

## ANALYSIS OF ILLINOIS PREJUDGMENT INTEREST ACT

Effective July 1, 2021

### Summary

Recently, the State of Illinois legislature presented Governor J.B. Pritzker with Illinois Senate Bill 72, known as the Prejudgment Interest Act. This legislation amends **735 ILCS 5/2-1303** to add Section (c) to allow for prejudgment interest on all damages rendered in personal injury and wrongful death actions at a rate of six percent per year.

The Prejudgment Interest Act allows for the calculation of prejudgment interest to begin accruing in certain cases immediately on the effective date of July 1, 2021.

### Background

Until now, Illinois law did not recognize an award of prejudgment interest in actions based on personal injury or wrongful death. Rather, litigants that obtained a judgment were permitted to seek post-judgment interest at a rate of nine percent per year following the judgment. See **735 ILCS 5/2-1303**.

Earlier this year, Gov. Pritzker vetoed a similar bill presented by the Illinois House that attempted to impose prejudgment interest at a rate of nine percent per year which also permitted retroactive application of the new bill to then-pending cases. Following the Governor's publicized veto, Illinois lawmakers crafted a new bill, with a lower per annum prejudgment interest rate, with more specific application to currently pending actions, as well as carved out exceptions and/or set offs to appeal to the defense bar throughout the state.

### **735 ILCS 5/2-1303(c)**

The new section (c), known as the Prejudgment Interest Act, amends 735 ILCS 5/2-1303, and provides that in all actions seeking damages for personal injury and/or wrongful death, Plaintiff is permitted to recover prejudgment interest from a Defendant on any damages awarded by a jury at an interest rate of not more than six percent per year.

Notably, prejudgment interest will only be applied to judgments against Defendants rendered by a jury in personal injury and/or wrongful death actions. The Act does not allow for prejudgment interest on attorney fees awards, court costs, punitive damage awards or sanctions entered by the court.

By its terms, the Act sets forth the date on which an action is filed as the trigger point for application of prejudgment interest; however, for all cases pending prior to the effective date of July 1, 2021, prejudgment interest will begin to accrue on the effective date.

For example, for a personal injury action filed on September 1, 2021, the application for any prejudgment interest, if a jury enters a verdict against any Defendant, would begin on September 1, 2021. However, for all personal injury and/or wrongful death actions pending actions previously filed before July 1, 2021, any prejudgment interest would begin to accrue on the effective date of the Act, July 1, 2021.

Defendants are provided certain protections under the Act which will either preclude application of prejudgment interest against them or provide them with a setoff to minimize the inclusion of prejudgment interest. To encourage settlements, the Act provides a credit for early settlement offers, within twelve months of filing of the actions if after July 1, 2021, or within twelve months of the effective date of the Act for all pending actions.

In practice, this credit is akin to an offer of judgment. For example, a Defendant in a personal injury action extends a settlement offer of \$200,000 to Plaintiff within either one year from the date of filing of the action or within one year of the effective date of the Act (for those cases pending on July 1, 2021). At trial, the jury returns a verdict against Defendant and awards \$300,000 in damages. Defendant would only be required to pay prejudgment interest on \$100,000 of the award, receiving a setoff credit of the difference between its settlement offer and the ultimate verdict amount.

But what happens if Defendant conveys a settlement offer in excess of the jury award in total? Under this scenario, a Defendant offers \$200,000 to Plaintiff (within either one year from filing or one year from the effective date of the Act), and the jury returns a verdict awarding Plaintiff damages of \$175,000 as against that Defendant. Here, Defendant would not be required to pay any prejudgment interest as its offer exceeded the amount of the jury damage award.

There are various carved out exceptions as to the application of prejudgment interest altogether. Prejudgment interest will not be permitted as against the State of Illinois, any local governmental, school district, community college district or other governmental entities. Further, application of prejudgment interest will be tolled if plaintiff voluntarily dismisses an action.

Finally, prejudgment interest will be capped at a maximum of five years. Meaning that should any action remain pending for longer than five years, the maximum amount of prejudgment interest that can be assessed against a Defendant will be capped by a date certain of not more than five years from the date upon which Plaintiff filed the action, or five years from the effective date of the Act, if the action was already pending on that date.

## Going Forward

While there will now be prejudgment interest available against certain Defendants, those same Defendants can avoid maximum impact if they timely convey settlement offers within one year of filing or the effective date of the Act. It will be important to track deadlines to do so to ensure maximum protection against needless application of excessive interest, particularly in cases where liability is likely.

**Alan M. Bernover** focuses his practice on insurance defense litigation in the areas of construction negligence, catastrophic personal injury and wrongful death and commercial litigation relating to labor and employment disputes. He has extensive experience in professional malpractice including defending executives and employers, corporate and business litigation, products liability and trucking liability. Alan has represented clients in arbitrations and in numerous jury trials to verdict in state courts throughout Illinois.

---

Litchfield Cavo operates out of 22 offices, serving clients in more than 35 states nationwide.

**AZ** – Phoenix | **CA** – Los Angeles area | **CT** – Hartford area | **FL** – Ft. Lauderdale | **FL** – Tampa | **GA** – Atlanta  
**IL** – Chicago | **IN** – Highland | **LA** – New Orleans area | **MA** – Boston area | **MO** – St. Louis | **NJ** – Cherry Hill  
**NV** – Las Vegas | **NY** – New York | **PA** – Philadelphia | **PA** – Pittsburgh | **RI** – Providence | **TX** – Dallas-Ft. Worth  
**TX** – Houston | **UT** – Salt Lake City | **WI** – Milwaukee | **WV** – Barboursville