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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, 317 P.3d 683 (Haw. Ct. App. 2013),  
3 created a distinction between medical discretion and  
4 governmental discretion for physicians who are employed by the  
5 State of Hawaii, unnecessarily putting publicly-employed  
6 professionals who are acting in the course and scope of their  
7 employment at personal monetary risk.

8           Therefore, the purpose of this Act is to mitigate that  
9 personal risk by recognizing what is inherent in the State Tort  
10 Liability Act: the state and its political subdivisions shall be  
11 held accountable for the torts of government employees in the  
12 same manner as a private employer. This Act clarifies that  
13 irrespective of whether a professionally licensed or certified  
14 employee of the State or a county exercises governmental  
15 discretion or the employee's professional judgment while acting  
16 within the scope of office or employment, the State and the



1 counties, as provided in sections 662-2 and 662-3, Hawaii  
2 Revised Statutes, have waived immunity from liability and shall  
3 be exclusively liable for all tort actions on claims for money  
4 damages for injury or loss of property or personal injury or  
5 death caused by the negligent or wrongful act or omission of  
6 their professionally licensed or certified employees.

7 The legislature finds that the provisions of this Act are  
8 necessary and appropriate to enable the State and the counties  
9 to continue to attract and hire employees who are professionally  
10 licensed or certified to perform services that are essential to  
11 good government.

12 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to  
14 read as follows:

15 "§46- Professionally licensed or certified government  
16 employees. Any action against a county for injury or loss of  
17 property, or personal injury or death, arising or resulting from  
18 the negligent or wrongful act or omission of any professionally  
19 licensed or certified employee of the county while acting within  
20 the scope of the employee's office or employment shall be  
21 exclusive of any other civil action or proceeding for money



1 damages by reason of the same subject matter against the  
2 professionally licensed or certified employee whose act or  
3 omission gave rise to the claim or against the employee's  
4 estate. Any civil action or proceeding for money damages  
5 arising out of or relating to the same subject matter against  
6 the employee or the employee's estate shall be precluded without  
7 regard to when the act or omission occurred. When an employee  
8 is named in an individual capacity, the county may notify all  
9 parties in writing that the county is invoking exclusive  
10 liability. The action or proceeding shall thereafter proceed  
11 against the county alone."

12 SECTION 3. Section 662-14, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§662-14 **Exclusiveness of remedy.** (a) The authority of  
15 the State or any state agency to sue and be sued in its own name  
16 shall not be construed to authorize any other actions against  
17 the State or such agency on claims [~~for torts of its employees,~~]  
18 cognizable under this chapter, and the rights and remedies  
19 provided by this chapter and section 661-11 shall be exclusive.

20 (b) The remedy against the State provided by this chapter  
21 and section 661-11 for injury or loss of property, or personal



1 injury or death, arising or resulting from the negligent or  
 2 wrongful act or omission of any professionally licensed or  
 3 certified employee of the State while acting within the scope of  
 4 the employee's office or employment shall be exclusive. Any  
 5 civil action or proceeding for money damages arising out of or  
 6 relating to the same subject matter against the employee or the  
 7 employee's estate shall be precluded without regard to when the  
 8 act or omission occurred. When an employee is named in an  
 9 individual capacity, the State may notify all parties in writing  
 10 that the State is invoking exclusive liability. The action or  
 11 proceeding shall thereafter proceed against the State alone."

12 SECTION 4. This Act does not affect rights and duties that  
 13 matured, penalties that were incurred, and proceedings that were  
 14 begun before its effective date.

15 SECTION 5. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on July 1, 2091.



**Report Title:**

Professionally Licensed or Certified Government Employees; Tort Liability; Exclusive Liability

**Description:**

Clarifies that the State and the counties shall be exclusively liable for civil tort claims resulting from the negligent or wrongful act or omission of their professionally licensed or certified employees acting within the scope of office or employment. Precludes civil actions or proceedings for money damages against the employee. (SB2815 HD1)

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

