

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1086

INTRODUCER: Senator Bradley

SUBJECT: Prejudgment Interest

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1086 requires a court to award prejudgment interest on economic damages to a prevailing plaintiff in a personal injury action. If economic damages are recovered, the court must include interest in its final judgment on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff;
- Attorney fees, if awarded, with the interest computed on the fees beginning on the first day of the month immediately following the month in which the attorney provided services to the plaintiff; and
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

The applicable rate of interest is established by the Chief Financial Officer pursuant to statute. That rate is currently 4.75 percent per annum.

The bill applies retroactively to all actions pending on the effective date of the act and any actions that are initiated on or after that date.

II. Present Situation:

Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, 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.

Under English common law, prejudgment interest was permitted for claims that were “liquidated” but not for claims that were “unliquidated.” 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. In personal injury law, examples of these types of damages include pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.¹

Florida does not generally allow the award of prejudgment interest for plaintiffs in personal injury² and wrongful death claims, but does allow it in some tort areas.³ The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule is when a plaintiff can establish that he or she suffered the loss of a vested property right.⁴

One theory of prejudgment interest is that it is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.⁵ Appellants who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation was protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone’s personal and real property.⁶ Non-economic damages, which are not addressed in the bill, are the subjective intangible items which cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life.

Attorney Fees and Costs

An attorney who represents a plaintiff in a personal injury case is generally paid a contingency fee for his or her services. The attorney will agree to take a fixed portion of the money recovered as the fee for services. If there is no recovery for the client, the attorney will not receive a fee,

¹ *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

² *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (1955).

³ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

⁴ *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

⁵ *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

⁶ See s. 768.81(1)(b), F.S., for a more detailed list.

although the client generally may be charged for allowable costs. A contingency fee contract must be in writing and signed by the client and the attorney or law firm who will be paid if the plaintiff prevails.

If a plaintiff prevails in a personal injury action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only and the taxation of costs is within the broad discretion of the court.⁷

The Florida Supreme Court has noted that this state has rejected the “English Rule” that attorney fees are part of the costs to be awarded to the prevailing party in all civil litigation. Instead, Florida has adopted the “American Rule” that attorney fees may be awarded by a court only when authorized by statute, by an agreement of the parties, or in situations involving inequitable conduct.⁸ Some examples of statutes that permit the award of attorney fees are specified in chapter 766, F.S., the medical malpractice chapter, damages in actions against contractors for injuries,⁹ offers of judgment,¹⁰ and instances in which the losing party or the losing party’s attorney raised unsupported claims or defenses.¹¹

III. Effect of Proposed Changes:

Interest

This bill requires a court, in its final order in which a plaintiff recovers economic damages in a personal injury claim, to include interest on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff;
- Attorney fees, if awarded, with the interest computed on the fees beginning on the first day of the month immediately following the month in which the attorney provided services to the plaintiff;
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

⁷ Fla. R. Civ. P. Taxation of Costs. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting but non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at <http://www.bing.com/search?q=florida+rules+of+civil+procedure&src=IE-SearchBox&FORM=IESR02> at 265-267.

⁸ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (1985).

⁹ Section 768.0425(2), F.S.

¹⁰ Section 768.79, F.S.

¹¹ Section 57.105, F.S.

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. The Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current quarterly interest rate is 4.75 percent.¹²

Applicable Cases and Retroactivity

The bill takes effect on July 1, 2016, and applies retroactively to all actions pending on that date, and any actions initiated on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill is retroactive to the extent that it increases the amount of damages that may be recoverable for personal injuries that occur before the effective date of the bill. Although the Legislature may enact retroactive statutory changes that are procedural or remedial, a statute may not apply retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.¹³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by being permitted to receive prejudgment interest from the date of their loss or injury. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

¹² Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, <http://www.myfloridacfo.com/division/AA/Vendors/#.VPtaBk0cSUI> (last visited Jan. 16, 2016).

¹³ *State Farm Mutual Automobile Insurance Co. v Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for this bill. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 55.035 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).