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# A BILL FOR AN ACT

RELATING TO LIABILITY.

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

1           SECTION 1. The legislature finds that nonprofit social  
2 service organizations provide essential, mandated services to  
3 children and families in partnership with the State, that  
4 otherwise would have to be performed by the State itself. The  
5 legislature further finds that these nonprofit organizations are  
6 now facing increasing challenges in securing general and  
7 professional liability insurance coverage. Many insurance  
8 carriers have withdrawn from the market, reduced coverage  
9 limits, or imposed drastically higher premiums, making coverage  
10 either unavailable or unaffordable.

11           The legislature additionally finds that without adequate  
12 liability insurance coverage, nonprofit organizations cannot  
13 maintain state contracts or deliver critically needed services.  
14 Furthermore, the legislature finds that rising insurance costs  
15 combined with stagnant contract reimbursements threaten the  
16 financial sustainability of these nonprofit organizations.  
17 These circumstances risk disrupting services provided by



1 nonprofit organizations under contract with the State, which  
2 would leave vulnerable children and families without necessary  
3 resources and place an unsustainable burden on state agencies.

4 Moreover, the legislature finds that the underlying cause  
5 of the crisis faced by these nonprofit organizations is the  
6 growing frequency and severity of lawsuits involving child-  
7 related tragedies. Litigation strategies often include  
8 nonprofit organizations even when they are not found  
9 responsible, resulting in nuclear judgments that destabilize the  
10 insurance market. As a result, nonprofit organizations are  
11 increasingly forced to rely on excess and surplus lines  
12 insurance coverage, which offers reduced liability protection at  
13 significantly higher costs.

14 The legislature finds that if this issue is not addressed,  
15 nonprofit organizations may withdraw from this type of work,  
16 creating significant gaps in services and straining state  
17 agencies that are tasked with filling those gaps. The  
18 legislature further finds that legislative and administrative  
19 solutions are needed to ensure that nonprofit organizations that  
20 provide foster care services can obtain reasonable and  
21 sustainable liability insurance coverage, thereby safeguarding



1 the continuity of essential services for children and families  
2 across the State.

3 The purpose of this Act is to provide certain liability  
4 protections for nonprofit foster care agencies that are under  
5 contract with the State to provide foster care services to  
6 children in foster care, including:

7 (1) Requiring contracts between foster care agencies and  
8 the State to include a state indemnification clause  
9 and requiring foster care agencies to name the State  
10 as an additional insured;

11 (2) Prohibiting punitive damages and pre- and post-  
12 judgment interest for foster care agencies;

13 (3) Requiring actions against foster care agencies to be  
14 tried by the court, except in certain circumstances;

15 (4) Removing joint and several liability for foster care  
16 agencies; and

17 (5) Specifying that no bond shall be required from a  
18 foster care agency on appeal.

19 SECTION 2. The Hawaii Revised Statutes is amended by  
20 adding a new chapter to be appropriately designated and to read  
21 as follows:



1 "CHAPTER

2 FOSTER CARE AGENCIES; FOSTER CARE; LIABILITY

3 § -1 Definitions. As used in this chapter:

4 "Authorized agency" means the department of human services,  
5 other public agency, or a foster care agency that is licensed by  
6 the department of human services or approved by the family court  
7 to receive children for control, care, maintenance, or  
8 placement.

9 "Foster care" means continuous twenty-four-hour care and  
10 supportive services provided for a child by an authorized agency  
11 or the family court.

12 "Foster care agency" means a nonprofit organization or  
13 entity that is under contract with the State to provide foster  
14 care services for children in foster care.

15 § -2 Foster care agencies; state contracts;  
16 indemnification; additional insured. (a) Any contract entered  
17 into between a foster care agency and the State to provide  
18 foster care shall include a provision that indemnifies and holds  
19 harmless the State of Hawaii and its officers, agents, and  
20 employees from and against any and all claims arising out of or  
21 resulting from the foster care agency's provision of foster



1 care, unless there is a finding of gross negligence on the part  
2 of the State.

3 (b) The foster care agency shall obtain sufficient  
4 insurance to provide the indemnification under subsection (a),  
5 if requested to do so by the department of human services.

6 (c) Any insurance policy obtained by a foster care agency  
7 shall name the State of Hawaii, and its officers, agents, and  
8 employees as additional insured and shall constitute primary  
9 insurance for the State, with respect to operations performed  
10 for the State.

11 § -3 **Liability; interest; punitive damages.** A foster  
12 care agency shall not be liable for:

13 (1) Interest prior to or after judgment; or

14 (2) Punitive damages.

15 § -4 **Jury trial, when.** Any action against a foster care  
16 agency under this chapter shall be tried by the court without a  
17 jury; provided that the court, with the consent of all the  
18 parties, may order a trial with a jury, whose verdict shall have  
19 the same effect as if trial by jury had been a matter of right.

20 § -5 **Foster care agency as a tortfeasor; abolition of**  
21 **joint and several liability.** (a) Any other law to the contrary



1 notwithstanding, in any case in which a foster care agency is  
2 determined to be a tortfeasor along with one or more other  
3 tortfeasors, the foster care agency shall be liable for no more  
4 than that percentage share of the damages attributable to the  
5 foster care agency.

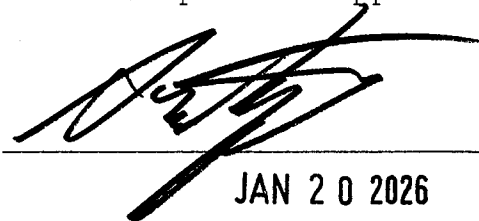
6 (b) For purposes of this section, the liability of a  
7 foster care agency shall include its vicarious liability for the  
8 acts or omissions of its officers and employees.

9 § -6 **Judgment on appeal; no bond.** When an appeal is  
10 taken by a foster care agency, and the operation or enforcement  
11 of the judgment is stayed, no bond, obligation, or other  
12 security shall be required from the foster care agency."

13 SECTION 3. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 4. This Act shall take effect upon its approval.  
17

INTRODUCED BY:

  
JAN 20 2026

# H.B. NO. 1645

**Report Title:**

Foster Care Agencies; Foster Care; Liability; Indemnification;  
Insurance; Trial; Bond

**Description:**

Provides certain liability protections for foster care agencies that are under contract with the State to provide foster care services to children in foster care. Requires contracts between foster care agencies and the State to include a state indemnification clause and requires foster care agencies to name the State as an additional insured. Prohibits punitive damages and pre- and post-judgment interest for foster care agencies. Requires actions against foster care agencies to be tried by the court, except in certain circumstances. Removes joint and several liability for foster care agencies. Specifies that no bond shall be required from a foster care agency on appeal.

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