

Bill No. CS for SB 2150

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Harris, Dudley and Campbell moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 27, delete that line

and insert:

Section 3. Effective July 1, 1998, subsection (1) of section 95.051, Florida Statutes, is amended to read:

95.051 When limitations tolled.--

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

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

(b) 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.

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

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

(e)~~(d)~~ The adjudicated incapacity, before the cause of

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1 action accrued, of the person entitled to sue. In any event,
2 the action must be begun within 7 years after the act, event,
3 or occurrence giving rise to the cause of action.

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

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

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

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

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

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

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1 clarify existing law.

2 Section 5. This act shall take effect July 1, 1998,
3 and shall apply to all actions in which there was a fraudulent
4 concealment of a cause of action or of the identity of a
5 person to be sued, regardless of whether such acts of
6 fraudulent concealment occurred before or after that date.

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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 1-10, delete those lines

12

13 and insert:

14 A bill to be entitled
15 An act relating to civil actions; providing
16 definitions; specifying conditions for
17 committing culpable negligence causing public
18 financial injury; providing penalties;
19 requiring certain contracts to provide notice
20 of such conditions; providing construction;
21 providing for prosecution by a state attorney
22 or the Statewide Prosecutor; amending s.
23 95.051, F.S.; providing that the fraudulent
24 concealment of the cause of action or the
25 identity of the person to be sued tolls the
26 statute; providing legislative intent;
27 providing effective dates.

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

31 WHEREAS, the courts of this state have long recognized

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

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

10 WHEREAS, the Florida Supreme Court, in Fulton County
11 Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla.
12 1997), held that "the plain language of s. 95.091 does not
13 provide for the tolling of the statute of limitation in cases
14 in which the tortfeasor fraudulently conceals his or her
15 identity," and

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

20 WHEREAS, similarly, as a result of the reasoning of the
21 Florida Supreme Court in Fulton County Administration v.
22 Sullivan, there may be a question of whether the fraudulent
23 concealment of a cause of action tolls the statute of
24 limitation, and

25 WHEREAS, it is the intent of the Legislature by this
26 act to clarify once and for all its continued recognition of
27 the "court-made" tolling provision for fraudulent concealment
28 of a cause of action and to avoid the unfair result of not
29 tolling the statute of limitations where the tortfeasor
30 fraudulently conceals his or her identity, and

31 WHEREAS, the Legislature deems the provisions of this

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1 act to be curative and remedial in effect and to operate as if
2 there was never any question of the Legislature's recognition
3 of the judicially created tolling exception for fraudulent
4 concealment of a cause of action, NOW, THEREFORE,
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