

By the Committee on Judiciary and Senator Harris

308-2224-98

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A bill to be entitled
An act relating to statute of limitations;
amending s. 95.051, F.S.; providing that the
fraudulent concealment of the cause of action
or the identity of the person to be sued tolls
the statute; providing legislative intent;
providing effective dates.

WHEREAS, it is a recognized rule of construction that
the Legislature is deemed to know the existing law, and

WHEREAS, the courts of this state have long recognized
the doctrine that the fraudulent concealment of a cause of
action by a tortfeasor tolls the statute of limitations until
the date the action is discovered or the date on which,
through the exercise of ordinary diligence, it might have been
discovered, Proctor v. Schomberg, 63 So.2d 68 (Fla. 1953), and

WHEREAS, the Legislature, in enacting a statute of
repose in medical malpractice actions expressly recognized and
recited this doctrine of tolling the statute of limitations in
cases of fraudulent concealment of the cause of action, and

WHEREAS, the Florida Supreme Court, in Fulton County
Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla.
1997), held that "the plain language of s. 95.091 does not
provide for the tolling of the statute of limitation in cases
in which the tortfeasor fraudulently conceals his or her
identity," and

WHEREAS, the Florida Supreme Court in Fulton County
Administration v. Sullivan made the recommendation "that the
Legislature examine this issue and, should it agree, enact an
amendment to the statute to avoid such an unfair result," and

1 WHEREAS, similarly, as a result of the reasoning of the
2 Florida Supreme Court in Fulton County Administration v.
3 Sullivan, there may be a question of whether the fraudulent
4 concealment of a cause of action tolls the statute of
5 limitation, and

6 WHEREAS, it is the intent of the Legislature by this
7 act to clarify once and for all its continued recognition of
8 the "court-made" tolling provision for fraudulent concealment
9 of a cause of action and to avoid the unfair result of not
10 tolling the statute of limitations where the tortfeasor
11 fraudulently conceals his or her identity, and

12 WHEREAS, the Legislature deems the provisions of this
13 act to be curative and remedial in effect and to operate as if
14 there was never any question of the Legislature's recognition
15 of the judicially created tolling exception for fraudulent
16 concealment of a cause of action, NOW, THEREFORE,

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Effective July 1, 1998, subsection (1) of
21 section 95.051, Florida Statutes, is amended to read:

22 95.051 When limitations tolled.--

23 (1) The running of the time under any statute of
24 limitations except ss. 95.281, 95.35, and 95.36 is tolled by:

25 (a) Absence from the state of the person to be sued.

26 (b) Use by the person to be sued of a false name that
27 is unknown to the person entitled to sue so that process
28 cannot be served on the person to be sued.

29 (c) Concealment in the state of the person to be sued
30 so that process cannot be served on him or her.

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1 (d) Fraudulent concealment of a cause of action or the
2 identity of a person to be sued.

3 ~~(e)(d)~~ The adjudicated incapacity, before the cause of
4 action accrued, of the person entitled to sue. In any event,
5 the action must be begun within 7 years after the act, event,
6 or occurrence giving rise to the cause of action.

7 ~~(f)(e)~~ Voluntary payments by the alleged father of the
8 child in paternity actions during the time of the payments.

9 ~~(g)(f)~~ The payment of any part of the principal or
10 interest of any obligation or liability founded on a written
11 instrument.

12 ~~(h)(g)~~ The pendency of any arbitral proceeding
13 pertaining to a dispute that is the subject of the action.

14 ~~(i)(h)~~ The minority or previously adjudicated
15 incapacity of the person entitled to sue during any period of
16 time in which a parent, guardian, or guardian ad litem does
17 not exist, has an interest adverse to the minor or
18 incapacitated person, or is adjudicated to be incapacitated to
19 sue; except with respect to the statute of limitations for a
20 claim for medical malpractice as provided in s. 95.11. In any
21 event, the action must be begun within 7 years after the act,
22 event, or occurrence giving rise to the cause of action.

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24 Paragraphs (a)-(c) shall not apply if service of process or
25 service by publication can be made in a manner sufficient to
26 confer jurisdiction to grant the relief sought. This section
27 shall not be construed to limit the ability of any person to
28 initiate an action within 30 days of the lifting of an
29 automatic stay issued in a bankruptcy action as is provided in
30 11 U.S.C. s. 108(c).

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1 Section 2. It is the intent of the Legislature that
2 the amendment of section 95.051, Florida Statutes, by section
3 1 of this act as it relates to the fraudulent concealment of a
4 cause of action is remedial in nature and is intended to
5 clarify existing law.

6 Section 3. This act shall take effect July 1, 1998.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 1606

11 The Committee Substitute for Senate Bill 1606:

- 12 - Provides whereas language relating to the history of the
13 judicially created doctrine that fraudulent concealment
14 of a cause of action tolls any applicable statute of
15 limitations.
16 - Provides for a tolling of any statute of limitations
17 based on fraudulent concealment of either a cause of
18 action or the identity of a person to be sued.
19 - Provides that it is the intent of the Legislature that
20 the act is remedial in nature and is intended to clarify
21 existing law.
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