

# Florida Tort Reform

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# HB 837

- ▶ Signed into law March 24, 2023
- ▶ Significant reforms in many aspects of personal injury cases
- ▶ Influx of complaints filed in days before signing
  - ▶ Plaintiffs' attorneys now in the process of serving them all

# Statute of Limitations on Negligence

- ▶ Shortened from four years to two for negligence actions accrued after March 24, 2023.
  - ▶ Fla Stat.95.11

## Past: Comparative Negligence

Fla Stat.768.81

- ▶ Florida was a pure comparative negligence jurisdiction.
- ▶ If a plaintiff is found to be 70% responsible for their own injury and a defendant found 30% responsible, the plaintiff could still seek 30% of the damages associated with the injury.

# Now: Modified Comparative Negligence

Fla Stat.768.81

- ▶ What it means: If a plaintiff is found to be more than 50% responsible for their own injury, they cannot recover.

# Premises Liability

- ▶ The factfinder is now to consider criminal acts of third parties in actions for damages against owner/lessor/operator/manager of commercial or real property.
  - ▶ Fla Stat. 768.0701

# Hypothetical

- ▶ A person visiting an attraction jumps into an animal enclosure.
- ▶ Now what if the worst happens and the person is killed or severely injured?
  - ▶ Old system: Even if the plaintiff is found 98% responsible for his death or injuries while the attraction shoulders 2% of the responsibility, the plaintiff can still recover for that 2%.
    - ▶ In a wrongful death suit that could still be a significant amount.
  - ▶ New system: The plaintiff is barred from any recovery if he is more than 50% responsible.
    - ▶ Realistically, a plaintiff's attorney would likely be hesitant to even bring this suit under the new system.

## Another Hypo....

- ▶ A guest falls and is injured at an attraction.
- ▶ The guest then sues the attraction.
- ▶ The investigation uncovers that the guest was intentionally pushed by another guest.
- ▶ Even in a suit against only the attraction for premises liability, the factfinder **MUST** consider the fault of the third party in contributing to the injury with the criminal act of pushing the plaintiff.

# Medical Evidence

Fla Stat.768.0427

- ▶ What is admissible in terms of past paid medical bills?
  - ▶ Now, only the “amount *actually paid*, regardless of the source of the payment”
  - ▶ Cannot simply introduce the total amount that a health care provider billed.

# Medical Evidence cont.

Fla Stat.768.0427

- ▶ What is admissible in terms of past unpaid medical bills?
  - ▶ For plaintiffs with health care coverage, the amount the insurer would pay if the claim was submitted, plus any co-pay or deductible the plaintiff would be responsible for.
  - ▶ For plaintiffs without health care coverage, evidence of the Medicare reimbursement rate in effect on the date they were treated. No rate? 170% of the applicable state Medicaid rate.

# Letters of Protection

Fla Stat.768.0427

- ▶ Now required to be disclosed
- ▶ If a plaintiff with health care coverage chooses to be treated under a letter of protection instead of going through insurance, only evidence of what that coverage would have paid (plus co-pay or deductible) is admissible.
- ▶ Referral from plaintiff's attorney regarding treatment no longer privileged

# Attorneys' Fees

- ▶ Contingency fee multipliers: There is a new rebuttable presumption that a lodestar fee is sufficient and reasonable.
  - ▶ Fla Stat.57.104
- ▶ The bill repeals many statutes that previously provided for the award of one-way attorneys' fees to plaintiffs in cases against insurers.

## Other Changes

- ▶ Bad faith litigation against insurance carriers is substantially curbed by reducing the volume of bad faith claims that can be brought and reducing the liability of insurers for bad faith claims.
  - ▶ Fla Stat.624.155
- ▶ For owners/operators of multifamily residential properties it creates a “presumption against liability” in a negligent security case if certain enumerated security protocols are in place.
  - ▶ Fla Stat.768.0706

# Retroactive?

- ▶ Maybe...
- ▶ Circuit Court Judge Anne-Leigh Gaylord Moe of Hillsborough County recently held that the statute is procedural and applies to suits filed before March 24, 2023.
  - ▶ See Sapp v. Brooks, 17-CA-5664

# Potential Consequence...Rise in Employment Litigation

- ▶ The Society for Human Resource Management (“SHRM”) has cautioned that employers should expect rise in employment-related statutory suits now that negligence suits will be tougher for plaintiffs to win.
  - ▶ The SHRM observed this trend in other states that have passed tort reform laws.

# Wrap Up

- ▶ This should be a positive reform for business owners and operators like yourselves.
- ▶ You may experience a short-term rise in suits because of the race to file prior to the bill's signing.
- ▶ There is still plenty of unknown as to how these reforms play out in court as judges interpret and apply the changes.

# THANK YOU

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