

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1005 Prejudgment Interest

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		King	Bond

SUMMARY ANALYSIS

The term "prejudgment interest" refers to an award of interest that is in addition to the base award of damages in a civil case. In general, prejudgment interest is awarded in civil actions on liquidated damages, but not on unliquidated damages. Liquidated damages are damages for an amount that can be determined or measured back to a fixed point in time.

The bill provides that prejudgment interest must be awarded in all civil actions for any measure of economic damages. The prejudgment interest begins at the time that the cost was incurred or paid. The term "economic damages" includes medical expenses, lost wages, and property damage.

The bill provides that prejudgment interest may not be awarded for punitive damages, pain and suffering, loss of consortium, loss of enjoyment of life, or any other similar damages; for attorney's fees and costs; for damages received from the state or a local government; where a contract between the parties provides that that prejudgment interest does not apply; or for amounts that the defendant paid or reimbursed to the plaintiff within 90 days.

The bill is prospective and thus will only apply to a cause of action that accrues on or after July 1, 2016.

The bill does not appear to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prejudgment interest is part of Florida's common law tradition, and is not provided for in statute. The Florida Supreme Court has said that the general legal theory supporting an award of prejudgment interest is known as the "Loss Theory." The court explained:

Under the "loss theory," ... neither the merit of the defense nor the certainty of the amount of loss affects the award of prejudgment interest. Rather, the loss itself is a wrongful deprivation by the defendant of the plaintiff's property. Plaintiff is to be made whole from the date of the loss once a finder of fact has determined the amount of damages and defendant's liability therefor.¹

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss to the date a final judgment is entered for the plaintiff. Post-judgment interest is interest on a judgment that is calculated from the date of the final judgment until the plaintiff collects the award from the defendant.

Economic damages are damages that are computed and proved from the face of records or documents. They generally include past and future medical bills, wages, funeral expenses, and damages to someone's personal and real property.² Non-economic damages, which are not affected by the bill, are subjective intangible items which cannot be measured with certainty. Non-economic damages generally include damages for physical pain and suffering, mental anguish, and the loss of enjoyment of life.

Prejudgment interest is only awarded to the prevailing party for liquidated damages. A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount.

Prejudgment interest is common in commercial litigation and collection lawsuits. Prejudgment interest is, however, generally inapplicable to most of the award in a personal injury action because damages are too speculative to liquidate before a final judgment is rendered.³ Prejudgment interest is appropriate and awarded in a personal injury action where the plaintiff can show that he or she suffered the loss of a vested property right⁴ or incurs an actual out-of-pocket expense.⁵

Prejudgment interest is not an absolute right, it may be denied on equitable grounds.⁶

¹ *Bosem v. Musa Holdings, Inc.*, 46 So3d 42, 45 (Fla. 2010).

² s. 768.81(1)(b), F.S., provides a more detailed list (as an example only and not binding on this bill): "Economic damages" means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss that would not have occurred but for the injury giving rise to the cause of action.

³ *Zorn v. Britton*, 162 So.879, 881 (Fla. 1935)("We have never recognized an allowance of interest on unliquidated damages for personal injuries, and the general rule seems against such allowance in the absence of statute providing for it.").

⁴ *Amerace Corp. v. Stallings*, 823 So. 2d 110 (Fla. 2002) (citing *Alvarado v. Rice*, 614 So.2d 498, 500 (Fla. 1993)). The vested property right in *Alvarado* was out-of-pocket medical expenses paid by the plaintiff before judgment.

⁵ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993)(finding that a claimant in a personal injury action is only entitled to prejudgment interest on past medical expenses when the trial court finds that the claimant has made actual, out-of-pocket payments on those medical bills at a date prior to the entry of judgment).

⁶ *Broward County v. Finlayson*, 555 So.2d 1211, 1213 (Fla. 1990) ("[O]nce damages are liquidated, prejudgment interest is considered an element of those damages as a matter of law, and the plaintiff is to be made whole from the date of the loss." 526 So.2d at 47. See also *Florida Steel Corp. v. Adaptable Devs. Inc.*, 503 So.2d 1232 (Fla.1986). This general rule is not absolute. In *Flack v. Graham*, 461 So.2d 82 (Fla.1984), we refused to permit recovery of any prejudgment interest, stating: "[I]nterest is not recovered according to a rigid theory of compensation for money withheld, but is given in

The statutory interest rate on judgments is calculated quarterly by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, adding 400 basis points.⁷ Prejudgment interest is calculated by the trial judge based on the final award in a post-trial hearing, and thus is not presented to the jury.

Effect of the Bill

The bill creates s. 55.035, F.S., to require that a court award prejudgment interest in any civil action, calculated as follows:

- As to past medical costs paid prior to entry of a final judgment, from the date the medical services were paid;
- As to past medical costs unpaid at the time of entry of a final judgment, based on the amount determined by the court in a post-judgment hearing as adjusted by law,⁸ from the date the payment for medical services was due in the ordinary course of business;
- As to lost wages, from the date that such wages would ordinarily have been paid to the employee;
- As to property damage, from the date of loss; and
- As to any other measure of economic damages, from the date the expense was paid by the party.

Because it is written as a mandatory award of prejudgment interest, the bill appears to provide that a court may not deny prejudgment interest on equitable grounds.

The bill also creates exceptions to the payment of prejudgment interest under the newly created statute, providing that no prejudgment interest may be awarded under this section:

- For any damages that were reimbursed to the plaintiff or paid on behalf of the plaintiff, if paid or reimbursed by the defendant or on behalf of the defendant by a third party and within 90 days;
- For exemplary or punitive damages, pain and suffering, loss of consortium, loss of enjoyment of life, or any other similar damages;
- For attorney's fees and costs;
- In any action against the state or any of its agencies or subdivisions to recover damages in tort, in accordance with the limit in s. 768.28(5), F.S.;⁹ or
- Where a contract between the parties specifically provides that interest will not be applied.

The bill applies to a cause of action that accrues on or after July 1, 2016.

B. SECTION DIRECTORY:

Section 1 creates s. 55.035, F.S., providing for prejudgment interest.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

response to considerations of fairness. It is denied when its exaction would be inequitable.' ” *Id.* at 84 (quoting *Board of Commissioners v. United States*, 308 U.S. 343 (1939)).

⁷ s. 55.03, F.S.

⁸ The collateral source rule, codified at s. 768.76, F.S., may require that a trial court reduce an award for past medical damages.

⁹ s. 768.28, F.S., is a partial waiver of sovereign immunity in tort actions applicable to the state and its subdivisions. Subsection (5) specifically prohibits an award of interest in cases where sovereign immunity is deemed waived.

The bill does not appear to have any impact on state government revenue.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenue.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have an indeterminate direct economic impact on the private sector. The bill may have a positive impact on plaintiffs in personal injury cases and a corresponding negative impact on defendants and/or their insurance companies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a