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## ILLINOIS LAW

### Pritzker Signs Unprecedented Prejudgment Interest Bill in Illinois into Law

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On May 28, 2021, Illinois' Governor J.B. Pritzker signed into law Senate Bill 72 as Public Act 102-0006. This amendment to the Illinois' judgment interest statute, 735 ILCS 2-1303, allows for prejudgment interest to be collected in Illinois on certain judgments at a rate of 6% annually. The amendment takes effect on July 1, 2021.

Under Public Act 102-0006, prejudgment interest will now be imposed on all actions brought to recover damages based on claims of personal injury or wrongful death with various limitations. The amendment applies to all such claims resulting from or occasioned by the conduct of any person or entity whether by negligence, willful and wanton conduct, intentional conduct, or strict liability. Prejudgment interest will not be imposed on any amount awarded by a jury for punitive damages, statutory attorneys' fees, statutory costs, or as a result of sanctions. The Act imposes prejudgment interest on awards for pain and suffering which often comprise a large percentage of any damage awards in actions for personal injury and wrongful death.

Per the Act, prejudgment interest will start to accrue on the date of filing for any new personal injury or wrongful death cases. The Act will not apply retroactively to cases that are currently pending in Illinois. For such cases, pre-judgment interest will begin to accrue on the effective date of the amendment, July 1, 2021. If a plaintiff voluntarily dismisses such a case, pre-judgment interest will not accrue during the time period between the entry of the voluntary dismissal and the time when the action is re-filed by the plaintiff. Prejudgment interest will accrue for a maximum of five years. A plaintiff may get up to 30% in pre-judgment interest added to any amount awarded by a jury at trial, a windfall unprecedented in Illinois.

Under the Act, any defendant affiliated with the State of Illinois or any local public entity is excluded from having to pay prejudgment interest. These entities include any unit of local government, school districts, or community college districts. The exclusion applies to cases involving allegations of both direct and vicarious liability against these organizations.

The amendment seeks to cap prejudgment interest where a defendant has made efforts to settle the litigation prior to the time of the

trial and related jury award with certain caveats. If a jury enters an award that exceeds the defendant's highest written settlement offer with that offer having been made in writing within 12 months of the effective date of the Act or the filing of the action, whichever is later, prejudgment interest shall accrue only on the difference between the amount of the awarded judgment and the amount of the settlement offer. This limitation applies to reduce prejudgment interest only when the settlement offer was rejected by the plaintiff within 90 days after the time when the offer was issued by the defense, or never formally accepted by the plaintiff. If the award as entered by a jury is equal to or lesser than such a written settlement offer, no prejudgment interest will be added to the jury award. Withdrawal of a written settlement offer by a defendant will not be deemed to be a rejection by the plaintiff.

The Act has drawn sharp criticism from the defense bar. It is viewed by defense attorneys as oppressive for defendants. The Act's settlement provisions require a defendant to make a written settlement offer within 12 months of the date of filing by the plaintiff in order to avoid or reduce prejudgment interest. These provisions fail to account for the fact that discovery is often needed after a suit is filed in order to allow defendants to accurately evaluate claims for personal injury and wrongful death prior to making a written settlement offer. The time required for a defendant to obtain the needed discovery to make an educated evaluation of a case prior to making a settlement offer can easily exceed the allotted period of 12 months specified in the Act, meaning the defendant will be unable to avoid the imposition of pre-judgment interest if a case proceeds to trial. The Act fails to address joint and several liability where multiple defendants may be found liable for damages by a jury. A plaintiff in such an instance may choose to collect the entire jury award from one or all of the defendants. It is unclear if a plaintiff will now be able to collect the pre-judgment interest in a similar manner.

The fact that the Act may force defendants to make hasty settlement offers in the interest of meeting the requirement of making an offer to settle within 12 months from the date of filing in an attempt to avoid or limit the imposition of pre-judgment interest is indisputable. The full impact of the Act will certainly become clearer after it goes into effect on July 1, 2021.

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