HOUSE BILL REPORT
ESB 6764

As Reported by House Committee On:
Judiciary

Title: An act relating to accrual of interest on judgments founded on tortious conduct.

Brief Description: Regarding accrual of interest on judgments founded on tortious conduct.

Sponsors: Senators Gordon, Pflug, Oemig, McCaslin, Kline and Hargrove.

Brief History:
Committee Activity:
Judiciary: 2/18/10, 2/22/10 [DPA].

Brief Summary of Engrossed Bill
(As Amended by House)

- Maintains the interest rate of 2 percentage points above the 26-week treasury bill rate on judgments founded on the tortious conduct of a public agency.
- Creates an interest rate of 2 percentage points above the prime rate for judgments founded on the tortious conduct of any individual or entity that is not a public agency.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Kelley, Kirby, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Ross and Warnick.

Staff: Rebecca Jones (786-5793) and Trudes Tango (786-7384).

Background:

Tort judgments accrue interest from the date of entry of the judgment at a rate prescribed by law. The maximum permissible interest rate under the general usury law is the higher of 12 percent or 4 percentage points above the equivalent coupon issue yield of the average bill

---

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

rate for 26-week treasury bills (T-bills). In 2004 the Legislature changed the interest rate on a tort judgment from the maximum permissible interest rate to a rate of 2 percentage points above the 26-week T-bill rate.

A public agency is defined as: (1) any state board, commission, committee, department, educational institution, or other state agency which is created by statute, other than courts and the Legislature; (2) any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington; (3) any sub-agency of a public agency which is created by statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies; or (4) any policy group whose membership includes representatives of publicly-owned utilities.

Summary of Amended Bill:

The interest rate on judgments arising from the tortious conduct of a public agency remains at 2 percentage points above the 26-week T-bill rate.

The interest rate on judgments arising from the tortious conduct of any other individual or entity is 2 percentage points above the prime rate.

The interest rates specified in the act apply to judgments entered on or after the effective date of the act as well as to judgments entered before the effective date that are still accruing interest.

Amended Bill Compared to Engrossed Bill:

The interest rate of 2 percentage points above the 26-week T-bill rate is applied to judgments arising from the tortious conduct of a public agency only. The engrossed bill applied the maximum permissible rate of 12 percent to entities other than public agencies, certain nonprofit and charitable organizations, and certain businesses. The section citing the act as the appellate congestion reduction act is removed. A section is added specifying that the act will apply to judgments entered on or after the effective date of the act and judgments entered before the effective date that are still accruing interest.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Until 2004, all defendants were equal when it came to interest on judgments, but in 2004 the Legislature gave a preferential interest rate to tort judgments. Some professional litigants, mostly insurance companies, have been playing the spread and using lower interest rates as an opportunity to make an investment for the pendency of the appeal. This investment strategy has made appeals more frequent, but no one should have justice delayed because a liable defendant files an appeal as an investment strategy. To fit with the bill's policy, the small businesses and nonprofits that employ fewer than 50 people should only be given the lower interest rate to the extent uninsured. There is a balance between creating incentives for appeals and chilling the exercise of the right of appeal and that balance is a matter of judgment. Those affected by this bill are liable defendants who chose not to settle and who lost at trial and on appeal. The people who are being affected by this so-called investment windfall are those who were injured, went through trial, had a verdict entered in their favor, and prevailed on appeal. Throughout that period they may have unpaid medical bills, and might be maxing out their credit card trying to pay rent. Washington is only one of a small handful of states that does not have pre-judgment interest.

(Opposed) The idea that insurers appeal based on investment decisions is inaccurate. The purpose of judgment interest should not be to reward the plaintiff and punish the defendant, but to preserve the value of the judgment during the pendency of the appeal. Judgment interest should be based on some appropriate sense of the time value of money. If the purpose is to compensate the creditor for the time during which he or she does not have use of the money, then statutes that set the interest rate nearest to the market rate best fulfill that purpose. As soon as a judgment is entered, insurers set resources into a reserve account. Those accounts are quite liquid and therefore have low rates of return. The defendant should not have to bear the burden when he or she wins on appeal. Between 2004 and 2009 one auto claims litigation center had 1,500 claims opened and closed, but only four were appealed. In 1983 when the floor on judgment interest was set at 12 percent, that rate was roughly equal to 4 percentage points above the T-bill rate, but now the T-bill rate is less than 1 percent so they are not close to equal. In 2004 the Legislature did what was appropriate by pegging the interest rate to a number that makes more than the market at the T-bill rate. This fairly compensates the plaintiff and does not penalize the defendant. Higher interest rates might prevent the defendant from exercising his or her right to appeal. This legislation creates inequality between various hospitals as some would get the lower public agency rate and others would fall under the higher default rate. The business community does not support this bill.

Persons Testifying: (In support) Senator Gordon, prime sponsor; and Larry Shannon, Washington State Association for Justice.

(Opposed) Mel Sorensen, Property Casualty Insurers Association of America; Jean Leonard, Washington Insurers and State Farm Insurance; Cliff Webster, Liability Reform Coalition; Kris Tefft, Association of Washington Business; and Tim Layton, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.