

JAN 19 2024

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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           The purpose of this Act is to:

- 8           (1) Declare that the State shall have a duty to defend  
9           professionally licensed or certified state employees  
10           from civil actions when the employee's actions were  
11           within the scope of employment and were not grossly  
12           negligent or wanton, as long as the employee is  
13           cooperating with the State's defense;
- 14           (2) Clarify that professionally licensed or certified  
15           state employees may employ their own attorney at the  
16           employee's own expense; and



1           (3) Require that if the State declines to defend any state  
2           employee from a civil action on certain grounds when  
3           the State would generally do so, the attorney general  
4           shall file a motion to withdraw as counsel.

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

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



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

5        (c) If the attorney general declines to defend a civil  
6 action or proceeding against a state employee on the grounds  
7 that the civil action or proceeding results from the employee's  
8 gross negligence or wanton act or omission or that the employee  
9 will not provide all information and assistance that the  
10 attorney general deems necessary, and the employee would  
11 otherwise be entitled to representation by the attorney general,  
12 the attorney general shall file a motion to withdraw as counsel  
13 not less than thirty days before the close of discovery in the  
14 action or proceeding.

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





# S.B. NO. 2520

**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 when the employee was acting within the scope of their employment and was not grossly negligent or wanton, or failing to cooperate. Clarifies that the employee may employ their own attorney at the employee's own expense. Requires that if the State refuses to defend a state employee from civil actions on certain grounds, the Attorney General shall file a motion to withdraw as counsel.

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

