

STAND. COM. REP. NO.

3449

Honolulu, Hawaii

MAR 24 2022

RE: H.B. No. 886
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred H.B. No. 886, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify when the State shall be exclusively liable for civil tort claims resulting from the negligent or wrongful act or omission of a professionally licensed or certified employee of the State acting within the course and scope of the employee's office or employment;
- (2) Preclude 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; and
- (3) Clarify liability when the State agrees to assume full or partial responsibility in a civil action against a professionally licensed or certified employee.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of



Transportation; Department of Human Services; Hawaii Association for Justice; and Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO.

Your Committee finds that in Slingluff v. State, 131 Hawai'i 239, 317 P.3d 683 (Haw. Ct. App. 2013), the court held that prison physicians are not entitled to a qualified privilege or immunity for the exercise of their professional judgment and discretion, because their actions in diagnosing and treating the plaintiff were medical, not governmental. The application of this rationale can lead to liability for other professionally licensed or certified employees of the State, including nurses, attorneys, and engineers, and make them personally liable for performing their job functions as State employees.

This measure will clarify that the exclusive remedy for a tort claim based on injury or loss of property, or personal injury or death, arising from the act or omission of a professionally licensed or certified employee of the State shall be against the State and not the individual, so long as the State agrees that the employee was acting within the course and scope of the employee's office or employment.

Your Committee notes the testimony of the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, contending that the qualified immunity under this measure be extended to all State employees, regardless of whether they hold professional licenses. While your Committee understands the basis for such sentiment, the title of this measure precludes the expansion of immunity under this measure to all State employees. Your Committee suggests that this measure does not preclude such a measure from being considered in the future.

This measure also provides that it does not create a right, claim, or cause of action by an employee against the State if the State does not invoke exclusive liability where the allegedly wrongful acts or omissions of its professionally licensed or certified employee are beyond the course or scope of employment. The Department of the Attorney General has clarified that this provision is not intended to preclude or extinguish any pre-existing rights that an employee may have against the State under chapter 662, Hawaii Revised States, including the right to seek declaratory relief. With that understanding, your Committee



intends that this measure retains, and does not preclude, the employee's right to seek declaratory relief against the State for its failure to accept responsibility for the alleged negligence or other wrongful acts or omissions by a State employee.

Your Committee has amended this measure by:

- (1) Clarifying that the purpose of the measure is to override the Intermediate Court of Appeals' holding in Slingluff;
- (2) Clarifying that nothing in section 662-14, Hawaii Revised Statutes, creates a right, claim, or cause of action by an employee against the State if the State does not invoke exclusive liability;
- (3) Inserting an effective date of July 1, 2060, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 886, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 886, H.D. 1, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,



BRIAN T. TANIGUCHI, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Labor, Culture and the Arts
LCA

Bill / Resolution No.:*	Committee Referral:	Date:
<i>HB 886, HD1</i>	<i>LCA, JDC/WAM</i>	<i>3/16/2022</i>

The Committee is reconsidering its previous decision on this measure.
If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)	✓			
CHANG, Stanley	✓			
KEOHOKALOLE, Jarrett	✓			
FEVELLA, Kurt				✓
TOTAL	<i>4</i>	<i>0</i>	<i>0</i>	<i>1</i>

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: 

Distribution: Original Yellow Pink Goldenrod
File with Committee Report Clerk's Office Drafting Agency Committee File Copy

*Only one measure per Record of Votes