

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 92  
 INTRODUCER: Senators Rich and Crist  
 SUBJECT: Statutes of Limitations/Wrongful Death Actions  
 DATE: March 8, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	Treadwell	Maclure	JU	<b>Favorable</b>
3.			JA	
4.			WPSC	
5.				
6.				

**I. Summary:**

The bill amends the statute of limitations in wrongful death actions for intentional torts resulting in death from acts described in the murder or manslaughter statutes to provide that these actions may be commenced at any time, rather than the current two-year statute of limitations.

This bill substantially amends section 95.11, Florida Statutes. The bill also contains language that does not appear to be intended for codification in the Florida Statutes.

**II. Present Situation:**

**Statute of Limitations Generally**

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Such laws creating statutes of limitations specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be suspended.

**Florida Wrongful Death Act**

Under current law, civil actions for a death caused by a wrongful act, negligence, default, or breach of contract or warranty of another may be brought under the Wrongful Death Act.<sup>1</sup> The Florida Wrongful Death Act creates a new and independent cause of action for the recovery of

<sup>1</sup> Section 768.19, F.S.

damages suffered by designated beneficiaries, not the decedent, as a result of the wrongful deprivation of legal rights by the tortfeasor.<sup>2</sup> As a result, wrongful death actions are initiated on behalf of survivors of the deceased, “not to recover for injuries to the deceased, but to recover for statutorily identified losses the survivors have suffered directly as a result of the death.”<sup>3</sup>

### **Damages Under the Wrongful Death Act**

The current wrongful death statute specifies the types of damages that may be recovered under a wrongful death action.<sup>4</sup> The following damages may be awarded:

- Each survivor may recover the value of lost support and services;
- A surviving spouse may recover for loss of companionship;
- Minor children and adult children (if there is no surviving spouse) may recover for lost parental companionship, instruction, and guidance and for mental pain and suffering;
- Parents of deceased minors may recover for lost parental companionship, instruction, and guidance and for mental pain and suffering; and
- Each survivor may recover medical and for funeral expenses paid by them.<sup>5</sup>

The statute also provides that the following damages may also be recovered for the decedent’s estate:

- Loss of earnings from the date of injury to death;
- Loss of the prospective net accumulations of an estate if:
  - Survivors include a spouse or lineal descendent; or
  - The decedent is not a minor child, there are no lost support and services recoverable by survivors under the statute, and there is a surviving parent; and
- Medical and funeral expenses that have become a charge against the estate.<sup>6</sup>

### **Wrongful Death Statute of Limitations**

Generally, a two-year statute of limitations period governs actions for wrongful death.<sup>7</sup> This two-year period generally accrues or begins to run on the date of the decedent’s death, rather than from the time the person entitled to sue discovers or should have discovered the particular cause of death.<sup>8</sup> In wrongful death actions premised upon medical malpractice, the medical malpractice statute of limitation applies.<sup>9</sup> The medical malpractice statute of limitations affords two years

<sup>2</sup> 17 FLA. JUR. 2D *Death* s. 3 (citing *Nissan Motor Co., v. Phlieger*, 508 So. 2d 713 (Fla. 1987)).

<sup>3</sup> *Id.* (citing *DeVaughn v. DeVaughn*, 840 So. 2d 1128 (Fla. 5th DCA 2003); *City of Pompano Beach v. T.H.E. Ins. Co.*, 709 So. 2d 603 (Fla. 4th DCA 1998)). Wrongful death actions are brought by the decedent’s personal representative to recover for the benefit of the decedent’s survivors and estate. Section 768.20, F.S.

<sup>4</sup> Section 768.21, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 95.11(4)(d), F.S. In determining the length of the two-year limitation period governing actions for wrongful death, the day of the decedent’s death is excluded. *Moorey v. Eytchison & Hoppes, Inc.*, 338 So. 2d 558 (Fla. 2d DCA 1976).

<sup>8</sup> 17 FLA JUR. 2d *Death* s. 42 (citing *Foster v. U.S.*, 768 F.2d 1278 (11th Cir. 1985); *Fulton County Adm’r v. Sullivan*, 753 So. 2d 549 (Fla. 1999); and *Walker v. Beech Aircraft Corp.*, 320 So. 2d 418 (Fla. 3d DCA 1975)).

<sup>9</sup> *Toombs v. Alamo Rent-A-Car, Inc.*, 833 So. 2d 109 (Fla. 2002).

from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill names the act the “Jeffrey Klee Memorial Act.”<sup>11</sup>

#### Extension of Statute of Limitations

The statute of limitations provision for wrongful death actions is amended to provide that wrongful death actions for intentional torts resulting in death from acts described in the murder or manslaughter statutes may be commenced at any time.<sup>12</sup> No other civil cause of action has an unlimited statute of limitations. In the criminal context, only a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time.<sup>13</sup>

The unlimited statute of limitations will likely benefit those relatives of decedents whose death was not actually attributed to murder or manslaughter until a time well beyond two years from the date of death. However, this extension of the statute of limitations may encourage delays in the filing of wrongful death actions in cases where the cause of death is immediately attributed to murder or manslaughter. In those instances, defendants may be prejudiced in defending the wrongful death case due to the disappearance or deterioration of evidence, as well as potential deaths of witnesses.

If it is the intent of the Legislature to toll the statute of limitations for those individuals who did not learn of the cause of the decedent’s death until a time beyond the two-year statute of limitation, the Legislature could create a “discovery rule” in statute similar to the medical malpractice context, which would toll the statute of limitations until the person discovered, or should have discovered with the exercise of due diligence, that the death was attributable to murder or manslaughter.

#### Prior Prosecution for Murder or Manslaughter

The bill also specifies that bringing a civil action is not conditioned upon the criminal prosecution, arrest, or conviction of the person being sued. In practice, the inability of prosecuting authority to arrest, prosecute, and convict a potential wrongful death defendant for murder or manslaughter would not preclude an individual from filing the wrongful death action in civil court.

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<sup>10</sup> Section 95.11(4)(a), F.S.

<sup>11</sup> See “Related Issues” section of this bill analysis for information regarding Jeffrey Klee.

<sup>12</sup> The bill expressly references ss. 782.04 and 782.07, F.S., respectively. The referenced murder statute includes first-degree murder, second-degree murder, or third-degree murder. The referenced manslaughter statute includes manslaughter, aggravated manslaughter, aggravated manslaughter of a child, and aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

<sup>13</sup> See s. 775.15(1), F.S. In some instances, the statute of limitations for other crimes may be extended until the discovery of certain crimes or within a certain number of years from when a victim reaches the age of 18.

### **Application of the Extension**

Language is included in the bill that limits the application of the extension of the wrongful death statute of limitations to claims not otherwise time barred on the effective date of the act. This provision makes clear that the extension of the statute of limitations will not be retroactively applied to claims currently time-barred. If a wrongful death claim is barred by the statute of limitations prior to the date the bill becomes law, it will continue to be barred despite the extension of the statute of limitations included in this bill. However, if the claim is not yet barred, it will enjoy the elimination of a statute of limitations as provided under the bill.

### **Effective Date**

The bill provides that the act will take effect upon becoming law.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

The Office of the State Courts Administrator (OSCA) states that the impact of this legislation cannot be determined at this time due to the unavailability of data needed to establish the increase in judicial workload attributed to an increase in wrongful death filings.<sup>14</sup> Similarly, the increase in revenue from filing fees for wrongful death cases is

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<sup>14</sup> Office of the State Courts Administrator, *Judicial Impact Statement: SB 92* (Oct. 27, 2009).

indeterminate at this time. However, OSCA concludes that, for both revenue and expenditures, the fiscal impact is likely to be minimal.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill is named after Jeffrey Klee, whose body was discovered in South Florida after being missing for more than 30 years. A friend of the victim recently admitted to a third party that he had killed Jeffrey accidentally. However, because prosecutors did not have sufficient evidence to go forward with more than a manslaughter prosecution, and the three-year criminal statute of limitations that was in place during the relevant time period had expired, they were unable to file homicide charges against the alleged perpetrator.<sup>16</sup>

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>15</sup> *Id.*

<sup>16</sup> Rich Phillips, *No charges in death of man rolled into canal 30 years ago*, CNN (Nov. 24, 2008), <http://www.cnn.com/2008/CRIME/11/24/florida.mystery.death/> (last visited Mar. 19, 2009).