

# ONE-WAY ATTORNEY FEES

## VOTE NO ON SB 426

Florida has enacted significant reforms over the past few years designed to reduce meritless and unnecessary insurance litigation—litigation that was largely driven by the promise of statutory, “one-way” attorney fees recoverable only by insureds and their assigns—and to make Florida’s insurance market more attractive to insurers. SB 426 appears designed to undercut those reforms before the results of those reforms are realized.

For decades, Florida’s one-way attorney fee statutes essentially made litigation against insurers risk-free for plaintiffs. Because these fee-shifting statutes were one-way—as only prevailing plaintiffs could recover their attorney fees, not prevailing insurers—they incentivized plaintiffs to bring suit, even over low-dollar and non-meritorious disputes. This resulted in a perpetration of low severity damage claims driving recovery of high plaintiffs’ attorney fees, costing insurers and Florida taxpayers billions of dollars per year. The Legislature ended the abuse of the one-way attorney fee statutes in property insurance cases in late 2022, and then finally repealed these statutes in their entirety in 2023 through HB 837.

Notwithstanding these significant strides forward, SB 426 threatens to create new incentives to litigate over insurance disputes given the promise of attorney fees. More specifically, the legislation would create a new mechanism for award of “reasonable” attorney fees in insurance litigation to the “prevailing party,” as defined by the legislation.

Now is not the time to create a new mechanism for attorney fees in insurance litigation. The repeal of one-way attorney fees is still relatively new, and we need to gather further data to understand the repeal’s impacts, including whether it has reduced frivolous litigation and resulted in earlier resolution of insurance disputes. Further, there are other existing mechanisms, like section 768.79, Florida Statutes, and section 57.105, Florida Statutes, that allow prevailing parties to recover their attorney fees in some circumstances. For all these reasons, the Institute opposes SB 426.

The Legislature must give its prior reforms a chance at success and reject SB 426. Parties are not left without recourse for recovering attorney fees, as either an insured or insurer could potentially recover their attorneys’ fees under the offer of judgment statute, section 768.79, Florida Statutes, and corresponding Florida Rule of Civil Procedure 1.442, or even under section 57.105, Florida Statutes, if a claim or defense is unsupported. For all these reasons, the Institute opposes SB 426.

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Questions? Reach out to William Large at [william@fljustice.org](mailto:william@fljustice.org).

