



NGA Security Advisors

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Florida House Bill 837

Summary & Overview

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Florida HB 837

The Florida Tort Reform Bill of 2023, also known as **FL HB 837** and **Florida Statute 768.0706**, was signed into law by Governor Ron DeSantis on March 24, 2023. This legislation has significantly altered the landscape of personal injury claims in Florida.

In this guide, we'll provide a Summary of the Bill, Compliance Overview, Legal Changes & Benefits, Presumption against Liability, Concerns & Challenges and Benefits & Potential Costs as it pertains to Insurers, Lawyers, and Property Owners.

Florida HB 837: A Summary

Florida House Bill 837 aims to reform the state's tort laws to protect businesses from excessive lawsuits and stabilize the insurance market. Generally, it accomplishes this by creating an environment that encourages fewer frivolous lawsuits, more frequent settlements, and stricter controls on excessive damage.

Florida HB 837 Compliance

All the tort reform laws in FL HB 837 require awareness, but the new law, for a presumption against liability for multi-family property owners, requires action to meet compliance requirements.

The following will provide a Summary on the Legal Benefits of Compliance and then a brief overview of how to comply with FL HB 837. Please refer to our "Roadmap to Compliance" document for a full Step-by-Step Guide to compliance.

Legal Changes and What to Expect

- **Shorter Statute of Limitations**

FL HB 837 reduces the general statute of limitations for personal injury claims in Florida from four to two years, adding Florida to the group of 44 other states with statutes of limitations under four years.

This change may impact victims of catastrophic injuries, as it may take longer than two years to understand the extent of their injuries. However, this new timeline also encourages plaintiffs to file suit earlier, increasing the ability to obtain evidence closer to the time of the incident and leading to earlier resolution of claims.

- **Shift to Modified Comparative Negligence**

FL HB 837 shifts Florida from a pure comparative negligence system to a modified comparative negligence system - except for cases of medical negligence. The change aligns Florida with over 30 states following the modified comparative standard.

Through the old pure comparative negligence system, the person suing (the plaintiff) could recover damages even if they were 99% at fault, with the damages amount reduced by their percentage of fault. With the new modified comparative negligence system, the recovery amount still reduces based on a percentage of fault, but the plaintiff can only recover if they're less than 50% at fault.

This shift favors defendants with a greater chance that damages won't be awarded. It also motivates plaintiffs to settle to ensure at least some portion of damage, though defendants will have more leverage in settlement amounts.

- **Changes to Bad Faith Claims Against Insurers**

Historically, bad faith traps have been used against insurers to create a bad faith claim and increase damage. FL HB 837 changes how bad faith claims are handled to protect insurers from such practices.

- **Good Faith of the Insured**

Cases can now account for the good faith of the insured, claimant, and their representative and may reduce the damages awarded accordingly. Some lawyers are concerned that this will encourage insurers to go after the conduct and mistakes of the victim or their lawyer.

- **Limits to Bad Faith Lawsuits**

FL HB 837 Section 624.155 adds that a bad faith action cannot be brought against an insurer if, within 90 days, they pay either the policy limits or the claim amount demanded with 'sufficient evidence' of the claim. FL HB 837 also confirms that just being negligent or not offering to pay isn't enough to establish bad faith.

- **Multiple Claims from an Event**

If there are several claims from one event that total more than the policy limits, the insurer doesn't have to pay more than the policy limit if, within 90 days, they file an interpleader or make the entire policy limits available to the claimants through binding arbitration. Insurers are likely to experience far fewer lawsuits due to these changes.

- **Offers of Judgment Expansion**

Florida Statute 624.1552 says that Florida law 768.79 on “offers of judgment” now applies to every lawsuit involving an insurance contract. Essentially, the defendant can recover its reasonable costs and attorney’s fees if it makes a settlement offer that the plaintiff doesn’t accept within 30 days, and the court later finds the defendant non-liable, or the amount awarded to the plaintiff is 25% less than the original offer.

- **Changes to Attorney Fee Awards**

Attorneys may be unhappy with the shift in law regarding attorney fee awards. The two shifts pertain to contingency multipliers and one-way fees.

- **Contingency Multipliers**

Contingency multipliers are extra fees applied to cases where attorneys are only paid if they win. They are meant to encourage attorneys to take on cases where clients can’t afford to pay upfront. FL HB 837 eliminates multipliers and limits attorney fees to a reasonable hourly rate, unless there are exceptional circumstances.

- **One-Way Fees**

One-way fees are when a plaintiff wins a lawsuit against an insurer and the insurer must pay for their legal fees. One-way fees are now only available in cases where the insurer must cover a claim after having denied it. This does not apply to residential or commercial property policies, and a reservation of rights from an insurer does not count as denial of coverage.

Going forward, the restrictions on one-way and contingency fees will make finding attorneys willing to take on certain cases harder, reducing lawsuits altogether. On the bright side, if successful, the bill will result in lower insurance costs by lowering how much insurers owe

- **New Standards for Determining Medical Damages**

FL HB 837 also creates stricter rules for determining medical damages. Now, to prove the total amount owed in damages for past or future medical treatment in a personal injury or wrongful death claim, evidence is limited to the amount actually paid, regardless of source of payment. The specifics of the evidence required depend on whether they have Medicare, Medicaid, other health coverage, or no health coverage.

Another change involves Letters of Protection (the agreement between an attorney and a doctor for the doctor to provide treatment without receiving payment until a lawsuit is complete). Letters of Protection are no longer protected by attorney-client privilege and must be disclosed, along with any financial relationship between the attorney and doctor.

Presumption Against Liability for Property Owners

There are two key changes to Florida tort law that have a significant impact on the multi-family industry. If taken advantage of properly, multi-family property owners can now reduce their liability risk by implementing specific crime prevention measures.

The new law defines a multi-family residential property as “a residential building, or group of residential buildings, such as apartments, townhouses, or condominiums, consisting of at least five dwelling units on a particular parcel.”

- **Criminal Fault**

Before FL HB 837, owners or operators of multi-family properties were held liable for the results of criminal acts on the property, even if they had reasonable security measures. Now, negligent security cases must also account for the criminal's fault.

- **Presumption Against Liability**

As stated in FL HB 837: “The Owner or principal operator of a multi-family residential property which substantially implements the following security measures on that property has a presumption against liability in connection with criminal acts that occur on the premises which are committed by third parties who are not employees or agents of the owner or operator.”

The key compliance requirements of FL HB 837 are summarized below...

Ensure the property “Substantially implements” seven security aspects as defined by Section 768.0706(2)(a):

- A security camera system at points of entry and exit that meets FL HB 837 requirements.
- A lighted parking lot illuminated at specific intensity requirements from dusk until dawn.
- Lighting in walkways, laundry rooms, common areas, and porches from dusk until dawn.
- A 1-inch deadbolt in each dwelling unit door.
- A lock on each window, exterior sliding door, and any other door not for community purposes.
- Locked gates with key or fob access along pool fence areas.
- A peephole on each dwelling unit door without a window or a window next to the door.

By January 1, 2025, the property must have a Crime Prevention Through Environmental Design (CPTED) assessment conducted by a Florida CPTED Practitioner (FCP), or LE Agency, that is no older than three years. Additionally, the property must be in “Substantial compliance” with the assessment.

By January 1, 2025, all employees must receive “proper crime deterrence and safety training” encompassing a review of the seven issues required by Paragraph A of the statute. After January 1, 2025, all newly hired employees must complete the same training within 60 days of hire.

Concerns

Some have raised concerns that this law will discourage property owners from implementing adequate security measures, but to meet FL HB 837 compliance and have protection against liability, property owners must meet security standards, including a CPTED assessment.

Challenges to the New Tort Reform Legislation Are Unlikely to Hold Up

Florida House Bill 837 may face challenges on grounds of substantive due process and access to courts, but these are unlikely to be successful.

Regarding due process, the changes within FL HB 837 either eliminate or modify rights created under the Florida Statute. As such, they are not part of the Florida constitution and are not considered fundamental rights that can be challenged through substantive due process. Someone might claim that the shortened statute of limitations infringes on a fundamental right, but The Supreme Court has previously ruled that legislation shortening the time to file suit is allowed.

The Florida Constitution says everyone should have access to the courts, but nothing in FL HB 837 unfairly limits access. For example, the right to sue for bad faith existed in common law before the Florida Constitution, but HB 837 doesn't remove this right. It only sets new limits on bad faith claims.

Someone might also argue that the presumption against liability for multi-family property owners hinders access to the court. However, people can still sue if they provide evidence to overcome this presumption. As such, it's crucial for multi-family property owners to meet the requirements in FL HB 837.

What are the Benefits of Compliance?

The most significant advantage of complying with Florida Statute 768.0706 (HB 837) is the immunity it offers from lawsuits arising from criminal acts committed by third parties. Property owners who have faced litigation due to violent crimes understand the strong protection this statute provides, especially considering the substantial costs of settlements or jury verdicts. Similarly, property owners concerned about high crime rates in their neighborhoods can feel more secure regarding crime-related lawsuits.

Additionally, insurance companies also benefit greatly from the liability protections of HB 837, which is likely to result in lower insurance rates for compliant property owners. For many, this could be the most attractive aspect of Florida Statute 768.0706. For instance, several of our current NGA clients are fully committed to achieving compliance across their Florida portfolios primarily to secure reduced insurance costs.

Furthermore, it is anticipated that real estate values will rise as insurance premiums decrease, and the handling of future lawsuits will clearly differentiate between compliant and non-compliant properties.

What are the Potential Costs of Compliance?

As a starting point, property owners should budget between \$5,000 and \$20,000 for an experienced Security Consultant, such as **NGA Security Advisors**, to conduct the **FCP CPTED** assessment required by Florida Statute 768.0706(2)(b). Factors that may affect the costs are the number of buildings, number of dwellings, square footage of common areas and number/size of parking lots which directly impact the amount of time the Practitioner must spend on property and the subsequent time needed to provide a thorough, comprehensive & detailed report.

In addition to the initial expenses, property owners should anticipate costs associated with making necessary improvements to achieve "substantial compliance" with the conditions mandated by Florida Statute 768.0706(2)(a) and the CPTED assessment findings.

What is CPTED?

Crime Prevention Through Environmental Design (CPTED) is a multi-disciplinary approach to crime prevention that uses urban and architectural design and the management of built and natural environments.

CPTED strategies aim to reduce victimization, deter offender decisions that precede criminal acts, and build a sense of community among inhabitants so they can gain territorial control of areas, reduce crime, and minimize fear of crime. The goal of applied CPTED principles is to prevent crime by designing a physical environment that positively influences human behavior. The theory is based on five principles: Natural Access Control, Natural Surveillance, Territorial Reinforcement & Maintenance.

NGA Security Advisors

NGA Security Advisors provides a specialized suite of services to our End User Clients & Industry Partners within the Electronic Security Industry. With close to 3 decades of experience, knowledge and passion for the Security Industry, our team is well versed to serve your needs. We believe in a proactive approach to security, ensuring that our clients not only meet regulatory requirements but also stay ahead of emerging threats. Whether you're a small startup or a large enterprise, we can help you navigate the ever-complex environment of security preparedness.

Charles M Johnson, CEO & Founder of **NGA Security Advisors**, is a **Certified Florida CPTED Practitioner (FCP)** and can provide the required FL CPTED Assessment as part of the requirement set forth in the Florida Tort Reform Bill, FL HB 837.

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