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# A BILL FOR AN ACT

RELATING TO LIFEGUARDS.

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

1           SECTION 1. The legislature finds that the State contracts  
2 with the counties to provide lifeguards at various state beach  
3 parks. These lifeguards provide a valuable service as first  
4 responders to residents and tourists alike. The legislature  
5 additionally finds that state law currently authorizes the  
6 attorney general to defend county lifeguards posted at  
7 designated state beach parks and the respective county against  
8 lawsuits, though this does not completely eliminate the risk to  
9 the lifeguard or county.

10           The purpose of this Act is for the State to more fully  
11 assume the risk of posting county lifeguards at designated state  
12 beach parks under an agreement between the State and a county by  
13 requiring, instead of authorizing, the attorney general to  
14 defend the lifeguards and the employing counties against civil  
15 lawsuits for injuries that result from acts or omissions while  
16 the lifeguard is acting within the scope of the lifeguard's  
17 employment at a state park. The legislature notes that state



1 law requires all first responders, including emergency medical  
2 technicians, police officers, and firefighters, as well as  
3 lifeguards, to meet a negligence standard of care and perform  
4 their jobs with reasonable care under the circumstances. This  
5 Act is not intended to alter the current standard of care nor  
6 require the State to defend against claims that result from a  
7 lifeguard's gross negligence or wanton act or omission.

8 SECTION 2. Section 662-16, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§662-16 Defense of state employees.** The attorney general  
11 may defend any civil action or proceeding brought in any court  
12 against any employee of the State, not including a county  
13 lifeguard providing lifeguard services at a designated state  
14 beach park under an agreement between the State and a county,  
15 for damage to property or for personal injury, including death,  
16 resulting from the act or omission of any state employee while  
17 acting within the scope of the employee's employment. The  
18 attorney general shall defend any civil action or proceeding  
19 brought in any court against any person who is employed by a  
20 county as a lifeguard, designated to provide lifeguard services  
21 at a designated state beach park under an agreement between the



1 State and a county, and acting within the scope of the county  
2 lifeguard's employment at a designated state beach park;  
3 provided that the attorney general shall have no obligation to  
4 defend when the civil action or proceeding results from a county  
5 lifeguard's gross negligence or wanton act or omission; provided  
6 further that the county lifeguard may employ an attorney, in  
7 lieu of the attorney general, to defend any civil action or  
8 proceeding brought in any court against the county lifeguard at  
9 the lifeguard's own expense. The employee against whom [such] a  
10 civil action or proceeding is brought shall deliver, within the  
11 time after the date of service or knowledge of service as  
12 determined by the attorney general, all process or complaint  
13 served upon the employee or an attested true copy thereof to the  
14 employee's immediate superior or to whomever was designated by  
15 the head of the employee's department to receive [such] the  
16 papers, and [such] the person shall promptly furnish copies of  
17 the pleadings and process therein to the department of the  
18 attorney general.

19 No judgment by default shall be entered against a state  
20 employee based on a cause of action arising out of an act or  
21 omission of such employee while acting within the scope of the



1 employee's employment unless the department of the attorney  
2 general has received a copy of the complaint or other relevant  
3 pleadings and a period of twenty days has elapsed from the date  
4 of [~~such~~] the receipt.

5 The attorney general [~~may~~] shall also defend any civil  
6 action or proceeding brought in any court against a county based  
7 on an allegedly negligent or wrongful act or omission of persons  
8 who are employed by a county as lifeguards [~~and~~], designated to  
9 provide lifeguard services at a designated state beach park  
10 under an agreement between the State and a county[-], and acting  
11 within the scope of their employment as county lifeguards at a  
12 designated state beach park; provided that the attorney general  
13 shall have not obligation to defend when the civil action or  
14 proceeding results from a county lifeguard's gross negligence or  
15 wanton act or omission.

16 The attorney general may [~~also~~] defend any civil action or  
17 proceeding brought in any court against any provider of medical,  
18 dental, or psychological services pursuant to contract with the  
19 department of public safety when the provider is sued for acts  
20 or omissions within the contract's scope of work."



1 SECTION 3. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$1,000,000 or so much  
3 thereof as may be necessary for fiscal year 2018-2019 for the  
4 department of land and natural resources division of state parks  
5 to contract with the counties for county lifeguard services at  
6 designated state beach parks under an agreement between the  
7 State and a county.

8 The sum appropriated shall be expended by the department of  
9 land and natural resources for the purposes of this Act.

10 SECTION 4. There is appropriated out of the tourism  
11 special fund the sum of \$1,000,000 or so much thereof as may be  
12 necessary for fiscal year 2018-2019 for the department of land  
13 and natural resources division of state parks to contract with  
14 the counties for county lifeguard services at designated state  
15 beach parks under an agreement between the State and a county.

16 The sum appropriated shall be expended by the department of  
17 land and natural resources for the purposes of this Act.

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 2018.



**Report Title:**

Lifeguards; Tort Liability; Attorney General; Department of Land and Natural Resources; Appropriation

**Description:**

Requires the Attorney General to defend any civil action or proceeding against a county and any person employed by the county to provide lifeguard services at a designated state beach park under an agreement between the State and the county. Appropriates funds to the Department of Land and Natural Resources to contract with the counties for county lifeguard services at designated state beach parks under an agreement between the State and a county. (SD1)

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

