Bill No. CS/CS/HB 3657 Amendment No. \_\_\_ CHAMBER ACTION Senate House 1 2 3 4 5 6 7 8 9 10 Senators Harris, Dudley and Campbell moved the following 11 12 amendment: 13 14 Senate Amendment (with title amendment) On page 2, lines 27-28, delete those lines 15 16 17 and insert: Section 3. Effective July 1, 1998, subsection (1) of 18 19 section 95.051, Florida Statutes, is amended to read: 20 95.051 When limitations tolled.--(1) The running of the time under any statute of 21 22 limitations except ss. 95.281, 95.35, and 95.36 is tolled by: 23 (a) Absence from the state of the person to be sued. 24 (b) Use by the person to be sued of a false name that 25 is unknown to the person entitled to sue so that process 26 cannot be served on the person to be sued. 27 (c) Concealment in the state of the person to be sued so that process cannot be served on him or her. 28 29 (d) Fraudulent concealment of a cause of action or the 30 identity of a person to be sued. (e)(d) The adjudicated incapacity, before the cause of 31 1 7:27 PM 04/30/98 h3657.ju24.xa Bill No. <u>CS/CS/HB 3657</u>

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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.

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, quardian, or quardian ad litem does not exist, has an interest adverse to the minor or 14 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, event, or occurrence giving rise to the cause of action. 19

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

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

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clarify existing law. 1 2 Section 5. This act shall take effect July 1, 1998, and shall apply to all actions in which there was a fraudulent 3 4 concealment of a cause of action or of the identity of a person to be sued, regardless of whether such acts of 5 6 fraudulent concealment occurred before or after that date. 7 8 9 10 And the title is amended as follows: On page 1, lines 1-10, delete those lines 11 12 and insert: 13 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 financial injury; providing penalties; 18 requiring certain contracts to provide notice 19 of such conditions; providing construction; 20 21 providing for prosecution by a state attorney or the Statewide Prosecutor; amending s. 22 95.051, F.S.; providing that the fraudulent 23 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. 28 29 WHEREAS, it is a recognized rule of construction that 30 the Legislature is deemed to know the existing law, and WHEREAS, the courts of this state have long recognized 31 3

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the doctrine that the fraudulent concealment of a cause of 1 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 recited this doctrine of tolling the statute of limitations in 8 9 cases of fraudulent concealment of the cause of action, and 10 WHEREAS, the Florida Supreme Court, in Fulton County Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla. 11 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 in which the tortfeasor fraudulently conceals his or her 14 15 identity, " and 16 WHEREAS, the Florida Supreme Court in Fulton County 17 Administration v. Sullivan made the recommendation "that the Legislature examine this issue and, should it agree, enact an 18 amendment to the statute to avoid such an unfair result," and 19 20 WHEREAS, similarly, as a result of the reasoning of the 21 Florida Supreme Court in Fulton County Administration v. Sullivan, there may be a question of whether the fraudulent 22 concealment of a cause of action tolls the statute of 23 24 limitation, and WHEREAS, it is the intent of the Legislature by this 25 act to clarify once and for all its continued recognition of 26 27 the "court-made" tolling provision for fraudulent concealment 28 of a cause of action and to avoid the unfair result of not tolling the statute of limitations where the tortfeasor 29 30 fraudulently conceals his or her identity, and 31 WHEREAS, the Legislature deems the provisions of this

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<pre>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, 5 6 7 7 8 9 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 </pre>	1	
3       of the judicially created tolling exception for fraudulent         4       concealment of a cause of action, NOW, THEREFORE,         5       6         7       7         8       7         9       7         10       7         11       7         12       7         13       7         14       7         15       7         16       7         17       7         18       7         19       7         10       7         12       7         13       7         14       7         15       7         16       7         17       7         18       7         19       7         12       7         13       7         14       7         15       7         16       7         17       7         18       7         19       7         12       7         13       7         14       7		
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