

# S.B. NO. 3047

JAN 26 2022

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## A BILL FOR AN ACT

RELATING TO SOVEREIGN IMMUNITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this bill is to clarify and  
2 explicitly state that sovereign immunity is not waived with  
3 respect to claims arising out of an act or omission that caused  
4 or contributed to, directly or indirectly, a person contracting  
5 coronavirus disease 2019 (COVID-19) or its variants.

6           SECTION 2. Section 662-15, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§662-15 **Exceptions.** This chapter shall not apply to:

9           (1) Any claim based upon an act or omission of an employee  
10           of the State, exercising due care, in the execution of  
11           a statute or regulation, whether or not such statute  
12           or regulation is valid, or based upon the exercise or  
13           performance or the failure to exercise or perform a  
14           discretionary function or duty on the part of a state  
15           officer or employee, whether or not the discretion  
16           involved has been abused;

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- 1           (2) Any claim arising in respect of the assessment or  
2           collection of any tax, or the detention of any goods  
3           or merchandise by law enforcement officers;
- 4           (3) Any claim for which a remedy is provided elsewhere in  
5           the laws of the State;
- 6           (4) Any claim arising out of assault, battery, false  
7           imprisonment, false arrest, malicious prosecution,  
8           abuse of process, libel, slander, misrepresentation,  
9           deceit, or interference with contract rights;
- 10          (5) Any claim arising out of the combatant activities of  
11          the Hawaii National Guard and Hawaii state defense  
12          force during time of war, or during the times the  
13          Hawaii National Guard is engaged in federal service  
14          pursuant to section 316, 502, 503, 504, 505, or 709 of  
15          title 32 of the United States Code;
- 16          (6) Any claim arising in a foreign country; [~~or~~]
- 17          (7) Any claim arising out of the acts or omissions of any  
18          boating enforcement officer[~~-~~]; or
- 19          (8) Any claim arising out of an act or omission that  
20          caused or contributed to, directly or indirectly, a  
21          person contracting coronavirus disease 2019 (COVID-19)  
22          or its variants."

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1 SECTION 3. This Act shall apply retroactively to January  
2 1, 2020. Notwithstanding any other provision of law, any waiver  
3 of sovereign immunity with respect to claims that an act or  
4 omission caused or contributed to, directly or indirectly, an  
5 individual contracting COVID-19 that accrued on or after January  
6 1, 2020, is expressly withdrawn.

7 SECTION 4. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

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

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:   
BY REQUEST

**Report Title:**

Sovereign Immunity

**Description:**

Amends section 662-15, Hawaii Revised Statutes, to provide that chapter 662 shall not apply to any claim that an act or omission caused or contributed to, directly or indirectly, a person contracting coronavirus disease 2019 (COVID-19) or its variants. Provides for retroactive application to January 1, 2020. Provides that any waiver of sovereign immunity with respect to claims that an act or omission caused or contributed to, directly or indirectly, an individual contracting COVID-19 or its variants that accrued on or after January 1, 2020, is expressly withdrawn.

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

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO SOVEREIGN IMMUNITY.

PURPOSE: To clarify and expressly state that sovereign immunity is not waived with respect to claims arising out of an act or omission that caused or contributed to, directly or indirectly, a person contracting coronavirus disease 2019 (COVID-19) or its variants and further provide that any waiver of sovereign immunity with respect to such is retroactively withdrawn for all such claims accruing on or after January 1, 2020.

MEANS: Amend section 662-15, Hawaii Revised Statutes (HRS), by adding a new subsection.

JUSTIFICATION: The COVID-19 pandemic has been extraordinarily disruptive and has imposed significant challenges across all aspects of state government. Against this backdrop, in the coming years some individuals may attempt to file legal claims against the State, asserting that State taxpayers should be liable as a result of the effects of the COVID-19 pandemic.

This bill makes clear that sovereign immunity bars such claims. As a general matter, "[i]t is well established that the State as sovereign is immune from suit except as it consents to be sued." *Figueroa v. State*, 61 Haw. 369, 381, 604 P.2d 1198, 1205 (1979). This bill clarifies that chapter 662, the State Tort Liability Act, does not apply with respect to certain legal claims against the State and its employees arising under state tort law. In particular, the bill provides that the waiver of sovereign immunity set forth in section 662-2, HRS, shall not apply to claims that an act or omission caused or

contributed to, directly or indirectly, an individual contracting COVID-19 or its variants.

Impact on the public: The bill would benefit the public by averting potentially substantial legal liability on the part of taxpayers, and by providing clear guidance regarding the application of sovereign immunity to claims arising from the COVID-19 pandemic.

Impact on the department and other agencies: The bill would provide departments with clear guidance with respect to the application of sovereign immunity to claims arising from the COVID-19 pandemic.

GENERAL FUND: This bill can only save state funds and requires no expenditure of funds to implement. Public funds that would otherwise be used to pay judgments and settlements relating to the COVID-19 pandemic may be used elsewhere.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: All the state agencies and all branches of government.

EFFECTIVE DATE: Upon approval.