



GOV. MSG. NO. 1350

July 12, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

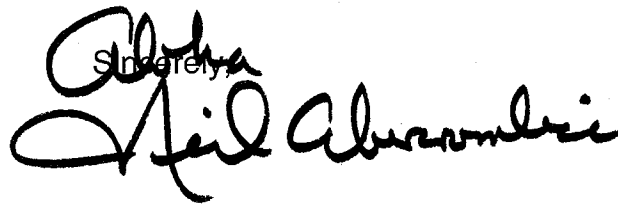
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith SB217 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB217 SD2 HD2 CD1

RELATING TO LIMITATION OF ACTIONS.

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2011

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 217

Honorable Members  
Twenty-Sixth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 217, entitled "A Bill for an Act Relating to Limitation of Actions."

The stated purpose of this bill is to eliminate the statute of limitations for civil causes of action for damages arising from the sexual abuse of a minor by an adult based upon sexual acts that constitute certain criminal offenses under parts V and VI of chapter 707, Hawaii Revised Statutes. The bill also allows claims that are beyond the current statute of limitations to be revived for two years following the effective date of the act. Claims may be brought against the person who committed the sexual abuse and that person's employer.

While the goals of this bill are laudable, it appears to allow an employer, including the State, to be sued for the criminal acts of its employees. This is contrary to well-established tort and agency law and is in direct contravention of the intentional tort exception to the State Tort Liability Act (STLA), chapter 662 of the Hawaii Revised Statutes. Under the STLA, the State cannot be sued for the criminal or intentional acts of its employees. In addition, this bill irreconcilably conflicts with the STLA, which already establishes a statute of limitations for tort claims against the State.

The elimination of a statute of limitations for a civil claim also raises grave constitutional and fairness concerns. If a claim can be brought after an unlimited passage of time, it is likely that documents will be lost or destroyed, witnesses will die or move away, and memories will fade. The accused, even

STATEMENT OF OBJECTIONS

SENATE BILL NO. 217

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those falsely accused, will not be able to defend himself, herself, or itself and true justice will not be achieved.

For the foregoing reasons, I am returning Senate Bill 217 without my approval.

Respectfully,

A handwritten signature in black ink, reading "Neil Abercrombie". The signature is written in a cursive, flowing style with a large initial "N".

NEIL ABERCROMBIE  
Governor of Hawaii

VETO

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

S.B. NO.

217  
S.D. 2  
H.D. 2  
C.D. 1

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## A BILL FOR AN ACT

RELATING TO LIMITATION OF ACTIONS.

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

1           SECTION 1. Chapter 657, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:  
4           "§657- Civil action arising from sexual offenses;  
5 application; certificate of merit. (a) Notwithstanding any law  
6 to the contrary, an action for recovery of damages based on  
7 physical, psychological, or other injury or condition suffered  
8 by a minor arising from the sexual abuse of the minor by an  
9 adult may be commenced against the natural person who committed  
10 the act of sexual abuse at any time following the commission of  
11 the act or acts that constituted the sexual abuse. A civil  
12 cause of action for sexual abuse of a minor shall be based upon  
13 sexual acts that constituted or would have constituted a  
14 criminal offense under part V or VI of chapter 707.  
15 Notwithstanding any law to the contrary, including chapter 662,  
16 Hawaii Revised Statutes, a claim may also be commenced at any  
17 time following the commission of the act or acts that  
18 constituted the sexual abuse under this subsection against a



1 legal entity, including the State, if the person committing the  
2 act of sexual abuse against the minor was employed by an  
3 institution, agency, firm, business, corporation, or other  
4 public or private legal entity that owed a duty of care to the  
5 victim, or the accused and the minor were engaged in an activity  
6 over which the legal entity had some degree of responsibility or  
7 control. Damages against the legal entity shall be awarded  
8 under this subsection only if there is a finding of gross  
9 negligence on the part of the legal entity. Nothing in this  
10 subsection shall be deemed to affect a cause of action otherwise  
11 provided by statute for recovery of damages for the sexual abuse  
12 of a minor if the liability is based on simple negligence.

13 (b) For a period of two years following the effective date  
14 of this Act, victims of child sexual abuse that occurred in this  
15 State who have been barred from filing suit against their  
16 abusers by virtue of the expiration of the former civil statute  
17 of limitations shall be permitted to file those claims in the  
18 circuit courts of this State against the natural person who  
19 committed the act of sexual abuse. A claim may also be brought  
20 under this subsection against a legal entity, including the  
21 State, if the person committing the act of sexual abuse against  
22 the minor was employed by an institution, agency, firm,



1 business, corporation, or other public or private legal entity  
2 that owed a duty of care to the victim, or the accused and the  
3 minor were engaged in an activity over which the legal entity  
4 had some degree of responsibility or control. Damages against  
5 the legal entity shall be awarded under this subsection only if  
6 there is a finding of gross negligence on the part of the legal  
7 entity.

8 (c) A person against whom a suit is filed may recover  
9 attorney's fees if the court determines that a false accusation  
10 was made with no basis in fact and with malicious intent. A  
11 verdict in favor of the accused shall not be the sole basis for  
12 a determination that an accusation was false. The court must  
13 make an independent finding of an improper motive to award  
14 attorney's fees under this section.

15 (d) In any civil action filed pursuant to subsection (a)  
16 or (b), a certificate of merit shall be filed by the attorney  
17 for each plaintiff at the time the action is commenced. The  
18 certificate of merit shall contain a notarized statement by a  
19 psychologist who is licensed pursuant to chapter 465, a marriage  
20 and family therapist who is licensed pursuant to chapter 451J, a  
21 mental health counselor who is licensed pursuant to chapter  
22 453D, a clinical social worker who is licensed pursuant to



1 chapter 467E, or a registered nurse who is licensed pursuant to  
 2 chapter 457, and who is knowledgeable in the relevant facts and  
 3 issues involved in the particular action. The certificate of  
 4 merit shall state in reasonable detail the facts and opinions  
 5 that the psychologist, marriage and family therapist, mental  
 6 health counselor, licensed clinical social worker, or registered  
 7 nurse has relied on to conclude that there is a reasonable basis  
 8 to believe that the plaintiff has been subject to one or more  
 9 acts that would constitute an offense listed in subsection (a).  
 10 The psychologist, marriage and family therapist, mental health  
 11 counselor, licensed clinical social worker, or registered nurse  
 12 providing the statement may not be a party to the litigation."

13 SECTION 2. The revisor of statutes shall insert the  
 14 effective date of this Act in the appropriate place in section 1  
 15 of this Act.

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

APPROVED this                      day of                      , 2011