
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 in the recent
2 decision Slingluff v. State, 317 P.3d 683 (Haw. Ct. App. 2013),
3 the Intermediate Court of Appeals held that "physicians employed
4 by the State, including prison doctors, exercising purely
5 medical discretion in the diagnosis and treatment of potentially
6 injured or sick people, are not protected from medical
7 malpractice claims by the doctrine of qualified immunity under
8 Hawai'i law."

9 The purpose of this Act is to clarify the personal
10 liability requirements for professionally licensed or certified
11 employees of the State by:

12 (1) Clarifying that the State shall be exclusively liable
13 for civil tort claims resulting from the negligent or
14 wrongful act or omission of a professionally licensed
15 or certified employee of the State acting within the
16 scope of the employee's office or employment;



1 (2) Precluding civil actions or proceedings for money
2 damages against the employee when the State agrees to
3 assume responsibility, except for claims based on
4 liability arising from employment with an employer
5 other than the State; and

6 (3) Clarifying liability when the State agrees to assume
7 responsibility in a civil action against a
8 professionally licensed or certified employee.

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

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

17 (b) The remedy against the State provided by this chapter
18 and section 661-11 for injury or loss of property, or personal
19 injury or death, arising or resulting from the negligent or
20 wrongful act or omission of any professionally licensed or
21 certified employee of the State while acting within the scope of



1 the employee's office or employment shall be exclusive whenever
2 the State agrees to be liable for the injuries, losses, and
3 damages caused by the professionally licensed or certified
4 employee. Any civil action or proceeding for money damages
5 arising out of or relating to the same subject matter against
6 the employee or the employee's estate shall thereafter be
7 precluded without regard to when the act or omission occurred;
8 provided that claims based on liability arising from employment
9 with an employer other than the State shall not be precluded.
10 When an employee is named in an individual capacity, the State
11 may notify all parties in writing that the State is invoking
12 exclusive liability by agreeing to be liable for the injuries,
13 losses, and damages caused by the professionally licensed or
14 certified employee, and the action or proceeding shall
15 thereafter proceed against the State alone. The employee shall
16 remain personally liable for those injuries, losses, and damages
17 for which the State has not accepted responsibility."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on January 7, 2059.



Report Title:

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

Description:

Clarifies liability for tort claims against a professionally licensed or certified state employee. Assigns exclusive liability and remedy to the State for claims arising out of acts within the scope of public employment and for which the State assumes responsibility. Precludes proceedings for damages against the employee where State is liable except for acts not within scope of State employment. (SB889 HD1)

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