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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 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8 Many insurance carriers have withdrawn from the market, reduced  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) Prohibiting both child welfare service organizations  
10 and the State from utilizing indemnification clauses  
11 in child welfare service contracts or requiring either  
12 party to name the other as an additional insured;
- 13 (2) Prohibiting pre- and post-judgment interest and  
14 punitive damages for nonprofit child welfare service  
15 organizations;
- 16 (3) Requiring actions against nonprofit child welfare  
17 service organizations to be tried by the court, except  
18 in certain circumstances;
- 19 (4) Removing joint and several liability for nonprofit  
20 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 under contract with the department  
12 of human services to provide welfare services to children.

13 § -2 **Nonprofit child welfare service organizations;**  
14 **state contracts; indemnification; additional insured.** Any  
15 contract entered into between a nonprofit child welfare service  
16 organization and the State shall not include any provision that  
17 allows either party to indemnify or hold harmless the other  
18 party from and against any and all claims arising out of the  
19 provision of child welfare services. The State and nonprofit  
20 child welfare service organizations shall not be required to



1 name each other as additional insureds in their respective  
2 liability insurance policies.

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

5 (1) Interest before or after judgment; or

6 (2) Punitive damages.

7 § -4 **Jury trial, when.** Any action against a nonprofit  
8 child welfare service organization to which this chapter applies  
9 shall be tried by the court without a jury; provided that the  
10 court, with the consent of all the parties, may order a trial  
11 with a jury, whose verdict shall have the same effect as if  
12 trial by jury had been a matter of right.

13 § -5 **Nonprofit child welfare service organization as a**  
14 **tortfeasor; abolition of joint and several liability.** (a)  
15 Notwithstanding any other law to the contrary, in any action in  
16 which a nonprofit child welfare service organization is  
17 determined to be a tortfeasor together with one or more other  
18 tortfeasors, the nonprofit child welfare service organization  
19 shall be liable only for the percentage share of damages  
20 attributable to the nonprofit child welfare service  
21 organization.



1 (b) For purposes of this section, the liability of a  
2 nonprofit child welfare service organization shall include its  
3 vicarious liability for the acts or omissions of its officers  
4 and employees.

5 § -6 **Judgment on appeal; no bond.** When an appeal is  
6 taken by a nonprofit child welfare service organization, and the  
7 operation or enforcement of the judgment is stayed, no bond,  
8 obligation, or other security shall be required from the  
9 nonprofit child welfare service organization."

10 SECTION 3. -This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 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. Prohibits both child welfare service organizations and the State from utilizing indemnification clauses in child welfare service contracts or requiring either party to name the other as an additional insured. Prohibits pre- and post-judgment interest and punitive damages 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. (HD2)

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

