

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 217
S.D. 2

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

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 217, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Eliminate the statute of limitations for civil actions brought by persons subjected to sexual offenses as a minor; and
- (2) Revive for one year certain actions for which the statute of limitations had previously lapsed.

Your Committee received testimony in support of this measure from The Sex Abuse Treatment Center and three individuals. Your Committee received testimony in opposition to this measure from the Department of the Attorney General and the Hawaii Catholic Conference.

Your Committee finds that this measure will expand the ability of sex assault victims to seek civil compensation for damages for the assault. The extension of the statute of limitations recognizes that victims of sex crimes who are under the age of majority are rarely equipped to report their abuses to the appropriate public authorities within the given time periods of legal statutes of limitations.



Testimony presented to your Committee raised concerns about this measure, however. Specifically, the Department of the Attorney General testified that this measure appears to allow a cause of action to be brought, not just against the alleged perpetrator, but against even those whom the claimant may believe had some connection, no matter how peripheral, to the assault or abuse, without any time limitation. The Department of the Attorney General raised concerns that the measure may violate the due process clause of the state and federal constitutions, since a claim can conceivably be brought against any person or entity at any time, which could prevent or severely impair that person or entity's ability to defend himself or itself.

Because the window for an action is thirty-five years or less before the effective date of the measure or within thirty-five years after the minor attained the age of eighteen, claims may be potentially asserted going back as far as fifty-three years. This raises problems with the availability of witnesses or documentation that would allow a medical provider or hospital to defend itself against a lawsuit for failure to report suspected abuse that occurred decades before, for example. An unlimited limitations period combined with the ability to bring suit against any person or entity raises questions about whether a person or entity connected only remotely with the abuse can meaningfully defend against such claims. Other concerns raised by various testifiers included the certification process and the potential for specious claims.

Your Committee notes that a substantively similar measure was enacted in Delaware in 2007, and codified at section 8145 of the Delaware Code. These provisions resolve many of the concerns raised in testimony and have been upheld on review by Delaware appellate courts and federal courts.

Your Committee has amended this measure by:

- (1) Deleting its contents and replacing it with the contents of section 8145 of the Delaware Code, which amends the measure, as received by your Committee, in the following ways:
 - (A) Limits the cause of action to the perpetrator of the sexual abuse, except for the employer of the perpetrator when the employer either owed some duty to the minor or the employer had some degree of



responsibility or control over the activity engaged in by the perpetrator and the minor and the employer was grossly negligent;

- (B) Does not include the certificate of merit requirement;
 - (C) Extends the period in which a revived cause of action may be brought from one year to two years; and
 - (D) Allows a person against whom a suit is filed to recover attorneys' fees where the court determines that a false accusation was made with no basis in fact and with malicious intent;
- (2) Inserting an effective date of July 1, 2050, to allow for further discussion; and
 - (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 217 SD1	Committee Referral: HMS, JDL	Date: 2/24/11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	5	0	0	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes