

SUBJECT: Eliminating prejudgment interest on future damages

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 6 ayes — Bosse, Janek, Hope, Nixon, Smithee, Zbranek
0 nays
3 absent — Alvarado, Dutton, Goodman

SENATE VOTE: On final passage, April 30 — 25-4 (Barrientos, Gallegos, Truan, Wentworth)

WITNESSES: None

BACKGROUND: Finance Code Chap. 304, Subchapter B allows prejudgment interest in wrongful death, personal injury, or property damage cases. In a 1994 case, *C&H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315, the Texas Supreme Court held that a court may award prejudgment interest on future damages.

Prejudgment interest is interest based on a statutory formula that accumulates during the period beginning on the 180th day after the date the defendant receives written notice of a claim or on the date the suit is filed, whichever is earlier, and ending on the day before the judgment is rendered.

Future damages are assessed on legal injuries that will occur in the future as a foreseeable result of a legal injury — for example, loss of future earnings as a result of a car injury.

DIGEST: SB 776 would amend the Finance Code to prohibit a court from awarding prejudgment interest on future damages in a wrongful death, personal injury, or property damage case.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and would apply only to suits begun on or after the effective date.

SUPPORTERS SAY: SB 776 would provide clear statutory guidance to courts that prejudgment interest on future damages should not be awarded. The Supreme Court allowed such prejudgment interest awards because of statutory uncertainty. This bill would eliminate the confusion on this issue.

Interest on monetary damages in a civil lawsuit should be used to compensate the plaintiff for economic opportunity lost because of the legal harm. If a person loses wages because of the wrongful action of the person's employer, the employer should be liable for interest on the lost wages from the date of the action that resulted in the lost wages until the date of final judgment, not on future damages.

Prejudgment interest on future damages does not compensate for lost opportunity because the losses have not yet accumulated. Rather, it provides a windfall to the plaintiff because the defendant must pay interest on losses before the date of judgment. The plaintiff also stands to collect postjudgment interest on future damages.

OPPONENTS SAY: By eliminating prejudgment interest on future damages, SB 776 would discourage the expeditious settlement of lawsuits, because the defendant would be less inclined to settle the case early. The defendant would not be liable for the interest on lost future earnings during the pendency of the suit, damages that are tied directly to legal injury. For reasons of equity, this interest should be applied to the final judgment. Postjudgment interest does not necessarily apply because such interest is awarded only if the case is appealed.

NOTES: The committee amendment would remove a section that would have amended the calculation of the judgment interest rate.