

STAND. COM. REP. NO. **2600**

Honolulu, Hawaii

MAR 03 2016

RE: S.B. No. 2815
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committees on Judiciary and Labor and Ways and Means, to which was referred S.B. No. 2815, 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:

- (1) Clarify that the State is 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;
- (2) Establish that any civil action or proceeding for money damages arising out of or related to the same subject matter against the employee is precluded; and
- (3) Authorize the State to notify all parties in a tort action or proceeding that names an employee in an individual capacity that the State is invoking exclusive liability and the action or proceeding will proceed thereafter against the State alone.

Your Committees received testimony in support of this measure from the Department of Taxation; Department of Accounting and General Services; Department of Public Safety; Department of the



Attorney General; and Department of Human Resources, City and County of Honolulu. Your Committees received comments on this measure from the Hawaii Association for Justice.

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 prison physicians were not entitled to qualified immunity for the exercise of their professional medical judgment. According to testimony received by your Committees, the Slingluff court created a distinction between medical judgment and governmental judgment, effectively nullifying qualified immunity for the same types of government officials to whom Hawaii's appellate courts have long granted immunity. Your Committees further find that the potential for personal liability can have a negative impact on hiring and retention of well-qualified professionals who are interested in working for the State.

Your Committees note the concerns raised regarding the scope of the term "wrongful act or omission" as used in this measure and the resulting exposure to the State. Your Committees will seek an opinion from the Attorney General to interpret this term and opine on any possible ramifications.

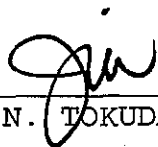
Your Committees have amended this measure by:

- (1) Deleting conflicting language to clarify that the State is exclusively liable;
- (2) Adding a savings clause; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 2815, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as S.B. No. 2815, 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-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB2815 SD1	Committee Referral: CPH, JDL/WAM	Date: 2/24/16		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Pass, unamended 2312 </div> <div> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div> <input type="checkbox"/> Hold 2310 </div> <div> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
KAHELE, Kaiali'i	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.		✓		
SLOM, Sam	✓			
TOTAL	6	1		
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
<div style="display: flex; justify-content: space-between; font-size: small;"> <div>Distribution:</div> <div>Original</div> <div>Yellow</div> <div>Pink</div> <div>Goldenrod</div> </div> <div style="display: flex; justify-content: space-between; font-size: x-small; margin-top: 2px;"> <div>File with Committee Report</div> <div>Clerk's Office</div> <div>Drafting Agency</div> <div>Committee File Copy</div> </div>				

*Only one measure per Record of Votes

The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB 2815, SD1	Committee Referral: CPH, SDL/WAM	Date: 8/24/16		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Pass, unamended 2312 </div> <div> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div> <input type="checkbox"/> Hold 2310 </div> <div> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
TOKUDA, Jill N. (C)	/			
DELA CRUZ, Donovan M. (VC)	/			
CHUN OAKLAND, Suzanne	/			
ENGLISH, J. Kalani	/			
GALUTERIA, Brickwood	/			
HARIMOTO, Breene				/
INOUE, Lorraine R.	/			
RIVIERE, Gil	/			
TANIGUCHI, Brian T.	/			
WAKAI, Glenn	/			
SLOM, Sam	/			
TOTAL	10			1
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: 				
Distribution: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

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