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: CS/SB 1948

SPONSOR: Committee on Fiscal Policy and Senator Casas

SUBJECT: Medicaid Third-Party Liability/Tobacco Settlement

DATE	: April 16, 1999	REVISED: <u>4/21/99</u>		
1. 2.	ANALYST Peters/Hadi	STAFF DIRECTOR Hadi	REFERENCE FP	ACTION Favorable/CS
3. 4. 5.				

I. Summary:

The committee substitute clarifies legislative intent underlying the enactment of the 1994 amendments to \$409.910, F.S., that authorized an independent cause of action to recover from liable third parties Medicaid benefits paid on behalf of unidentified recipients, and clarifies that distribution of the recovery in the independent cause of action is not to a recipient unless the recipient is named in the judgment, order, or settlement agreement in which the department prevailed and obtained a recovery.

This bill amends §409.910, Florida Statutes, and takes effect upon becoming law.

II. Present Situation:

In 1997, Florida won a landmark lawsuit against tobacco companies as a result of litigation entitled The State of Florida et al. v. American Tobacco Company et al., Case # 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County. Florida is to receive \$11.3 billion over the next 25 years and an additional \$1.7 billion over the next 5 years as a result of a most favored nation clause. Currently, funds from the tobacco settlement are being deposited in the State Treasury to the credit of an Escrow Account or to the Grants and Donations Trust Fund in the Department of Health. The Department of Health transfers funds appropriated by the Legislature to the various departments into existing trust funds.

III. Effect of Proposed Changes:

The committee substitute clarifies legislative intent underlying the enactment of the 1994 amendments to \$409.910, F.S., that authorized an independent cause of action to recover from liable third parties Medicaid benefits paid on behalf of unidentified recipients, and clarifies that distribution of the recovery in the independent cause of action is not to a recipient unless the recipient is named in the judgment, order, or settlement agreement in which the department prevailed and obtained a recovery.

The 1994 amendments abrogated for the department's independent cause of action, all affirmative defenses that would have been available to a liable third party in a traditional suit brought by or in the name of an identified recipient, but provided that such affirmative defenses would still apply to an individual Medicaid recipient's right of recovery against any third party.

Under the circumstances of the department's independent cause of action, distribution of the amount collected in the recovery to any individual recipient, is inconsistent with the purpose underlying the 1994 amendments authorizing the independent cause of action as such result would provide individuals with the benefits of the abrogation of affirmative defenses and would frustrate the purpose and the policy of the 1994 amendments of reimbursing the state for the publicly borne costs of medical treatment.

Individual recipients were in 1994 and are now free to bring their own cause of action for damages, subject, however, to the affirmative defenses which were abrogated for the department's cause of action.

The bill is to take effect upon becoming a law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.