



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2815, S.D. 1, RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

DATE: Wednesday, February 24, 2016 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call Kendall Moser, Deputy Attorney General at 586-1494

Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

The Department of the Attorney General supports Senate Draft 1.

The purpose of this bill is to mitigate the personal monetary risk of professionally licensed or certified state employees.

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, affording them protection from individual liability. In the recent case of Slingluff v. State of Hawai'i, et al., 131 Hawai'i 239, 317 P.3d 683 (App. 2013), however, the Intermediate Court of Appeals 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, including nurses, attorneys, engineers, and other professionals.

The potential for personal liability prevents good, well-qualified professionals from applying for jobs with the government. To address the ramifications of Slingluff, and in an effort to attract and retain physicians and other professionally licensed or certified state employees, it is proposed that section 662-14, Hawaii Revised Statutes, be amended to clarify that the exclusive remedy for injury or loss of property, or personal injury or death, arising from the act or omission of a professionally licensed or certified employee of the State acting within the scope of the employee's office or employment shall be against the State alone.

We respectfully ask the Committees to pass Senate Bill No. 2815, Senate Draft 1.

LATE TESTIMONY

COMMENTS OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. NO. 2815, S.D.1

Date: Wednesday, February 24, 2016

Time: 10:00 am

Room: 211

To: Chairs Gilbert Keith-Agaran and Jill Tokuda, and the Members of the Senate Committees on Judiciary and Labor, and Ways and Means:

My name is Bob Toyofuku and I am presenting COMMENTS on behalf of the Hawaii Association for Justice (HAJ) regarding S.B. No. 2815, S.D.1, relating to Professionally Licensed or Certified Government Employees.

The Department of the Attorney General and HAJ met and worked together to draft the language contained in the S.D. 1. As the committee report from the prior committee noted, "this amended measure remains a work in progress." The parties have continued to work together and are agreeable to moving this measure as is. The parties may continue to discuss tweaking the language as it proceeds through the legislative process as necessary.

Thank you very much for considering these comments regarding this measure. Please feel free to contact me should you have any questions or desire additional information.