

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 794

INTRODUCER: Senator Ring

SUBJECT: Prejudgment Interest

DATE: March 9, 2015

REVISED: _____

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

I. Summary:

SB 794 requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff. Prejudgment interest accrues from the date of the plaintiff's injury or loss. As provided in current law, the applicable interest rate is based on the discount rate of the Federal Reserve Bank of New York plus 400 basis points.

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

II. Present Situation:

Prejudgment interest is the interest on a judgment that 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 Proponents of 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 because the defendant had no incentive to settle the case.⁶

III. Effect of Proposed Changes:

This bill requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff.

The rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S., and accrues from the date of the plaintiff's injury or loss. 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.⁷

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

This bill takes effect upon becoming law.

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 According to the Florida Justice Association, 32 states and the District of Columbia now allow for prejudgment interest in personal injury and wrongful death cases. Florida Justice Association, *Prejudgment Interest*, (2015) (on file with the Senate Committee on Judiciary).

⁷ 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 March 7, 2015).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

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 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.⁸ By increasing the amount of damages authorized for causes of action that accrue before the effective date of the bill, this bill potentially could be construed as an unconstitutional penalty.

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.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ *State Farm Mutual Automobile Insurance Co. v Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

VIII. Statutes Affected:

This bill creates s. 55.031, F.S.

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.
