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Bill adds 9% prejudgment interest to injury suits

By Marc Karlinsky
mkarlinsky@lawbulletinmedia.com

Update: This article was corrected to reflect the measure passed Wednesday. The author was up too late and lost track of what day it was. It has also updated a comment from Larry Rogers Jr.

Around 3 a.m. Wednesday, Illinois lawmakers passed a bill that will add prejudgment interest to personal injury lawsuits.

The measure, House Bill 3360, modifies the Code of Civil Procedure to add 9% annual interest to “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,” according to the bill.

The interest will start accruing “on the date the defendant has notice of the injury from the incident itself or a written notice.”

Actions for injuries that occurred before the bill takes effect — even currently pending suits — will also accrue the interest, but only starting at the law’s effective date.

Under the proposal, defendant government bodies would not be subject to the interest rule.

The bill also gives judges discretion to apportion the interest award between the plaintiff and state agencies.

Passed by both houses, the bill will next head to Gov. J.B. Pritzker to be signed into law.

HB3360 was sponsored in the Senate by President Donald F. Harmon, D-Oak Park. He filed the floor amendment Monday, and the body passed the measure the same day on a 38-17 vote.

In the House, its chief sponsor is Rep. Jay Hoffman, D-Swansea. The bill came up for floor debate during a marathon overnight session, as lawmakers stared down the adjournment of the 101st General Assembly at noon Wednesday.

Hoffman told lawmakers the bill is meant to “get litigation moving.”

“This proposal is a proposal that would actually speed up the court system, would be reasonable to injured individuals or individuals who actually lost their lives as a result of a negligent and/or strict-liability act or an intentional act.”

Rep. Deanne M. Mazzochi, R-Elmhurst, criticized the bill as imprecisely drafted and overly favorable to plaintiffs. Among her concerns: The accrual timing is not anchored to the statute of limitations.

Mazzochi said prejudgment interest laws in other states don’t allow for accrual to run as long, and she suggested the proposal be modified to “mirror” what is done elsewhere.

“I understand there are instances where defendants will delay litigation, and you don’t want to have that happen,” she said. “But I’m also not interested in giving potential plaintiffs a windfall where the interest award itself is larger than the underlying claim.”

Outside of her legislative role, Mazzochi is a partner at Rakoczy Molino Mazzochi Siwik LLP, where she handles intellectual property and commercial litigation.

“We already have a prejudgment statute for contracts, and it doesn’t go back anywhere close to what this is,” she told Hoffman. “You could have a situation where you experienced an injury in 1980, you don’t sue on it for 40 years later, say after we’ve passed this statute, and you would be entitled to 9% interest. Say you had an injury that was worth the equivalent of \$1,000, you’re going to get an interest award that massively outweighs what you actually could recover in a court of law.”

Rep. Daniel J. Ugaste, R-Geneva, said the new rules give plaintiffs an upper hand in negotiations.

“Couldn’t it also be used to inflate the settlement? By threatening the defendant that if you don’t settle for the amount I want, we could drag this on for years to come, go to court, I could get 9% per year on my money — which is very hard for people right now, I think you’d agree — and actually get more money instead of incentivizing a reasonable settlement.”

Hoffman downplayed the concern, arguing injured plaintiffs still won’t want the risk of leaving a trial empty-handed.

Ugaste, a shareholder at Nyhan Bambrick Kinzie & Lowry P.C. who defends employers in workers’ compensation cases, said it will add up even without deliberate stalling. He offered an example of a \$1 million judgment with prejudgment interest at \$90,000 per year.

“So that could be ... it takes five years to get to judgment date — which probably isn’t a short time at least in Cook County and maybe in other parts of the state — we’re talking almost \$450,000 on a million-dollar judgment.”

The vote passed with 69 in favor, 24 opposed and one representative voting present.

Larry R. Rogers Jr. of Power Rogers LLP, the president of the Illinois Trial Lawyers Association, said ITLA supported the bill.

“It’s important to note that 46 states have some form of prejudgment interest on the books,” he said in interview late Wednesday morning after the vote. “Illinois is one of only four states that has nothing as it relates to tort law claims.”

Rogers said prejudgment interest, like its 9% postjudgment interest counterpart, brings equity to plaintiffs who must wait years to be made whole.

“When a plaintiff sustains an injury or loses a loved one, the family most often experiences significant financial hardship because of the inability to work out medical bills, the loss of a major breadwinner.”

And Rogers said the extreme scenarios of interest eclipsing damages will be rare, because 97% of all cases filed settle, and the interest does not apply to settlements.

It's the lack of prejudgment interest under current law that incentivizes delay over resolution, he argued.

The state's defense bar expressed outrage over the bill.

Nicole D. Milos, assistant counsel at the American Association of Insurance Services in Lisle and president of Illinois Defense Counsel, said it's an inappropriate time to hurry such a proposal to the governor.

“The rushed status by which this has been introduced and is getting passed through — especially in light of our current events with the amount of focus we have seen in the last year with regard to racial injustice and civil unrest and illness and the pandemic — and this is what our Illinois legislature decides is a priority to pass through on an expedited basis,” she said in an interview Tuesday night. “I just have no explanation for it.”

She likened the timing of the bill to the passage of the six-person jury law in the January 2015 lame-duck session, seen as a gesture by then-speaker Michael J. Madigan and the Democratic caucuses in each chamber toward their political allies in the plaintiff's bar.

The Illinois Supreme Court struck down that law as unconstitutional in September 2016.

In the current bill, Milos said that the bill will harm businesses, medical practices and the entire insurance industry.

“We're supposed to create a system that is fair and balanced,” she said. “And this proposal is neither.”

Milos said the new rule doesn't match the realities of litigation.

“This proposal does not take into consideration the time delays that any attorney would properly take to investigate a claim before filing suit. It does not take into account the discovery process, which any reasonable attorney will undertake in order to understand the value and impact of a claim. It does not take into account the larger scope of the delays that may happen, such as what we're dealing with right now in the pandemic,” she said.

Defendants and their insurers will be “penalized” by pandemic-related delays completely beyond their control, Milos said.

“I expect that the financial implications of this are going to be long-reaching — it's going to impact both the businesses, the hospitals and the commercial entities the suits are filed against, it's going to impact the insurance companies' ability to provide coverage. I don't think it is accomplishing

the goals they are seeking. And more importantly, in an arena where we should be focused on fairness, it does not accomplish that.”

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