



GOV. MSG. NO. 1411

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 09, 2012

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

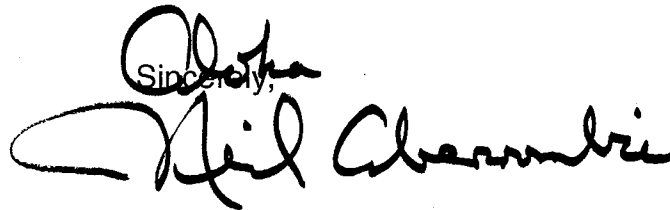
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

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

This is to inform you that on July 09, 2012, the following bill was signed into law:

HB1181 HD1 SD1

RELATING TO GOVERNMENT.  
Act 294 (12)

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii



1 two times the amount of back pay, interest on the back pay, and  
2 compensation for any special damages sustained as a result of  
3 the discrimination, including litigation costs and reasonable  
4 attorney's fees. An action for relief from retaliatory actions  
5 under subsection (a) may be brought in the appropriate court of  
6 this State for the relief provided in this part.

7 (c) An action for relief from retaliatory actions under  
8 subsection (a) shall be brought within three years of the  
9 retaliatory conduct upon which the action is based.

10 §46- Certain actions barred. (a) In no event may a  
11 person bring an action under this part that is based upon  
12 allegations or transactions which are the subject of a civil  
13 suit or an administrative civil money penalty proceeding in  
14 which a county is already a party.

15 (b) The court shall dismiss an action or claim under this  
16 part, unless opposed by a county, if the allegations or  
17 transactions alleged in the action or claim are substantially  
18 the same as those publicly disclosed:

19 (1) In a criminal, civil, or administrative hearing in  
20 which a county or its agent is a party;

21 (2) In a county council or other county report, hearing,  
22 audit, or investigation; or



1       (3) By the news media,  
2 unless the action is brought by the county attorney or the  
3 person bringing the action is an original source of the  
4 information.

5       (c) For purposes of this section, "original source" means  
6 an individual who:

7       (1) Prior to public disclosure under subsection (b), has  
8 voluntarily disclosed to a county the information on  
9 which the allegations or transactions in a claim are  
10 based; or

11       (2) Has knowledge that is independent of and materially  
12 adds to the publicly disclosed allegations or  
13 transactions, and who has voluntarily provided the  
14 information to a county before filing an action under  
15 this part."

16       SECTION 2. Section 46-171, Hawaii Revised Statutes, is  
17 amended as follows:

18       1. By amending subsection (a) to read:

19       "(a) Any person who:

20       (1) Knowingly presents, or causes to be presented, [~~to an~~  
21 ~~officer or employee of a county]~~ a false or fraudulent  
22 claim for payment or approval;



- 1           (2) Knowingly makes, uses, or causes to be made or used, a  
2           false record or statement [~~to get a false or~~  
3           ~~fraudulent claim paid or approved by a county;~~  
4           material to a false or fraudulent claim;
- 5           [~~(3)~~ ~~Conspires to defraud a county by getting a false or~~  
6           ~~fraudulent claim allowed or paid;~~
- 7           +4] (3) as possession, custody, or control of property or  
8           money used, or to be used, by a county and, intending  
9           to defraud a county or [~~wilfully~~] to wilfully conceal  
10          the property, delivers, or causes to be delivered,  
11          less property than the amount for which the person  
12          receives a certificate or receipt;
- 13          [~~(5)~~] (4) Is authorized to make or deliver a document  
14          certifying receipt of property used, or to be used by  
15          a county and, intending to defraud a county, makes or  
16          delivers the receipt without completely knowing that  
17          the information on the receipt is true;
- 18          [~~(6)~~] (5) Buys, or receives as a pledge of an obligation or  
19          debt, public property from any officer or employee of  
20          a county that the person knows [~~may~~] is not lawfully  
21          authorized to sell or pledge the property;



1       ~~(7)~~ (6) Knowingly makes, uses, or causes to be made or  
2       used, a false record or statement [~~to conceal, avoid,~~  
3       ~~or decrease~~] material to an obligation to pay or  
4       transmit money or property to a county, or knowingly  
5       conceals, or knowingly and improperly avoids or  
6       decreases an obligation to pay or transmit money or  
7       property to a county; [~~or~~

8       ~~(8)~~ (7) Is a beneficiary of an inadvertent submission of  
9       a false claim to a county, who subsequently discovers  
10      the falsity of the claim, and fails to disclose the  
11      false claim to the county within a reasonable time  
12      after discovery of the false claim; or

13      (8) Conspires to commit any of the conduct described in  
14      this subsection,

15      shall be liable to the county for a civil penalty of not less  
16      than [~~\$5,000~~] \$5,500 and not more than [~~\$10,000,~~] \$11,000, plus  
17      three times the amount of damages that the county sustains due  
18      to the act of that person."

19      2. By amending subsection (e) to read:

20      "(e) For purposes of this section:

21      "Claim" [~~includes~~] means any request or demand, whether  
22      under a contract or otherwise, for money or property, and



1 whether or not a county has title to the money or property, that  
2 is presented to an officer, employee, or agent of the county or  
3 is made to a contractor, grantee, or other recipient, if the  
4 money or property is to be spent or used on the county's behalf  
5 or to advance a county program or interest, and if the county  
6 provides or has provided any portion of the money or property  
7 that is requested or demanded[~~, or if the government~~] or will  
8 reimburse the contractor, grantee, or other recipient for any  
9 portion of the money or property that is requested or demanded.  
10 "Claim" shall not include requests or demands for money or  
11 property that a county has paid to an individual as compensation  
12 for employment or as an income subsidy with no restrictions on  
13 that individual's use of the money or property.

14 "Knowing" and "knowingly" means that a person, with respect  
15 to information:

- 16 (1) Has actual knowledge of the information;  
17 (2) Acts in deliberate ignorance of the truth or falsity  
18 of the information; or  
19 (3) Acts in reckless disregard of the truth or falsity of  
20 the information;

21 and no proof of specific intent to defraud is required.



1       "Material" means having the tendency to influence or  
2 capability to influence the payment or receipt of money or  
3 property.

4       "Obligation" means an established duty, whether or not  
5 fixed, arising from an express or implied contractual, grantor-  
6 grantee, or licensor-licensee relationship, from a fee-based or  
7 similar relationship, from statute, regulation, or  
8 administrative rule, or from the retention of any overpayment."

9       SECTION 3. Section 46-177, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "~~§~~46-177~~§~~ Awards to qui tam plaintiffs. (a) If a  
12 county proceeds with an action brought by a person under section  
13 46-175, the person shall receive at least fifteen per cent but  
14 not more than twenty-five per cent of the proceeds of the action  
15 or settlement of the claim, depending upon the extent to which  
16 the person substantially contributed to the prosecution of the  
17 action. Where the action is one that the court finds to be  
18 based primarily on disclosures of specific information, other  
19 than information provided by the person bringing the action,  
20 relating to allegations or transactions in a criminal, civil, or  
21 administrative hearing, in a legislative or administrative  
22 report, hearing, audit, or investigation, or from the news





1 media, the court may award sums as it considers appropriate, but  
2 in no case more than ten per cent of the proceeds, taking into  
3 account the significance of the information and the role of the  
4 person bringing the action in advancing the case to litigation.  
5 Any payment to a person under this subsection shall be made from  
6 the proceeds. The person shall also receive an amount for  
7 reasonable expenses that the court finds to have been  
8 necessarily incurred, plus reasonable attorneys' fees and costs.  
9 All expenses, fees, and costs shall be awarded against the  
10 defendant.

11 (b) If a county proceeds with an action brought under  
12 section 46-171, the county may file its own complaint or amend  
13 the complaint of a person who has brought an action under  
14 section 46-171 to clarify or add detail to the claims in which  
15 the county is intervening and to add any additional claims with  
16 respect to which the county contends it is entitled to relief.  
17 For statute of limitations purposes, any such pleading shall  
18 relate back to the filing date of the complaint of the person  
19 who originally brought the action, to the extent that the claim  
20 of the county arises out of the conduct, transactions, or  
21 occurrences set forth, or attempted to be set forth, in the  
22 prior complaint of that person.



1        [~~(b)~~] (c) If the county does not proceed with an action  
2 under this section, the person bringing the action or settling  
3 the claim shall receive an amount that the court decides is  
4 reasonable for collecting the civil penalty and damages. The  
5 amount shall be not less than twenty-five per cent and not more  
6 than thirty per cent of the proceeds of the action or settlement  
7 and shall be paid out of the proceeds. The person shall also  
8 receive an amount for reasonable expenses that the court finds  
9 to have been necessarily incurred, plus reasonable attorneys'  
10 fees and costs. All expenses, fees, and costs shall be awarded  
11 against the defendant.

12        [~~(e)~~] (d) Regardless of whether the county proceeds with  
13 the action, if the court finds that the action was brought by a  
14 person who planned and initiated the violation of section 46-171  
15 upon which the action was brought, then the court, to the extent  
16 the court considers appropriate, may reduce the share of the  
17 proceeds of the action that the person would otherwise receive  
18 under subsection (a), taking into account the role of that  
19 person in advancing the case to litigation and any relevant  
20 circumstances pertaining to the violation. If the person  
21 bringing the action is convicted of criminal conduct arising  
22 from the person's role in the violation of section 46-171, that



1 person shall be dismissed from the civil action and shall not  
2 receive any share of the proceeds of the action. The dismissal  
3 shall not prejudice the right of the county to continue the  
4 action.

5 ~~[(d)]~~ (e) If the county does not proceed with the action  
6 and the person bringing the action conducts the action, the  
7 court may award to the defendant its reasonable attorneys' fees  
8 and expenses if the defendant prevails in the action and the  
9 court finds that the claim of the person bringing the action was  
10 frivolous, vexatious, or brought primarily for purposes of  
11 harassment.

12 ~~[(e)]~~ (f) In no event may a person bring an action under  
13 section 46-175:

14 (1) Against any elected official of the county, if the  
15 action is based on evidence or information known to  
16 the county. For purposes of this section, evidence or  
17 information known only to the person or persons  
18 against whom an action is brought shall not be  
19 considered to be known to the county;

20 ~~[(2) When the person is a present or former employee of the~~  
21 ~~county and the action is based upon information~~  
22 ~~discovered by the employee during the course of the~~



1 ~~employee's employment, unless the employee first, in~~  
2 ~~good faith, exhausted any existing internal procedures~~  
3 ~~for reporting and seeking recovery of the falsely~~  
4 ~~claimed sums through official channels and the county~~  
5 ~~failed to act on the information provided within a~~  
6 ~~reasonable period of time,] or~~

7 [(3)] (2) That is based upon allegations or transactions  
8 that are the subject of a [civil or criminal  
9 investigation by the county,] civil suit[,] or an  
10 administrative civil money penalty proceeding in which  
11 the county is already a party."

12 SECTION 4. Section 46-178, Hawaii Revised Statutes, is  
13 repealed.

14 ["~~§46-178~~ Jurisdiction. (a) No court shall have  
15 jurisdiction over an action under this part based upon the  
16 public disclosure of allegations or transactions in a criminal,  
17 civil, or administrative hearing, in a legislative or  
18 administrative report, hearing, audit, or investigation, or from  
19 the news media, unless the action is brought by a county  
20 corporation counsel or county attorney or the person bringing  
21 the action is an original source of the information.

22 (b) ~~For purposes of this section:~~





1       (b) Relief under subsection (a) shall include  
2 reinstatement with the same seniority status that the employee,  
3 contractor, or agent would have had but for the discrimination,  
4 two times the amount of back pay, interest on the back pay, and  
5 compensation for any special damages sustained as a result of  
6 the discrimination, including litigation costs and reasonable  
7 attorney's fees. An action for relief from retaliatory actions  
8 under subsection (a) may be brought in the appropriate court of  
9 this State for the relief provided in this part.

10       (c) An action for relief from retaliatory actions under  
11 subsection (a) shall be brought within three years of the  
12 retaliatory conduct upon which the action is based.

13       §661-       **Certain actions barred.** (a) In no event may a  
14 person bring an action under this part that is based upon  
15 allegations or transactions which are the subject of a civil  
16 suit or an administrative civil money penalty proceeding in  
17 which the State is already a party.

18       (b) The court shall dismiss an action or claim under this  
19 part, unless opposed by the State, if the allegations or  
20 transactions alleged in the action or claim are substantially  
21 the same as those publicly disclosed:



1       (1) In a state criminal, civil, or administrative hearing  
2             in which the State or its agent is a party;

3       (2) In a state legislative or other state report, hearing,  
4             audit, or investigation; or

5       (3) By the news media,  
6       unless the action is brought by the attorney general or the  
7       person bringing the action is an original source of the  
8       information.

9       (c) For purposes of this section, "original source" means  
10       an individual who:

11       (1) Prior to public disclosure under subsection (b), has  
12             voluntarily disclosed to the State the information on  
13             which the allegations or transactions in a claim are  
14             based; or

15       (2) Has knowledge that is independent of and materially  
16             adds to the publicly disclosed allegations or  
17             transactions, and who has voluntarily provided the  
18             information to the State before filing an action under  
19             this part."

20       SECTION 6. Section 661-21, Hawaii Revised Statutes, is  
21       amended to read as follows:



1           "§661-21 Actions for false claims to the State; qui tam  
2 actions. (a) Notwithstanding section 661-7 to the contrary,  
3 any person who:

4           (1) Knowingly presents, or causes to be presented, [~~to an~~  
5           ~~officer or employee of the State~~] a false or  
6           fraudulent claim for payment or approval;

7           (2) Knowingly makes, uses, or causes to be made or used, a  
8           false record or statement [~~to get a false or~~  
9           ~~fraudulent claim paid or approved by the State;~~]  
10           material to a false or fraudulent claim;

11           ~~[(3) Conspires to defraud the State by getting a false or~~  
12           ~~fraudulent claim allowed or paid;~~

13           ~~(4)]~~ (3) Has possession, custody, or control of property  
14           or money used, or to be used, by the State and,  
15           intending to defraud the State or [~~wilfully~~] to  
16           wilfully conceal the property, delivers, or causes to  
17           be delivered, less property than the amount for which  
18           the person receives a certificate or receipt;

19           ~~[(5)]~~ (4) Is authorized to make or deliver a document  
20           certifying receipt of property used, or to be used by  
21           the State and, intending to defraud the State, makes





1 or delivers the receipt without completely knowing  
2 that the information on the receipt is true;

3 ~~[(6)]~~ (5) Knowingly buys, or receives as a pledge of an  
4 obligation or debt, public property from any officer  
5 or employee of the State who ~~[may]~~ is not lawfully  
6 authorized to sell or pledge the property;

7 ~~[(7)]~~ (6) Knowingly makes, uses, or causes to be made or  
8 used, a false record or statement ~~[to conceal, avoid,~~  
9 ~~or decrease]~~ material to an obligation to pay or  
10 transmit money or property to the State, or knowingly  
11 conceals, or knowingly and improperly avoids or  
12 decreases an obligation to pay or transmit money or  
13 property to the State; ~~[or~~

14 ~~+(8)]~~ (7) Is a beneficiary of an inadvertent submission of  
15 a false claim to the State, who subsequently discovers  
16 the falsity of the claim, and fails to disclose the  
17 false claim to the State within a reasonable time  
18 after discovery of the false claim; or

19 (8) Conspires to commit any of the conduct described in  
20 this subsection,

21 shall be liable to the State for a civil penalty of not less  
22 than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000,]~~ \$11,000, plus



1 three times the amount of damages that the State sustains due to  
2 the act of that person.

3 (b) If the court finds that a person who has violated  
4 subsection (a):

5 (1) Furnished officials of the State responsible for  
6 investigating false claims violations with all  
7 information known to the person about the violation  
8 within thirty days after the date on which the  
9 defendant first obtained the information;

10 (2) Fully cooperated with any state investigation of  
11 [~~such~~] the violation; and

12 (3) At the time the person furnished the State with the  
13 information about the violation, no criminal  
14 prosecution, civil action, or administrative action  
15 had commenced under this title with respect to [~~such~~]  
16 the violation, and the person did not have actual  
17 knowledge of the existence of an investigation into  
18 [~~such~~] the violation;

19 the court may assess not less than two times the amount of  
20 damages that the State sustains because of the act of the  
21 person. A person violating subsection (a) [7] shall also be



1 liable to the State for the costs and attorneys' fees of a civil  
2 action brought to recover the penalty or damages.

3 (c) Liability under this section shall be joint and  
4 several for any act committed by two or more persons.

5 (d) This section shall not apply to any controversy  
6 involving an amount of less than \$500 in value. For purposes of  
7 this subsection, "controversy" means the aggregate of any one or  
8 more false claims submitted by the same person in violation of  
9 this part. Proof of specific intent to defraud is not required.

10 (e) For purposes of this section:

11 "Claim" [~~includes~~] means any request or demand, whether  
12 under a contract or otherwise, for money or property, and  
13 whether or not the State has title to the money or property,  
14 that is presented to an officer, employee, or agent of the State  
15 or is made to a contractor, grantee, or other recipient, if the  
16 money or property is to be spent or used on the State's behalf  
17 or to advance a state program or interest, and if the State  
18 provides or has provided any portion of the money or property  
19 that is requested or demanded [~~, or if the government~~] or will  
20 reimburse the contractor, grantee, or other recipient for any  
21 portion of the money or property that is requested or demanded.

22 "Claim" shall not include requests or demands for money or



1 property that the State has paid to an individual as  
2 compensation for employment or as an income subsidy with no  
3 restrictions on that individual's use of the money or property.

4 "Knowing" and "knowingly" means that a person, with respect  
5 to information:

- 6 (1) Has actual knowledge of the information;  
7 (2) Acts in deliberate ignorance of the truth or falsity  
8 of the information; or  
9 (3) Acts in reckless disregard of the truth or falsity of  
10 the information;

11 and no proof of specific intent to defraud is required.

12 "Material" means having the tendency to influence or  
13 capability to influence the payment or receipt of money or  
14 property.

15 "Obligation" means an established duty, whether or not  
16 fixed, arising from an express or implied contractual, grantor-  
17 grantee, or licensor-licensee relationship, from a fee-based or  
18 similar relationship, from statute, regulation, or  
19 administrative rule, or from the retention of any overpayment.

20 [~~(f) This section shall not apply to claims, records, or~~  
21 ~~statements for which procedures and remedies are otherwise~~  
22 ~~specifically provided for under chapter 231.]"~~



1 SECTION 7. Section 661-27, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§661-27[+] Awards to qui tam plaintiffs. (a) If the  
4 State proceeds with an action brought by a person under section  
5 661-25, the person shall receive at least fifteen per cent but  
6 not more than twenty-five per cent of the proceeds of the action  
7 or settlement of the claim, depending upon the extent to which  
8 the person substantially contributed to the prosecution of the  
9 action. Where the action is one that the court finds to be  
10 based primarily on disclosures of specific information, other  
11 than information provided by the person bringing the action,  
12 relating to allegations or transactions in a criminal, civil, or  
13 administrative hearing, in a legislative or administrative  
14 report, hearing, audit, or investigation, or from the news  
15 media, the court may award sums as it considers appropriate, but  
16 in no case more than ten per cent of the proceeds, taking into  
17 account the significance of the information and the role of the  
18 person bringing the action in advancing the case to litigation.  
19 Any payment to a person under this subsection shall be made from  
20 the proceeds. [+]The[+] person shall also receive an amount for  
21 reasonable expenses that the court finds to have been  
22 necessarily incurred, plus reasonable attorneys' fees and costs.



1 All expenses, fees, and costs shall be awarded against the  
2 defendant.

3 (b) If the State proceeds with an action brought under  
4 section 661-21, the State may file its own complaint or amend  
5 the complaint of a person who has brought an action under  
6 section 661-21 to clarify or add detail to the claims in which  
7 the State is intervening and to add any additional claims with  
8 respect to which the State contends it is entitled to relief.  
9 For statute of limitations purposes, any such state pleading  
10 shall relate back to the filing date of the complaint of the  
11 person who originally brought the action, to the extent that the  
12 claim of the State arises out of the conduct, transactions, or  
13 occurrences set forth, or attempted to be set forth, in the  
14 prior complaint of that person.

15 [~~(b)~~] (c) If the State does not proceed with an action under  
16 this section, the person bringing the action or settling the  
17 claim shall receive an amount that the court decides is  
18 reasonable for collecting the civil penalty and damages. The  
19 amount shall be not less than twenty-five per cent and not more  
20 than thirty per cent of the proceeds of the action or settlement  
21 and shall be paid out of the proceeds. The person shall also  
22 receive an amount for reasonable expenses that the court finds



1 to have been necessarily incurred, plus reasonable attorneys'  
2 fees and costs. All expenses, fees, and costs shall be awarded  
3 against the defendant.

4 [~~e~~] (d) Whether or not the State proceeds with the action,  
5 if the court finds that the action was brought by a person who  
6 planned and initiated the violation of section 661-21 upon which  
7 the action was brought, then the court may, to the extent the  
8 court considers appropriate, reduce the share of the proceeds of  
9 the action that the person would otherwise receive under  
10 subsection (a), taking into account the role of that person in  
11 advancing the case to litigation and any relevant circumstances  
12 pertaining to the violation. If the person bringing the action  
13 is convicted of criminal conduct arising from the person's role  
14 in the violation of section 661-21, that person shall be  
15 dismissed from the civil action and shall not receive any share  
16 of the proceeds of the action. The dismissal shall not  
17 prejudice the right of the State to continue the action.

18 [~~d~~] (e) If the State does not proceed with the action and  
19 the person bringing the action conducts the action, the court  
20 may award to the defendant its reasonable attorneys' fees and  
21 expenses if the defendant prevails in the action and the court  
22 finds that the claim of the person bringing the action was



1 frivolous, vexatious, or brought primarily for purposes of  
2 harassment.

3 ~~[(e)]~~ (f) In no event may a person bring an action under  
4 section 661-25:

5 (1) Against a member of the state senate or state house of  
6 representatives, a member of the judiciary, or an  
7 elected official in the executive branch of the State,  
8 if the action is based on evidence or information  
9 known to the State. For purposes of this section,  
10 evidence or information known only to the person or  
11 persons against whom an action is brought shall not be  
12 considered to be known to the State;

13 ~~[(2) When the person is a present or former employee of the  
14 State and the action is based upon information  
15 discovered by the employee during the course of the  
16 employee's employment, unless the employee first, in  
17 good faith, exhausted any existing internal procedures  
18 for reporting and seeking recovery of the falsely  
19 claimed sums through official channels and the State  
20 failed to act on the information provided within a  
21 reasonable period of time;] or~~





1       ~~[(3)]~~ (2) That is based upon allegations or transactions  
 2                   that are the subject of a ~~[civil or criminal~~  
 3                   ~~investigation by the State,~~] civil suit~~[,~~] or an  
 4                   administrative civil money penalty proceeding in which  
 5                   the State is already a party."

6           SECTION 8. Section 661-28, Hawaii Revised Statutes, is  
 7   repealed.

8           ~~["[§661-28] Jurisdiction. No court shall have~~  
 9   ~~jurisdiction over an action under this part based upon the~~  
 10 ~~public disclosure of allegations or transactions in a criminal,~~  
 11 ~~civil, or administrative hearing, in a legislative or~~  
 12 ~~administrative report, hearing, audit, or investigation, or from~~  
 13 ~~the news media, unless the action is brought by the attorney~~  
 14 ~~general or the person bringing the action is an original source~~  
 15 ~~of the information. For purposes of this section:~~

16           ~~"Original source" means an individual who has direct and~~  
 17 ~~independent knowledge of the information on which the~~  
 18 ~~allegations are based and has voluntarily provided the~~  
 19 ~~information to the State before filing an action under this part~~  
 20 ~~that is based on the information, and whose information provided~~  
 21 ~~the basis or catalyst for the investigation, hearing, audit, or~~  
 22 ~~report that led to the public disclosure."]~~



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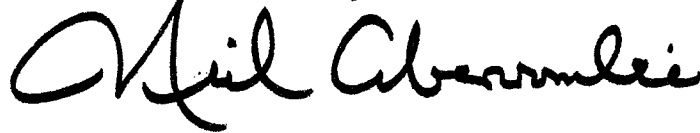
PART III

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

APPROVED this 9 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

