

Honolulu, Hawaii

FEB 18 2016

RE: S.B. No. 2815

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2815 entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONALLY LICENSED OR
CERTIFIED GOVERNMENT EMPLOYEES,"

begs leave to report as follows:

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

Your Committee received testimony in support of this measure
from the Department of the Attorney General; Department of Public
Safety; Department of Taxation; City and County of Honolulu,
Department of Human Resources; and Hawaii Government Employees
Association, AFSCME Local 152, AFL-CIO. Your Committee received
testimony in opposition to this measure from the Hawaii
Association for Justice.

Your Committee finds that state employees are generally
afforded qualified immunity for torts as a result of actions taken
while in the course and scope of their state employment, which
affords these employees protection from individual liability.
However, in the recent case of Slingluff v. State, 317 P.3d 683
(Haw. Ct. App. 2013), the Intermediate Court of Appeals held that
prison physicians were not entitled to qualified immunity for the
exercise of their professional medical judgment. According to
testimony received by your Committee, the Slingluff court created
a distinction between medical judgment and governmental judgment,



effectively nullifying qualified immunity for the same types of government officials to whom Hawaii's appellate courts have long granted immunity. Your Committee further finds that the potential for personal liability can have a negative impact on hiring and retention of well-qualified professionals who are interested in working for the State.

Your Committee has heard the concerns regarding the use of professional discretion and governmental discretion in this measure and whether this measure may give immunity beyond what was provided to state employees prior to the Slingluff decision. Your Committee understands these concerns and notes the importance of holding professionally licensed or certified state employees to appropriate professional standards of care.

In response to these concerns, your Committee requested that interested stakeholders work together to seek a balanced procedure that would address the liability of state employees in tort claims. Your Committee notes that the interested stakeholders have almost reached a consensus on this procedure to address liability of state employees. Amendments to this measure are therefore necessary to incorporate language agreed to by interested stakeholders.

Your Committee has amended this measure by:

- (1) Removing language that stated a person exercising professional discretion while in the course and scope of state employment shall be deemed to be exercising governmental discretion and therefore afforded the same privileges and immunities that are afforded to other state employees;
- (2) Clarifying that the State waives its immunity from liability and shall be exclusively liable for all tort actions on claims for money damages for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any professionally licensed or certified employees of the State while acting within the scope of the employee's office or employment;
- (3) Inserting an effective date of July 1, 2050, to encourage further discussion; and



- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that this amended measure remains a work in progress and additional consideration may be warranted by your Committees on Judiciary and Labor and Ways and Means.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2815, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2815, S.D. 1, and be referred to your Committees on Judiciary and Labor and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



