

# Pre-Judgment Interest Law Takes Effect July 1, 2021

*Amundsen Davis Alert*

June 2, 2021

Just ahead of the long Memorial Day weekend, Illinois Governor Pritzker signed into law a bill that allows a plaintiff to recover 6% per annum prejudgment interest in any personal injury or wrongful death lawsuit pending or filed in Illinois on or after July 1, 2021. The legislation amends section 5/2-1303 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1303) by adding a new section, section "c." The law applies to "all actions brought to recover damages for personal injury or wrongful death" whether by negligence, willful and wanton misconduct, intentional conduct or strict liability of the defendant, whether a person or entity. *Interest does not accrue, however on the amount of punitive damages, sanctions, statutory attorney's fees, and statutory costs.* If a plaintiff voluntarily dismisses the cause of 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. The accrual of prejudgment interest is capped at 5 years. Prejudgment interest does not accrue before a lawsuit is filed.

Prejudgment interest is applied when the plaintiff obtains a judgment in his/her favor. The court adds to the amount of the judgment the amount of prejudgment interest at a rate of 6% per annum from the date the lawsuit was filed to the date of judgment. The State, a unit of local government, a school district, community college district, or any other governmental entity is exempt from the prejudgment interest provisions.

Defendants may be able to mitigate the effects of this statute *by making written settlement offers within 12 months* of the filing of the lawsuit, or, for currently pending lawsuits, within 12 months after the effective date of the act. The plaintiff has up to 90 days to accept or reject the written offer. If the judgment is greater than the last written offer made within the 12 month period (and it is not accepted by the plaintiff), prejudgment interest only accrues on the difference between the judgment amount and the offer amount. Where the judgment amount is equal to or less than the amount of the highest written settlement offer made within the 12 month period, no prejudgment interest accrues. Withdrawal of an offer by the defendant shall not be considered a rejection of the offer by the plaintiff.

Illinois has historically encouraged settlements of lawsuits, and the amendment to section 2-1303 is consistent with that public policy. However, defendants may view this statute more as a club than a carrot, particularly in cases of high

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damages exposure and tenuous liability. This amendment is a deterrent to an aggressive defense of those types of cases. The statute may also hasten settlement where there are low limits of insurance coverage. This law may also curb motion practice, as defendants need to carefully consider the likelihood of successful, but protracted motion practice versus the need to aggressively pursue discovery within the first 12 months of litigation to be able to make a meaningful offer. The statute is also likely to generally lessen the number of trials and appeals. With this amendment, an unsuccessful defendant at trial will pay 6% prejudgment interest to the date of judgment, and thereafter, pay an additional 9% post-judgment interest.

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