
A BILL FOR AN ACT

RELATING TO CHILD WELFARE SERVICE ORGANIZATIONS.

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

1 SECTION 1. The legislature finds that child welfare
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 child welfare service
6 organizations are now facing extreme challenges in securing
7 general and professional liability insurance coverage. Many
8 insurance carriers have withdrawn from the market, reduced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, child welfare service
13 organizations cannot maintain state contracts or deliver
14 critically needed services. The legislature also finds that
15 rising insurance costs combined with stagnant contract
16 reimbursements threaten the financial sustainability of these
17 child welfare service organizations. These circumstances risk



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

15 The legislature believes that if this issue is not
16 addressed, child welfare service organizations may withdraw from
17 this type of work, creating significant gaps in services and
18 straining state agencies that are tasked with filling those
19 gaps. The legislature further finds that legislative and
20 administrative solutions are needed to ensure that child welfare
21 service organizations can obtain reasonable and sustainable



1 liability insurance coverage, thereby safeguarding the
2 continuity of essential services for children and families
3 across the State.

4 Accordingly, the purpose of this Act is to provide certain
5 limited liability protections for nonprofit child welfare
6 service organizations that contract with the State to provide
7 child welfare services to children and families by eliminating
8 joint and several liability for child welfare service
9 organizations by limiting liability to each organization's
10 percentage share of damages.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 **"CHAPTER**

15 **CHILD WELFARE SERVICE ORGANIZATIONS**

16 § -1 **Definitions.** As used in this chapter:

17 "Child welfare service organization" means a nonprofit
18 organization that has entered into a contract with the
19 department of human services to provide child welfare services
20 to children and families.



1 § -2 **Child welfare service organization as a tortfeasor;**
2 **abolition of joint and several liability.** (a) Notwithstanding
3 any other law to the contrary, in any case in which a child
4 welfare service organization is determined to be a tortfeasor
5 along with one or more other tortfeasors, the child welfare
6 service organization shall be liable for not more than that
7 percentage share of the damages attributable to the child
8 welfare service organization.

9 (b) For the purposes of this section, the liability of a
10 child welfare service organization shall include its vicarious
11 liability for the acts or omissions of its officers, agents, and
12 employees."

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.



S.B. NO. 3164
S.D. 1

Report Title:

Child Welfare Service Organizations; Tort Liability; State
Contracts

Description:

Eliminates joint and several liability for child welfare service
organizations by limiting liability to each organization's
percentage share of damages. (SD1)

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not legislation or evidence of legislative intent.*

