

SENATE BILL REPORT

ESB 6764

As Passed Senate, February 16, 2010

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: 2/03/10, 2/05/10 [DP, DNP, w/oRec].

Passed Senate: 2/16/10, 29-19.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Gordon, Hargrove and Kohl-Welles.

Minority Report: Do not pass.

Signed by Senator Carrell.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Lidia Mori (786-7755)

Background: In all tort and nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date the judgment is entered by the trial court until full satisfaction. In Washington, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, will bear interest from the date of entry of the judgment at two percentage points above the equivalent coupon issue yield of the average bill rate for 26 week treasury bills, as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry.

A public agency is defined in Washington statute as meaning (a) any state board, commission, committee, department, educational institution, or other state agency which is created by statute, other than courts and the legislature; (b) any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of

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Washington; (c) 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 (d) any policy group whose membership includes representatives of publicly owned utilities.

Summary of Engrossed Bill: Judgments arising from the tortious, or wrongful, conduct of a public agency bear interest from the date of entry of the judgment at 2 percentage points above the equivalent coupon issue yield of the average bill rate for 26 week treasury bills, as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry.

Judgments other than those founded on written contracts, judgments for unpaid child support that have accrued under a superior court order, and judgments founded on the tortious conduct of a public agency as defined in statute bear interest from the date of entry at a rate that does not exceed the higher of: (a) 12 percent per annum; or (b) 4 percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for 26 week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate.

A nonprofit, charitable organization or business employing fewer than 50 people will pay interest on judgments founded on tortuous conduct at a rate of 2 percent above the T-bill rate.

This act may be known and cited as the appellate congestion reduction act.

Appropriation: None.

Fiscal Note: Requested on February 2, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This section of the law was last amended in 2004. Its purpose is to deter frivolous appeals and provide recognition to injured persons who have to go through this process. Who is that? A person who has been injured due to someone's recklessness or negligent action, who had to bring an action that did not settle, had to go to trial, prevailed at trial, the case went up on appeal and the person prevailed on appeal, possibly even two levels of appellate action. During that time, there has been no payment for lost wages, medical bills, help to pay for a mortgage or rent. The interest on the person's maxed out credit card is likely far far higher than anything we're talking about today. Who might pay for this? The responsibility would fall to the entity that cause the injury, who failed to settle, went to trial and lost, then appealed and lost again. This is not a windfall, this is a person who is trying to dig himself out of a hole and put himself back together. Defense lawyers have talked specifically about being ordered to file an appeal

because on any market based return, it may not be 12 percent, but it is higher than 2.147 percent.

CON: In 2004, legislation eliminated the 12 percent interest rate for judgments arising from tortious conduct and set it at 2 percent over the treasury bill. Two percent over the T-bill rate makes the party who's waiting to be paid whole without punishing the one exercising the right to appeal. This bill negatively impacts equal access to justice. In a recent case, if this bill were in effect, her client would have had to pay an extra \$500,000 on the judgment. That kind of money makes it worthwhile for the plaintiff to keep fighting by bringing appeals and let the interest tick up. It is not true that defense attorneys are saying they are required to take frivolous appeals in order to pursue an investment outcome. The interest rate in statute now fairly compensates the plaintiff. A 12 percent interest rate would be a significant deterrent to filing appeals. There is time and thought put into filing an appeal due to the costs associated with appeals. If the interest rate is moved to 12 percent, there will be even fewer cases appealed. Many times there are meritorious cases that need to be appealed, and one reason is to improve case law.

Persons Testifying: PRO: Larry Shannon, WA State Assn. of Justice.

CON: Cliff Webster, WA Liability Reform Coalition; Emilia Sweeney, WA Defense Trial Lawyers; Tim Layton, WA State Medical Assn.