



Oppose Prejudgment Interest SB 334 by Sen. Steube / HB 469 by Rep. Harrison

Issue/Background

Under current law, Florida courts award postjudgment interest to the prevailing party in a lawsuit to compensate for any delay from when damages are awarded until the losing party pays the damages. The threat of postjudgment interest also encourages the losing party to pay the damages quickly, which is good public policy.

In contrast, prejudgment interest is normally calculated from the date of a concrete monetary loss, such as in a breach of contract or property dispute. Florida courts have repeatedly said that prejudgment interest is not appropriate in personal injury cases and other lawsuits, where the amount of damages is not defined but entirely speculative until a jury determines the amount of damages owed.

SB 334 will require Florida courts to award prejudgment interest to a prevailing party in any type of action and calculated on economic damages, noneconomic damages, attorney fees, and costs. HB 469, meanwhile, refers to undefined "monetary damages." Both bills also apply prejudgment interest to actions pending on the date of enactment.

The Problem

Anyone can find him or herself named in a lawsuit as a defendant. If passed, these bills will make fighting a lawsuit extremely risky. Even if the defendant has valid arguments and believes the lawsuit is completely without merit, if they lose, they could owe much more in prejudgment interest, depending on when the alleged loss occurred.

The bills will also require incredibly burdensome, time-consuming calculations. Traditionally, a jury verdict form simply asks for an award for past medical expenses and lost wages. In a case with, for example, hundreds of physical therapy treatments, the jury will have to indicate which treatments are compensable, beginning on what date, and for what individual amounts. Then, the court will be required to calculate prejudgment interest through the date of the judgment for each medical expense.

The bills also take away judicial discretion. Regardless of whether there is a legitimate legal dispute at the center of the case or whether the plaintiff actually caused the delay in prosecuting the action, the defendant will be financially responsible for prejudgment interest. If the plaintiff seeks and obtains three different continuances of trial over the defendant's objection, and the plaintiff wins, the plaintiff will be rewarded and the defendant penalized for that delay through a larger prejudgment interest award.

Requiring an award of prejudgment interest on noneconomic damages also distorts the jury's decision. Through jury instructions and the verdict form, juries are asked to make an award that reasonably compensates the plaintiff for past and future pain and suffering. Adding prejudgment interest on top of the award second-guesses what the jury believed was appropriate in total for those noneconomic damages.

Finally, permitting the recovery of prejudgment interest in all pending cases imposes a new penalty on defendants. Until now, defendants have only been obligated by statute to pay postjudgment interest. Consequently, these bills would attach new legal consequences to old events. The Florida Supreme Court has stated that the Legislature may not increase an existing penalty as to a set of facts after those facts have occurred.

The Answer

There's no fixing these bills. Defendants must already make tough decisions about asserting their rights under legitimate defenses, versus swallowing the cost of litigation and settling claims. If passed, these bills will force defendants to settle cases they believe are without merit, in order to avoid the potentially high costs of prejudgment interest.

These bills are a step backwards for civil justice reform. For almost twenty years, the legislature and business community have worked together to make great progress improving Florida's civil justice system. This bill turns back the clock on that progress.