

Substituted for H.F. 216

FEB 08 1991

SENATE FILE 131

BY VARN

*Substituted for H.F. 216*  
(COMPANION TO LSB 1897HH BY DODERER)

Passed Senate, Date 4/1/91 (p 454) Passed House, Date 4/9/91 (p 1177)

Vote: Ayes 37 Nays 0 Vote: Ayes 84 Nays 15

*Disapproved May 9, 1991*

*Repealed House same name passed 5/2/91 (p 2000) 91-2*

A BILL FOR

- 1 An Act relating to the time within which a claim must be brought
- 2 by a minor or incompetent under the state tort claims Act.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 131

H-3491

- 1 Amend Senate File 131, as passed by the Senate, as
- 2 follows:
- 3 1. Page 1, by inserting after line 31, the
- 4 following:
- 5 "Sec. \_\_\_\_ . RETROACTIVE APPLICABILITY. This Act is
- 6 retroactively applicable to January 1, 1980, and is
- 7 applicable on and after that date."
- 8 2. By renumbering as necessary.

By JOCHUM of Dubuque

H-3491 FILED APRIL 3, 1991  
*(Adopted 4/9/91 (p 1177))*

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1 Section 1. Section 25A.13, Code 1991, is amended to read  
2 as follows:

3 25A.13 LIMITATION OF ACTIONS.

4 1. Every claim and suit permitted under this chapter shall  
5 be forever barred, unless within two years after such claim  
6 accrued, the claim is made in writing to the state appeal  
7 board under this chapter. The time to begin a suit under this  
8 chapter shall be extended for a period of six months from the  
9 date of mailing of notice to the claimant by the state appeal  
10 board as to the final disposition of the claim or from the  
11 date of withdrawal of the claim from the state appeal board  
12 under section 25A.5, if the time to begin suit would otherwise  
13 expire before the end of such period.

14 2. If a person is a minor or incompetent at the time a  
15 claim accrues, the time within which a claim must be submitted  
16 to the state appeal board shall be extended one year from and  
17 after the termination of such minority or incompetency status.

18 3. If a claim is made or filed under any other law of this  
19 state and a determination is made by a state agency or court  
20 that this chapter provides the exclusive remedy for the claim,  
21 the time to make a claim and to begin a suit under this  
22 chapter shall be extended for a period of six months from the  
23 date of the court order making such determination or the date  
24 of mailing of notice to the claimant of such determination by  
25 a state agency, if the time to make the claim and to begin the  
26 suit under this chapter would otherwise expire before the end  
27 of such period. The time to begin a suit under this chapter  
28 may be further extended as provided in ~~the preceding paragraph~~  
29 subsections 1 and 2.

30 4. This section is the only statute of limitations  
31 applicable to claims as defined in this chapter.

34917

32 EXPLANATION

33 This bill overrides the Iowa supreme court decision in  
34 Harden v. State, 434 N.W.2d 881 (Iowa 1989), where the court  
35 stated that the statute of limitations did not toll under the

1 state tort claims Act for a minor or incompetent because of  
2 the lack of any specific provision providing for such tolling.

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HOUSE AMENDMENT TO  
SENATE FILE 131

S-3359

1 Amend Senate File 131, as passed by the Senate, as  
2 follows:  
3 1. Page 1, by inserting after line 31, the  
4 following:  
5 "Sec. \_\_\_\_ . RETROACTIVE APPLICABILITY. This Act is  
6 retroactively applicable to January 1, 1980, and is  
7 applicable on and after that date."  
8 2. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3359 FILED APRIL 9, 1991  
*Senate referred to committee 4/24/91 (p. 1520)*  
*House received 5/2/91 (p. 2042)*

SENATE FILE 131  
FISCAL NOTE

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A fiscal note for Senate File 131 as amended by H-3491 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Amendment H-3491 establishes retroactive applicability to January 1, 1980, for minors or incompetents to be allowed one year from the termination of minority or incompetency to submit a claim to the State Appeal Board for a tort claim.

**FISCAL EFFECT:** It is estimated that at least 4 - 6 cases may be revived by this retroactive applicability. Given the time necessary for processing these cases through the Court System and the possibility of some cases being settled early it is likely that the cost of the bill, if amended, would be between \$2.0 and \$3.0 in FY 1992 and \$3.0 million in FY 1993.

(SOURCE: Department of Justice)

(LSB 1897ss, DPW)

FILED APRIL 10, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

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LSB 1897SS 74

GOVERNOR'S VETO MESSAGE

May 10, 1991

The Honorable Joe Welsh  
President of the Senate  
State Capitol Building  
LOCAL

Dear Mr. President:

Senate File 131, an act relating to the time within which a claim must be brought by a minor or incompetent under the state tort claims act, is hereby disapproved and transmitted to you in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

Iowa Code Section 25A.13 currently provides a two-year statute of limitations for claims against the state under the Iowa Tort Claims Act. This is a departure from common law which did not permit actions against the state. Senate File 131 would amend Section 25A.13 to allow the two years to be tolled if the claimant is a minor or incompetent at the time the claim accrues.

Current Iowa law parallels the Federal Tort Claims Act which does not provide a tolling of its two-year statute of limitations for claims against the federal government brought by minors or incompetents. Congress was concerned about state claims when it passed the federal act and has declined to alter it. Federal court decisions have upheld the constitutionality of the federal statute of limitations. Likewise, the Iowa Supreme Court has upheld the constitutionality of Section 25A.13.

At any given time, the state is charged with the care of hundreds of institutionalized minors and incompetents, many who because of the seriousness of their problems have been denied care by private facilities. Under this bill, a claim could be brought against the state by minors until their nineteenth birthday or by incompetents until one year after they attain competency which may be some 10, 20 or even 30 years after the incident giving rise to the claim. In the case of both minors and incompetents, the claim may be made many years after the evidence and people familiar with the circumstances are gone. The state should not be forced to defend against claims that are stale. Our present law permits parents or guardians of minors or incompetents to bring claims on their behalf in a timely manner.

For the above reasons, I hereby respectfully disapprove Senate File 131.

Sincerely,  
TERRY E. BRANSTAD  
Governor

SENATE FILE 131

AN ACT

RELATING TO THE TIME WITHIN WHICH A CLAIM MUST BE BROUGHT BY  
A MINOR OR INCOMPETENT UNDER THE STATE TORT CLAIMS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 25A.13, Code 1991, is amended to read  
as follows:

25A.13 LIMITATION OF ACTIONS.

1. Every claim and suit permitted under this chapter shall  
be forever barred, unless within two years after such claim  
accrued, the claim is made in writing to the state appeal  
board under this chapter. The time to begin a suit under this  
chapter shall be extended for a period of six months from the  
date of mailing of notice to the claimant by the state appeal  
board as to the final disposition of the claim or from the  
date of withdrawal of the claim from the state appeal board  
under section 25A.5, if the time to begin suit would otherwise  
expire before the end of such period.

2. If a person is a minor or incompetent at the time a  
claim accrues, the time within which a claim must be submitted  
to the state appeal board shall be extended one year from and  
after the termination of such minority or incompetency status.

3. If a claim is made or filed under any other law of this  
state and a determination is made by a state agency or court  
that this chapter provides the exclusive remedy for the claim,  
the time to make a claim and to begin a suit under this  
chapter shall be extended for a period of six months from the  
date of the court order making such determination or the date  
of mailing of notice to the claimant of such determination by  
a state agency, if the time to make the claim and to begin the  
suit under this chapter would otherwise expire before the end  
of such period. The time to begin a suit under this chapter

may be further extended as provided in the preceding paragraph  
subsections 1 and 2.

4. This section is the only statute of limitations  
applicable to claims as defined in this chapter.

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JOE J. WELSH  
President of the Senate

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ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and  
is known as Senate File 131, Seventy-fourth General Assembly.

*Detrod*  
Approved 5/10/91, 1991

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JOHN F. DWYER  
Secretary of the Senate

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TERRY E. BRANSTAD  
Governor