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## GOVERNMENT CODE - GOV

**TITLE 1. GENERAL [100 - 7931.000]** ( Title 1 enacted by Stats. 1943, Ch. 134. )

**DIVISION 3.6. CLAIMS AND ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES [810 - 998.3]** ( Division 3.6 added by Stats. 1963, Ch. 1681. )

**PART 7. DEFENSE OF PUBLIC EMPLOYEES [995 - 996.6]** ( Part 7 added by Stats. 1963, Ch. 1683, Sec. 16. )

**995.** Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.

For the purposes of this part, a cross-action, counterclaim or cross-complaint against an employee or former employee shall be deemed to be a civil action or proceeding brought against him.

(Added by Stats. 1963, Ch. 1683, Sec. 16.)

**995.2.** (a) A public entity may refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the public entity determines any of the following:

(1) The act or omission was not within the scope of his or her employment.

(2) He or she acted or failed to act because of actual fraud, corruption, or actual malice.

(3) The defense of the action or proceeding by the public entity would create a specific conflict of interest between the public entity and the employee or former employee. For the purposes of this section, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, as specified by statute or by a rule or regulation of the public entity.

(b) If an employee or former employee requests in writing that the public entity, through its designated legal counsel, provide for a defense, the public entity shall, within 20 days, inform the employee or former employee whether it will or will not provide a defense, and the reason for the refusal to provide a defense.

(c) If an actual and specific conflict of interest becomes apparent subsequent to the 20-day period following the employee's written request for defense, nothing herein shall prevent the public entity from refusing to provide further defense to the employee. The public entity shall inform the employee of the reason for the refusal to provide defense.

(Amended by Stats. 1982, Ch. 1046, Sec. 1.)

**995.3.** (a) If a state employee provides his or her own defense against an action brought for an alleged violation of Section 8547.3, and if it is established that no violation of Section 8547.3 occurred, the public entity shall reimburse the employee for any costs incurred in the defense.

(b) A public entity which does provide for the defense of a state employee charged with a violation of Section 8547.3 shall reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated Section 8547.3, he or she is liable for all defense costs and shall reimburse the public entity for those costs.

(Amended by Stats. 1995, Ch. 277, Sec. 1. Effective January 1, 1996.)

**995.4.** A public entity may, but is not required to, provide for the defense of:

(a) An action or proceeding brought by the public entity to remove, suspend or otherwise penalize its own employee or former employee, or an appeal to a court from an administrative proceeding by the public entity to remove, suspend or otherwise penalize its own employee or former employee.

(b) An action or proceeding brought by the public entity against its own employee or former employee as an individual and not in his official capacity, or an appeal therefrom.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*

**995.6.** A public entity is not required to provide for the defense of an administrative proceeding brought against an employee or former employee, but a public entity may provide for the defense of an administrative proceeding brought against an employee or former employee if:

(a) The administrative proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and

(b) The public entity determines that such defense would be in the best interests of the public entity and that the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*

**995.8.** A public entity is not required to provide for the defense of a criminal action or proceeding (including a proceeding to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code) brought against an employee or former employee, but a public entity may provide for the defense of a criminal action or proceeding (including a proceeding to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code) brought against an employee or former employee if:

(a) The criminal action or proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and

(b) The public entity determines that such defense would be in the best interests of the public entity and that the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*

**995.9.** Notwithstanding any other provision of law, upon a request made in writing to a public entity, the public entity may defend or indemnify or defend and indemnify any witness who has testified on behalf of the public entity in any criminal, civil, or administrative action. The decision of the public entity to defend or indemnify or defend and indemnify such a witness shall rest within the sound discretion of the public entity and may be based on any relevant factors, including, but not limited to, whether the provision of defense or indemnity would serve the public interest. The public entity may defend or indemnify or defend and indemnify the witness only if it is determined by the public entity that the action being brought against the witness is based directly upon the conduct which the public entity requested of the witness related to the witness' testimony or provision of evidence. The public entity has the discretion to provide a defense alone apart from indemnity, and the public entity may offer to defend or indemnify or defend and indemnify while reserving all rights to subsequently withdraw these offers upon reasonable notice.

Neither defense nor indemnification shall be provided if the testimony giving rise to the action against the witness was false in any material respect, or was otherwise not given by the witness with a good faith belief in its truth; nor shall representation or indemnification under this section be offered or promised unless the action has been commenced and the witness has requested the public entity to act for the witness' benefit under this section. The public entity shall not be liable for indemnification of a defendant witness for punitive damages awarded to the plaintiff in such an action. If the plaintiff prevails in a claim for punitive damages in an action defended at the expense of the public entity, the defendant shall be liable to the public entity for the full costs incurred by the public entity in providing representation to the defendant witness.

*(Added by Stats. 1995, Ch. 799, Sec. 2. Effective January 1, 1996.)*

**996.** A public entity may provide for a defense pursuant to this part by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. All of the expenses of providing a defense pursuant to this part are proper charges against a public entity. A public entity has no right to recover such expenses from the employee or former employee defended.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*

**996.4.** If after request a public entity fails or refuses to provide an employee or former employee with a defense against a civil action or proceeding brought against him and the employee retains his own counsel to defend the action or proceeding, he is entitled to recover from the public entity such reasonable attorney's fees, costs and expenses as are necessarily incurred by him in defending the action or proceeding if the action or proceeding arose out of an act or omission in the scope of his employment as an employee of the public entity, but he is not entitled to such reimbursement if the public entity establishes (a) that he acted or failed to act because of actual fraud, corruption or actual malice, or (b) that the action or proceeding is one described in Section 995.4.

Nothing in this section shall be construed to deprive an employee or former employee of the right to petition for a writ of mandate to compel the public entity or the governing body or an employee thereof to perform the duties imposed by this part.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*

**996.6.** The rights of an employee or former employee under this part are in addition to and not in lieu of any rights he may have under any contract or under any other enactment providing for his defense.

*(Added by Stats. 1963, Ch. 1683, Sec. 16.)*