

SENATE BILL REPORT

SB 5059

As of January 15, 2024

Title: An act relating to prejudgment interest.

Brief Description: Concerning prejudgment interest.

Sponsors: Senators Kuderer, Trudeau, Conway, Nobles, Pedersen, Stanford, Valdez and Wellman.

Brief History:

Committee Activity: Ways & Means: 2/07/23, 2/23/23 [DPF, DNP]; 1/15/24.

Brief Summary of Bill

- Modifies the accrual date for interest on tort judgments for tortious conduct of public agencies, individuals, and other entities to the date the cause of action accrues with some exceptions.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators McCune, Torres, Wagoner and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

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

Majority Report: Do pass fail.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña and Wellman.

Minority Report: Do not pass.

Signed by Senators Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Torres, Van De Wege and Wagoner.

Staff: Trevor Press (786-7446)

Background: Torts Generally. A tort is a civil wrong in which a plaintiff seeks monetary compensation for harm to the plaintiff's person or property. Tort law includes actions based on negligence, intentional conduct, and strict liability. Damages that may be awarded to an injured plaintiff include both economic damages, such as lost earnings and medical expenses, and noneconomic damages, such as pain and suffering, and emotional distress.

Post-Judgment Interest. Under state law, interest on tort judgments accrues from the date of entry of the judgment at a rate specified in statute. In a case where a court is directed on review to enter judgment on a verdict, or where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed dates back and accrues from the date the verdict was rendered.

For the tortious conduct of a public agency, the post-judgment interest rate is 2 percent above the equivalent coupon issue yield of the average bill rate for 26 weeks of treasury bills.

For the tortious conduct of individuals and entities, the post judgment interest rate is 2 percent above the prime rate.

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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Interest on judgments for tortious conduct of public agencies, individuals, and other entities is modified to run from the date on which the cause of action accrues. This prejudgment interest applies only to arbitration awards and judgments entered following a trial of the matter. All other judgments founded on tortious conduct bear interest from the date of entry.

Interest on judgments for nonsexual abuse tortious conduct that occurred while a plaintiff

was a minor begins to run from the date the action is commenced, or the date the minor turns 18 years old, whichever is earlier, at the same rates as currently provided in statute.

Prejudgment interest does not begin to accrue on child sexual abuse claims until a notice of a claim is filed against a public agency defendant, or a cause of action is filed against a nonpublic agency defendant.

Future damages begin to accrue interest from the date of judgement.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Law & Justice) (Regular Session 2023): PRO: Currently, our law allows prejudgment interest only in contract cases and does not allow any when someone is hurt or killed by another's negligence. This bill seeks to fix that by adding prejudgment interest from the date the cause of action occurs which is already allowed in 46 other states. This is a victims rights bill. In many cases, there is no incentive for the defendant and the insurance company to settle. In catastrophic cases, insurance companies know they are going to pay the limits, but rather than doing that, they invest money in interest bearing accounts to lessen their loss at the expense of victims who are frequently harassed by medical bill collectors or are forced to spend down into poverty to qualify for Medicaid to get the medical care they need. This bill holds people, businesses, and public agencies fully accountable when they harm another person. This is a missing piece of the justice system in the state of Washington. This bill will help support clearing court backlogs.

CON: There is a fundamental right for a defendant and plaintiff to have their case heard in front of a jury. To take that away or pressure a defendant to settle is a challenge. This bill will disincentivize speedy settlements. This bill takes away discretion from judges and mandates back interest be paid on damages in situations where it is not needed. Last year, there was language in this bill exempting school districts and public agencies but that is not there this year. The language in this bill does not work for school districts. Nonprofits will have less resources to serve their clients. Nonprofits already have incentives to quickly settle claims. There is a public trust and faith from the community in what they do. Fewer insurers will want to engage with and do business with cities in Washington State. More taxpayer resources will be spent on increasing insurance demands.

OTHER: Please amend this bill to exempt nonprofits from prejudgment interest. Charitable organizations in Washington face increasing demand while costs are rising and

contributions are falling. 21 percent of nonprofits in our state and 40 percent of BIPOC-led charities cited insurance costs as a major barrier. Insurance costs are rising an average of 10 to 30 percent annually for nonprofits over the past few years. Increasing this liability will further restrict those organizations' ability to serve. Charities who are already strapped with unique hurdles in the form of contract stipulations such as paying on a reimbursement basis, only providing funding for a portion of the cost of contracted programs, and not paying overhead costs. Exempting nonprofits from an additional costly mandate would help the 25,000 nonprofit organization in Washington State. This bill will take food out of people's mouths; remove opportunity for academic success and workforce development; and keep people unsheltered, unsupported, and without access to basic needs.

Persons Testifying (Law & Justice): PRO: Senator Patty Kuderer, Prime Sponsor; Nate Roberts, Washington State Association for Justice; Colleen Durkin Peterson, Washington State Association for Justice; Darrell Cochran, Washington State Association for Justice; Crystal Rutherford, Excelsior Law PLLC.

CON: Tyna Ek, Washington Schools Risk Management Pool; Mike Hoover, Washington State Association of Counties and the Washington State School Directors' Association; Derek Bryan, Washington Counties Risk Pool; Gregory Narver, General Counsel, Seattle Public Schools; Sandy Hayes, Washington State School Directors' Association / Northshore SD; Ron Mabry, Washington State School Directors' Association / Kennewick SD; Cindy McMullen, Washington State School Directors' Association / Central Valley SD; Kris Tefft, Washington Liability Reform Coalition; Michael Heinisch, Non Profit Insurance Program Board of Directors; Karl JOHANSON, NPIP; Mark Sektnan, APCIA; Sean Graham, Washington State Medical Association (WSMA); Sophina Nunez; Charlie Brown, The Schools Alliance; Robert Christie; Elizabeth Perez, Nonprofit Association of Washington - Equity Ambassador based in Whitman County; Candice Bock, Association of Washington Cities; Anita Waller, Ephrata School District Board of Directors.

OTHER: Anne Anderson, Nonprofit Association of Washington.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means) (Regular Session 2023): PRO: Prejudgment interest is a tool that can be used to settle cases. The scope of cases under this bill has been adjusted and it would only apply to 2-3 percent. People have been sitting on their injuries for 3-6 years, and this bill is a way to recognize it as 46 other states do.

CON: Schools should be exempt from the scope of this bill. At least 85 school districts are opposed to it. School districts will face much higher settlement demands, and this new multi-million-dollar burden will take away from the resources directed to children. It will also add an additional 40 percent interest cost to every nonprofit in the state, penalizing them for factors that are outside of their control. This statute violates the 1986 Supreme Court decision for Washington judges to award pre-judgement interest in tort claims. This is

meant to encourage early settling on cases, but this bill will defeat its own purpose as it may lead to cases being drawn out longer to get interest. This bill is not the right answer for jammed courts. The correct remedy is to instead fully fund the courts.

OTHER: Nonprofits should be exempt from this bill as they face increased demands while costs rise. 21 percent of nonprofits and 40 percent of BIPOC led charities have cited insurance costs as a barrier. Increasing this liability will further restrict their ability to serve.

Persons Testifying (Ways & Means): PRO: Darrell Cochran; Colleen Durkin Peterson, Washington State Association for Justice; Larry Shannon, Washington State Association for Justice; Marshall Casey, Washington State Association for Justice.

CON: Tyna Ek, Washington Schools Risk Management Pool; Grace Yuan, Puget Sound School Coalition; Alex Hur, Schools Insurance Association of Washington/Non Profit Insurance Program; Gregory Narver, General Counsel, Seattle Public Schools; KARL JOHANSON, NPIP; Madelyn Carlson, Non-Profit Insurance Program; Laura Pierce, Nonprofit Association of Washington; Mike Hoover, Washington State School Directors' Association and Washington State Association of Counties; Derek Bryan, Washington Counties Risk Pool; Candice Bock, Association of Washington Cities; Sandy Hayes, Washington State School Directors' Association; Ron Mabry, Washington State School Directors' Association; Cindy McMullen; Sean Graham, Washington State Medical Association (WSMA); Bob Christie, Washington Defense Trial Lawyers Association; Mark Sektnan, American Property Casualty Insurance Association; Kris Tefft, Washington Liability Reform Coalition; Suzanne Hanson, Washington Federation of Independent Schools; Michael Heinisch, Non Profit Insurance Program Board of Directors; Charlie Brown, Pierce County Superintendents, Federal Way SD, School Coalition.

OTHER: Anne Anderson, Nonprofit Association of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means):

No one.

Staff Summary of Public Testimony On Proposed Substitute (Ways & Means) (Regular Session 2024): PRO: Interest involves a debt. When the jury renders its award, they give compensatory damages which are the damages actually suffered from that injury. Individuals have not had use of the money that is due to them before it is given to them and still have had their harm through the whole time they had to wait for their money. Banks and credit card companies get prejudgment, injured parties also deserve this right. There is currently no incentive to move cases along. This bill would prevent delays to trials. The cost of injury producing negligence should be paid by the negligent party. Washington is an outlier in not applying prejudgment interest. This bill will likely produce savings for defendants. Forty-six other states have some form of prejudgment interest. Washington does not have any form of prejudgment interest and this bill would put Washington in the middle of all states. It take about four years to get to trial and the injured person bears this

cost without compensation. This bill removes incentives for delays and evens the playing field.

CON: Cities are sensitive to liability issues and have seen significant increases to liability insurance. Washington is already difficult when it comes to liability insurance. There are no caps on rewards. Cities would not have any positive impact from this bill. Individuals who receive funds are already being compensated fairly. Prejudgment claims are above and beyond fair compensation and cannot be controlled. Insurance costs are high already and would only increase with the passage of this bill. Medical malpractice actions can be complex and take a lot of time to move through the system. This would make independent practice more difficult in the state because malpractice insurance costs would increase so much. If this bill advances, please exempt medical practices. Damages are not decided until the end of litigation and therefore allow judges to account for time. This bill removes the discretion from judges. The time that a judgement takes is not decided by either party and cannot be attributed to them. This proposal tilts the playing field against defendants to be able to put on a defense. This would add pressures to the liability system and would increase premiums. Claims take years and this bill would reward a plaintiff for being in a trial longer and delaying a case. Any amount being set aside is not earning interest. When an insurance company has a case before them, they must hold funding reserve. This bill will apply to every court case in Washington. Cases are on backlog and it takes a long time between filing a case and getting to trial. This will increase the exposure of insurance companies and will cause insurance companies to stop providing insurance in the state. Please put a medical malpractice exemption back in the bill. Controlling health care costs has been a priority of this legislature but this bill puts new costs on the health care system. This bill tilts the legal landscape toward trial lawyers. The time value of money is already a part of the jury's judgment. This bill is bad for insurance and will have a direct impact to health care costs. Will increase risks and exposures and will result in higher malpractice premiums. It is in the consumer's best interest to keep premiums sustainable

OTHER: The runway on cases involving children can be very long and this proposed substitute addresses these cases. The bill also addresses future liability. The risk pool will be neutral on this bill if it does not change. Please exempt schools. The interest rate would be high for public agencies and could have a very high cost for school districts. Increased cost for insurance leads to fewer services being provided. The proposed sub addresses some concerns.

Persons Testifying (Ways & Means): PRO: Senator Patty Kuderer, Prime Sponsor; Marshall Casey, Washington State Association for Justice; Colleen Durkin Peterson, Washington State Association for Justice; Todd Nichols, Washington State Association for Justice; Larry Shannon, WA State Association for Justice.

CON: Candice Bock, Association of Washington Cities; Mike Hoover, Washington State Association of Counties; Derek Bryan, Washington Counties Risk Pool; Mark Sektnan, American Property Casualty Association; Bob Christie, Washington Defense Trial Lawyers

Association; Bob Battles, Association of Washington Business; Kris Tefft, Washington Liability Reform Coalition; Sean Graham, WA State Medical Assn; Cara Helmer, Washington State Hospital Association; Anne Bryant, Physicians Insurance.

OTHER: Alex Hur, WA Schools Risk Management Pool, Schools Insurance Association of Washington, USIP; Pete Talevich, Puget Sound School Coalition; Karl Johanson, Non Profit Insurance Program.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.