

S.B. NO. 889

JAN 25 2017

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 state-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; and clarify that irrespective of whether a
11 professionally licensed or certified employee of the State
12 exercises governmental discretion or the employee's professional
13 judgment while acting within the scope of the employee's office
14 or employment, the State, as provided in sections 662-2 and 662-
15 3, Hawaii Revised Statutes, has waived its immunity from
16 liability and shall be exclusively liable for all tort actions

1 on claims for money damages for injury or loss of property or
2 personal injury or death caused by the negligent or wrongful act
3 or omission of professionally licensed or certified employees of
4 the State.

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

10 SECTION 2. Section 662-14, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§662-14 Exclusiveness of remedy.** (a) The authority of
13 the State or any state agency to sue and be sued in its own name
14 shall not be construed to authorize any other actions against
15 the State or such agency on claims [~~for torts of its employees,~~]
16 cognizable under this chapter, and the rights and remedies
17 provided by this chapter and section 661-11 shall be exclusive.

18 (b) The remedy against the State provided by this chapter
19 and section 661-11 for injury or loss of property, or personal
20 injury or death, arising or resulting from the negligent or
21 wrongful act or omission of any professionally licensed or
22 certified employee of the State while acting within the scope of
23 the employee's office or employment shall be exclusive. Any


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1 civil action or proceeding for money damages arising out of or
2 relating to the same subject matter against the employee or the
3 employee's estate shall be precluded without regard to when the
4 act or omission occurred. When an employee is named in an
5 individual capacity, the State may notify all parties in writing
6 that the State is invoking exclusive liability; and the action
7 or proceeding shall thereafter proceed against the State alone."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on approval.

14 INTRODUCED BY: 

15 BY REQUEST

16

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Report Title:

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

Description:

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. 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.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

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

MEANS: Amend section 662-14, Hawaii Revised Statutes

JUSTIFICATION: State employees are generally afforded qualified immunity for torts as a result of actions 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 Hawaii, 131 Haw. 239, 317 P.3d 683 (2013), however, the Hawaii Supreme Court 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.

We disagree with the holding in Slingluff. An employee who is employed by the State to perform tasks for which he or she is professionally licensed or certified, is exercising judgment for which the State hired the employee and is therefore exercising governmental judgment and discretion. This is the position taken by a

majority of jurisdictions nationwide and we seek to adopt this position legislatively.

To address the ramifications of Slingluff, and in an effort to attract and retain its doctors, the State has taken steps to obtain professional liability insurance covering claims of individual liability for its physicians. This comes at a cost. This cost is expected to rise over time as claims are made against such policies. The need for such insurance becomes unnecessary with the passage of this bill.

The potential for personal liability prevents good, well-qualified professionals from applying for jobs with the government. And, even though the State may currently have insurance for physicians, providing liability insurance for every licensed or certified professional employed by the State would come at an extraordinary, and unnecessary, cost.

Impact on the public: Individuals who are required to be served, or who will benefit from professional services rendered, will be better served by the enhanced ability of the State to hire and retain professionally licensed and certified employees.

The State regularly pays for judgments or settlements where the actions of its employees, professionally licensed or not, were taken in the course and scope of their employment. Plaintiffs, who successfully prove their claims would therefore not be negatively impacted.

Impact on the department and other agencies: Departments and agencies who need to hire employees for their professionally licensed or certified skills will benefit from the elimination of an impediment to hiring and retention of such employees.

GENERAL FUND: Public funds that would otherwise be used to pay insurance premiums and deductibles could be used elsewhere.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health and Department of Public Safety.

EFFECTIVE DATE: Upon approval.