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# A BILL FOR AN ACT

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RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT  
EMPLOYEES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In the decision of Slingluff v. State, 131  
2   Hawai'i 239, 317 P.3d 683 (Haw. Ct. App. 2013), the Intermediate  
3   Court of Appeals held that "physicians employed by the State,  
4   including prison doctors, exercising purely medical discretion  
5   in the diagnosis and treatment of potentially injured or sick  
6   people, are not protected from medical malpractice claims by the  
7   doctrine of qualified immunity under Hawai'i law."

8           The purpose of this Act is to clarify the personal  
9   liability requirements for professionally licensed or certified  
10   employees of the State by:

11           (1) Clarifying that the State shall be exclusively liable  
12           for civil tort claims resulting from the negligent or  
13           wrongful act or omission of a professionally licensed  
14           or certified employee of the State acting within the  
15           course and scope of the employee's office or  
16           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 course and scope  
4 of 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 course



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

19 (c) Nothing in this chapter shall create a right, claim,  
20 or cause of action by an employee against the State if the State  
21 does not invoke exclusive liability.



1        (d) The State shall retain the right to seek reimbursement  
2 from an employee if, after invoking exclusive liability, the  
3 State discovers that the employee was not acting within the  
4 course and scope of the employee's office or employment."

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

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

10       SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Professionally Licensed or Certified Government Employees; Tort Liability; State 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 course and 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 course and 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 7/1/2050. (HD1)

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