

ACT 44

H.B. NO. 886

A Bill for an Act Relating to Professionally Licensed or Certified Government Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In the decision of *Slingluff v. State*, 131 Hawai'i 239, 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 Hawai'i law."

The purpose of this Act is to override the Intermediate Court of Appeals' holding in *Slingluff* and clarify the personal liability requirements for professionally licensed or certified employees of the State by:

- (1) Clarifying 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 of the State acting within the course and scope of the employee's office or employment;
- (2) Precluding civil actions or proceedings for money damages against the state employee, except for claims based on liability other than an employee's course and 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.

SECTION 2. Section 662-14, Hawaii Revised Statutes, is amended to read as follows:

**"§662-14 Exclusiveness of remedy.** (a) The authority of the State or any state agency to sue and be sued in its own name shall not be construed to authorize any other actions against the State or such agency on claims ~~[for torts of its employees;]~~ cognizable under this chapter, and the rights and remedies provided by this chapter and section 661-11 shall be exclusive.

(b) The remedy against the State provided by this chapter and section 661-11 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 shall be exclusive whenever the State agrees to be fully liable for the injuries, losses, and damages caused by the negligent or wrongful act or omission of the professionally licensed or certified employee. Any civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate shall thereafter be precluded without regard to when the act or omission occurred; provided that claims based on liability arising from employment with an employer other than the State shall not be precluded. When an employee is named as a defendant in an individual capacity, the State may notify all parties in writing that the State is invoking exclusive liability by agreeing to be fully liable for the injuries, losses, and damages caused by the professionally licensed or certified employee, and the action or proceeding shall thereafter proceed against the State alone. The employee shall remain personally liable for those injuries, losses, and damages for which the State has not accepted responsibility.

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

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

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

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 2022.)