



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2815, S.D. 2, RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, March 15, 2016

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or Kendall J. Moser, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General supports Senate Draft 2.

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

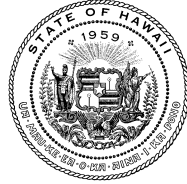
State employees are generally afforded qualified immunity for torts as a result of actions taken while in the course and scope of their State employment, affording them protection from individual liability. In the recent case of Slingluff v. State of Hawai'i, et al., 131 Hawaii 239, 317 P.3d 683 (App. 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 Committee to pass Senate Bill No. 2815, Senate Draft 2.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Mark M. Nakashima, Chair
and Members of the House Committee on Labor & Public Employment

Date: March 15, 2016
Time: 10:30 A.M.
Place: Conference Room 309, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2815, S.D. 2, Relating to Professionally Licensed or Certified Government Employees.

The Department of Taxation (Department) supports S.B. 2815, S.D. 2, and offers the following comments for your consideration.

The Department has numerous employees who are also professionals and who are directly affected by the holding in *Slingluff v. State of Hawaii*. This measure will help the Department recruit and retain professional employees by ensuring those professional employees cannot be held personally liable for actions they carry out in the course and scope of their government employment.

Thank you for the opportunity to provide comments.

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
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2815, SENATE DRAFT 2
RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED
GOVERNMENT EMPLOYEES

By
Nolan P. Espinda, Director

House Committee on Labor and Public Employment
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Tuesday, March 15, 2016; 10:30 a.m.
State Capitol, Conference Room 309

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2815, Senate Draft (SD) 2, which would amend HRS Chapter 662-14 to allow the State to invoke exclusive liability in actions or proceedings naming a State employee individually. The action or proceeding would then proceed against the State alone.

In the *Slingluff v. State of Hawaii* decision, the Intermediate Court of Appeals (ICA) withheld qualified privileges and immunities from PSD physicians and ruled that the qualified privilege 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 does not limit its application to just physicians, as personal liability may be imposed on any state employee who is also a professional. In this decision, the ICA created an artificial distinction between medical discretion and governmental discretion that did not previously exist in Hawaii law.

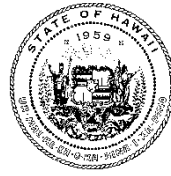
PSD has always found it difficult to recruit and retain qualified physicians, psychiatrists, and advance practice registered nurses because of typically lower government salaries than in the private sector. In addition, knowing that their personal assets may be at risk has further discouraged candidates from even applying for positions

Testimony on SB 2815, SD2
March 15, 2016
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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.

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* by providing for the State's exclusive liability.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
ON
MARCH 15, 2016

S.B. 2815, SD2

RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

Chair Nakashima and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2815, SD2.

The Department of Accounting and General Services (DAGS) strongly supports this bill and offers the following comments for your consideration.

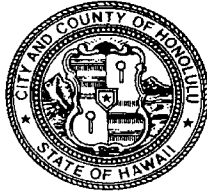
DAGS has multiple divisions and attached agencies who rely on the work of employees that are licensed professionals who are directly affected by the holding in *Slingluff v. State of Hawaii*. This measure will help DAGS recruit and retain professional employees by ensuring those professional employees cannot be held personally liable for actions they carry out in the course and scope of their government employment. Without this provision, current and future State employees who require professional licensing to qualify for employment would find federal and private sector work that affords the proposed protection much more attractive. This bill will help DAGS to attract, hire, and retain qualified licensed professionals.

Thank you for the opportunity to submit written testimony on this matter.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 15, 2016

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

Subject: Senate Bill No. 2815, SD2
Relating to Professionally Licensed or Certified Government
Employees

The City and County of Honolulu ("City"), Department of Human Resources ("DHR"), supports SB 2815, and requests a further statutory amendment, clarifying that professional employees of the City, when exercising professional judgment, are likewise deemed to be exercising governmental discretion as employees of the City. DHR believes the same privileges and immunities should be extended to professionally-licensed employees of the City, so that the City is not disadvantaged in attracting and hiring employees who are specially-licensed or certified to perform services that are essential to good government.

Chapter 46, Hawaii Revised Statutes, should be amended by adding a new section to be appropriately designated and to read as follows:

§46- Professionally licensed or certified government employees. Any action against a county for injury or loss of property, or personal injury or death, arising or resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the county while acting within the scope of the employee's office or employment shall be exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the professionally licensed or certified employee whose act or omission gave rise to the claim or against the estate of such employee. Any civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
March 15, 2016
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estate shall be precluded without regard to when the act or omission occurred. When an employee is named in an individual capacity, the county may notify all parties in writing that the county is invoking exclusive liability; and the action or proceeding shall thereafter proceed against the county alone."

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo". The signature is written in a cursive, flowing style.

Carolee C. Kubo
Director



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 15, 2016
10:00 a.m.
State Capitol, Room 309

S.B. 2815 S.D. 2
RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT
EMPLOYEES

Senate Committee on Labor and Public Employment

The Department of Transportation (DOT) strongly **supports** S.B. 2815, S.D. 2. This Administration bill affords the same privileges and immunities to professionally licensed or certified state employees who are afforded to other employees.

DOT has multiple divisions who rely on the work of employees who are licensed or certified professionals. This bill will help us recruit and retain licensed employees by ensuring they cannot be held personally liable for actions they carry out in the scope of their employment.

Thank you for the opportunity to provide testimony.

LATE

**COMMENTS OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. NO. 2815, S.D.2**

Date: Tuesday, March 15, 2016

Time: 10:30 am

Room: 309

To: Chairman Mark Nakashima and the Members of the House Committee on Labor:

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.2, relating to Professionally Licensed or Certified Government Employees.

The Department of the Attorney General and HAJ worked together to reach consensus on this measure as reflected in the S.D. 1. The S.D. 2 made several language revisions that may unintentionally affect pending and future claims. HAJ prefers the language in the S.D. 1. As of the time that this testimony is being submitted the Department of the Attorney General and HAJ continue to discuss reaching a consensus agreement. As such, this measure remains a work in progress.

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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

LATE

The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

March 15, 2016

S.B. 2815, S.D. 2 – RELATING TO
PROFESSIONALLY LICENSED
OR CERTIFIED GOVERNMENT EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2815, S.D. 2. This important legislation amends Chapter 662, HRS, by providing professionally licensed or certified employees employed by the State of Hawaii liability protection when exercising their professional discretion within the course and scope of their government employment.

More specifically, S.B. 2815, S.D. 2 clarifies that the State shall be exclusively liable for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the State while acting within the scope of the employee's office or employment. It also establishes that any civil action or proceeding for money damages arising out of or related to the same subject matter against the employee shall be precluded.

This bill will protect physicians, psychiatrists and nurses, and other licensed professionals who work for the State of Hawaii. The HGEA represents many of these employees in various state departments. S.B. 2815, S.D. 2, if enacted, will enable the State of Hawaii to attract and retain employees who provide essential services to the public.

Thank you for the opportunity to testify in support of S.B. 2815, S.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director