

JAN 27 2016

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**A BILL FOR AN ACT**

RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT  
EMPLOYEES.

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

1           SECTION 1. The legislature finds that the recent decision  
2 in Slingluff v. State of Hawaii, 131 Haw. 239, 317 P.3d 683  
3 (2013), created a distinction between medical discretion and  
4 governmental discretion for physicians who are employed by the  
5 State of Hawaii, unnecessarily putting state-employed  
6 professionals, who are acting in the course and scope of their  
7 employment, at personal monetary risk.

8           The purpose of this Act is to clarify that professional  
9 employees who are required to abide by standards established for  
10 their profession, such as physicians, nurses, attorneys,  
11 engineers and other professionals, who are employed by the State  
12 of Hawaii, when exercising their professional judgment, are  
13 deemed to be exercising their governmental discretion as  
14 employees of the State of Hawaii.

15           The legislature finds that the provisions of this Act are  
16 necessary and appropriate to enable the State to continue to  
17 attract and hire employees who are specially licensed or

S .B. NO. 2815

1 certified to perform services that are essential to good  
2 government.

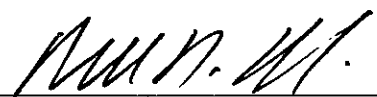
3 SECTION 2. Chapter 662, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§662- Professionally licensed or certified government  
7 employees. A person exercising professional discretion while in  
8 the course and scope of state employment shall be deemed to be  
9 exercising governmental discretion and is, therefore, afforded  
10 the same privileges and immunities under the common law, federal  
11 law, and statutes of this State, to the same extent as any other  
12 government employee who is not a professional.

13 "Professional discretion" as used in this section means an  
14 action or inaction of a state employee performing a function for  
15 which the employee is licensed or certified, while in the course  
16 and scope of state employment."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval  
19 and shall be effective in all lawsuits filed as of and after its  
20 approval.

21  
22 INTRODUCED BY: 

23 BY REQUEST

S .B. NO. 2815

**Report Title:**

Professionally Licensed Or Certified Government Employees

**Description:**

Adds a new section to chapter 662, Hawaii Revised Statutes, providing professionally licensed or certified government employees with the same privileges and immunities as other state employees.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

PURPOSE: The purpose of this bill is to afford the same privileges and immunities to professionally licensed or certified state employees that are afforded to other state employees.

MEANS: Add a new section to chapter 662, Hawaii Revised Statutes (HRS).

JUSTIFICATION: State employees are generally afforded qualified immunity for torts as a result of actions while in the course and scope of their state employment, affording them protection from individual liability. In the recent case of Slingluff v. State of Hawaii, 131 Haw. 239, 317 P.3d 683 (2013), however, the Hawaii Supreme Court held that prison physicians are not entitled to qualified immunity for the exercise of their professional medical judgment. The Court's reasoning that these employees exercise judgment for which they are specially licensed, therefore making their judgment separate and distinct from governmental judgment, could be argued to extend to any other professionally licensed or certified employee of the State.

We disagree with the holding in Slingluff. An employee who is employed by the State to perform tasks for which he or she is professionally licensed or certified, is exercising judgment for which the State hired the employee and is therefore exercising governmental judgment and discretion. This is the position taken by a majority of jurisdictions nationwide and we seek to adopt this position legislatively.

To address the ramifications of Slingluff, and in an effort to attract and retain its doctors, the State has taken steps to obtain professional liability insurance covering

claims of individual liability for its physicians. This comes at a cost. This cost is expected to rise over time as claims are made against such policies. The need for such insurance becomes unnecessary with the passage of this bill.

The potential for personal liability prevents good, well-qualified professionals from applying for jobs with the government. And, even though the State may currently have insurance for physicians, providing liability insurance for every licensed or certified professional employed by the State would come at an extraordinary, and unnecessary, cost.

Impact on the public: Individuals who are required to be served, or who will benefit from professional services rendered, will be better served by the enhanced ability of the State to hire and retain professionally licensed and certified employees.

The State regularly pays for judgments or settlements where the actions of its employees, professionally licensed or not, were taken in the course and scope of their employment. Plaintiffs, who successfully prove their claims would therefore not be negatively impacted.

Impact on the department and other agencies: Departments and agencies who need to hire employees for their professionally licensed or certified skills will benefit from the elimination of an impediment to hiring and retention of such employees.

GENERAL FUND: Public funds that would otherwise be used to pay insurance premiums and deductibles could be used elsewhere.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health and Department of Public Safety.

EFFECTIVE DATE: Upon approval.