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# 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 override the Intermediate  
9   Court of Appeals' holding in *Slingluff* and clarify the personal  
10   liability requirements for professionally licensed or certified  
11   employees of the State by:

12           (1) Clarifying when 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



1 course and scope of the employee's office or  
2 employment;

3 (2) Precluding civil actions or proceedings for money  
4 damages against the state employee, except for claims  
5 based on liability other than an employee's course and  
6 scope of employment with the State or other employer;  
7 and

8 (3) Clarifying liability when the State agrees to assume  
9 full or partial responsibility in a civil action  
10 against a professionally licensed or certified  
11 employee.

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

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

20 (b) The remedy against the State provided by this chapter  
21 and section 661-11 for injury or loss of property, or personal



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



1 losses, and damages for which the State has not accepted  
2 responsibility.

3 (c) Nothing in this section shall create a right, claim,  
4 or cause of action by an employee against the State if the State  
5 does not invoke exclusive liability.

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

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

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2060.



**Report Title:**

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

**Description:**

Clarifies when 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. Effective 7/1/2060. (SD1)

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