

By Representative Suarez

1                                   A bill to be entitled  
2           An act relating to statute of limitations;  
3           amending s. 95.051, F.S.; providing that the  
4           fraudulent concealment of the cause of action  
5           or the identity of the person to be sued tolls  
6           the statute; providing legislative intent;  
7           providing effective dates.

8  
9           WHEREAS, it is a recognized rule of construction that  
10          the Legislature is deemed to know the existing law, and

11           WHEREAS, the courts of this state have long recognized  
12          the doctrine that the fraudulent concealment of a cause of  
13          action by a tortfeasor tolls the statute of limitations until  
14          the date the action is discovered or the date on which,  
15          through the exercise of ordinary diligence, it might have been  
16          discovered, Proctor v. Schomberg, 63 So.2d 68 (Fla. 1953), and

17           WHEREAS, the Legislature, in enacting a statute of  
18          repose in medical malpractice actions expressly recognized and  
19          recited this doctrine of tolling the statute of limitations in  
20          cases of fraudulent concealment of the cause of action, and

21           WHEREAS, the Florida Supreme Court, in Fulton County  
22          Administration v. Sullivan, 22 Fla. Law Weekly, S578 (Fla.  
23          1997), held that "the plain language of s. 95.091 does not  
24          provide for the tolling of the statute of limitation in cases  
25          in which the tortfeasor fraudulently conceals his or her  
26          identity," and

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

31

1           WHEREAS, similarly, as a result of the reasoning of the  
2 Florida Supreme Court in Fulton County Administration v.  
3 Sullivan, there may be a question of whether the fraudulent  
4 concealment of a cause of action tolls the statute of  
5 limitation, and

6           WHEREAS, it is the intent of the Legislature by this  
7 act to clarify once and for all its continued recognition of  
8 the "court-made" tolling provision for fraudulent concealment  
9 of a cause of action and to avoid the unfair result of not  
10 tolling the statute of limitations where the tortfeasor  
11 fraudulently conceals his or her identity, and

12           WHEREAS, the Legislature deems the provisions of this  
13 act to be curative and remedial in effect and to operate as if  
14 there was never any question of the Legislature's recognition  
15 of the judicially created tolling exception for fraudulent  
16 concealment of a cause of action, NOW, THEREFORE,

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20           Section 1. Effective July 1, 1999, subsection (1) of  
21 section 95.051, Florida Statutes, is amended to read:

22           95.051 When limitations tolled.--

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

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

26           (b) Use by the person to be sued of a false name that  
27 is unknown to the person entitled to sue so that process  
28 cannot be served on the person to be sued.

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

31

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

3        (e)~~(d)~~ The adjudicated incapacity, before the cause of  
4 action accrued, of the person entitled to sue. In any event,  
5 the action must be begun within 7 years after the act, event,  
6 or occurrence giving rise to the cause of action.

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

9        (g)~~(f)~~ The payment of any part of the principal or  
10 interest of any obligation or liability founded on a written  
11 instrument.

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

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

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

31

1           Section 2. It is the intent of the Legislature that  
2 the amendment of section 95.051, Florida Statutes, by section  
3 1 of this act as it relates to the fraudulent concealment of a  
4 cause of action is remedial in nature and is intended to  
5 clarify existing law.

6           Section 3. This act shall take effect July 1, 1999.

7  
8

\*\*\*\*\*

9

SENATE SUMMARY

10 Provides for the tolling of a statute of limitations when  
11 a cause of action or the identity of a tortfeasor is  
fraudulently concealed from the person entitled to sue.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31