

**EXEMPT FROM PUBLIC ACCESS PURSUANT TO FLA. R. JUD. ADMIN.
2.420(C)(1).**

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CONFIDENTIAL MEMORANDUM

TO: Judge Jack Tuter

FROM: Yvette Sosa, Esq.
Judicial Staff Attorney

DATE: March 31, 2023

RE: Bill # CS/HB 837- Civil Remedies Legislation

On March 23, 2023, the Florida Legislature passed House Bill No. 837 (HB 837). HB 837 is an act relating to Civil Remedies. The bill encompasses twenty-six (26) related statutes to include amendments, additions, and repeals.

The civil remedies addressed create(s):

1. A rebuttable presumption that a lodestar amount is reasonable, only to be overcome in rare circumstances;
2. A reduction of the statute of limitations for negligence actions;
3. Standards for bad faith actions;
4. Standards for distribution of proceeds when two or more third-party claims arising out of single occurrence exceed policy limits;
5. Limitations as to the applicability of provisions relating to attorney fees in certain actions against insurers;
6. Standards for evidence to prove damages for medical expenses in certain civil actions; requires certain disclosures with respect to claims for medical expenses for treatment rendered under letters of protection;
7. The requirement that the trier of fact consider fault of certain persons who contribute to an injury;
8. A presumption against liability for an owner or principal operator of a multifamily residential property in connection with certain criminal acts that occur on the premises, providing that, there is substantial compliance as to implementation of specified security measures; and
9. Revisions relating to immunity stemming from liability for injuries to trespassers on real property.

The following is a summary of the most significant components of the bill, those of which focus in the areas of one-way attorney fees; comparative negligence; transparency in damages; duty of good faith; contingency fee multiplier; statute of limitations and premises liability. The statutes that are not addressed specifically are those in which include negligible modifications and/or edits.

1. **HB 837 amended s. 57.104, F.S Computation of Attorney fees.** In any action in which attorney fees are determined by the court, there is a strong presumption that a lodestar fee is a sufficient and reasonable method in the determination of said fees.
 - a. The presumption may be overcome only in a rare and exceptional circumstance with evidence that competent counsel could not otherwise be retained.

2. **HB 837 created s. 86.121, Attorney fees; actions for declaratory relief to determine insurance coverage after total coverage denial of claim.**
 - a. In a declaratory relief action, it will permit an award of attorney fees to a named insured, omnibus insured or beneficiary under a policy, after an insurer has made a total coverage denial of the claim.
 - b. The right is not transferable or assignable to anyone other than the named insured.
 - c. Does not apply to any action arising under a residential or commercial property insurance policy.
 - d. A reservation of rights is not considered a “coverage denial” under this section.

3. **HB 837 amended s. 95.11, F.S Limitations other than for the recovery of real property.**
 - a. Removal of an action for negligence from section (3) WITHIN FOUR YEARS and added to section (4) WITHIN TWO YEARS, thus reducing the statute of limitations for filing the specific action.
 - b. Also added, was subsection (12) addressing actions involving service members.

4. **HB 837 amended s. 624.155, F.S Civil remedy.** Civil Remedy creates a safe harbor within which, the insurer may correct alleged “bad faith acts” by attempting to settle a claim in good faith. Thus, insurer is not liable for bad faith regarding a liability insurance claim (whether brought by statute or by common law) if insurer:
 - a. Tenders the lesser of the policy limits, or
 - b. Tenders the amount demanded by claimant within 120 days after receipt of actual notice of claim.
 - c. Furthermore, in the event there is failure by insurer to tender within the 120 days, it is not considered bad faith and is inadmissible in a bad faith action. Moreover, if failure to tender within 120 days, the applicable statute of limitation shall be extended for an additional 120 days.
 - d. Applicable to all “bad faith” claims:

- i. Mere negligence in itself does not constitute bad faith.
 - ii. The insured or third party claimant or representative for the same has a duty to act in good faith in furnishing information about the claim.
 - iii. Trier of fact may consider whether the insured or third party claimant or representative for the same failed to act in good faith and as such reasonably reduce damages accordingly against the insurer.
 - e. Where two or more third party claimants have competing claims arising out of a single occurrence, which in total may exceed policy limits, the insurer does not act in bad faith by failure to tender, if within 90 days of receipt of competing claims the insurer either:
 - i. Files an interpleader action, or
 - ii. Pursuant to binding arbitration agreed to by the parties makes the entire amount of the policy limits available.
5. **HB 837 created s. 624.1552, F.S Civil actions involving an insurance contract; applicability of offer of judgment provisions.** The provisions of s. 768.79 apply to any civil action involving an insurance contract.
 6. **HB 837 repealed s. 626.9373, s. 627.428, and s. 631.926 F.S Attorney fees.** Repeals the one-way attorney fees as they relate to insurance field representative and operations (surplus line insurers) and insurance rates and contracts (authorized insurers), respectively.
 7. **HB 837 amended s. 627.756, F.S Bonds for construction contracts; attorney fees in case of suit.** In a suit brought by an owner, a contractor, a subcontractor, a laborer, or a materialman against a surety insurer under payment or performance bonds written by the insurer under the laws of this state to indemnify against pecuniary loss by breach of a building or construction contract, upon the rendition of a judgment or decree by any of the courts of this state against the surety insurer and in favor of the owner, contractor, subcontractor, laborer, or materialman, the trial court or, in the event of an appeal in which the owner, contractor, subcontractor, laborer, or materialman prevails, the appellate court, shall adjudge or decree against the surety insurer and in favor of the owner, contractor, subcontractor, laborer, or materialman a reasonable sum as fees or compensation for the attorney prosecuting the suit in which the recovery is had.
 8. **HB 837 amended s. 632.638 F.S Applicability of other code provisions.** Additions apply to fraternal benefit societies.
 9. **HB 837 created s. 768.0427, F.S Admissibility of evidence to prove medical expenses in personal injury or wrongful death actions; disclosure of letters of protection; recovery of past and future medical expenses damages.** Provides for uniform standards in calculating the accurate value of medical damages in personal injury or wrongful death actions.

- a. Provides guidelines on what evidence is admissible to be presented to the fact finder to prove amount of damages for past or future damages.
- b. Past Paid Medical Bills - Restricts evidence of services that have been satisfied to the actual amount paid for the services. Thus, the amount paid by the insurer is the only amount admissible regardless of what was initially billed.
- c. Past Unpaid Medical Bills - The bill shows as admissible any evidence to prove damages that is otherwise admissible. And provides that the “usual and customary” amount of damages is dependent on whether the claimant has insurance pursuant to delineated specifications.
- d. Not admissible as evidence are contracts between providers and authorized commercial insurers or authorized health maintenance organizations, as such are not subject to discovery or disclosure and are not admissible.
- e. Provides a uniform guidance for evidence to prove damages for future medical treatments thus, any evidence to prove damages that is otherwise admissible. And also provides that the “usual and customary” amount of damages is dependent on whether the claimant has health care coverage or is eligible for health care coverage pursuant to delineated specifications
- f. Letter of Protection- In the determination of damages procedure requires claimant to disclose:
 - i. Copy of letter of protection
 - ii. All billings for the medical expenses, to be itemized and coded according to standards as stipulated.
 - iii. Third party purchases of provider accounts, require name of such third party and amount for which the third party purchased the accounts.
 - iv. Whether claimant had health care coverage at the time of treatment.
 - v. If claimant was referred treatment under a letter of protection, the identity of the person who made the referral.
 - 1. If claimants attorney is the party who made the referral, such evidence is allowed notwithstanding the lawyer-client privilege within s. 90.502. F.S. Furthermore, any financial relationship between attorney and medical provider is relevant to whether a testifying medical provider is biased.
- g. Prohibits inflated amounts of damages in excess of the evidence that may be admitted under the bill. Thus, prohibiting an award of damages from exceeding:
 - i. Actual amount paid to the provider.
 - ii. Amount necessary to satisfy outstanding medical services pending at the time of trial.
 - iii. Amount necessary to provide for reasonable and necessary future medical treatment.

10. HB 837 created s. 768.0701 - Premises liability for criminal acts of third parties. Notwithstanding s. 768.81(4), in an action for damages on a premises liability wherein a person is lawfully on the property and injured by the criminal acts of third

parties, the trier of fact must consider the fault of all persons who contributed to the injury.

11. **HB 837 created s. 768.0706 - Multifamily residential property safety and security; presumption against liability.** Creates a presumption against negligent liability for the owner or operator of a multifamily residential property, in where the criminal actor is not an employee or agent of the owner or operator and where within the property are security measures and crime prevention implementations as recited within the statute.
 - a. Provides for the requirement of various security measures to be applied within the dwellings and throughout the property and provide “proper crime deterrence and safety training” for its current employees.
 - b. Bill expands the presumption against negligent security to a person or organization whom owns or controls an interest in real property by substantially complying with safety and security measures as set forth in the bill. Also provides immunity from liability stemming from the negligence of a trespasser, while attempting to commit or engage in the commission of any criminal act, which results in the death, injury, or damage to such trespasser; no longer is the immunity just limited to felonies.

12. **HB 837 amended s. 768.81 Comparative fault.** Changes Florida’s comparative negligence from “pure” to a “modified”, *i.e.* 50% system. (except for personal injury and wrongful death stemming from medical negligence pursuant to chapter 766).
 - a. In a negligence action to which this section applies, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.