

STORAGE NAME: h2095a.cla
DATE: April 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CLAIMS
ANALYSIS**

BILL #: HB 2095
RELATING TO: Statute of limitations.
SPONSOR(S): Representative Suarez
COMPANION BILL(S): SB 1480 by Senator Mitchell
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CLAIMS YEAS 4 NAYS 0
(2) JUDICIARY
(3)
(4)
(5)

I. SUMMARY:

Provides that the running of time under the statute of limitations is tolled by fraudulent concealment of a cause of action or the identity of the person to be sued. Sets forth specific legislative intent that the bill is intended to be remedial in nature.

This bill has no fiscal impact on the court system.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Statute of limitations: Black's Law Dictionary defines statute of limitations as: "... legislative enactments that prescribe the periods within which certain rights may be enforced." Black's Law Dictionary, 835 (5th ed., 1979). The Florida Statutes address statutes of limitation in chapter 95. Section 95.051, F.S. specifically provides the conditions which will toll, or temporarily suspend, the statute of limitations:

- Absence from the state of the person to be sued.
- 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.
- Concealment in the state of the person to be sued so that process cannot be served.
- The adjudicated incapacity, before the cause of action accrued, of the person entitled to sue.
- Voluntary payments by the alleged father of the child in paternity actions during the time of payments.
- The payment of any part of the principal or interest of any obligation or liability founded on a written instrument.
- The pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action.
- 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 adverse interest to the person entitled to sue, or is adjudicated incapacitated themselves.

Subsection (2) of s. 95.051, F.S., specifically states that no other reason shall toll the running of any statute of limitations, except those specified in s. 95.051, the Florida Probate Code, or the Florida Guardianship Law.

Fraudulent concealment: In order to establish fraudulent concealment sufficient to toll the statute of limitations, the plaintiff must show both successful concealment of the cause of action and a fraudulent means to achieve that concealment. *S.A.P. v. State, Department of Health and Rehabilitative Services*, 704 So.2d 583 at 585 (Fla. 1st DCA, 1997). Prior to the enactment of s. 95.051(2), F.S., the Florida Supreme Court held that the fraudulent concealment of an injury would toll the running of the statute of limitations, or would serve as an exception to the statute of limitations. *Proctor v. Schomberg*, 63 So.2d 68 (Fla. 1953). Since the Court's holding in Proctor, the Legislature enacted legislation that allowed the statutes of limitations in medical malpractice actions to be extended forward 2 years from the time that the injury is discovered, or should have been discovered with the exercise of due diligence, if it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury. 95.11(4)(b), F.S. This exception to the statute of limitations is limited to medical malpractice actions only.

Florida courts have consistently held that fraudulent concealment tolls the statute of limitations in cases other than medical malpractice. In *S.A.P. v. the Department of Health and Rehabilitative Services*, the First District Court of Appeal held that "as a general rule, fraudulent concealment constitutes an implied exception to the statute of limitations, postponing commencement of the running of the statute until discovery of reasonable opportunity of discovery of the concealment by the owner of the cause of action." *S.A.P. at 585*. In the *S.A.P.* case, fraudulent concealment was held to toll the four-year statute of limitations for tort actions brought against state agencies pursuant to the waiver of sovereign immunity provisions found at s. 768.28, F.S. Similarly, the Fourth District Court of Appeal has held that the tolling for fraudulent concealment in no way affects the legislature's determination that the state only be liable up to the limits set forth in the waiver of sovereign immunity statute. *Vargas v. Glades General Hospital*, 566 So.2d 282 at 285 (Fla. 4th DCA, 1990).

However, the Florida Supreme Court recently held that statutes of limitations for civil actions are NOT tolled by the fraudulent concealment of the identity of the defendant. *Fulton County Administrator v. Sullivan*, 1997 WL 589312 (Fla.) The Court made its decision based on rules of statutory construction: that legislative intent is the polestar by which the court is guided, and intent should be gleaned from the plain language of the statute. In statutes of limitation specifically, courts will not find exceptions when the Legislature has refused to do so. *Fulton County Administrator at 3, citing Carey v. Beyer*, 75 So.2d 217 (Fla. 1954). Because section 95.051, F.S. does not specifically allow the statute of limitations to be tolled for fraudulent concealment, the Court opined that "in the face of such clear legislative direction, we are compelled to hold that fraudulent concealment ... will not toll the

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statute of limitations.” *Id at 3.* In fact, the Court recommended that the legislature examine this issue, and should it agree, enact an amendment to the statute to avoid another unfair result. *Id at 4.*

B. EFFECT OF PROPOSED CHANGES:

HB 2095, in response to the Supreme Court’s request in the Fulton County Administrator case, clearly enumerates legislative intent to recognize the “court-made” tolling provision for fraudulent concealment of a cause of action or identity of a person to be sued. The bill amends section 95.051, F.S., to include fraudulent concealment of a cause of action or the identity of a person to be sued as specific conditions which will toll, or suspend, the statute of limitations. Lastly, the bill sets forth that the intent is remedial in nature, and is intended to clarify existing law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 95.051, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Office of the State Court Administrator has determined that this bill has no fiscal impact on the court system.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Will allow plaintiffs to proceed with causes of action that may have been previously precluded due to the fraudulent concealment of the cause of action or the identity of the person to be sued.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with municipalities.

V. COMMENTS:

Remedial statutes are statutes relating to modes of procedure which confirm rights already existing, and as such, do not come within the general rule against retrospective application. *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961). HB 2095 specifically states that the amendment to section 95.051, F.S. is remedial in nature; thus, the tolling provisions provided by the bill would apply to causes of action already existing.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1999, the Committee on Claims adopted one amendment to HB 2095. The amendment provides an exception to the tolling provisions for medical malpractice actions brought pursuant to s. 95.11(4)(b), F.S. Section 95.11(4)(b), F.S., already includes a tolling provision for fraudulent concealment.

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VII. SIGNATURES:

COMMITTEE ON CLAIMS:
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