SFA BILL ANALYSIS
Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373 5383

Senate Bill 226 (as reported without amendment)
Sponsor: Senator Frederick Dillingham
Committee: Commerce

Date Completed: 5-8-87

RATIONALE

Public Act 178 of 1986 requires that interest on a money judgment recovered in a civil action be calculated at six-month intervals at a rate equal to 1% plus the average interest rate paid on five-year U.S. treasury notes. For cases filed before 1987, however, interest is calculated from the filing of the complaint to the satisfaction of the judgment at an annual rate of 12%; but if the judgment is on a written instrument having a higher interest rate, interest is calculated at the rate specified in the instrument if the rate was legal when the instrument was executed, but may not exceed 13% after the date of judgment. Since Public Act 178 was part of a larger package of tort reform, some people claim that the pre-1987 rate should be restored for written instruments, which are not otherwise governed by tort law. It also is claimed that the new rate gives debtors an incentive to default on written instruments carrying a higher interest rate than that allowed under the new rate.

CONTENT

The bill would amend the Revised Judicature Act to establish a 12% annual rate on prejudgment and postjudgment interest on written instruments for cases filed on or after January 1, 1987, unless the instrument had a higher rate of interest. Interest would have to be calculated from the date the complaint was filed to the date the judgment was satisfied at the rate of 12% per year compounded annually. If the instrument had a higher rate, interest would have to be calculated at the rate specified in the instrument if the rate were legal at the time the instrument was executed. The rate could not exceed 13% per year compounded annually after the date judgment was entered.

MCL 600.6013

FISCAL IMPACT

The bill would have no fiscal impact on the State or local government.

ARGUMENTS

Supporting Argument

The bill would correct what some people consider an oversight in the passage of Public Act 178 of 1986. Rather than creating an entirely new interest rate for judgments on written instruments, the bill simply would reinsert the pre-existing rate for written instruments. Along with various other bills, Public Act 178 was designed to address issues pertaining to tort cases, not contract or consumer law. Because the interest rate for written instruments was intermingled with the rate for tort actions, however, the 1986 Act revised the rate for both types of actions. The bill would merely separate the rates and restore the previous rate for actions on a written instrument.

Opposing Argument

Some have expressed a concern about the interest rate that should apply during the period between the time a party makes a settlement offer and the time of judgment. Setting an interest rate above that currently allowed (which is approximately 7.5%) could give creditors an incentive not to settle, in order to reap additional interest income on the amount of damages.

Response: Without the bill, on the other hand, debtors may be encouraged to default on their instrument, in order to be assessed an interest rate lower than that specified in the contract.

Opposing Argument

By allowing a different interest rate only if a written instrument had a higher rate, the bill actually could increase the rate above that specified in an instrument that had a rate lower than the current rate. That is, if an instrument carried a 9% interest rate, for example, the rate on a judgment on the instrument between the time of filing the complaint and satisfaction of the judgment would be raised to 12%.

Response: While it is true that the bill could have this result, it is highly unlikely. The type of loans that the bill typically would affect are unsecured consumer loans, such as credit cards whose interst rate is commonly 18% or above, rather than large secured loans, such as mortgages, that might carry an interest rate below 12%. Further, in the case of a secured loan, the lender usually pursues the collateral, not the debt.

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