

Practice Update

Comprehensive Tort Reforms Signed into Florida Law

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Comprehensive tort reform legislation was passed by the Florida Legislature on Thursday, March 23, 2023. By noon Friday, March 24, 2023, Governor Ron DeSantis signed the legislation, which was one of his pre-session priorities, into Florida law. The law immediately went into effect.

Upon signing [House bill \(HB\) 837](#) by Representatives Tom Fabricio and Tommy Gregory – Civil Remedies, Governor DeSantis said, “Florida has been considered a judicial hellhole for far too long and we are desperately in need of legal reform that brings us more in line with the rest of the country.”

In addition, Speaker of the House of Representatives Paul Renner said, “Thank you Governor DeSantis for signing transformational legislation to end lawsuit abuse. This legislation prevents frivolous lawsuits and allows good claims to move forward. These reforms make our economy more competitive and Florida more affordable for our citizens and businesses.”

In short, HB 837:

- Modified the bad faith framework;
- Eliminated one-way attorney’s fees and fee multipliers;

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- Provided that persons cannot be held liable for damages if the other person suing is more at fault;
- Expanded immunity for property owners defending against a person injured while committing a crime on their property;
- Provided uniform standards for juries in calculating medical damages; and
- Reduced the statute of limitations for general negligence.

Specifically, regarding the bad faith framework, the legislation:

- Provides that an insurer has no liability for a bad faith claim if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receipt of the claim and sufficient evidence to support the claim.
- Provides negligence alone is not enough to demonstrate bad faith.
- Requires insureds, claimants, and their representatives to act in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the claim.
- Allows insurers, in the event of multiple claimants in a single action, to pay the total amount of the policy limits at the outset to the court through an interpleader action or, through binding arbitration, make the entire policy limits available for payment to the competing third-party claimants.

In regards to attorney's fee multipliers, federal standards of elimination, known as the Lodestar Method where the number of hours are multiplied by the attorneys' hourly rates, were adopted. Also adopted were provisions making one-way attorney fees, when only the plaintiff is entitled to relief, applicable only in certain scenarios. Governor DeSantis stated his goal behind this was "to disincentivize frivolous lawsuits and prolonged

litigation to increase the profit margins of activist attorneys abusing the system.”

As for medical damages, language providing uniform standards to assist juries in calculating the accurate value in wrongful death or personal injury actions was adopted. In both personal injury and wrongful death there are several elements used to determine the accurate value presented to a jury. Economic damages is one (i.e. medical bills), which is separate from pain and suffering. Going forward, a jury will only be able to consider the amount paid to providers, not the amount charged by them.

The *News Service of Florida* article, “Senate Signs Off on Lawsuit Limits,” by Jim Saunders provided “Business and insurance groups have long sought such changes, contending that Florida has been plagued by excessive litigation that drives up costs. As the heavily lobbied bill moved through the House and Senate, supporters often blamed what they called “billboard lawyers.” Opponents of the legislation have, from the start, referred to this as “a gift to the insurance industry” and an impediment to the justice system. As a result, there has been a crush on the legal system of new cases filed in the past several weeks, trying to be governed by the old laws’ provisions. Only time will tell if the provisions set forth under this new Chapter Law will have the desired effect of lowering insurance rates and weeding out bad actors.

Senate President Kathleen Passidomo commented on the legislation by saying “When a horrible accident or incident occurs and people suffer a loss, they should be compensated quickly and fairly. The vast majority of attorneys work very hard to provide sound legal representation for Floridians in these difficult circumstances. Unfortunately, there are a few bad actors who are in the business to draw out civil cases as long as possible, collecting more and more fees from insurance companies. Litigation drives up the basic costs of goods and services for everyone across all areas of industry and commerce.

Under the leadership of Governor DeSantis, we have taken many steps to help keep Florida affordable for growing families and seniors. This legislation furthers those efforts striking the right balance and protecting the rights of Floridians who suffer a loss, while at the same time safeguarding everyone else against the hidden costs of prolonged litigation.”

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