



Recent Florida Reforms Impact How Lawsuits are Litigated

Two bills recently became law in Florida: House Bill 837 and Senate Bill 360. Both are designed to help reduce the number of frivolous lawsuits in the state and potentially have a positive impact on what many consider to be inflated insurance rates.

In this article, we look at the key components of each bill as well as both the short- and long-term affects they may have on the insurance market in the state of Florida.

House Bill (HB) 837 – Civil Remedies

On March 24, 2023, Florida Governor Ron DeSantis signed [House Bill \(HB\) 837](#), Civil Remedies, into law, introducing significant changes to how lawsuits are filed and litigated in Florida. A companion to [Senate Bill 236](#), the law makes substantive changes to tort laws in the state and limits the financial liability of public and private entities alike, shifting losses to the responsible parties.

This legislation has been referred to as monumental and is just the latest in a series of bills aimed to combat Florida's volatile legal environment. Effective immediately, the law applies to all causes of action filed after March 24, as well as all insurance contracts issued or renewed after that date.

HB 837 is expected to reduce the number of frivolous lawsuits in the state and limit what many consider to be the long-standing abuse of Florida's prior bad faith law which negatively impacted the insurance marketplace. It also brings Florida in line with 34 other states across the U.S. that apply a modified comparative negligence system.

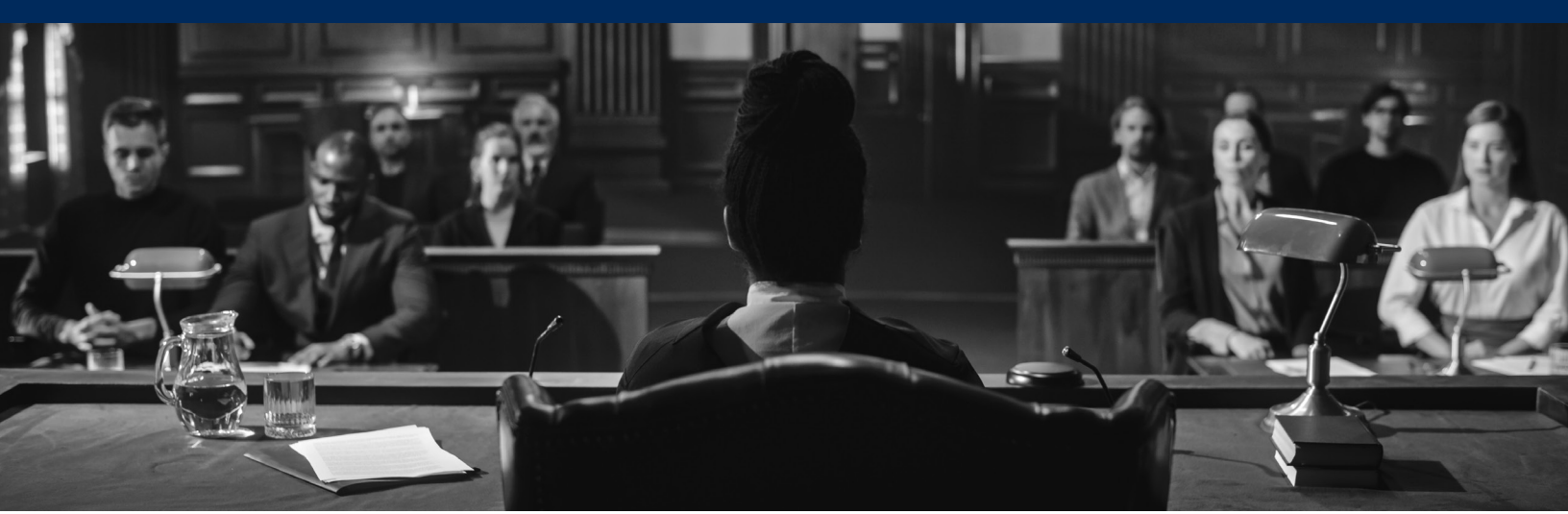
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To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Courtesy of Amwins Group, Inc.



Key Components of the Bill

- Changes Florida's comparative negligence system from "pure" comparative negligence to "modified system" for the first time in 50 years
 - Plaintiffs considered to be more than 50% at fault for their own injuries may not generally recover damages from the defendant, or must demonstrate otherwise
 - Excludes medical negligence cases
- Provides uniform standards to juries for calculating medical damages in personal injury/wrongful death actions
 - Evidence to prove damages is limited to the amount actually paid
 - Admissibility of evidence also affects the amount of damages considered; for example, if a plaintiff has health insurance, evidence of the amount the coverage is obligated to reimburse the provider under the contract is admissible
 - There is no lawyer-client privilege in communications related to an attorney's referral of a client for treatment
- Modifies Florida's "bad faith" framework with more leniency for insurers to correct alleged bad faith acts
 - Insurers may avoid third-party bad faith liability if they tender policy limits, or the amount demanded by the claimant within 90 days from receipt of actual notice of the claim
 - Insurer's bad faith liability may be limited to the total amount of the policy limits when paid at the outset in cases with multiple claimants
- Insurers may distribute limited policy benefits when there are multiple claimants presenting competing claims from a common, single occurrence
- Claimants must act in good faith when providing information and attempting to settle the claim
- Negligence alone does not demonstrate bad faith
- Adjusts attorney fees and contingency fee multipliers to follow the federal standard
 - Eliminates attorney's fee multipliers
 - Provides that one way attorney fee provision can only be applied in limited situations
 - Aims to eliminate frivolous lawsuits and prolonged litigation
- Modifies current Florida law around premises liability and negligent security
 - Considers the fault of all persons who contributed to the injury
 - Establishes a presumption against negligent security liability in specified situations
 - Expands immunity for property owners defending lawsuits against criminals injured on their property, including a presumption against liability for property owners who complete and follow their checklist of precautionary measures and requirements
 - Requires a judge or jury to consider the fault of all persons who contributed to an injury
- Reduces the statute of limitations for general negligence from four years to two years



Senate Bill (SB) 360 - Causes of Action Based on Improvements to Real Property

On April 13, 2023, Governor DeSantis signed **Senate Bill (SB) 360**, Causes of Action Based on Improvements to Real Property, into law. The bill revises the timeframe during which design, planning, and construction defect claims can be brought. It also revises the date on which the statute of limitations period begins.



Key Components of the Bill

- Reduces the statute of repose for latent defects to 7 years, down from 10 years
- Revises the commencement dates of the statute of limitations or repose periods to the earliest rather than the latest date
 - Repose periods for model homes do not begin until the date the deed is recorded as transferring the title to the first purchaser
 - Repose periods for multi-building projects run on a building-by-building basis
- Redefines commencement dates to:
 - Issuance of a temporary certificate of occupancy (TCO)
 - Certificate of occupancy (CO), or certificate of completion
 - The date of abandonment of construction, if not completed
- Narrows the scope of statutory civil actions against builders to “material” violations only, thus eliminating “technical” violations of FL building code where there is no resulting damage to the property or personal injury
 - Owners must show that a Florida Building Code violation exists within a completed building, structure, or facility
- The law took effect immediately; however, it does allow for claims that would not have been barred prior to its revision to be filed until July 1, 2024

Impacts to the Market

Expectations that the passage of HB 837 could lead to a rush of lawsuit filings ahead of it receiving the governor's signature appear to have been well-founded. According to the South Florida *Sun-Sentinel*, Morgan & Morgan, one of the largest plaintiff attorney firms in the U.S., acknowledged that their firm alone filed approximately 25,000 suits in anticipation of HB 837 being signed into law. Additional analysis by the paper found that between March 17-22, more than 90,000 circuit civil cases were filed in the state – representing 77% of all cases filed since the beginning of the year.



This influx of claims will shock the Florida insurance market and the wave of new cases will take time to move through the legal system. However, initial carrier response to the legislation has been encouraging and we remain optimistic about the direction this legislation may take. In the short-term, we do not anticipate an immediate shift in rates, terms, or capacity in Florida.

SB 360 is also a welcome change for carriers, helping reduce long-tail exposure on construction risk in the state. That said, the immediate effect on pricing and terms will likely be minimal. Claimants have until July 1, 2024, before the bill takes effect retroactively, so

we expect a similar wave of lawsuits as those filed in response to HB 837.

Long-term, we anticipate a more predictable legal environment and a shorter period of repose will allow carriers to more confidently price for the risk they ultimately assume. However, as these reforms are unprecedented in many ways, we don't expect to know the full extent of this legislation until case law develops and we see interpretations of the new statutes. Evidence will need to be provided before carriers make comprehensive changes to their strategy in Florida.

We Help You Win

Partnering with a wholesale specialist like Amwins can help you navigate the changes to the insurance marketplace that may arise from the evolving legal landscape in Florida and ensure that your clients have access to appropriate coverage at the best price and terms possible. Contact your Amwins broker or personal lines underwriter for assistance on specific accounts.

Sources

[Governor Ron DeSantis Signs Comprehensive Legal Reforms into Law \(flgov.com\)](https://www.flgov.com)

[Insights – Wilson Elser](#)

[Saxe Doernberger & Vita, P.C. Florida Insurance Legislation Alert - Part I \(sdvlaw.com\)](https://www.sdvlaw.com)