

UPDATE: Prejudgment Interest Could Impact Personal Injury and Wrongful Death Actions in Illinois

Article

Amundsen Davis Health Care Alert

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UPDATE: On March 25, 2021, Governor Pritzker vetoed the original prejudgment interest bill, HB3660, and the Illinois Senate concurred on the new bill, House Amendment 2 to Senate Bill 72. Governor Pritzker's veto statement is available [here](#). That amendment will now be sent to Governor Pritzker. Although Pritzker has intimated that he intends to sign what has been hailed as a compromise bill, much of the defense bar remains opposed to this legislation. HA2 to SB72 will still increase the costs of personal injury litigation; one of the remaining key points of contention is that the amended legislation continues to permit prejudgment interest of 6% per annum to be accrued on non-economic damage awards such as pain and suffering. Amundsen Davis continues to strongly oppose this new legislation and will again be notifying the Governor of our continued ongoing objection to amended proposal.

On January 13, 2021, the Illinois Legislature passed House Bill 3360, which tentatively added prejudgment interest on all personal injury and wrongful death claims. Since then, the bill has been awaiting the signature or veto of Governor Pritzker, and numerous op-eds and other opinion pieces have been published by the plaintiff's bar, the defense bar, and the medical community regarding the potential ramifications of the bill. Amundsen Davis, along with other firms, also urged Governor Pritzker to veto the bill.

In response to Governor Pritzker's request that the bill's sponsors engage in discussions with the defense bar regarding how the bill could be amended to make the prospect of prejudgment interest fairer to defendants, the two sides have had a series of face-to-face communications.

As a result of these negotiations, the Illinois Trial Lawyers Association proposed an amendment to HB 3360 that addressed several of the defense bar's concerns with the bill. House Amendment 2 to State Bill 72 was passed by the Illinois House on March 18, 2021, and now awaits approval by the State Senate. The following key issues are addressed in the amendment.

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The effective date of the bill will now be July 1, 2021. The original bill specified that prejudgment interest would start accruing immediately after enactment of the bill. With the amendment, prejudgment interest will also begin to accrue on the date an action is filed, instead of on the date a defendant has “notice” of an injury. The prejudgment interest rate has been lowered from 9% per annum to 6% per annum, which brings it more into line with the national median for prejudgment interest statutes. For pending cases, interest will begin accruing on the later of the case filing date or the effective date of the act.

Equitable limitations have also been added to the bill, addressing concerns regarding plaintiff-driven delays. Prejudgment interest will not accrue between the time of a voluntary dismissal and a refiling of the case, and the total prejudgment interest accrual period in all cases is capped at 5 years. Settlement offers are also now given consideration in the bill. If a defendant makes a settlement offer within 12 months of the filing date, and the offer is not accepted by the plaintiff, then the prejudgment interest applies only to the difference between the highest written offer and the actual verdict (if the verdict is larger than the offer). If the judgment is less than the highest written settlement offer, no prejudgment interest will apply at all.

In light of these amendments, Governor Pritzker is now expected to veto House Bill 3360, as the amendment is a standalone bill not contingent upon signature of the original legislation. The amendment is expected to pass the Illinois Senate and be signed into law by Governor Pritzker.

Read Governor Pritzker's veto statement by visiting this website: https://cdn.ymaws.com/www.idc.law/resource/resmgr/advocacy/HB3360_Veto_by_Gov_Pritzker.pdf

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