

New House Bill Could Impact Personal Injury and Wrongful Death Actions in Illinois

Amundsen Davis Health Care Alert
January 18, 2021

On January 13, 2021, the Illinois Legislature passed House Bill 3360. Although the original purpose of the bill was to amend a statute relating to mortgage foreclosures and abandoned property, an amendment was added on January 11, 2021, to add prejudgment interest on all personal injury and wrongful death claims.

The bill awaits signing by Governor Pritzker, who has not given an indication as to whether he will sign or veto it. The bill provides that in all actions for personal injury or wrongful death, the plaintiff shall recover prejudgment interest on all damages awarded in a subsequent judgment, at the interest rate of 9% per annum. Under the amended bill, prejudgment interest will begin accruing on the date the defendant has notice of the injury. What constitutes “notice of the injury” will likely be the subject of some confusion, as the bill does not specifically define the term. This is in contrast to statutes in other states with prejudgment interest, some of which specify that accrual does not begin until formal written notice of a claim is tendered or until a complaint is filed. The Illinois statute would also appear to award prejudgment interest on awards for future damages, which other states have excluded from the prejudgment interest calculations. It also awards prejudgment and post-judgment interest at the same 9% per annum rate, while states like Missouri have lower rates for pre- compared to post-judgment interest accrual.

Under HB 3360, the “notice” date could be notice of an injury either from notice of the incident itself or from written notice. This could lead to confusion where an incident may not result in immediately apparent injuries, but instead the injuries develop later. Given the two year statute of limitations for personal injury and wrongful death claims, prejudgment interest could potentially accrue for years before a claim is filed; this is particularly worrisome for birth injury cases, which often are filed years after birth.

For personal injury or wrongful death actions occurring prior to the enactment of HB 3360, prejudgment interest will begin to accrue on the latter of the effective date of the act or the date the defendant has notice of the injury. Supporters of the act, including the Illinois Trial Lawyers Association, say the bill will ensure that defendants and insurers do not benefit from delaying resolution of meritorious

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claims. Supporters of civil justice reform and tort reform are asking Governor Pritzker to veto the bill and instead pass tort reforms similar to those in neighboring states.

If the bill is enacted, defendants should be mindful of the prejudgment interest accrual that will result from any delays in litigation caused by the plaintiff and seek to toll the accrual of interest when plaintiffs seek extensions of time to complete a task or amend their pleadings. Defendants should also be prepared to litigate the issue of when “notice of an injury” occurred in incidents where there was no immediately recognizable injury.

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