



Client Alert

February 2021

New Prejudgment Interest Bill Waiting for Governor's Signature May Permit 9% Interest in All Personal Injury Cases

On January 13, 2021, the Illinois Legislature passed House Bill 3360, which, if signed into law by Governor Pritzker, will allow plaintiffs to recover prejudgment interest at a rate of 9% per year on all damages awarded in any personal injury or wrongful death case. This is a stark departure from current Illinois laws, which only allow prejudgment interest at a rate of 5% per year, and even then, only in contract cases or other cases where damages can be readily determined.

The bill has several notable features that, if enacted, are sure to be the target of much litigation. The first is that prejudgment interest begins to accrue when the defendant receives notice of the plaintiff's injury, either from the injury itself or by written notice, whichever is later. The two obvious triggers would be if a defendant immediately knows that his or her actions caused an injury, or when a defendant is served with a complaint or other demand notifying them of the injury. However, because the bill does not provide any definition of "notice," defendants can expect to litigate when "notice of injury" occurs when there is no immediately recognizable injury.

The second interesting aspect of the bill is that it will immediately apply retroactively to pre-existing personal injuries. Specifically, if the bill is enacted, for injuries or deaths occurring prior to the enactment date, prejudgment interest will begin to accrue on either the date the bill is enacted, or the date that the tortfeasor has notice of the injury, whichever is later.

Third, since the bill allows plaintiffs to recover prejudgment interest on *all* damages awarded by a court, plaintiffs would be able to recover interest on *future, unforeseeable* damages that are not directly for the underlying injury itself. This could include pain and suffering, lost wages, future medical costs, and other non-economic damages. In other words, since the bill broadly defines "damages," it seemingly permits interest to accrue on any damages that are directly *or indirectly* related to the underlying injury, and even if they are speculative at the time of injury.

Not surprisingly, this bill was pushed through by the Illinois Trial Lawyers Association. They argue that the bill will deter defendants from intentionally stalling or delaying cases that would be successful at trial. They also believe that the bill will encourage defendants to negotiate earlier and settle, rather than drag litigation out.

Organizations such as the Illinois State Medical Society, Illinois Defense Counsel, and several insurance company groups strongly oppose the bill due to its detrimental effects on the medical profession and small businesses. For example, these groups point out that having interest accrue from the date of injury will encourage plaintiff's attorneys to delay settlements or drag out litigation, since interest on the plaintiff's future award will continue to increase as negotiations or litigation are prolonged. To prevent plaintiff attorney abuse of this rule, it would be wise for defense attorneys to either enter agreements with opposing counsel or seek the court's permission to toll accrual of any prejudgment interest each and every time a plaintiff seeks an extension of time, amends the pleadings, or otherwise delays the litigation process. Further, when negotiating settlements, defendants and their attorneys will be required to add prejudgment interest into their valuation of what the injury claim is worth.

Several doctors have already written letters to Governor Pritzker begging him to veto the bill, and chastising the legislature for trying to pass a bill that could so dramatically affect the health care heroes who are working tirelessly to help people during these unprecedented times.

If passed, we expect that the new law will substantially increase damages awarded in medical liability cases. With a two-year statute of limitations for all medical malpractice cases, coupled with the massive delays and trial backlog caused by the COVID-19 pandemic, it is possible that an injury occurring today would not go to trial for more than 5 years, increasing any ultimate award by tens or hundreds of thousands of dollars. Similarly, a significantly injured minor child could wait until they reach the age of majority to file suit, allowing interest to accrue for years.

To date, the Governor has not given any indication whether he will sign or veto the bill, but he must act within 60 days after it was presented to him. Even if the Governor vetoes the bill, the legislature can override the veto with a 3/5 vote in both houses, although with election turnover, it is a slightly different legislature now than the one that passed the bill earlier this year. We note that Governor Pritzker has only vetoed a handful of bills since coming into office 2 years ago.

Illinois is already a challenging and expensive place for physicians to practice. If this bill passes, physicians may decide that they no longer want to work in Illinois and take their business elsewhere. Insurance premiums would likely increase for doctors who choose to stay, given that the risk of higher verdicts increases potential exposure. We will update you as we learn more about this bill, and are happy to answer any questions you may have.

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www.walkerwilcox.com

Questions? Contact us:
jkerman@walkerwilcox.com
kseay@walkerwilcox.com
kalt@walkerwilcox.com

Chicago Office
One North Franklin Street
Suite 3200
Chicago, IL 60606

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