

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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**BILL #:** [HB 1551](#)

**TITLE:** Attorney Fee Awards in Insurance Actions

**SPONSOR(S):** Cassel

**COMPANION BILL:** [SB 426](#) (Martin)

**LINKED BILLS:** None

**RELATED BILLS:** None

## Committee References

[Civil Justice & Claims](#)

16 Y, 1 N

[Insurance & Banking](#)

[Judiciary](#)

## SUMMARY

### Effect of the Bill:

HB 1551 requires a court to award prevailing party attorney fees in certain insurance lawsuits and specifies that, where such fees are awardable, the offer of judgment statute does not apply. The bill also ensures that the two-way attorney fee statute applies, or does not apply, to the various types of insurance disputes in the same manner as the one-way attorney fee statute did before its limitation and eventual repeal.

### Fiscal or Economic Impact:

The bill may have a fiscal impact on the state court system. The bill may also have an economic impact on the private sector.

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## ANALYSIS

### EFFECT OF THE BILL:

#### [Attorney Fee Awards](#)

The bill provides for the award of “two-way,” prevailing party attorney fees in most insurance disputes. Specifically, the bill creates s. 627.4275, F.S., to require a court to award attorney fees to the prevailing party in any civil action brought against an insurer by a named or omnibus insured or the named beneficiary under an insurance policy executed by the insurer. (Section [4](#)) Similarly, the bill creates s. 626.9375, F.S., to require a court to award attorney fees to the prevailing party in any civil action brought against a surplus lines insurer by a named or omnibus insured or the named beneficiary under an insurance policy executed by the insurer. (Section [3](#))

The bill provides that the insured or named beneficiary is the “prevailing party” when such person obtains a judgment greater than the highest written, good faith settlement offer previously tendered by the insurer; conversely, the bill provides that the insurer is the “prevailing party” when the insured or named beneficiary does not obtain a judgment greater than the highest written, good faith settlement offer previously tendered by the insurer. For purposes of determining who is the prevailing party, the bill defines “judgment” to include any reasonable attorney fees, taxable costs, and prejudgment interest that the insured had incurred when the highest written, good faith settlement offer previously tendered by the insurer was made, and provides that any settlement offer tendered by an insurer which is not left open for at least five business days is not made in good faith. The definitions of “prevailing party,” as it relates to an insured, and the definition of “judgment” incorporated into the bill generally mirror the definitions of those terms which the courts used to apply when interpreting the now-repealed one-way attorney fee statute. (Sections [3](#) and [4](#))

Finally, the bill specifies that s. 627.4275, F.S., applies, or does not apply, to specific insurance disputes in the same manner in which Florida law used to apply the now-repealed [one-way attorney fee statutes](#). Significantly, under the bill:

- The provision applies to suits brought against a surety insurer under a payment or performance bond written by the insurer. (Section [11](#))

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- The provision applies in an uninsured motorist coverage dispute only if there is a dispute over whether the policy provided coverage for an uninsured motorist proven to be liable for the accident. (Section [9](#))
- The provision applies, but only in a limited manner, with respect to the Florida Motor Vehicle No-Fault Law. (Section [10](#))
- The provision applies to claims brought against the Florida Insurance Guaranty Association only if the association denied a covered claim or a portion thereof. (Section [13](#))
- The provision applies to claims brought against the Florida Workers' Compensation Insurance Guaranty Association only if the association denies a covered claim or a portion thereof. (Section [14](#))

### [Offer of Judgment](#)

The bill amends [s. 624.1552, F.S.](#), to provide that, where prevailing party attorney fees are awardable under either newly-created [s. 627.4275, F.S.](#), or newly-created [s. 626.9375, F.S.](#), the offer of judgment statute does not apply. Practically speaking, this makes the two-way, prevailing party attorney fee statutes the sole mechanism by which attorney fees may be awarded in most suits brought by an insured against insurers in this state, absent the award of attorney fees as a [sanction](#) under [s. 57.105, F.S.](#) or a controlling contract provision. (Section [2](#))

### [Actions for Declaratory Relief](#)

The bill repeals [s. 86.121, F.S.](#), relating to attorney fee awards in actions for declaratory relief to determine insurance coverage after total coverage denial of a claim. Practically speaking, this means that attorney fee awards for such an action would be governed by either newly-created [s. 627.4275, F.S.](#), or newly-created [s. 626.9375, F.S.](#), as applicable, absent a controlling contract provision. (Section [1](#))

### [Applicability and Effective Date](#)

The bill provides an effective date of upon becoming a law. (Section [18](#)) The bill also specifies that the changes made by the bill apply to an insurance policy or contract issued on or after the bill's effective date and may not be construed to impair or limit any right under an insurance policy or contract issued before the bill's effective date. (Section [16](#)) Finally, the bill directs the Division of Law Revision to replace the phrase "the effective date of this act" with the date the bill becomes a law. (Section [17](#))

## **FISCAL OR ECONOMIC IMPACT:**

### STATE GOVERNMENT:

The bill may have a fiscal impact on the state court system. Whether such an impact is positive or negative will depend on whether the bill increases or reduces the number of lawsuits filed against insurers in this state.

### PRIVATE SECTOR:

The bill may have an economic impact on the private sector. Specifically, the bill may have a positive economic impact on the private sector to the extent that it incentivizes insurers to expediently and fairly resolve insurance disputes and insureds to accept fair settlement offers tendered by their insurers. The bill may also incentivize attorneys to take insurance lawsuits which they might not otherwise have taken due to the financial constraints of the insured. However, the bill may have a negative economic impact on the private sector to the extent that it results in an increase in insurance premiums.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

[Attorney Fee Awards](#)

When it comes to the payment of attorney fees following civil litigation, the traditional “English rule” entitled a prevailing party in civil litigation to an attorney fees award as a matter of right. However, Florida, and a majority of other United States jurisdictions, have since adopted what is now known as the “American rule,” under which each party bears its own attorney fees unless a “fee-shifting statute” or contract provision provides an entitlement to an attorney fees award. In Florida, several such fee-shifting statutes entitle the prevailing party or, in some instances, a particular prevailing plaintiff, to have his or her fees paid by the other party.<sup>1</sup>

Before 2022, [s. 627.428, F.S.](#), commonly known as Florida’s “[one-way attorney fee statute](#),” generally provided that, when an insured or named beneficiary under an insurance policy prevailed in a legal action against the insurer, the insurer must pay the insured’s attorney fees; a related statute, [s. 626.9373, F.S.](#), contained a similar one-way attorney fee provision applicable to insurance disputes involving a surplus lines insurer. In interpreting these sections, the Florida Supreme Court held that an insured was the [prevailing party](#) only when the insured “obtain[ed] a judgment greater than any offer of settlement previously tendered by the insurer.”<sup>2</sup> Further, the Court held that the term “[judgment](#)” included the insured’s damages plus any attorney fees, taxable costs, and prejudgment interest incurred before the insurer’s offer.<sup>3</sup>

Generally speaking, the one-way attorney fee statutes were designed to incentivize insurers to deal fairly with insureds in resolving insurance disputes. However, several statutory provisions limited the application of [s. 627.428, F.S.](#), to certain types of insurance disputes; such provisions included language specifying that:

- The statutes applied to suits brought against a surety insurer under a payment or performance bond written by the insurer.<sup>4</sup>
- The statutes applied in an uninsured motorist coverage dispute only if there was a dispute over whether the policy provided coverage for an uninsured motorist proven to be liable for the accident.<sup>5</sup>
- The statutes applied, but only in a limited manner, with respect to the Florida Motor Vehicle No-Fault Law.<sup>6</sup>
- The statutes applied to claims brought against the Florida Insurance Guaranty Association only if the association denied a covered claim or a portion thereof.<sup>7</sup>
- The statutes applied to claims brought against the Florida Workers’ Compensation Insurance Guaranty Association only if the association denied a covered claim or a portion thereof.<sup>8</sup>

Further, in 2022, the Florida Legislature eliminated the application of the one-way attorney fee statutes to lawsuits arising under a residential or commercial property insurance policy.<sup>9</sup> In 2023, the Florida Legislature eliminated the one-way attorney fee statutes entirely, repealing [ss. 627.428 and 626.9373, F.S.](#)<sup>10</sup>

Thus, under current law, each party to an insurance lawsuit generally must pay the party’s own attorney fees, regardless of whether or not the party prevails, absent the application of the offer of judgment statute in [s. 768.79, F.S.](#), fees awarded as a [sanction](#) under [s. 57.105, F.S.](#),<sup>11</sup> or another controlling statute or contract provision providing otherwise.

## [Offer of Judgment](#)

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<sup>1</sup> See, e.g., [s. 400.023, F.S.](#) (nursing home resident); [s. 440.34, F.S.](#) (claimant in a workers’ compensation case in certain situations); [s. 501.2105, F.S.](#) (plaintiff in specified FDUTPA actions); [s. 790.33, F.S.](#) (plaintiff in a suit to enforce his or her firearm rights).

<sup>2</sup> *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006).

<sup>3</sup> *Id.* at 1074.

<sup>4</sup> [S. 627.756, F.S. \(2022\)](#).

<sup>5</sup> [S. 627.727\(8\), F.S. \(2022\)](#).

<sup>6</sup> [S. 627.736\(8\), F.S. \(2022\)](#).

<sup>7</sup> [S. 631.70, F.S. \(2022\)](#).

<sup>8</sup> [S. 631.926, F.S. \(2022\)](#).

<sup>9</sup> In 2021, the Florida Legislature had created specific one-way attorney fee provisions for residential and commercial property insurance lawsuits that based the entitlement to a fee award on the difference between the judgment obtained and the pre-suit settlement offer; these provisions were eliminated as part of the 2022 reforms. [Ch. 2021-77, L.O.F.](#); [ch. 2022-271, L.O.F.](#)

<sup>10</sup> [Ch. 2023-15, L.O.F.](#)

<sup>11</sup> Generally speaking, under this provision, a court may award attorney fees to the prevailing party in a civil proceeding when the court finds that the losing party, or the losing party’s attorney, knew or should have known that a claim or defense when initially presented to the court or at an time before trial: a) was not supported by the material facts necessary to establish the claim or defense; or b) would not be supported by the application of then-existing law to those material facts. The court may also award attorney fees to a moving party that proves, by a preponderance of the evidence, that any action taken by the opposing party was taken for the purpose of unreasonable delay.

Florida’s “offer of judgment” statute, codified in [s. 768.79, F.S.](#), provides attorney fee incentives to encourage swift settlement and decrease litigation. Specifically, under this statute, if a defendant in a civil action for damages makes an offer of judgment and the plaintiff does not accept such offer within 30 days, the plaintiff must pay the defendant’s reasonable costs and attorney fees incurred from the date the defendant made the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than the offer. On the other hand, if the plaintiff files a demand for judgment and the defendant does not accept such demand within 30 days, the defendant must pay the plaintiff’s reasonable costs and attorney fees incurred from the date the plaintiff made the demand if the plaintiff recovers a judgment in an amount at least 25 percent greater than the demand.

Further, [s. 624.1552, F.S.](#), expressly provides that the offer of judgment statute applies to any civil action involving an insurance contract. This clarification was made in 2023 in conjunction with the repeal of Florida’s one-way attorney fee statutes.<sup>12</sup>

[Actions for Declaratory Relief](#)

In conjunction with the 2023 repeal of Florida’s one-way attorney fee statutes, the Florida Legislature enacted [s. 86.121, F.S.](#), to provide that, in an action brought for declaratory relief in state or federal court to determine insurance coverage after the insurer has made a total coverage denial of a claim, either party is entitled to the summary procedure provided in [s. 51.011, F.S.](#),<sup>13</sup> and the court shall advance the cause on the calendar.<sup>14</sup> Further, this section directs the court to award reasonable attorney fees to the named insured, omnibus insured, or named beneficiary under a policy issued by the insurer upon rendition of a declaratory judgment in favor of the named insured, omnibus insured, or named beneficiary; however, such fees are limited to those incurred in the action brought under this chapter for declaratory relief to determine insurance coverage, and this section does not apply to any action arising under a residential or commercial property insurance policy.

**RECENT LEGISLATION:**

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2023	<a href="#">CS/CS/HB 837</a>	Gregory and Fabricio	Hutson	Took effect on March 24, 2023.
2022A	<a href="#">SB 2-A</a>	Leek and Rommel	Boyd	Took effect on December 16, 2022, except as otherwise expressly provided.
2021	<a href="#">CS/CS/CS SB 76</a>	Rommel	Boyd	Took effect on July 1, 2021.

<sup>12</sup> [Supra, note 9.](#)

<sup>13</sup> Generally speaking, the summary procedure provides for expedited pleading, discovery, trial, and appeal deadlines.

<sup>14</sup> [Supra, note 9.](#)

## BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Civil Justice &amp; Claims Subcommittee</a>	16 Y, 1 N	3/13/2025	Jones	Mawn
<a href="#">Insurance &amp; Banking Subcommittee</a>				
<a href="#">Judiciary Committee</a>				