

Honolulu, Hawaii

, 2011

APR 28 2011

RE: S.B. No. 217
S.D. 2
H.D. 2
C.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 217, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LIMITATION OF ACTIONS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to expand the ability of sex abuse victims to seek civil claims and compensation for damages by:

- (1) Allowing claims against natural persons who committed an act of sexual abuse against a minor or a legal entity;
- (2) Reviving for two years certain actions for which the statute of limitations had previously lapsed;
- (3) Allowing an award of attorney's fees if a false accusation was made with no basis in fact and with malicious intent; and



- (4) Requiring a certificate of merit to be filed for plaintiffs who are twenty-six years of age or older.

Your Committee on Conference finds that this measure is intended to expand the ability of sexual abuse victims to seek civil compensation for damages resulting from their sexual abuse. Your Committee on Conference further finds that perpetrators of abuse often target children over a lifetime. Many victims who are under the age of majority do not report their abuse to the appropriate authorities and the majority of potential claims expire before the victims are capable of going to court.

Your Committee on Conference additionally finds that organizations and adults may also contribute to childhood sexual abuse and thus should be held accountable for their actions. Your Committee on Conference notes that all entities, including the State, should be subject to civil actions for past sexual abuse of minors.

Your Committee on Conference notes that other states have enacted laws that create retroactive civil statute of limitations windows. The Delaware Child Victim's Act of 2007, codified at section 8145 of the Delaware Code, allowed a two-year window for alleged victims of child sexual abuse to file lawsuits even though the statute of limitations had expired. On February 22, 2011, the Delaware Supreme Court ruled in *Sheehan v. Oblates of St. Francis de Sales*, 2011 WL 592186 (Del.Supr.), that the Child Victim's Act of 2007 was constitutional and did not violate defendants' rights to prompt due process.

Your Committee on Conference acknowledges that reforming the statute of limitations period for victims of childhood sexual abuse is one method of identifying child predators but believes that the elimination of a statute of limitations for claims based on childhood sexual abuse is the most effective method to bring justice for past victims and help prevent abuse of children in the future.

Your Committee on Conference also notes that the elimination of a statute of limitations warrants additional protections against false claims or claims brought as a result of false memories. Your Committee on Conference therefore finds that requiring a certificate of merit to be filed on behalf of all plaintiffs is an appropriate safeguard.



Accordingly, your Committee on Conference has amended this measure by:

- (1) Clarifying that an action for recovery of damages based on sexual abuse of a minor may be brought against a natural person at any time following the commission of the act or acts that constituted the sexual abuse;
- (2) Clarifying that an action for recovery of damages based on sexual abuse of a minor may be brought against a legal entity at any time following the commission of the act or acts that constituted sexual abuse;
- (3) Adding the State as an entity eligible to be sued for future claims of sexual abuse;
- (4) Clarifying that damages shall not be awarded for sexual abuse of a minor against a natural person or legal entity at any time following the sexual abuse if liability is based on simple negligence;
- (5) Deleting the requirement that an action for recovery of damages for sexual abuse of a minor against a natural person or legal entity at any time following the sexual abuse must be brought within eight years of the plaintiff attaining the age of majority or three years of the date the plaintiff discovered or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse;
- (6) Adding the State as an eligible entity to be sued for past claims of sexual abuse for which the statute of limitations had previously lapsed;
- (7) Clarifying that a certificate of merit must be filed for each plaintiff, not just plaintiffs who are twenty-six years of age or older;
- (8) Adding Registered Nurses as one of the licensed professionals whose notarized statement is required to be filed with a certificate of merit;
- (9) Changing the effective date to upon approval; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

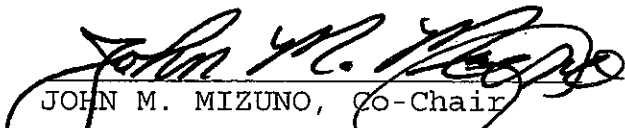



As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 217, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 217, S.D. 2, H.D. 2, C.D. 1.


Respectfully submitted on behalf of the managers:

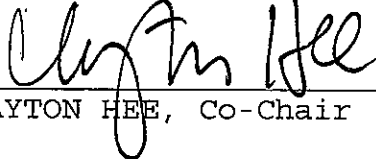
ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE


 JOHN M. MIZUNO, Co-Chair


 GILBERT KEITH-AGARAN, Co-Chair


 SUZANNE CHUN OAKLAND, Chair


 CLAYTON HEE, Co-Chair



**Hawaii State Legislature
Record of Votes of a
Conference Committee**

Bill / Concurrent Resolution No.: **SB 217, SD 2, HD 2** Date/Time: **4/20/11 4:42pm**

The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure

The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
CHUN OAKLAND, Suzanne, Chr.	✓				MIZUNO, John M., Co-Chr.	✓			
HEE, Clayton, Co-Chr.	✓				KEITH-AGARAN, Gilbert S.C., Co-Chr.	✓			
IHARA, Les, Jr.	✓				JORDAN, Jo	✓			
SHIMABUKURO, Maile S.L.	✓				WOOLEY, Jessica				✓
SLOM, Sam				✓	PINE, Kymberly Marcos	✓			
TOTAL	4	0	0	1	TOTAL	4	0	0	1

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is:
 Adopted Not Adopted

House Recommendation is:
 Adopted Not Adopted

Senate Lead Chair's or Designee's Signature:
Suzanne Chun Oakland

House Lead Chair's or Designee's Signature:
John M. Mizuno

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