

Expert Insights: Chubb Excess Casualty's Liability Market Analysis

Florida Enacts Sweeping Tort Reform

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Over the past several years, the Florida Legislature has passed numerous rounds of insurance reforms aimed towards reigning in abusive property insurance litigation. The Legislature has now moved on to broader tort reforms. On March 24, 2023, Governor DeSantis signed into law [H.B. 837](#), which replaces Florida's pure comparative negligence system with a modified comparative negligence rule, shortens the limitations period for negligence actions from four years to two years, and establishes certain protections for property owners against premises liability claims.



Premises Liability Claims

In premises liability claims involving criminal acts by a third party, the newly-created Section 768.0701 requires the trier of fact to “consider the fault of all persons who contributed to the injury.” This statutory change prevents tort claimants, for example, from casting blame solely on the property owner in instances where the claimant was a victim of a criminal act by a third-party.

The Legislature also created Section 768.0706, which establishes a presumption against liability for negligent security claims against owners and operators of “multifamily residential property” in connection with criminal acts committed on the premises by third parties if the owner or operator substantially implements the following security measures:

1. A security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension.
2. A lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
3. Lighting in walkways, laundry rooms, common areas, and porches. Such lighting must be illuminated from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
4. At least a 1-inch deadbolt in each dwelling unit door.
5. A locking device on each window, each exterior sliding door, and any other doors not used for community purposes.
6. Locked gates with key or fob access along pool fence areas.
7. A peephole or door viewer on each dwelling unit door that does not include a window or that does not have a window next to the door.

Additional requirements take effect on January 1, 2025, including requiring multifamily property owners to provide crime deterrence and safety training to their employees and to undergo a crime prevention through environmental design assessment.

Modified Comparative Fault

The Florida Legislature has replaced its longstanding pure comparative fault rule with a modified comparative fault rule. With a comparative fault system, a claimant can recover proportionately based on the degree of fault assigned to the defendant(s). Under a pure comparative fault model, a plaintiff who was found to be 90% at fault could still recover 10% of the damages from a defendant.

The amended Section 768.81 states: "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." However, this limitation does not apply to actions for personal injury or wrongful death arising out of medical negligence brought under Florida Statutes Chapter 766.

Statute of Limitations for Negligence

Prior to the current tort reform bill, actions founded on negligence had a four year limitations period. Section 95.11 has been amended to reduce the limitations period for actions founded on negligence to two years. This amendment, however, only applies to causes of action accruing after the effective date of the act, March 24, 2023. Therefore, injuries arising from accidents that occurred prior to March 24, 2023 would have a four year limitations period, but injuries from accidents occurring after March 24, 2023 would have a two year limitations period.

Closing Thoughts

When the final version of H.B. 837 appeared likely to pass, there was a rush to file lawsuits unlike any ever seen before in Florida. In just over a week, some reports estimate that approximately 100,000 lawsuits were filed, which is nearly quadruple the amount filed in the first two and a half months of the year. There will be challenges to the application of these statutory changes and there will be an adjustment period, but we believe that ultimately these changes will cause a reduction in the more speculative claims, and a reduction in the overall tort liability for all putative defendants who find themselves in Florida courtrooms.



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