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## Judiciary Committee

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### ESSB 5456

**Title:** An act relating to unpaid accounts.

**Brief Description:** Concerning unpaid accounts.

**Sponsors:** Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Braun and Bailey).

#### Brief Summary of Engrossed Substitute Bill

- Amends the definition of "account receivable" for purposes of the six year statute of limitations.
- Defines "account receivable" for purposes of the statute governing prejudgment interest, and specifies when prejudgment interest begins to accrue in a variety of situations if there is no agreement setting forth the date on which the moneys become due.

**Hearing Date:** 3/16/17

**Staff:** Cece Clynch (786-7195).

#### **Background:**

##### Statutes of Limitation.

A plaintiff must commence an action within the statute of limitations (SOL) for that particular type of action or else the action is barred. The SOL for an action upon an "account receivable" is six years. For purposes of this SOL, an "account receivable" is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions, and whether or not earned by performance.

There are a variety of other statutes of limitation, including:

- three years for:

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1. an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
  2. waste or trespass upon real property; and
  3. an action for taking, detaining, or injuring personal property, including for recovery of the property.
- six years for:
    1. an action upon a contract in writing, or liability arising out of a written agreement; and
    2. the rents and profits, or for the use and occupation, of real estate.

### Prejudgment Interest.

Prejudgment interest is intended to make a plaintiff whole by compensating for the use value of damages incurred from the time of the loss until the date of judgment. A prejudgment award may be made when an amount claimed is liquidated or when the amount of an unliquidated claim is for an amount due upon a specific contract for the payment of money, and the amount due is determinable by computation with reference to a fixed standard contained in the contract, without reliance on opinion or discretion. For example, in a case involving repair damages, the claim was held to be liquidated even though the cost to repair was disputed.

Conversely, a prejudgment interest award is not available where the exact amount of the sum to be allowed cannot be definitely fixed from the data or facts proved, but depends upon the opinion or discretion of the trier of fact. An example of this can be seen in an unlawful termination case, where the plaintiff-employee was allowed to recover prejudgment interest and other benefits, since those could be determined with reference to a fixed standard, but not for pay raises that the plaintiff-employee might have received absent termination because the latter required the exercise of discretion.

Every loan or forbearance of money, goods, or thing in action bears interest at the rate of 12 percent per year where no different rate is agreed to in writing between the parties. If an agreement in writing between the parties provides for the payment of money at the end of an agreed period of time, or in installments over an agreed period of time, then the agreement constitutes a writing.

### **Summary of Bill:**

#### Statute of Limitation on an Account Receivable.

For purposes of the six year statute of limitations on an account receivable, the definition of "account receivable" is amended as follows:

- "[A]n account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions, whether or not earned by performance, whether or not reduced to oral or written contract, and whether or not disputed. "Account receivable" includes, but is not limited to, obligations for medical or other professional services, excluding obligations incurred through medical assistance programs administered by, and sought to be recovered by, the Department of Social and Health Services or the Health Care Authority, and damage to real or personal property pursuant to a residential or commercial lease agreement." (Underlining indicates new language.)

Prejudgment Interest.

For purposes of the prejudgment interest statute, the term "account receivable" has the same meaning as it has for purposes of the six year statute of limitations.

Where a forbearance concerns an account receivable, or goods or services that are not accounts receivable, the obligations are deemed liquidated. In the absence of an agreement which specifies the date on which the moneys become due, interest begins to accrue:

- on an account receivable, from the date of the last charge or transaction;
- on goods or services provided that are not accounts receivable, on the payment due date provided in any written invoice, bill, account statement, or other form of writing seeking payment; or
- on obligations for medical services, on the later of when the debt is transferred to a collection agency or 120 days from the date the medical service was rendered, provided that no interest may accrue or be charged on any portion of the obligation for medical services that is subsequently covered by charity care.

The act applies to all accounts receivable and goods and services that are not accounts receivable, whether or not they were in existence before or after the effective date. A federal severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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