



WHAT DO WE DO NOW?

Dealing with the introduction of prejudgment interest

1

History

- HB3360 was sent to the governor, who vetoed it on March 25, 2021 and in relevant part stated:

HB 3360 imposes a rate of 9% per annum prejudgment interest, which would begin to accrue on the date the defendant has notice of the injury. Even states with prejudgment interest, such as Michigan or Wisconsin, provide a more reasonable rate structure by tying the interest rate to market conditions such as the federal prime rate, as opposed to a flat rate. The proposed 9% flat rate is higher than many of these market-based rates adopted by other states, even when accounting for additional percentages that many states add to the market-based rates as part of the calculation of prejudgment interest. Because many businesses have been severely and negatively affected by today's economic climate, 9% interest is high and tying to market conditions would be less onerous. A 9% rate could similarly be damaging to entities like hospitals.

Further, HB 3360 would allow for prejudgment interest to be calculated on non-economic damages such as pain and suffering and loss of normal life. Again, when we compare this legislation to states that have prejudgment interest, many of them exclude non-economic damages from the calculation. For example, the prejudgment interest statutes in Massachusetts and Minnesota limit the application of prejudgment interest in personal injury cases to pecuniary damages. Minnesota law explicitly excludes future, punitive or noncompensatory damages.

2

History

- Ultimately, the General Assembly amended SB72.
- The first attempt was to make some changes contingent on the governor signing HB3360.
- When the governor vetoed HB3360, further modifications were made in negotiations with the hospitals.
- Those modifications ended up being the bill that was signed into law on May 28, 2021 and became PA102-0006.

Illinois Defense Counsel | www.IDC.law

3

Essential Provisions of PA102-0006

- Applies to personal injury or wrongful death actions arising out of any theory of tort liability.
- 6% per annum interest applies to all categories of damages except punitive damages, sanctions, statutory attorneys' fees, and statutory costs.
- For claims that accrue after the enactment of the statute, the interest begins to run from the date the date the suit is filed.
- For claims that accrued before the enactment of the statute, interest begins to run on the later of the date of the accident or the enactment of the statute.

Illinois Defense Counsel | www.IDC.law

4

Essential Provisions of PA102-0006

- The interest does not run during the time when a plaintiff has voluntarily dismissed their lawsuit.
- The interest can only run for a total of 5 years.
- Prejudgment interest cannot be assessed against the State of Illinois, local government, school district, community college district, or any other governmental entity.

Illinois Defense Counsel | www.IDC.law

5

Essential Provisions of PA102-0006

- Interest can also be cut off by the highest written settlement offer made within 12 months after the later of the effective date of the statute or the filing of the action and **not accepted within 90 days** or rejected by the plaintiff.
- If the judgment is greater than the highest offer, then the plaintiff gets interest on that difference only.
- If the judgment is less than or equal to the highest offer, then the plaintiff gets no prejudgment interest.

Illinois Defense Counsel | www.IDC.law

6



Illinois Defense Counsel
PO Box 588
Rochester IL 62563-0588
800-232-0169, admin@IDC.law
www.IDC.law

Public Act 102-0006

SB0072 Enrolled

LRB102 04343 LNS 14361 b

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Code of Civil Procedure is amended by changing Section 2-1303 as follows:

(735 ILCS 5/2-1303) (from Ch. 110, par. 2-1303)

Sec. 2-1303. Interest on judgment.

(a) Except as provided in subsection (b), judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VII of the Constitution, a school district, a community college district, or any other governmental entity. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment.

(b)(1) As used in this Section:

"Consumer debt" means money or property, or the equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a transaction in which property, services, or money is acquired by that natural person primarily for personal, family, or household purposes.

"Consumer debt judgment" means a judgment recovered in any court against one or more natural persons arising out of consumer debt. "Consumer debt judgment" does not include any compensation for bodily injury or death, nor any judgment entered where the debt is guaranteed by or contains a joint and several liability provision between a natural person and a business, whether or not that business is legally constituted under the laws of this State or any other state.

(2) Notwithstanding subsection (a), consumer debt judgments of \$25,000 or less shall draw interest from the date of the judgment until satisfied at the rate of 5% per annum.

(3) The judgment debtor may, by tender of payment of judgment, costs, and interest accrued to the date of tender, stop the further accrual of interest on the consumer debt judgment, notwithstanding the prosecution of an appeal, or other steps to reverse, vacate, or modify the judgment.

(4) This subsection applies to all consumer debt judgments entered into after the effective date of this amendatory Act of the 101st General Assembly.

(c) In all actions brought to recover damages for personal injury or wrongful death resulting from or occasioned by the conduct of any other person or entity, whether by negligence, willful and wanton misconduct, intentional conduct, or strict

liability of the other person or entity, the plaintiff shall recover prejudgment interest on all damages, except punitive damages, sanctions, statutory attorney's fees, and statutory costs, set forth in the judgment. Prejudgment interest shall begin to accrue on the date the action is filed. If the plaintiff voluntarily dismisses the action and refiles, the accrual of prejudgment interest shall be tolled from the date the action is voluntarily dismissed to the date the action is refiled. In entering judgment for the plaintiff in the action, the court shall add to the amount of the judgment interest calculated at the rate of 6% per annum on the amount of the judgment, minus punitive damages, sanctions, statutory attorney's fees, and statutory costs. If the judgment is greater than the amount of the highest written settlement offer made by the defendant within 12 months after the later of the effective date of this amendatory Act of the 102nd General Assembly or the filing of the action and not accepted by the plaintiff within 90 days after the date of the offer or rejected by the plaintiff, interest added to the amount of judgment shall be an amount equal to interest calculated at the rate of 6% per annum on the difference between the amount of the judgment, minus punitive damages, sanctions, statutory attorney's fees, and statutory costs, and the amount of the highest written settlement offer. If the judgment is equal to or less than the amount of the highest written settlement offer made by the defendant within 12 months after the later of the effective date of this amendatory Act of the 102nd General Assembly or the filing of the action and not accepted by the plaintiff within 90 days after the date of the offer or rejected by the plaintiff, no prejudgment interest shall be added to the amount of the judgment. For the purposes of this subsection, withdrawal of a settlement offer by defendant shall not be considered a rejection of the offer by the plaintiff. Notwithstanding any other provision of this subsection, prejudgment interest shall accrue for no longer than 5 years.

Notwithstanding any other provision of law, neither the State, a unit of local government, a school district, community college district, nor any other governmental entity is liable to pay prejudgment interest in an action brought directly or vicariously against it by the injured party.

For any personal injury or wrongful death occurring before the effective date of this amendatory Act of the 102nd General Assembly, the prejudgment interest shall begin to accrue on the later of the date the action is filed or the effective date of this amendatory Act of the 102nd General Assembly.

(Source: P.A. 101-168, eff. 1-1-20.)

Section 99. Effective date. This Act takes effect July 1, 2021.

Effective Date: 7/1/2021