

JAN 27 2021

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

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

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

- 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 course and scope
4 of 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 course
22 and scope of the employee's office or employment shall be
23 exclusive whenever the State agrees to be fully liable for the

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

17 (c) Nothing in this chapter shall create a right, claim,
18 or cause of action by an employee against the State if the State
19 does not invoke exclusive liability.

20 (d) The State shall retain the right to seek reimbursement
21 from an employee if, after invoking exclusive liability, the
22 State discovers that the employee was not acting within the
23 course and scope of the employee's office or employment."

Report Title:

Professionally Licensed or Certified Government Employees; Tort Liability; 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 course and 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 course and 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.

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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 make the State partially or exclusively liable for the negligent acts of professionally licensed or certified employees of the State acting within the course and 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: Our department's position is that state employees are generally afforded qualified immunity for torts resulting from actions while in the course and scope of their state employment, thereby 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. There is a concern that the Court's reasoning could 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. Directly after Slingluff, the Department of Public Safety lost a prison physician and a prison nurse, both of whom were concerned about personal liability.

To address the ramifications of Slingluff, and in an effort to attract and retain its doctors, the State obtained professional liability insurance covering claims of individual liability for its physicians.

Nevertheless, the potential for personal liability prevents good, well-qualified professionals from applying for jobs with the government. And, if the logic of Slingluff is extended to other professionally licensed or certified employees, the State faces the potential of losing more experienced professionals who are concerned about personal liability.

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.