

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

NOLAN P. ESPINDA  
DIRECTOR

Cathy Ross  
Deputy Director  
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Deputy Director  
Corrections

Shawn H. Tsuha  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 2098  
RELATING TO HEALTH

By  
Nolan P. Espinda, Director

Senate Committee on Commence, Consumer Protection, and Health  
Senator Rosalyn H. Baker, Chair  
Senator Michelle N. Kidani, Vice Chair

Senate Committee on Judiciary and Labor  
Senator Gilbert S. C. Keith-Agaran, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair

Friday, February 12, 2016; 9:00 a.m.  
State Capitol, Conference Room 229

Chairs Baker and Keith-Agaran, Vice Chairs Kidani and Shimabukuro, and Members of the Committees:

The Department of Public Safety (PSD) **strongly supports** Senate Bill (HB) 2098 which clarifies that medical health professionals who are employed by the State receive a qualified immunity from personal liability when exercising their governmental discretion as employees of the State when actin in the course and scope of their state employment.

Qualified immunities were withheld from PSD physicians in the Slingluff v. State of Hawaii decision, as the Intermediate Court of Appeals (ICA) ruled that the qualified immunity did not apply to the named physicians, since these physicians are subject to separate professional standards and were exercising their professional medical discretion and not their governmental discretion. The analysis set forth by the ICA created an artificial distinction between medical discretion and governmental discretion that did not previously exist in Hawaii law.

PSD has always found it difficult to recruit and retain qualified physicians, psychiatrists, and advance practice registered nurses because of typically lower government salaries than in the private sector. In addition, knowing that their personal assets may be at risk has further discouraged candidates from even applying for positions with the State. A malpractice insurance policy had to be obtained to ensure that PSD physicians and other medical professionals would not be personally harmed.

Testimony on SB 2098  
February 12, 2016  
Page 2

It is critical that this bill be passed to counter the harsh and unfair results of the *Slingsuff* decision by the ICA, which, by ignoring existing Hawaii law, unnecessarily puts the PSD physicians at personal financial and professional risk. This bill would return the law to its original state before *Slingsuff*.

Thank you for the opportunity to testify on this measure.

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VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

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DEPARTMENT OF HEALTH  
1250 Punchbowl Street  
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**Testimony in SUPPORT of SB2098  
RELATING TO HEALTH**

SENATOR ROSALYN BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH  
SENATOR GILBERT KEITH-AGARAN, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
Hearing Date: February 12, 2016 Room Number: 016

1 **Fiscal Implications:** Savings from department-funded malpractice policies.

2

3 **Department Testimony:** The Department of Health (DOH) supports the concept of immunity for health  
4 professionals acting within the course of government employment and scope of license. DOH defers to  
5 the Department of the Attorney General as whether SB2098 confers levels of protection optimal for the  
6 interests of the State and affected employees.

7

8 SB2098 will enhance the recruitment and retention of public-minded highly qualified clinicians, and  
9 narrow the competitive gap with the private sector. Without such protections DOH professionals acting  
10 in good faith in the best interest of their clients and the public may be at personal financial and  
11 professional risk. This is an unfair burden and detrimental to government services.

12

13 The department respectfully recommends extending protections beyond *medical* health professionals,  
14 most often physicians and nurses, to *clinical* health professionals to include psychologists, licensed  
15 clinical social workers, and similar disciplines working within scope of license at independent practice  
16 levels.

17

18 **Offered Amendments:** Page 1, Bill Section 2, from Line 16:

19 "§321- Medical and clinical health professionals; qualified  
20 immunity. State employees who exercise professional medical and  
21 clinical discretion within the course and scope of their government

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1 employment shall receive qualified immunity from any personal  
2 liability. Medical and clinical health professionals shall also be  
3 afforded any other privileges and immunities that are available under  
4 common law, federal law, or state law for other government employees  
5 who are not medical and clinical health professionals, when those  
6 other government employees are acting in the course and scope of their  
7 government employment."

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It is critical that this bill be passed to counter the harsh and unfair results of the *Slingluff* decision by the ICA, which, by ignoring existing Hawaii law, unnecessarily puts the PSD physicians at personal financial and professional risk. This bill would return the law to its original state before *Slingluff*.

Thank you for the opportunity to testify on this measure.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Eighth Legislature, State of Hawaii  
State Senate  
Committee on Commerce, Consumer Protection and Health  
Committee on Judiciary and Labor

Testimony by  
Hawaii Government Employees Association

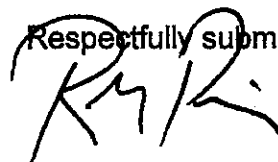
February 12, 2016

S.B. 2098 – RELATING TO HEALTH

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2098. This important legislation amends Chapter 321, HRS by providing medical health professionals employed by the State of Hawaii with qualified immunity from personal liability when exercising their professional medical discretion within the course and scope of their government employment. S.B. 2098 also provides medical health professionals with the same privileges and immunities that other state employees currently have.

More specifically, this bill will protect physicians, psychiatrists and nurses, who work for the State of Hawaii. The HGEA represents many of these employees in various state departments. S.B. 2098, if enacted, will enable the State of Hawaii to attract and retain employees who provide medical services that are essential to the public.

Thank you for the opportunity to testify in support of S.B. 2098.

Respectfully submitted,  
  
Randy Perreira  
Executive Director