employee]~~ the person while acting within the scope of the ~~[employee's]~~ person's employment unless the department of the attorney general has received a copy of the complaint or other relevant pleadings and a period of twenty days has elapsed from the date of ~~[such]~~ the receipt.

(e) The attorney general ~~[may also]~~ shall defend any civil action or proceeding brought in any court against a county based on an allegedly negligent or wrongful act or omission of persons who are employed by a county as lifeguards ~~[and]~~, designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county~~[-]~~, and acting within the scope of their employment as county lifeguards at a designated state beach park; provided that the attorney general shall have no obligation to defend when the civil action or proceeding results from a county lifeguard's gross negligence or wanton act or omission, or when claims are made against the county for its own negligence or wrongful acts or omissions.

(f) The attorney general may ~~[also]~~ defend any civil action or proceeding brought in any court against any provider of medical, dental, or psychological services pursuant to contract with the department of public safety when the provider is sued for acts or omissions within the contract's scope of work."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2018-2019 for the department of land and natural resources division of state parks to contract with the counties for county lifeguard services at designated state beach parks under an agreement between the State and a county.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. There is appropriated out of the special land and development fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2018-2019 for the department of land and natural resources division

of state parks to contract with the counties for county lifeguard services at designated state beach parks under an agreement between the State and a county.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2018.

(Approved July 10, 2018.)