

## Illinois Prejudgment Interest – June Update

Article By:

Melissa A. Murphy-Petros

---

Since January, we have been reporting on the Illinois General Assembly's legislative efforts to amend the Illinois [judgment interest statute](#), 735 ILCS 5/2-1303(a) (Section 1303), to impose prejudgment interest. On May 28, 2021, those efforts came to fruition when Governor J.B. Pritzker (D) signed Senate Bill 72 into law as Public Act 102-0006.

Pursuant to Public Act 102-0006, the Illinois judgment interest statute now imposes prejudgment interest in all actions brought to recover damages for personal injury or wrongful death as follows:

- Prejudgment interest will accrue “on all damages, except punitive damages, sanctions, statutory attorney’s fees, and statutory costs.”
- Prejudgment interest will begin to accrue “on the date the action is filed.” However, if the plaintiff voluntarily dismisses the action and refiles, “the accrual of prejudgment interest shall be tolled from the date the action is voluntarily dismissed to the date the action is refiled.”
- Prejudgment interest will be imposed at the rate of 6 percent per year and will not accrue “for longer than 5 years.”
- “[N]either the State, a unit of local government, a school district, community college district, nor any other governmental entity is liable to pay prejudgment interest in an action brought directly or vicariously against it by the injured party.”
- “For any personal injury or wrongful death occurring before the effective date of this amendatory Act” – July 1, 2021 – “the prejudgment interest shall begin to accrue on the later of the date the action is filed or the effective date of this amendatory Act.”

Finally, Public Act 102-0006 also includes provisions for capping prejudgment interest within the context of settlement offers:

- Where the judgment is *greater* than the defendant's highest written settlement offer made within 12 months after the filing of the action or the effective date of the bill (July 1, 2021), whichever is later, and that settlement offer either is not accepted or is rejected by the plaintiff within 90 days after the date of issuance, *prejudgment interest shall accrue only on the*

*difference between the amount of the judgment (minus punitive damages, sanctions, statutory attorney's fees and statutory costs) and the amount of the settlement offer.*

- Where the judgment is *equal to or less than* the defendant's highest written settlement offer made within 12 months after the filing of the action or the effective date of the bill (July 1, 2021), whichever is later, and that settlement offer is either not accepted or is rejected by the plaintiff within 90 days after the date of issuance, *no prejudgment interest shall be added to the judgment.*

To say that Public Act 102-0006 is problematic for defendants in Illinois is putting it mildly. For example:

- The Act imposes prejudgment interest on noneconomic damage awards for pain and suffering. Such awards can never be calculated with mathematical precision and often comprise the lion's share of a personal injury or wrongful death verdict.
- The Act can be read to apply to currently pending lawsuits.
- The Act does not address joint and several liability where liability is shared and a plaintiff may collect the total awarded damages from any or all defendants.
- The settlement provisions requiring a defendant to make a settlement offer within 12 months after suit is filed in order to reduce or eliminate prejudgment interest do not account for the fact that discovery is needed in order to propose a fair and realistic settlement offer, and discovery in complex cases can take up to 36 months as recognized by the Circuit Court of Cook County.