

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 469 Prejudgment Interest
SPONSOR(S): Civil Justice & Claims Subcommittee; Harrison
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	11 Y, 4 N, As CS	MacNamara	Bond
2) Judiciary Committee			

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. Historically, prejudgment interest has been awarded in civil actions for damages that are for actual out-of-pocket expenses, actual loss of property, or failure to pay monies due on a contract. Damages such as pain and suffering, mental anguish and loss of enjoyment of life damages have not been subject to prejudgment interest.

The distinction between the classifications of damages is not the controlling factor, however. Rather, in all cases, either in tort or contract, where the loss is monetary and may be fixed as of a definite date, prejudgment interest is appropriate. The rate of interest awarded may be set by contract or agreement between the parties. In absence of a contractual provision, however, the rate of interest is set by statute.

The bill provides that prejudgment interest must be awarded in any action in which a plaintiff recovers any form of economic or noneconomic damages. The interest on economic damages (loss of property, contractual damages, etc.) begins to accrue on the date of the loss of an economic benefit, while interest on noneconomic damages (pain and suffering, mental anguish, etc.) begins to accrue on the date the defendant receives notice of the claim. Prejudgment interest on attorney fees or costs begins to accrue on the date of entitlement to those fees or costs.

The bill applies to causes of action that accrue on or after July 1, 2017.

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

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prejudgment Interest Theory and Law

Prejudgment interest is the interest on the applicable portion of a final judgment which is calculated from the date of the injury or loss to the date a final judgment is entered for the prevailing party. Prejudgment interest is part of Florida's common law tradition, and is not required by 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 defenses 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 common in commercial and business litigation and collection lawsuits. For instance, a prevailing party in a breach of contract action is entitled to prejudgment interest on the amount of the verdict.²

Historically, plaintiffs in personal injury cases have not been entitled to prejudgment interest because damages in personal injury cases are too speculative to liquidate before final judgment. The reason for not allowing prejudgment interest from the date of loss in personal injury actions is because of the speculative nature of some items of damage, such as mental anguish, and the indefiniteness of items such as future pain and suffering.³

Prejudgment interest is, however, appropriate and awarded in a personal injury actions 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 Moreover, prejudgment interest is appropriate and awarded in tort actions where damages are not speculative and can be determined as of a fixed date. Addressing this issue, the Supreme Court in *Bosem* stated:

[I]n all cases, either of tort or contract, where the loss is wholly pecuniary, and may be fixed as of a definite time, interest should be allowed as a matter of right, whether the loss is liquidated or unliquidated.⁶

Definitions of Economic and Noneconomic Damages

Statutory law does not provide a general definition of the terms "economic damages" and "noneconomic damages."

The term "economic damages" generally refers to monies owed pursuant to a contract or agreement, medical bills, lost wages, funeral expenses, and damages to someone's personal and real property.

¹ *Bosem v. Musa Holdings, Inc.*, 46 So.3d 42, 45 (Fla. 2010).

² *Summerton v. Mamele*, 711 So.2d 131 (Fla. 5th DCA 1998).

³ *Bosem*, at 46.

⁴ See *Alvarado v. Rice*, 614 So.2d 498, 500 (Fla. 1993) (Vested property right included out-of-pocket medical expenses paid by the plaintiff before judgment.).

⁵ *Id.* (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 *Bosem*, at 46.

The only statutory definition of economic damages applies to medical malpractice actions, where the term is defined as:

“Economic damages” means financial losses that would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.⁷

The term "noneconomic damages" generally refers to damages that are subjective intangible items that cannot be measured with certainty. Generally, this category includes damages for physical pain and suffering, mental anguish, and loss of the enjoyment of life. The only statutory definition of noneconomic damages applies to medical malpractice actions, where the term is defined as:

“Noneconomic damages” means nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.⁸

Punitive damages are neither economic damages nor are they non-economic damages.⁹

How Prejudgment Interest is Calculated

The rate of prejudgment interest may be set by contract or agreement between the parties.¹⁰ Absent a specific contractual provision concerning the rate of interest, the rate payable when interest is due is the rate set by a formula at s. 55.03, F.S.

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.¹¹ The trial court is responsible for calculating the prejudgment interest based on the final award in a post-trial hearing, and thus the calculation is not presented to the jury.¹²

Effect of the Bill

The bill creates s. 55.035, F.S., to require that a court award a prevailing plaintiff prejudgment interest for both economic and noneconomic damages in a final judgment. Prejudgment interest is also awarded on a plaintiff's attorney fees or costs. The rate of interest applied is the rate established pursuant to s. 50.03, F.S.

The interest on economic damages begins to accrue on the date the plaintiff lost an economic benefit. Prejudgment interest for noneconomic damages, on the other hand, does not begin to accrue until the date the defendant receives notice of a claim from the plaintiff. Lastly, for attorney fees or costs, provided they are fixed through agreement, arbitration award, or court determination, the interest begins to accrue on the date the plaintiff is entitled to those fees or costs.

The bill does not affect the accrual of prejudgment interest before its effective date if such interest is otherwise authorized by statute or common law. The bill applies to any cause of action accruing on or after July 1, 2017.

⁷ s. 766.202(3), F.S.

⁸ s. 766.202(8), F.S.

⁹ See, e.g., *FL-Carrollwood Care Ctr., LLC v. Gordon*, 72 So. 3d 162 (Fla. 2nd DCA 2011)

¹⁰ s. 55.03(1), F.S. ("Nothing contained herein shall affect a rate of interest established by written contract or obligation.")

¹¹ s. 55.03, F.S.

¹² *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 215 (Fla. 1985) ("Thus, it is a purely ministerial duty of the trial judge or clerk of the court to add the appropriate amount of interest to the principal amount of damages awarded in the verdict. We conclude that the finder of fact should not consider the time-value of money in its consideration of damages.")

B. SECTION DIRECTORY:

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

Section 2 limits the applicability of the bill.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate economic impact on the private sector. The bill may have a positive impact on plaintiffs in civil actions that proceed to trial and a corresponding negative impact on defendants and/or their insurance companies.

D. FISCAL COMMENTS:

State and local governments can be sued in tort. Section 768.28(5), F.S., however, specifically provides that damages payable by a state and local government do not include "interest for the period before judgment."¹³

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.

¹³ See *Palm Beach County Canvassing Bd. v. Harris*, 772 So.2d 1273, 1287 (Fla. 2000) ("[I]t is well settled that where two statutory provisions are in conflict, the specific statute controls the general statute.")

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill only awards prejudgment interest to a prevailing "plaintiff" and, thus, may preclude some prevailing parties in a lawsuit from being awarded prejudgment interest.

Section 2 may be unnecessary given the prospective nature of the bill reflected in Section 3 of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 23, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Limited the scope of the bill to economic damages, non-economic damages, and attorney fees and costs, thus effectively removing punitive damages from being subject to prejudgment interest;
- Specified when prejudgment interest begins to accrue for each measure of damages;
- Provided that the bill does not affect prejudgment interest earned prior to the effective date of the bill; and
- Specified that the bill is prospective only.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.