

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1917 Statutes of Limitation  
**SPONSOR(S):** Committee on Judiciary and Rep. Kottkamp  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2700

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	14 Y, 0 N	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

Courts have held that constructive fraud actions are subject to the general four-year statute of limitations for fraud, and that they are governed by the delayed discovery rule rather the general rule that statutes of limitations begin to run when the cause of action accrues. However, one could argue otherwise, since the law has always distinguished between actual and constructive fraud, and continues to do so.

This bill makes clear that the delayed discovery rule applies to actions founded on constructive fraud, as well as on actual fraud. This bill further provides that it is remedial in nature and retrospective in effect.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1917.ju.doc  
**DATE:** April 25, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **The Statute of Limitations for Constructive Fraud**

“Constructive fraud” or “fraud in law” (as opposed to “fraud in fact”) is a term applied to a variety of transactions which equity regards as wrongful, to which it attributes similar effects as those following from “actual,” intentional fraud, and for which it grants the same relief as actual fraud.<sup>1</sup> The term is typically applied to abuse of a confidential or fiduciary relationship, or to the taking of an unconscionable advantage.<sup>2</sup>

The general statutes of limitations for civil actions are provided in ch. 95, F.S. Suits on contracts, obligations or other liabilities arising under written instruments may be brought within five years of when the cause of action accrues;<sup>3</sup> for negligence, for fraud or for any unspecified and most specified other intentional torts, within four years;<sup>4</sup> for professional malpractice or for defamation (libel or slander) within two years,<sup>5</sup> etc.

Under s. 95.031(2)(a), F.S., rather than running from when the cause of action accrues, the statute of limitations for fraud suits runs:

from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11(3), but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.

Courts have held that constructive fraud actions are subject to the general four-year statute of limitations imposed in s. 95.11(3)(j), F.S., and that they are governed by the above special provision (the “delayed discovery rule”) rather than the general rule of s. 95.031, F.S., that statutes of limitations begin to run when the cause of action accrues.<sup>6</sup> However, one could argue otherwise, since the law has always distinguished between actual and constructive fraud, and continues to do so.

<sup>1</sup> See *Robson Link & Co. v. Leedy Wheeler & Co.*, 18 So.2d 523 (Fla. 1944); *Douglas v. Ogle*, 85 So. 243 (Fla. 1920); *Harrell v. Branson*, 344 So.2d 604 (Fla. 1st DCA 1977). See generally 27 FLA. JUR. 2D FRAUD AND DECEIT § 8.

<sup>2</sup> See, e.g., *Beers v. Beers*, 724 So.2d 109 (Fla. 5th DCA 1999); *Rogers v. Mitzi*, 584 So.2d 1092 (Fla. 5th DCA 1991).

<sup>3</sup> See s. 95.11(2)(b), F.S.

<sup>4</sup> See s. 95.11(3), F.S.

<sup>5</sup> See s. 95.11(4), F.S.

<sup>6</sup> See, e.g., *Halkey-Roberts Corp. v. Mackal*, 641 So.2d 445 (Fla. 2d DCA 1994).

## **Proposed Change**

This bill amends s. 95.031(2)(a), F.S., to make clear that the delayed discovery rule provided in that statutory section applies to actions founded on constructive fraud, as well as on actual fraud.

This bill further provides that it is remedial in nature and has retrospective effect.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 95.031, F.S., to specifically include constructive fraud in the scheme for calculating the statute of limitations for fraud actions

Section 2. Provides that the amendments to s. 95.031, F.S., in this bill are remedial in nature and shall have retrospective effect.

Section 3. Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2003, the House Committee on Judiciary reported this bill favorably without amendment.