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PRACTICE FOCUS / CIVIL RIGHTS

New Florida Law Robs Crime Victims of Their Civil Rights

Commentary by
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Unfortunately, during the recent legislative session, the Florida Legislature destroyed decades of law that shielded Florida citizens from profit-driven insurance companies. In May 2023, in a sweeping new law written by insurance company lobbyists, legislators in Tallahassee stripped the rights of victims of negligence. Florida HB 837 will have a profound negative effect on plaintiffs, especially for those filing claims against property managers and operators of residential properties, for their failure to provide adequate security measures to protect their customers and residents.

HB 837 has significantly limited the rights of crime victims to obtain justice. In inadequate security cases, the new law creates a “presumption against liability” for those who own and manage “multifamily residential property,” such as an apartment or condominium complex, as long as they implement security measures such as:

- A one-inch deadbolt in each dwelling door;
- A peephole or “door viewer” on dwelling unit doors that do not include a window, or have a window next to the door;
- A locking device on all windows, exterior sliding doors, and any other doors not used for community purposes;
- A locked pool gate, with only a key or fob for access;
- A lighted parking lot and lighted common areas;



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- Security cameras with retrievable footage at all entry and exit points.

This presumption is written in very ambiguous terms, which will lead to more litigation and unclear court rulings. These measures were not data driven and were written by the insurance lobby, with no regard to studies that show what security measures actually prevent crime. Thus, the “presumption against liability” was just a means of further protecting liability insurance carriers, with no true rationale.

Second, the new law says that the fault of the intentional tortfeasor shall be considered by the jury along with the fault of the property owner. However, this makes

no sense. Civil actions are for “negligence,” but a criminal commits a crime with the mens rea of intent. Thus, how will a jury be able to compare the “negligence” of the property owner with the “intentional act” committed by the criminal? The typical verdict form asks a jury to make an allocation of negligence. However, as written, the new law is asking a jury to do the impossible—to divide liability (fault) with two different standards: a negligent act and an intentional act. This unclear portion of the law will also lead to confusion and appellate error, in every case. In practicality, a jury will want to place more blame on a criminal than on a negligent property owner, which will lead to unjust verdicts.

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Third, claims by the victims of negligence due to inadequate security will also be compromised because of changes in the comparative fault laws. Prior to the law being implemented, even if a plaintiff was found by a jury to be 60% at fault for their injuries, they would still be able to collect 40% of the damages. However, with the new legislation, if the insurance company convinces a jury that the plaintiff was more than 50% at fault for their own injury or harm, the plaintiff may not recover any damages. This modification will affect most personal injury cases, including cases involving inadequate security. For example, if a person was lawfully at an apartment complex, but they were responsible for being involved in starting an altercation, and was shot and killed, a jury may find the plaintiff to be 51% responsible for the event. In such a situation, the family members of the plaintiff, even though their loved one was killed in the altercation, will now be entitled to zero.

The new legislation has many other parts to it—all bad for the citizens of Florida. The insurance companies once again fooled the public and the legislature by claiming that insurance companies are the victims of a culture of “frivolous lawsuits.” So, the next time you see commercials for the insurance giants, ask yourself where their advertising budgets come from, and why those budgets are so big. The answer? Your skyrocketing premiums, and no accountability.

Sadly, Big Insurance wins again, and the citizens of Florida lose.

Craig M. Goldenfarb is a South Florida personal injury attorney. Goldenfarb and his law firm, GOLDLAW, have handled inadequate security cases and other types of cases for the last 30 years. His law firm is based in West Palm Beach. For more information, visit www.goldlaw.com.