

# FLORIDA ENACTS SIGNIFICANT TORT REFORM

Advisory

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On February 15, 2023, HB 837 was introduced in the Florida House of Representatives, which proposed dramatic changes to the landscape of civil litigation in Florida. The bill passed both the House of Representatives and the Senate along party lines. Governor Ron DeSantis approved the bill and is expected to sign it into law today. Below is a summary of the bill's significant changes.

## Summary of Proposed Changes

- Changes Florida's comparative negligence system from a "pure" comparative negligence system to a "modified" system, except for medical negligence cases, so that a plaintiff who is more at fault for his or her own injuries than the defendant may not generally recover damages from the defendant.
  - Under the current system, a claimant's recovery is reduced by their percentage of fault and a defendant can further diminish its liability to the claimant based on the comparative fault of others.
  - Under the modified system, any claimant found to be responsible for more than fifty percent (50%) of their alleged harm may not recover damages from any other party. This change will not apply to medical negligence claims.
- Reduces the statute of limitations to file negligence actions from four (4) years to two (2) years from the date of the alleged incident.
- Modifies Florida's "bad faith" framework to:
  - Clarify that negligence alone is not enough to demonstrate bad faith.
  - Require an insured, claimant, or representative of the insured or claimant to act in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the claim. This change aims to prevent claimants and their attorneys from attempting to create a basis for bad faith claims by withholding information and imposing unrealistic deadlines.

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- Allow an insurer to avoid third-party bad faith liability if the insurer tenders the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of the claim.
- Limit an insurer's bad faith liability in actions involving multiple claimants by paying the total amount of the policy limits at the outset.
- Provides that a contingency fee multiplier for an attorney fee award is appropriate only in rare and exceptional circumstances, adopting the federal standard.
- Creates a strong presumption that a lodestar fee is sufficient and reasonable in any action in which attorney fees are determined or awarded by the court. This presumption can be overcome only in rare and exceptional circumstances.
  - A lodestar fee is a method of computing attorney's fees where the court multiplies reasonable hourly rate by a reasonable number of hours for work performed.
- Provides uniform standards to assist juries in calculating the accurate value of medical damages in personal injury or wrongful death actions. Under this change, to prove the amount of damages for past or future medical treatment for personal injury or wrongful death cases, evidence will be limited to evidence of the amount actually paid, which will vary depending upon the source of payment (i.e. private health insurance, Medicare, Medicaid, no insurance or letters of protection). Bills will still be evaluated as to reasonableness and if the past or future treatment was medically necessary.
- Requires certain disclosures with respect to claims for medical expenses for treatment rendered under letters of protection. Specifically, this change will create a condition precedent for asserting a claim for medical expenses in personal injury and wrongful death cases, which requires claimant to disclose a copy of the letter of protection and who made the referral, all itemized billings for medical expenses, and whether claimant had health care coverage.
- Removes the attorney-client privilege for medical referrals. This means if the referral is made by the claimant's attorney, disclosure of the referral is permitted along with evidence of such referral. The financial relationship between the law firm and a medical provider would be admissible as relevant to the issue of bias of a testifying medical provider.
- Creates a limited ability to recover attorney's fees from an insurance company after a total coverage denial through a declaratory judgment action.

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- Requires the trier of fact consider the fault of all persons who contributed to the injury, establishes a presumption against negligent security liability in specified situations, and expands immunity for a property owner defending a lawsuit against an individual lawfully on the property who was injured by a criminal actor
- Provides a presumption against liability to owners or principal operators of multifamily residential property, which substantially implement certain security measures, for certain criminal acts that occur on the property. These measures, among other requirements, include details relating to security cameras, lighting, door locks, window locks, pool gates/locks, door views (peepholes) and crime prevention assessments and training.
- Specifies applicability of provisions of section 768.79, Florida Statute relating to offer of judgment to any civil action involving an insurance contract.
- Repeals Florida's one-way attorney fee provisions for insurance cases, while maintaining the ability to award attorney fees to an owner, contractor, subcontractor, laborer, or materialman that prevails in a claim against a construction surety bond

### **Effective Date**

The amendment to the statute of limitations for negligence actions applies to causes of action accruing after the effective date of this act. Changes in the act pertaining to insurance policies will go into effect for policies issued after the bill is signed into law and the act does not impair any right under an existing insurance contract. The remaining provisions will take effect when the Governor signs the bill and the act provides a catch-all applying the act to all causes of action filed after the effective date unless otherwise expressly provided therein.

### **How Do We See These Proposed Changes Impacting Our Clients?**

In large part, the proposed changes are expected to help defendants, business owners, multifamily residential property owners, and insurance carriers. Plaintiffs who are mostly at fault for their own harm will not be able to recover and juries will be presented with a more accurate picture of past and future medical expenses. Anticipation of this reform led to tens of thousands of lawsuits being filed because Plaintiff attorneys do not like the changes and believe the changes will hurt their clients.