

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 21, 1998 Revised: _____

Subject: Statute of Limitations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides whereas language relating to the history of the judicially created doctrine that fraudulent concealment of a cause of action tolls any applicable statute of limitations. It amends s. 95.051, F.S., to provide that the fraudulent concealment of a cause of action or of the identity of a person to be sued would toll any applicable statute of limitations. Finally, the bill provides that it is the intent of the Legislature that the act is remedial in nature and is intended to clarify existing law.

This bill substantially amends section 95.051 of the Florida Statutes.

II. Present Situation:

A. Statutes of Limitations

A statute of limitations imposes a time limit based upon and beginning to run when a cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs. As a general principle, a statute of limitation does not start to run until the cause of action was or should have been discovered by the plaintiff. The absence of express statutory language providing that a particular cause of action does not accrue until the plaintiff discovers the harm does not abrogate this principle. However, when a statute of limitations is specific as to the event that starts the limitation time clock running, the statute begins to run immediately upon the occurrence of the specified event.

B. Statute Tolling Statutes of Limitations

Section 95.051, F.S., provides for the tolling, or suspension, of the running of statutes of limitations. The section provides that the running of the time under any statute of limitations except ss. 95.281, 95.35, and 95.36, F.S., is tolled by:

- Absence from the state of the person to be sued.
- Use by the person to be sued of a false name that is unknown to the person entitled to sue so that process cannot be served on the person to be sued.
- Concealment in the state of the person to be sued so that process cannot be served on him or her.
- The adjudicated incapacity, before the cause of action accrued, of the person entitled to sue. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.
- Voluntary payments by the alleged father of the child in paternity actions during the time of the payments.
- The payment of any part of the principal or interest of any obligation or liability founded on a written instrument.
- The pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action.
- The minority or previously adjudicated incapacity of the person entitled to sue during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue; except with respect to the statute of limitations for a claim for medical malpractice as provided in s. 95.11, F.S. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

No disability or other reason tolls the running of any statute of limitations except those specified in this section, s. 95.091, F.S., the Florida Probate Code, or the Florida Guardianship Law.

As noted above, there are three exceptions to the application of the tolling statute. Section 95.281, F.S., provides limitations relating to instruments encumbering real property. Section 95.35, F.S., provides for limitations relating to termination of contracts to purchase real estate when there is no maturity date. Section 95.36, F.S., provides limitations relating to dedications of park property to local governments.

C. Case Law on Tolling Due to Fraudulent Concealment of a Cause of Action

Until recently, there was a judicially-created, equity-based doctrine tolling statutes of limitations. The fraudulent-concealment doctrine was first recognized in 1953. *Proctor v. Schomberg*, 63 So.2d 68 (Fla. 1953). In this case, the Florida Supreme Court found that a person who wrongfully conceals material facts in order to prevent another from discovering a cause of action against the person should not be able to take advantage of the wrongful concealment by asserting a statute of limitations as a bar to the action. *Id.* at 71-72. This doctrine was subsequently applied in a variety of cases by the Supreme Court and the district courts of appeal. It was applied by the First

District Court of Appeal as recently as September of 1997. *S.A.P. v. Department of Health & Rehabilitative Services*, 22 Fla. L. Weekly D2095 (Fla. 1st DCA Sept. 3, 1997).

However, the Supreme Court recently receded from the doctrine. *Fulton County Administrator v. Sullivan*, 22 Fla. L. Weekly S578 (Fla. 1997). The Court stated that all of its previous applications of the doctrine predated the Legislature's enactment of the tolling statute, s. 95.051, F.S. *Id.* The Court found that, as the statute does not contain a provision tolling statutes of limitations other than in medical malpractice actions, the plain language of the statute does not provide for the tolling of statutes of limitations in cases in which the tortfeasor fraudulently conceals his or her identity. The Court therefore held that fraudulent concealment of the identity of a tortfeasor does not toll the statute of limitations. *Id.* The Court closed its discussion by stating:

However, as previously stated, we do agree with Judge Klein that the statute of limitations requires an unjust result in cases such as the one presented here. We therefore recommend that the legislature examine this issue and should it agree, enact an amendment to the statute to avoid such an unfair result.

Id.

III. Effect of Proposed Changes:

The bill provides whereas language relating to the history of the judicially created doctrine that fraudulent concealment of a cause of action tolls any applicable statute of limitations. It amends s. 95.051, F.S., to provide that the fraudulent concealment of a cause of action or of the identity of a person to be sued would toll any applicable statute of limitations. Finally, the bill provides that it is the intent of the Legislature that the act is remedial in nature and is intended to clarify existing law.

The bill takes effect on July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be subject to constitutional challenge to the extent that it would apply to revive a cause of action which has been extinguished by the Supreme Court's abolition of the fraudulent concealment doctrine and the subsequent application of a statute of limitations. The Supreme Court has held that a newly enacted statute of limitations cannot resurrect a cause of action which has been previously time-barred by the applicable statute of limitations, stating that "Once an action is barred, a property right to be free from a claim has accrued." *Wiley v. Roof*, 641 So.2d 66 (Fla. 1994).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. The bill may continue the viability of existing causes of action, but its application and the number of cases and the monetary value of the claims is not determinable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.