

Florida's Tort Reform Current Status & Outlook

Presented by

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Tort Reform Act (f/k/a House Bill 837)

Signed into law on March 24, 2023, and immediately went into effect.

What impact did this law have?

- Transition to Modified Comparative Negligence
- Two Year Negligence Statute of limitations
- Limits to Bad Faith Lawsuits against Insurers
- Changes to Admissibility of Medical Evidence
- Changes to Attorney Fee Awards
- Presumption against Liability of Property Owners

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Modified Comparative Negligence

In essence, this law transitioned Florida from a pure comparative negligence system to modified comparative negligence.



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What does that mean for your venue?

- Under modified comparative negligence, if a plaintiff is found to be 51% or more at fault they will be **unable to recover** any damages for their injuries.
- This means once a defendant (the venue) shows the plaintiff is more than 50% at fault for their injuries, **they avoid liability entirely.**



Example:

- FunZone offers various family attraction activities including Go Karts. Risks are clearly printed on signs throughout the establishment, in the pre-race class and on the waiver signed by the parties before partaking in the activity. One of the rules is that participants must place their hair within a head sock.
- Ms. Smith takes the class, signs the waiver and sees the signs. Places her hair in a head sock but then decides to untuck her hair to not have "helmet hair". Her hair gets tangled in the go cart and she is injured.
- Ms. Smith sues the location for damages in excess of \$500,000.00.
- Upon review of the case, the fact finder rules that Ms. Smith is 70% responsible.





Result:

- Under this new law, the plaintiff, who is 70% responsible for their losses, would recover **nothing** from the opposing side because they are more than 50% at fault for their damages.

What are some of the advantages for a traction venues?

- Given that there is a greater chance that recovery may be barred entirely, plaintiffs will have stronger motivation to settle in order to recover some portion of damages.
- Defendants have more leverage during settlement discussions.
- Modified comparative negligence provides plaintiffs with more risk in litigation, and decreases the risks faced by defendants.





In terms of Liability....
If the fact-finder finds both plaintiff and defendant 50% at fault where plaintiff seeks \$10,000 in damages, plaintiff still only recovers \$5,000.

Statute of Limitations

The statute of limitations has been shortened from 4 years to **2 years.**



Prior to March 24, 2023

A slip and fall of an elderly lady who suffered a broken neck on March 23, 2023 has until March 22, 2027 to file their claim.

After the Tort Reform Act

A slip and fall of an elderly lady who suffered a broken neck on March 25, 2023 has until March 24, 2025 to file their claim.

Limitation on Bad Faith Lawsuits



- Claimants now have a duty to act in good faith in furnishing information regarding the claim, making demands, setting deadlines and settling.
- No separate cause of action for bad faith of an insurer.

Example:

- If an injured party or their attorney sent a settlement offer within the 30-day deadline for the insurer to respond and the insurer failed to respond by the deadline.
- The insurer could be held accountable for the full measure of damages – regardless of the policy limits.



What does it mean for an attraction venue?



- The new law says that “mere negligence alone is insufficient” to constitute an insurer’s bad faith.
- Insurers now have a **minimum of 90 days** to respond to notice of a claim. The claim notice must be accompanied by “sufficient evidence” to support the amount requested.
- It remains to be seen what will qualify as sufficient evidence, but this statutory provision will likely favor insurers.**

Admissibility of Medical Evidence

- The admissibility of evidence at trial of past medical treatment is limited to the “**amount actually paid**, regardless of the source of payment.





Example:

A customer gets hurt in your establishment. She begins seeking medical treatment and agrees to pay medical bills with Dr. Y in accordance with a Letter of Protection. In total, the customer has paid \$200 in medical bills, but has \$2,000 in outstanding bills.

John Doe
5432 Address
Anywhere, USA

HOSPITAL BILLING STATEMENT

1234-5678-912345-6789-8765-4321			May 31, 2014	\$814637.88
January 2014	February 2014	March 2014	April 2014	MEDICAL
2746.99	3919.76	4988.60	9277.53	
CURRENT CHARGES:				
SURGERY				
TIER 1				
PHARMACY				
PERSONNEL				

SOURCE: KAISER FAMILY FOUNDATION

Result...

- The Tort Reform Act limits the award to the medical damages paid and not outstanding.
- Therefore, there would be a \$200 limit on medical damages.
- These changes may affect the willingness of doctors to treat patients who are unable to provide immediate payment for their care.

Attorney Fee Awards

- The bill will eliminate one-way attorney fees and attorney fee multipliers for all lines of insurance.



Example:

- A family has a \$2 million dollar life insurance policy. The wife dies and the insurer fails to pay the husband the policy amount.



Before the Tort Reform Act



- Husband could sue the insurance company for the amount owed plus the attorney fees associated with filing the claim.
- Therefore, insurance companies are incentivized to settle usually in excess of the full amount owed as they would need to cover attorneys' fee costs.

After the Tort Reform Act

- Insurance company would be incentivized to offer less than the full amount owed to the widow as they know that the claimant will have to pay their own attorney's fees.



Liability of Property Owners

- New reform has a presumption against liability for owners and operators of multifamily residential property in cases based on criminal acts upon the premises by third parties.
- This applies to owners of multifamily residential properties implement certain security features.



What does this mean for property owners?

- The blame and liability can be shifted from a negligent property owner to an intentional wrongdoer.
- As a result, property owners may have reduced liability.



Example

- If Mr. A, a tenant of a multifamily property, invites a guest, Mr. B, to his home to engage in a criminal activity and either the tenant or the guest is injured, neither can successfully recover a judgment from the landlord if the party seeking recovery is determined to be more than 50% at fault for the injuries.



Florida Tort Reform Act Outlook

- The intent behind the law was to limit inflated damages and awards.
- Prior to the signing of the law there was a significant uptick in filed claims, estimated more than 280,000 filings.
- Although insurers have seen a brief uptick it seems that the law will ultimately lead to a reduction in lawsuits.
- It is likely that insurance companies and plaintiffs will see benefits from legislation, but the bill highly favors insurers.
- Will Insurance rates decrease? As of now they have yet to decrease however if the decline in claims continue a decrease in premiums could be a possibility.




Q&A Session



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