

stop ABUSIVE INSURANCE LITIGATION



INSURING FLORIDA'S FUTURE

Repeal the One-Way Attorney Fee Law

The American Rule is that in any civil litigation, both parties pay their own lawyers unless the terms of a contract or provisions of a statute provide for an award of attorney fees.

Did you know?

Florida has what's known as a "one-way attorney fee law," which applies in lawsuits against insurers. This means a plaintiff who sues an insurer and loses is under no obligation to pay the insurer's legal fees. But an insurer must pay the plaintiff's attorney's fees in the event the plaintiff prevails, including settlements.

Florida's unique one-way attorney fee statute is intended to shield policyholders against legal bills if they need to sue their insurers. However, unscrupulous attorneys and contractors exploit the law to file unnecessary lawsuits against insurers. Their goal is to seek attorney fees, and the results in Florida are an unstable insurance market, increasing rates, decreasing coverage, insurer insolvencies, assessments by FIGA (the guarantor of payments for insolvent insurers), and an increase in the policy count for Citizens Property Insurance Corporation.

While it may have been intended to protect consumers, the law has now been abused to the point which litigation costs are driving insurance companies out of Florida or out of business, even without catastrophic storms hitting the state.

The financial incentive to litigate insurance claims in Florida is disrupting the market, creating affordability and availability issues.

NOW is the time to stop unscrupulous attorneys and protect Floridians by repealing the one-way attorney fee statute.

The repeal of the statute will help to create stability in the Florida insurance market to the benefit of all insurance consumers.

Repeal of the statute **WILL NOT** affect the ability of an attorney to enter into fee arrangements with a client in an insurance case. And repealing the statute will not eliminate customers' ability to file a lawsuit against their insurance company.

Repealing the statute will remove the primary incentive to receive attorney fees, create a more stable litigation environment, and improve the health of the insurance market.

Did you know?

Data gathered by the Florida Office of Insurance Regulation underscores the problem: In 2021, Florida represented 7% of property insurance claims and 76% of property insurance litigation nationwide.

Repeal THE ONE-WAY ATTORNEY FEE LAW

If the law is repealed, how will insurance consumers find counsel if they have a dispute with their insurer? There are four ways of compensating attorneys for representing insureds in a civil lawsuit against an insurer:

- 1 Civil Remedy (Bad Faith) - s. 624.155**

The civil remedy law provides for an award of attorney fees to a person who is damaged by acts of an insurer that violate certain provisions of the Insurance Code, including provisions of the unfair and deceptive trade practices provision of the Code, and in cases where the insurer fails to settle a claim in good faith or commits certain other specific violations of the civil remedy law.
- 2 Offer of Judgment - s. 768.79 (and Rule 1.442, Fla. R. Civ. P.)**

The offer of judgment law and a related rule of civil procedure known as “proposal for settlement” are intended to incentivize reasonable settlement of claims to avoid prolonged and costly litigation. Attorney fees are awarded if a party has made an offer to settle, the offer is rejected, and the offering party prevails by a certain amount in the litigation.
- 3 Unsupported Claim or Defense - s. 57.105**

This law provides for an award of attorney fees in cases where a plaintiff or defendant presents an unsupported (frivolous) claim or defense in a lawsuit. Fees are awarded to the party that must respond to the claim or defense and are intended to discourage frivolous claims and defenses.
- 4 Contingency Fee Agreements - Rule 4-1.5, Florida Bar Rules of Professional Conduct**

In many areas of litigation, it is common for attorneys to enter into contingency fee arrangements with their clients. These arrangements allow a lawyer to earn a percentage of the ultimate judgment or settlement of the litigation as their fee. This is a very common arrangement in bodily injury cases, for example. These contracts mirror the law governing public adjusters, who are compensated based on a percentage of the insurance benefits paid (s. 626.854).



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