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



- 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



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



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

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 Statutory material to be repealed is bracketed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

6 SECTION 5. This Act shall take effect on January 7, 2059.

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Report Title:

Professionally Licensed or Certified Government Employees; Tort Liability; Exclusive 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. Effective 01/07/2059. (SD2)

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