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## State lawmakers push tort reform

By Zac Anderson  
GateHouse Florida

The Florida Supreme Court has consistently struck down caps on how much a person who is injured through others' negligence can receive in financial compensation for their pain and suffering.

In 1986 the Legislature adopted a \$450,000 cap on so-called "noneconomic damages" in all personal injury cases. It was overturned

the next year.

In 2003 the Legislature put caps on noneconomic damage awards in medical malpractice cases. The caps were overturned by the court in 2014 and 2017.

Now lawmakers want to try again. A bill that advanced in the Florida House Wednesday would reinstate a cap on noneconomic damages in all personal injury cases.

The bill is another sign that a new look Supreme Court

packed with conservative justices is emboldening lawmakers to revive ideas that had been deemed unconstitutional in the past.

Abortion and school vouchers are two other areas where the court has stifled the GOP-controlled Legislature but there is renewed activity this year. Republican Gov. Ron DeSantis' appointment of three new Supreme Court justices is giving GOP lawmakers reason to be hopeful

about such issues.

State Rep. Tom Leek, R-Ormond Beach, who works as an attorney for the Daytona Beach insurance firm Foundation Risk Partners, is sponsoring the tort reform bill.

The Supreme Court wrote in 2017 in a 4-3 decision that the medical malpractice damage caps "arbitrarily reduce damage awards for plaintiffs who suffer the most drastic injuries." But

Leek said after Wednesday's hearing that the court was "wrong" in overturning the medical malpractice caps.

"What we saw there was probably an activist court," Leek said. "We have a new court now."

Leek's bill, which cleared the House Civil Justice Committee Wednesday, puts a \$1 million cap on pain and suffering damage awards in civil

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cases. It also revises how plaintiffs are compensated for medical treatments made necessary because of an injury suffered through another party's negligence.

A third aspect of the bill that dealt with product liability - and would have shielded businesses from liability in some cases - was stripped from the legislation Wednesday because of concerns that it could have hampered the state's lawsuit against opioid manufacturers.

The \$1 million cap on pain and suffering damages drew considerable attention during Wednesday's committee hearing, with Democrats and some Republicans expressing

concerns.

"I can't imagine putting a value on life," said Rep. Jackie Toledo, R-Tampa.

Toledo noted that she has pushed legislation to cut down on distracted driving, which has brought her into contact with those who have been harmed by bad drivers.

"I can't imagine telling them that they would be limited to a million-dollar cap," she said.

Rep. Mike Beltran, R-Lithia, also said he wants to "raise that cap or figure out some other situations where that may not be appropriate."

Other lawmakers took issue with Leek's characterization of Florida's judicial system. Leek cited the American Tort Reform Association's ranking of Florida as the second worst "judicial hellhole" in America.

"I don't like hearing that anything in my state's a

hellhole, particularly the courts," said Rep. Ben Diamond, D-St. Petersburg, adding: "I think we have to be very, very careful with our rhetoric here."

Rep. Tommy Gregory, R-Sarasota, also said that "it is important we watch our rhetoric."

An attorney, Gregory said he does not want to "send a message to the public that we're losing faith in our legal system." Gregory still voted to advance the bill through committee, though.

In response, Leek said he believes in the judicial system but "I think that we have gotten out of balance."

Leek cited a litany of statistics in arguing that excessive litigation is hurting Florida's economy by driving up insurance premiums and other costs for businesses and average citizens. An array of

business interests support Leek's legislation, including the Florida Chamber of Commerce, the Florida Retail Federation and Associated Industries of Florida.

With a cap on personal injury claims "you provide predictability," Leek said. "You allow insurance carriers to have a better understanding of what their exposure is and with that they can set premiums that are reasonable."

Representatives from the Florida Justice Association, which represents trial attorneys, spoke against the bill Wednesday.

"Let me give you an example of what you would be regulating," said Leslie Kroeger, a Palm Beach Gardens attorney and the Florida Justice Association's president-elect.

Kroeger talked about an 18-year-old client who was badly injured and needs a

wheelchair.

"What you would be saying as a body if you vote on this bill is that what he lives through every day is only worth a million dollars for the rest of this young man's life," Kroeger said.

Kroeger said her group will be fighting the legislation "tooth and nail."

With a number of Republicans in the House expressing concerns about the pain and suffering damage cap, the legislation appears to be on shaky ground. The cap is not even in the Senate version of the bill. Senate President Bill Galvano, a Bradenton attorney, said he is "very cautious" when it comes to tort reform.

"It's not that I haven't supported tort reform in the past," Galvano said. "But we're gonna scrutinize everything that comes over in that regard."