

SENATE, No. 2322

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1997

By Senator MacINNES

1 AN ACT concerning the duty of the Attorney General to defend certain  
2 State employees and amending P.L.1972, c.48 and supplementing  
3 Title 59 of the New Jersey Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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8 1. Section 2 of P.L.1972, c.48 (C.59:10A-2 ) is amended to read  
9 as follows:

10 2. Grounds for refusal to provide defense.

11 a. The Attorney General may refuse to provide for the defense of  
12 an action referred to in section 1 of P.L.1972, c.48 (C.59:10A-1) if he  
13 determines that:

14 [a.] (1) the act or omission was not within the scope of  
15 employment; or

16 [b.] (2) the act or the failure to act was because of actual fraud,  
17 willful misconduct or actual malice; or

18 [c.] (3) the defense of the action or proceeding by the Attorney  
19 General would create a conflict of interest between the State and the  
20 employee or former employee.

21 b. (1) The Attorney General shall refuse to provide for the defense  
22 of an action referred to in section 1 of P.L.1972, c.48 (C.59:10A-1)  
23 if he determines that the act involves an allegation of sexual  
24 harassment and the allegation has merit based on the investigation  
25 conducted pursuant to section 2 of P.L. c. (C. )(now pending  
26 before the Legislature as section 2 of this bill). In this instance, the  
27 State employee or former State employee charged with sexual  
28 harassment shall not be provided a defense by the Attorney General in  
29 the sexual harassment matter.

30 (2) There shall be no indemnification pursuant to the provision of  
31 N.J.S.59:10-1 et seq. for any State employee that the Attorney  
32 General refuses to defend pursuant to the provisions of this subsection.  
33 (cf: P.L.1972, c.48)

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined **thus** is new matter.

1       2. (New section) a. Whenever an action involves a charge of  
2 sexual harassment by a State employee or former State employee  
3 against a State employee or former State employee and the Attorney  
4 General is requested to provide a defense in the matter, the Attorney  
5 General, in evaluating his duty to defend State employees under the  
6 provisions of section 1 of P.L.1972, c.48 (C.59:10A-1) shall conduct  
7 a preliminary investigation of the action to determine if a reasonable  
8 basis exists for finding that the allegation has merit.

9       b. This investigation is in addition to any duty imposed upon the  
10 Attorney General pursuant to the provisions of section 14 of the "Law  
11 Against Discrimination," P.L.1945, c.169 (C.10:5-14).

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13       3. This act shall take effect immediately.

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#### STATEMENT

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18       This bill amends N.J.S.A.59:10A-2, the section concerning the  
19 grounds on which the Attorney General may refuse to provide a  
20 defense and, as a result of that defense, indemnification to State  
21 employees or former State employees. The bill provides that in cases  
22 of alleged sexual harassment the Attorney General must evaluate his  
23 duty to defend State employees by conducting a preliminary  
24 investigation of the charge of sexual harassment to determine if a  
25 reasonable basis exists for finding that the allegation has merit. If the  
26 allegation is determined to have merit then the employee who allegedly  
27 engaged in the harassment shall not be defended by the Attorney  
28 General in the matter.

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34 Clarifies duty of the AG to defend certain State employees in cases of  
sexual harassment.