

(II) THE ACT OR OMISSION WAS MALICIOUS; OR

(III) THE ACT OR OMISSION WAS GROSSLY NEGLIGENT.

(2) THE ATTORNEY GENERAL MAY DECLINE TO REPRESENT A STATE OFFICER OR STATE EMPLOYEE WHO OTHERWISE IS ELIGIBLE FOR REPRESENTATION IF THE OFFICER OR EMPLOYEE:

(I) RETAINS OTHER COUNSEL; OR

(II) IS COVERED BY INSURANCE THAT REQUIRES THE CARRIER TO PROVIDE COUNSEL.

(C) DECISION OF ATTORNEY GENERAL.

(1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE ATTORNEY GENERAL HAS SOLE DISCRETION IN UNDERTAKING TO REPRESENT THE STATE OFFICER OR STATE EMPLOYEE.

(2) A DECISION OF THE ATTORNEY GENERAL NOT TO REPRESENT AN OFFICER OR EMPLOYEE IS INADMISSIBLE IN ANY LEGAL ACTION OR SPECIAL PROCEEDING. REFERENCE TO THE DECISION MAY NOT BE MADE IN ANY HEARING OR TRIAL.

(D) EFFECTS OF SECTION.

THIS SECTION DOES NOT:

(1) DEPRIVE A STATE OFFICER OR STATE EMPLOYEE OF ANY RIGHT TO RETAIN COUNSEL, AT THE EXPENSE OF THE OFFICER OR EMPLOYEE; OR

(2) PREVENT THE APPEARANCE OF THE ATTORNEY GENERAL TO PROTECT THE INTERESTS OF THE STATE, EVEN IF THE OFFICER OR EMPLOYEE DOES NOT REQUEST THE APPEARANCE.

REVISOR'S NOTE: Subsection (a)(1)(i) through (iii) and (v) and (2) of this section is new language derived without substantive change from the second sentence and the first and second clauses of the first sentence of former Art. 32A, § 12A(a)(1), the first and third sentences of § 12B, and the introductory clause of § 12F.

Subsection (a)(1)(iv) of this section is new language substituted for the third clause of the first sentence of former Art. 32A, § 12A(a)(1), which referred to a "proceeding instituted ... by reason of any act done or omitted to be done" and failed to reflect that the alleged act or omission may not have occurred.

Subsections (b) through (d) of this section are new language derived without substantive change from