

STAND. COM. REP. NO.

774

Honolulu, Hawaii

MAR 03 2017

RE: S.B. No. 889
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committees on Judiciary and Labor and Ways and Means, to which was referred S.B. No. 889, S.D. 1, entitled:

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

beg leave to report as follows:

The purpose and intent of this measure is to clarify the personal liability requirements for professionally licensed or certified employees of the State by:

- (1) Clarifying that 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 scope of the employee's office or employment;
- (2) Precluding 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; and
- (3) Clarifying liability when the State agrees to assume full or partial responsibility in a civil action against a professionally licensed or certified employee.



Your Committees received testimony in support of this measure from the Department of the Attorney General; Department of Accounting and General Services; Department of Health; Department of Public Safety; Department of Taxation; and Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO.

Your Committees find that state employees are generally afforded qualified immunity for torts as a result of actions taken while in the course and scope of their state employment, which affords these employees protection from individual liability. However, in the recent case of Slingluff v. State, 317 P.3d 683 (Haw. Ct. App. 2013), the Intermediate Court of Appeals held that "physicians employed by the State, including prison doctors, exercising purely medical discretion in the diagnosis and treatment of potentially injured or sick people, are not protected from medical malpractice claims by the doctrine of qualified immunity under Hawaii law." This measure seeks to clarify the issue of state defense and indemnification of professionally licensed or certified employees.

Your Committees have amended this measure by inserting an effective date of January 7, 2059, to encourage further discussion.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 889, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as S.B. No. 889, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Labor and Ways and Means,



JILL N. TOKUDA, Chair



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

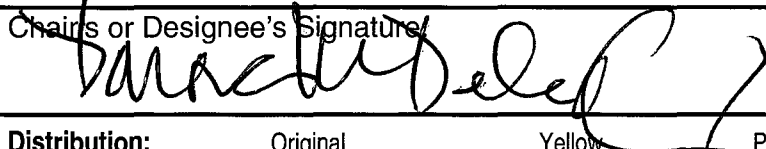
Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB889, SDI	Committee Referral: CPH, JDL/WAM	Date: 2/28/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado				✓
THIELEN, Laura H.	✓			
TOTAL	3	0	0	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB 889, SDI	Committee Referral: CPH, SDL/WAM	Date: 7-8/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TOKUDA, Jill N. (C)	/			
DELA CRUZ, Donovan M. (VC)	/			
ENGLISH, J. Kalani	/			
GALUTERIA, Brickwood	/			
HARIMOTO, Breene	/			
INOUE, Lorraine R.				/
KAHELE, Kaiali'i	/			
RIVIERE, Gil	/			
SHIMABUKURO, Maile S.L.	/			
TANIGUCHI, Brian T.	/			
WAKAI, Glenn				/
TOTAL	9			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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