



## **Florida Passes Sweeping Legal Reforms and Insurance Oversight Legislation**

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Governor Ron DeSantis and the Florida Legislature passed significant legislation this year aimed at - addressing Florida's litigious environment, strengthening economic conditions, and protecting consumers while also continuing efforts to stabilize the state's property insurance market. The two key bills were a comprehensive tort reform package and an insurer accountability bill designed to increase consumer protection and oversight of insurance companies.

Together, Governor DeSantis and legislative leaders announced the proposed tort reform package - prior to the legislative session. The bill enjoyed priority status in the legislature and sped through both chambers. With broader support, the insurance accountability legislation - quickly passed both the House and Senate unanimously. The bill enacts consumer protection provisions, increases potential- penalties for insurers, and expands oversight of the Florida Office of Insurance Regulation.

Governor Ron DeSantis signed the historic tort reform legislation into law on March 24th, just three weeks into the 2023 Florida Legislative Session.

DeSantis wasted no time putting pen to paper, signing the major tort reform package in a private ceremony less than 24 hours after the Florida Legislature passed the bill.

The legislation (HB 837), aimed at curbing frivolous lawsuits against insurance companies and businesses, was sponsored by Representative Tommy Gregory (R-Lakewood Ranch) in the House and Senator Travis Hutson (R-Palm Coast) in the Senate.

The House passed the measure 80 to 31 on March 17, with the Senate following suit on March 23 with a 23-15 vote. Both bills passed largely along party lines.

The bill makes the following changes to Florida's civil justice system:

- Provides that a contingency fee multiplier for an attorney fee award is appropriate only in a rare and exceptional circumstance, adopting the federal standard.
- Reduces the statute of limitations for general negligence cases from 4 years to 2 years.

- Modifies Florida’s “bad faith” framework to: Provide an insurer has no liability for bad faith failure to settle a liability claim if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant before a complaint is filed, or within 90 days after service of the complaint.
  - Provides that negligence alone is not enough to demonstrate bad faith.
  - Require insureds, claimants, and their representatives to act in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the insurance claim.
- Provides a uniform process for the admissibility and the calculation of medical damages in personal injury or wrongful death actions. These changes modify the collateral source rule in a way that requires parties to present to the finder of fact evidence of actual medical costs or evidence that better approximates medical costs that may be incurred by a claimant.
- Requires the trier of fact in a negligent security action against the owner, lessor, operator, or manager of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of a third party, to consider the fault of all persons who contributed to the injury.
- Applies the offer of judgment statute to any civil action involving an insurance contract.
- Except for causes of action for personal injury or wrongful death arising out of medical negligence, changes Florida’s comparative negligence system from a “pure” comparative negligence system to a “modified” comparative negligence system, whereby a plaintiff who is found to be more than 50 percent at fault for his or her own harm may not recover damages from any defendant.
- Repeals Florida’s one-way attorney fee provisions for insurance cases.
- Provides that the amendment to the statute of limitation for negligence actions applies prospectively to causes of action accruing after the effective date of the bill, that the remainder of the bill applies to causes of action filed after the effective date, and that the bill shall not be construed to impair any right under an existing insurance contract.

The bill’s signing was applauded by Florida’s business community. Business leaders believe this tort reform bill will save Floridians and Florida businesses billions of dollars that have historically been funneled to a few billboard plaintiffs’ lawyers. It is believed these reforms will usher in new investment due to increased economic stability and freedom from frivolous lawsuits that carry irrational awards for damages.

While there has been great support for the tort reforms adopted by the legislature, there are concerns that some insurers may use the reforms as a mechanism to treat consumers unfairly. In response, the legislature adopted new requirements to hold insurers accountable for their business practices and further enhanced the authority of the Florida Office of Insurance Regulation. On May 31, Governor DeSantis signed CS/SB 7052 relating to Insurer Accountability by Senator Travis Hutson (R-Palm Coast) into law. The bill was approved by the Florida Legislature in the final days of the 2023 Regular Session and includes provisions relating to insurance coverage, claims handling, rates, and the state’s regulatory oversight of insurers. The bill will take effect July 1, 2023.

The bill includes the following provisions:

Regarding insurance coverage the bill:

- Prohibits authorized insurers from cancelling a property insurance policy during any pending claim until the earlier of when the property has been repaired or one year after the insurer issues the final claim payment. The bill expands upon current law which prohibits authorized insurers from cancelling a residential property insurance policy until 90 days after repairs are complete for damage resulting from a hurricane or wind loss that is the subject of a state of emergency declared by the Governor and for which the Office of Insurance Regulation has issued an emergency order.
- Protects policyholders whose property insurance company becomes insolvent by requiring Citizens Property Insurance Corporation to cover property with open claims handled by the Florida Insurance Guaranty Association.
- Clarifies that if a roof deductible is applied, the prohibition on applying any other deductible under the policy encompasses any other loss to the property caused by the same covered peril.
- Tolls the time period for filing a property insurance claim during a named insured's term of deployment to a combat zone or combat support posting.
- Clarifies legislative intent that Chapter 2022-271, Laws of Florida, passed during Special Session A in December 2022, (SB 2-A [2022] on Property Insurance) shall not be construed to impair any right under an insurance contract in effect on or before the applicable effective date of that chapter law (December 16, 2022).

Regarding rates charged for insurance, the bill:

- Requires property insurance and motor vehicle rate filings to include, and the OIR must consider in reviewing rates, the combined effect of recent legislative reforms.
- Appropriates \$500,000 from the Insurance Regulatory Trust Fund for the OIR to obtain an actuarial study to implement this requirement.
- Requires property insurance mitigation discounts be updated at least every five years and requires insurers to provide consumer-friendly information on their website describing hurricane mitigation discounts available to policyholders.

Regarding insurer claims handling, the bill:

- Requires liability insurers to follow proper claims handling practices on behalf of their insureds and provides that insurers engaging in a pattern or practice of violations are subject to enhanced enforcement penalties including a 2.0 multiplier of fines.
- Requires residential property insurers to create and use claims-handling manuals that comply with the Insurance Code and, at a minimum, comply to industry standards. The OIR may request a claims handling manual at any time and requires each property insurer to attest that their claims manuals comply with Florida law and the insurer is able to properly implement their manual.
- Strengthens the Unfair Insurance Trade Practices Act by:
  - Prohibiting alteration or amendment of an adjuster's report without providing a detailed explanation as to why any change that has the effect of reducing the estimate of the loss was made. The insurer must also either create a list of changes and who made the change or retain all versions of the report.

- Prohibiting officers and directors of impaired or insolvent insurers from receiving a bonus from that insurer or other entity under common ownership with that insurer.

Regarding regulatory oversight of insurers, the bill:

- Creates a statutory requirement that the OIR refer suspected criminal activity to the Department of Financial Services (DFS) or other appropriate law enforcement or prosecutorial entities.
- Requires the OIR to develop a risk-based selection methodology for scheduling examinations of insurers. Such methodology must include:
  - Use of a risk-focused analysis to prioritize financial examinations of insurers when such reporting indicates a decline in the insurer's financial condition. OIR must consider:
    - Level of capitalization and identification of unfavorable trends;
    - Negative trends in profitability or cash flow from operations;
    - National Association of Insurance Commissioners Insurance Regulatory Information System ratio results;
    - Risk-based capital and risk-based capital trend test results;
    - The structure and complexity of the insurer;
    - Changes in the insurer's officers or board of directors;
    - Changes in the insurer's business strategy or operations;
    - Findings and recommendations from an examination;
    - Current or pending regulatory actions by the OIR or the DFS;
    - Information obtained from other regulatory agencies or independent organization ratings and reports; and
    - The impact of an insurer's insolvency on policyholders of the insurer and the public generally.
  - Prioritization of property insurers for which the OIR identifies significant concerns about an insurer's solvency.
  - Any other matters the OIR deems necessary to consider for the protection of the public.
- Provides that the OIR must initiate a market conduct examination after a hurricane if, at any time more than 90 days after the end of the hurricane, the insurer:
  - Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claim-related consumer complaints made about that insurer to the DFS to the insurer's total number of hurricane-related claims;
  - Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims;
  - Has made significant payments to its managing general agent since the hurricane; or is identified by the OIR as necessitating a market conduct exam for any other reason.

- Specifies factors the OIR may consider in determining whether the continued operation of an insurer may be deemed hazardous to its policyholders, creditors, or the general public.
- Specifies actions the OIR may take in determining an insurer's financial condition and specifies actions the OIR may order an insurer to take in an effort to improve the insurer's financial condition.
- Increases maximum administrative fines that may be levied by the OIR on insurers by 250 percent generally, and 500 percent for violations stemming from a state of emergency such as a hurricane.
- Requires insurers to more promptly respond to the DFS Division of Consumer Services and increases fines for noncompliance. Decreases time for insurers to respond to the DFS Division of Consumer Services from 20 to 14 days and increases fines for noncompliance to \$5,000 (up from \$2,500) for licensed entities; and increases fines for a licensed individual to a flat \$1,000 for each violation (up from \$250 for a first violation, \$500 for a second violation, and \$1,000 for a third and any subsequent violation).
- Requires insurers that violate the Insurance Code to obtain prior approval of forms from the Office of Insurance Regulation (OIR) for three years after the violation.

The tort reform legislation passed by the Florida Legislature and signed by Governor Ron DeSantis represents a crucial step towards meaningful improvements in Florida's litigation and tort environment. Additionally, the signing of these bills into law demonstrates Florida's leaders' commitment to fostering a balanced legal system by avoiding frivolous lawsuits, while providing strong oversight of insurers and safeguards for policyholders. These legislative changes will serve as the blueprint for other states experiencing similar insurance market challenges. With optimism and confidence, these measures will pave the way -to provide new hope for a more stable and affordable insurance market in the future.