



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 886, H.D. 1, S.D. 1, RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Tuesday, April 5, 2022 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 211 and Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Caron Inagaki,
Deputy Attorney General, at (808) 586-1494)

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to override the Intermediate Court of Appeal's holding in *Slingluff v. State of Hawai'i, et al.*, 131 Hawai'i 239, 317 P.3d 683 (App. 2013). The bill would 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 acting within the course and scope of the employee's office or employment, and preclude civil actions or proceedings for money damages against the individual employee. The employee would remain liable for those injuries, losses, and damages for which the State has not accepted responsibility.

State employees are generally afforded qualified privilege or immunity for torts as a result of actions taken while in the course and scope of their State employment, affording them protection from individual liability. In the case of *Slingluff*, however, the Intermediate Court of Appeals held that prison physicians are not entitled to a qualified privilege or 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 employees of the State, including nurses, attorneys, engineers, and other professionals.

For example, plaintiffs in civil lawsuits have attempted to apply the reasoning in *Slingluff* to deputy public defenders who had represented criminal defendants. Other state employees who hold professional licenses could also be affected and potentially be held personally liable for doing their jobs.

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. There is no reason to provide less protection from individual liability to some government employees merely because they hold professional licenses.

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 in the Department of Public Safety. 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 would become unnecessary with the passage of this bill.

The potential for personal liability, putting personal assets at risk, prevents good, well-qualified professionals from applying for jobs with the government. Even though the State may now carry insurance for its physicians in the Department of Public Safety, providing liability insurance for every licensed or certified professional employed by the State would come at an extraordinary, and unnecessary, cost.

This bill would amend section 662-14, Hawaii Revised Statutes, to clarify that the exclusive remedy for 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.

Because the State Tort Liability Act already obligates the State to accept liability for the acts or omissions of their employees who were acting within the course and scope of their employment, this bill does not impose any additional obligations on the

State. And, because a plaintiff may still sue professionally licensed or certified employees in their personal capacities if they act outside the course and scope of their employment, plaintiffs would not be prevented from seeking available remedies.

We respectfully ask that this bill be passed.

LATE

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF HB 886
SD1**

Date: Tuesday April 5, 2022

Time: 10:05 a.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **SUPPORT** of HB 886 SD1, Relating to Professionally Licensed or Certified Government Employees; Tort Liability; State Liability.

HAJ is stands in support of this measure as it offers an avenue of recourse for the for injury or loss of property, or personal injury or death, arising or 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. HB 886 SD1 appropriately balances the protection of resident's rights to recovery while offering protection to our hardworking professionally licensed or certified state employees.

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.