

Bill No. CS/CS/HB 3657

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, between lines 26 and 27,

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

Bill No. CS/CS/HB 3657

Amendment No. \_\_\_\_

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.

20  
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

Bill No. CS/CS/HB 3657

Amendment No. \_\_\_\_

1 clarify existing law.

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3 (Redesignate subsequent sections.)

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

7 And the title is amended as follows:

8 On page 1, lines 1-10, delete those lines

9

10 and insert:

11 A bill to be entitled

12 An act relating to civil actions; providing

13 definitions; specifying conditions for

14 committing culpable negligence causing public

15 financial injury; providing penalties;

16 requiring certain contracts to provide notice

17 of such conditions; providing construction;

18 providing for prosecution by a state attorney

19 or the Statewide Prosecutor; amending s.

20 95.051, F.S.; providing that the fraudulent

21 concealment of the cause of action or the

22 identity of the person to be sued tolls the

23 statute; providing legislative intent;

24 providing effective dates.

25

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

28 WHEREAS, the courts of this state have long recognized  
29 the doctrine that the fraudulent concealment of a cause of  
30 action by a tortfeasor tolls the statute of limitations until  
31 the date the action is discovered or the date on which,

Bill No. CS/CS/HB 3657

Amendment No. \_\_\_\_

1 through the exercise of ordinary diligence, it might have been  
2 discovered, Proctor v. Schomberg, 63 So.2d 68 (Fla. 1953), and  
3           WHEREAS, the Legislature, in enacting a statute of  
4 repose in medical malpractice actions expressly recognized and  
5 recited this doctrine of tolling the statute of limitations in  
6 cases of fraudulent concealment of the cause of action, and  
7           WHEREAS, the Florida Supreme Court, in Fulton County  
8 Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla.  
9 1997), held that "the plain language of s. 95.091 does not  
10 provide for the tolling of the statute of limitation in cases  
11 in which the tortfeasor fraudulently conceals his or her  
12 identity," and  
13           WHEREAS, the Florida Supreme Court in Fulton County  
14 Administration v. Sullivan made the recommendation "that the  
15 Legislature examine this issue and, should it agree, enact an  
16 amendment to the statute to avoid such an unfair result," and  
17           WHEREAS, similarly, as a result of the reasoning of the  
18 Florida Supreme Court in Fulton County Administration v.  
19 Sullivan, there may be a question of whether the fraudulent  
20 concealment of a cause of action tolls the statute of  
21 limitation, and  
22           WHEREAS, it is the intent of the Legislature by this  
23 act to clarify once and for all its continued recognition of  
24 the "court-made" tolling provision for fraudulent concealment  
25 of a cause of action and to avoid the unfair result of not  
26 tolling the statute of limitations where the tortfeasor  
27 fraudulently conceals his or her identity, and  
28           WHEREAS, the Legislature deems the provisions of this  
29 act to be curative and remedial in effect and to operate as if  
30 there was never any question of the Legislature's recognition  
31 of the judicially created tolling exception for fraudulent

Bill No. CS/CS/HB 3657

Amendment No. \_\_\_\_

1 concealment of a cause of action, NOW, THEREFORE,  
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