



Prejudgment Interest

Vote NO on HB 941 and SB 794

Issue/Background

Both prejudgment interest and post-judgment interest are awarded to make the injured plaintiff "whole." The purpose of post-judgment interest is to compensate the successful plaintiff for the delay from the time the amount of judgment is determined until the time the defendant actually pays.

Meanwhile, Florida courts have said that prejudgment interest is only appropriate in the case of a defined or tangible loss, such as in a breach of contract or property loss. Florida courts have continually rejected the idea that prejudgment interest is appropriate in other contexts, particularly personal injury cases in which the amount of damages is not defined but speculative until a judgment is entered. Thus, in Florida, the goal of prejudgment interest is to compensate plaintiff for a concrete monetary loss rather than to penalize the defendant.

The Problem

If passed, SB 794 and HB 941 will unfairly penalize defendants for delays they may not have caused, and further impede settlements. The bills also run contrary to the long line of Florida authority declining to award prejudgment interest in most tort cases where the damages are too speculative. See *Bosem v. Musa Holdings, Inc.*, 46 So.3d 42, 45-46 (Fla. 2010).

The bills also apply retroactively, which raises constitutional due process issues. For the retroactive application of a law to be constitutionally valid, the Legislature must express a clear intent that the law applies retroactively. Also, the law must be procedural or confirm rights that already exist.

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 post-judgment 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. See *Bitterman v. Bitterman*, 714 So.2d 356, 363-64 (Fla. 1998). In short, the retroactive application of a law mandating prejudgment interest may be unconstitutional.