

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1480

SPONSOR: Senator Mitchell

SUBJECT: Statute of Limitations

DATE: March 4, 1999

REVISED: 03/11/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 Amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill amends s. 95.051, F.S., which provides for the tolling of the statute of limitations under certain situations. The bill adds fraudulent concealment of a cause of action, or the identity of a person to be sued, as conduct that will toll the statute of limitations.

The act takes effect on July 1, 1999.

This bill amends section 95.051 of the Florida Statutes.

## II. Present Situation:

Chapter 95 of the Florida Statutes, entitled Limitations of Actions, prescribes time limitations within which causes of action must be brought. Section 95.051, F.S., which was enacted in 1974, chapter 74-382, L.O.F., enumerates several bases for tolling the statute of limitations. According to *Black's Law Dictionary*, tolling the statute of limitations means to show facts which remove its bar of the action. In other words, if facts are proved which show any of the conditions enumerated in s. 95.051, F.S., then the statute of limitations will be tolled, or stopped from running, for a particular action. The conditions specifically identified in s. 95.051, F.S., as tolling a statute of limitation are the following:

- (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 such person;
- (d) The adjudicated incapacity, before the cause of 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;
- (e) Voluntary payments by the alleged father of the child in paternity actions during the time of the payments;
  - (f) The payment of any part of the principal or interest of any obligation or liability founded on a written instrument;
  - (g) The pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action; and
  - (h) The minority or previously adjudicated incapacity of the person entitled to sue during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue; except with the respect to the statute of limitations for a claim for medical malpractice as provided in s. 95.11, F.S. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

Section 95.051(2), F.S., expressly provides that no disability or other reason shall toll the running of any statute of limitations except those specified in this section, the Florida Probate Code, or the Florida Guardianship Law.

Fraudulent concealment of a cause of action and fraudulent concealment of the identity of the person to be sued, as far as the tolling of the statute of limitations is concerned, were first recognized by the Florida Supreme Court in the case of *Proctor v. Schomberg*, 63 So.2d 68 (Fla.1953). In *Proctor*, the court found that a person who wrongfully conceals material facts and prevents the discovery of either the wrong, or the fact that a cause of action has accrued against the person, should not be able to take advantage of the person's wrong and assert the statute of limitations as a bar to the action. To establish fraudulent concealment sufficient to toll the statute, the plaintiff must show both successful concealment of the cause of action, or identity of the tortfeasor, and a fraudulent means to achieve that concealment. *Nardone v. Reynolds*, 333 So.2d 25 (Fla. 1976). Fraudulent concealment is the employment of artifice planned to prevent inquiry or escape investigation and to mislead or hinder the acquisition of information disclosing a right of action. *Fulton County Administrator v. Sullivan* 22 Fla. L. Weekly S578 at S588,---So.2d--- (1997), citing *Black's Law Dictionary* (Anstead, J., dissenting). Under this rule, the statute of limitations begins to run from the date the action is discovered or from the date on which, through the exercise of ordinary diligence, it might have been discovered.

At the time of the *Proctor* decision, the Legislature had only expressly set forth limited circumstances which would toll the statute of limitations. See s. 95.05, 95.07, F.S.(1949). Those circumstances did not address any tolling provisions for fraudulent concealment. Also, those circumstances did not expressly exclude the possibility of judicial recognition of tolling provisions for fraudulent concealment. Accordingly, the Florida Supreme Court continued to recognize the validity of the court-fashioned rule regarding fraudulent concealment. See *Nardone v. Reynolds*, 333 So.2d 25 (Fla. 1976).

However, after the enactment in 1974 of the tolling provisions in s. 95.051, F.S., the validity of the judicially created fraudulent concealment doctrine was in doubt. See *Grantham v. Blount*,

*Inc.*, 683 So.2d 538 (Fla. 2d DCA 1996); but see *Berisford v. Jack Eckard Corp.*, 667 So.2d 809 (Fla.4th DCA 1995); *S.A.P. v. Department of Health and Rehabilitative Services*, 704 So.2d 583 (Fla. 1st DCA 1997). Notably absent from the list in s. 95.051, F.S., was fraudulent concealment of the action and identity of the tortfeasor, especially in light of the inclusion, in s. 95.051(1)(b) and (c), F.S., of the defendant's use of a false name or concealment in Florida to avoid service of process. The omission was even more striking in light of s. 95.11(4)(b), F.S.'s provision for tolling the statute of limitations due to fraudulent concealment of the discovery of the plaintiff's injury in medical malpractice actions. Significantly, s. 95.051(2), F.S., stated that no disability or other reason shall toll the running of any statute of limitations except where specified in this section, the Florida Probate Code, or the Florida Guardianship Law.

The Florida Supreme Court resolved the issue in *Fulton County Administrator v. Sullivan*, 22 Fla. L. Weekly S578, --- So.2d --- (Fla.1997). In *Sullivan*, the court found that the judicially created tolling provision for fraudulent concealment could no longer be recognized since s. 95.051, F.S., did not specifically include it. The court ruled that the statute specifically precluded application of any tolling provision not specifically provided for by the legislature and, in the face of such clear legislative direction, it could not write in the fraudulent concealment exception when the legislature refused to do so.

### **III. Effect of Proposed Changes:**

The bill would add the fraudulent concealment doctrine to the list of circumstances which toll the statute of limitations identified in s. 95.051, F.S. By expressly providing for the exception of the fraudulent concealment of a cause of action, or the identity of a person to be sued, the bill resolves the issue discussed by the Florida Supreme Court in *Sullivan*.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill will allow plaintiffs whose causes of action have been fraudulently hidden from them to proceed with their lawsuits. Likewise, the bill will also allow plaintiffs whose causes of actions have been precluded from being brought due to the tortfeasor's fraudulent concealment of his or her identity to now successfully bring their lawsuits. The precise impact upon the private sector is unknown.

**C. Government Sector Impact:**

The bill could result in an increased number of lawsuits. The precise impact upon the court system is undeterminable.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Judiciary:

Clarifies that the bill's provisions do not apply to actions subject to the periods of limitation in s. 95.11(4), F.S., which governs medical malpractice actions. Section 95.11 (4), F.S., already contains similar tolling provisions for conduct involving fraudulent concealment in medical malpractice actions.