

Bad Faith Isn't "Good Faith" Even If You Change The Name

Vote NO on HB 751

Under Florida law, an insurance company acts in bad faith when:

- Not attempting in good faith to settle claims when it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Today, when an insured feels that an insurance company has acted in bad faith, he can take his challenge to court, to have the issue settled by a judge and jury. This bill would completely upend this well established and constitutionally protected right to access the courts.

What the bill does:

The bill removes all bad faith actions from the judicial circuits and places them before an administrative agency - the Division of Administrative Hearings. Within 90 days of DOAH receiving the complaint, an administrative law judge must hold a hearing to determine if a breach of duty occurred. Within 30 days from the hearing date, the administrative law judge must enter an order making conclusions and findings, including the amount of damages that may or may not be recovered.

Why this bill is dangerous:

- The bill fundamentally changes how insurance consumers bring a claim of bad faith against an insurance company by removing it from the circuit court system into a government hearing system.
- It removes the constitutional right to a trial by jury under the 7th Amendment.
- The Division of Administrative Hearings was established for government agency cases and controversies. This expands the role of a government agency that has had a limited and focused scope.
- The administrative law judges are not required to follow the Rules of Civil Procedure, which are the rules set forth by the Florida Supreme Court and followed by every court in Florida.
- There are no guarantees of the ability to conduct adequate discovery to make an accurate determination if bad faith occurred. These are often complex and highly contested claims which deserve the detailed processes and expertise of judges one would find in judicial branch courts.
- It places a hard timeline on the proceedings, which may not be sufficient depending on the complexity of individual cases.
- It would place a consumer in two separate courts. Currently both the underlying case and the bad faith case are before the same court.

This bill represents a fundamental and unnecessary change to how bad faith claims are handled. These cases are best left to the purview of circuit courts where they will get the process, review, and resolution they need.

For these reasons, please vote NO on HB 751