

JAN 24 2019

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 decision of
2 Slingluff v. State, 131 Hawai'i 239, 317 P.3d 683 (Haw. Ct. App.
3 2013), the Intermediate Court of Appeals held that "physicians
4 employed by the State, including prison doctors, exercising
5 purely medical discretion in the diagnosis and treatment of
6 potentially injured or sick people, are not protected from
7 medical malpractice claims by the doctrine of qualified immunity
8 under 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;

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- 1 (2) Precluding civil actions or proceedings for money
2 damages against the employee, except for claims based
3 on liability other than an employee's scope of
4 employment with the State or other employer; and
5 (3) Clarifying liability when the State agrees to assume
6 full or partial responsibility in a civil action
7 against a professionally licensed or certified
8 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
22 the employee's office or employment shall be exclusive whenever
23 the State agrees to be liable for the injuries, losses, and

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

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

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *M. J. W.*
BY REQUEST

Report Title:

Professionally Licensed or Certified Government Employees; Tort Liability; Exclusive State 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. Precludes civil actions or proceedings for money damages against the employee, except for claims based on liability other than an employee's scope of employment with the State or other employer. Clarifies liability when the State agrees to assume full or partial responsibility in a civil action against a professional licensed or certified employee.

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 TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

PURPOSE: The purpose of this bill is to clarify the personal liability requirements for professionally licensed or certified employees of the State by making the State exclusively liable for the negligent acts of professionally licensed or certified employees of the State acting within the scope of the employee's office or employment and precluding civil actions or proceedings for money damages against the employee.

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 case of Slingluff v. State of Hawaii, 131 Hawai'i 239, 317 P.3d 683 (2013), however, the Hawaii 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.

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. 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, and potentially, all departments and agencies that employ licensed or certified professionals.

EFFECTIVE DATE: Upon approval.