

Bill No. CS for SB 2150

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Harris moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 2, between lines 26 and 27,		
15			
16	insert:		
17	Section 3. Effective July 1, 1998, subsection (1) of		
18	section 95.051, Florida Statutes, is amended to read:		
19	95.051 When limitations tolled.--		
20	(1) The running of the time under any statute of		
21	limitations except ss. 95.281, 95.35, and 95.36 is tolled by:		
22	(a) Absence from the state of the person to be sued.		
23	(b) Use by the person to be sued of a false name that		
24	is unknown to the person entitled to sue so that process		
25	cannot be served on the person to be sued.		
26	(c) Concealment in the state of the person to be sued		
27	so that process cannot be served on him or her.		
28	<u>(d) Fraudulent concealment of a cause of action or the</u>		
29	<u>identity of a person to be sued.</u>		
30	<u>(e)</u> <del>(d)</del> The adjudicated incapacity, before the cause of		
31	action accrued, of the person entitled to sue. In any event,		

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1 the action must be begun within 7 years after the act, event,  
2 or occurrence giving rise to the cause of action.

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

5 (g)~~(f)~~ The payment of any part of the principal or  
6 interest of any obligation or liability founded on a written  
7 instrument.

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

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

19  
20 Paragraphs (a)-(c) shall not apply if service of process or  
21 service by publication can be made in a manner sufficient to  
22 confer jurisdiction to grant the relief sought. This section  
23 shall not be construed to limit the ability of any person to  
24 initiate an action within 30 days of the lifting of an  
25 automatic stay issued in a bankruptcy action as is provided in  
26 11 U.S.C. s. 108(c).

27 Section 4. It is the intent of the Legislature that  
28 the amendment of section 95.051, Florida Statutes, by section  
29 1 of this act as it relates to the fraudulent concealment of a  
30 cause of action is remedial in nature and is intended to  
31 clarify existing law and shall apply to all actions in which

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1 there was a fraudulent concealment of a cause of action or of  
2 the identity of a person to be sued, regardless of whether  
3 such acts of fraudulent concealment occurred before or after  
4 that date.

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6 (Redesignate subsequent sections.)

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8

9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 9 and 10, delete those lines

12

13 and insert:

14 or the Statewide Prosecutor; amending s.  
15 95.051, F.S.; providing that the fraudulent  
16 concealment of the cause of action or the  
17 identity of the person to be sued tolls the  
18 statute; providing legislative intent;  
19 providing effective dates.

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

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

29 WHEREAS, the Legislature, in enacting a statute of  
30 repose in medical malpractice actions expressly recognized and  
31 recited this doctrine of tolling the statute of limitations in

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1 cases of fraudulent concealment of the cause of action, and  
2           WHEREAS, the Florida Supreme Court, in Fulton County  
3 Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla.  
4 1997), held that "the plain language of s. 95.091 does not  
5 provide for the tolling of the statute of limitation in cases  
6 in which the tortfeasor fraudulently conceals his or her  
7 identity," and

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

12           WHEREAS, similarly, as a result of the reasoning of the  
13 Florida Supreme Court in Fulton County Administration v.  
14 Sullivan, there may be a question of whether the fraudulent  
15 concealment of a cause of action tolls the statute of  
16 limitation, and

17           WHEREAS, it is the intent of the Legislature by this  
18 act to clarify once and for all its continued recognition of  
19 the "court-made" tolling provision for fraudulent concealment  
20 of a cause of action and to avoid the unfair result of not  
21 tolling the statute of limitations where the tortfeasor  
22 fraudulently conceals his or her identity, and

23           WHEREAS, the Legislature deems the provisions of this  
24 act to be curative and remedial in effect and to operate as if  
25 there was never any question of the Legislature's recognition  
26 of the judicially created tolling exception for fraudulent  
27 concealment of a cause of action, NOW, THEREFORE,

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