

JAN 24 2024

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# A BILL FOR AN ACT

RELATING TO 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 circumstance under which the State will have a  
6 duty to defend professionally licensed or certified state  
7 employees.

8           The purpose of this Act is to:

- 9           (1) Clarify that the State shall have a duty to defend  
10           professionally licensed or certified state employees  
11           from civil actions when the employee was acting within  
12           the scope of their employment and was not grossly  
13           negligent or wanton; and
- 14           (2) Clarify that if the State refuses to defend any state  
15           employee from civil actions on certain grounds when  
16           the State would generally do so, that the State is  
17           required to file a motion to be heard with the court.



1 SECTION 2. Chapter 662, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 **"§662- Defense of state employees; professionally**  
5 **licensed; certified.** The attorney general shall defend any  
6 civil action or proceeding brought in any court against any  
7 professionally licensed or certified employee of the State for  
8 damage to property or personal injury, including death,  
9 resulting from the act or omission of the professionally  
10 licensed or certified state employee who was acting within the  
11 scope of the employee's employment; provided that the attorney  
12 general shall have no obligation to defend when the civil action  
13 or proceeding results from the professionally licensed or  
14 certified state employee's gross negligence or wanton act or  
15 omission; provided further that the professionally licensed or  
16 certified state employee may employ an attorney, in lieu of the  
17 attorney general, to defend any civil action or proceeding  
18 brought in any court against the state employee at the  
19 employee's own expense.

20 **§662- Attorney general; decision not to defend; state**  
21 **employees.** If the attorney general refuses to defend a civil



1 action or proceeding against a state employee, on the grounds  
2 that the civil action or proceeding results from the employee's  
3 gross negligence or wanton act or omission, and the employee  
4 would otherwise be entitled to a defense by the attorney  
5 general, the attorney general shall file a motion within thirty  
6 days of the close of discovery in the action or proceeding.  
7 After the motion is filed, the employee shall have not less than  
8 thirty days to respond to the motion. Upon the attorney  
9 general's motion, the court shall conduct a hearing regarding  
10 the attorney general's duty to defend the employee in that civil  
11 action or proceeding."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'R. J. ...', written over a horizontal line.

# S.B. NO. 3298

**Report Title:**

Attorney General; State Employees; Professionally Licensed;  
Certified; Duty to Defend

**Description:**

Requires the Attorney General to defend professionally licensed or certified state employees from civil actions or proceedings, when the employee was acting within the scope of their employment and was not grossly negligent or wanton. Requires that, if the State refuses to defend a state employee from civil actions on certain grounds, that the State file a motion to be heard with the court.

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

