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8 Many insurance carriers have withdrawn from the market, reduced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

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



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

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

16 The legislature further finds that legislative and
17 administrative solutions are needed to ensure that nonprofit
18 organizations that provide child welfare services to children
19 and families can obtain reasonable and sustainable liability
20 insurance coverage, thereby safeguarding the continuity of
21 essential services for children and families across the State.



1 If this issue is not addressed, nonprofit child welfare service
2 organizations may withdraw from this type of work, creating
3 significant gaps in services and straining state agencies that
4 are tasked with filling those gaps.

5 The purpose of this Act is to provide certain liability
6 protections for nonprofit child welfare service organizations
7 that are under contract with the State to provide child welfare
8 services to children and families, including:

- 9 (1) Requiring contracts between nonprofit child welfare
10 service organizations and the State to include a state
11 indemnification clause and requiring these
12 organizations to name the State as an additional
13 insured;
- 14 (2) Prohibiting punitive damages and pre- and post-
15 judgment interest for nonprofit child welfare service
16 organizations;
- 17 (3) Requiring actions against nonprofit child welfare
18 service organizations to be tried by the court, except
19 in certain circumstances;
- 20 (4) Removing joint and several liability for nonprofit
21 child welfare service organizations; and



1 (5) Specifying that no bond shall be required from a
2 nonprofit child welfare service organization on
3 appeal.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 **NONPROFIT CHILD WELFARE SERVICE ORGANIZATIONS; LIABILITY**

9 § -1 **Definitions.** As used in this chapter, "nonprofit
10 child welfare service organization" means a nonprofit child
11 welfare organization that is contracted with the department of
12 human services to provide services to children.

13 § -2 **Nonprofit child welfare service organizations;**
14 **state contracts; indemnification; additional insured.** (a) Any
15 contract entered into between a nonprofit child welfare service
16 organization and the State shall include a provision that
17 indemnifies and holds harmless the State of Hawaii and its
18 officers, agents, and employees from and against any and all
19 claims arising out of or resulting from the organization's
20 provision of child welfare services, unless there is a finding
21 of gross negligence on the part of the State.



1 (b) The nonprofit child welfare service organization shall
2 obtain sufficient insurance to provide the indemnification under
3 subsection (a), if requested to do so by the department of human
4 services.

5 (c) Any insurance policy obtained by a nonprofit child
6 welfare service organization shall name the State of Hawaii, and
7 its officers, agents, and employees as additional insured and
8 shall constitute primary insurance for the State, with respect
9 to operations performed for the State.

10 § -3 **Liability; interest; punitive damages.** A nonprofit
11 child welfare service organization shall not be liable for:

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

13 (2) Punitive damages.

14 § -4 **Jury trial, when.** Any action against a nonprofit
15 child welfare service organization under this chapter shall be
16 tried by the court without a jury; provided that the court, with
17 the consent of all the parties, may order a trial with a jury,
18 whose verdict shall have the same effect as if trial by jury had
19 been a matter of right.

20 § -5 **Nonprofit child welfare service organization as a**
21 **tortfeasor; abolition of joint and several liability.** (a) Any



1 other law to the contrary notwithstanding, in any case in which
2 a nonprofit child welfare service organization is determined to
3 be a tortfeasor along with one or more other tortfeasors, the
4 organization shall be liable for no more than that percentage
5 share of the damages attributable to the organization.

6 (b) For purposes of this section, the liability of a
7 nonprofit child welfare service organization shall include its
8 vicarious liability for the acts or omissions of its officers
9 and employees.

10 § -6 **Judgment on appeal; no bond.** When an appeal is
11 taken by a nonprofit child welfare service organization, and the
12 operation or enforcement of the judgment is stayed, no bond,
13 obligation, or other security shall be required from the
14 nonprofit child welfare service organization."

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

18 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

DHS; Nonprofit Child Welfare Service Organizations; Child Welfare Services; Liability; Indemnification; Additional Insured; Trial; Bond

Description:

Provides certain liability protections for nonprofit child welfare service organizations that are under contract with the Department of Human Services to provide child welfare services to children and families. Requires contracts between nonprofit child welfare service organizations and the State to include a state indemnification clause and requires these organizations to name the State as an additional insured. Prohibits punitive damages and pre- and post-judgment interest for nonprofit child welfare service organizations. Requires actions against nonprofit child welfare service organizations to be tried by the court, except in certain circumstances. Removes joint and several liability for nonprofit child welfare service organizations. Specifies that no bond shall be required from a nonprofit child welfare service organization on appeal. Effective 7/1/3000. (HD1)

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