



**House
Legislative
Analysis
Section**

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**JUDGMENT INTEREST RATES ON
WRITTEN INSTRUMENTS**

**House Bill 5585 (Substitute H-1)
First Analysis (2-12-02)**

**Sponsor: Rep. Andrew Richner
Committee: Civil Law and the Judiciary**

THE APPARENT PROBLEM:

Public Act 175 of 2001, which revises a provision of the Revised Judicature Act that pertains to the calculation of interest on money judgments in civil actions, will take effect on March 22, 2002. However, the act contains several provisions regarding complaints filed between January 1, 1987 and July 1, 2001. Since the act will take effect at a later date than was originally anticipated, the inclusion of the July 1, 2001 dates would now make the act retroactive, rather than prospective, as apparently intended. Legislation has been offered to change the July 1, 2001 date to July 1, 2002.

Public Act 175 addressed a rather complex issue. The Revised Judicature Act (RJA) provides for the calculation and payment of interest on money judgments in civil cases. (See BACKGROUND INFORMATION.) With regard specifically to complaints filed on or after January 1, 1987, if a judgment is rendered on a "written instrument," a 12 percent interest rate (calculated from the date the complaint is filed to the date the judgment is satisfied), compounded annually, is applied, unless the instrument has a higher rate of interest, in which case the higher rate would be applied to the judgment. The law does not define "written instrument," but a 1998 state supreme court decision upheld a lower court's finding that an insurance contract was a "written instrument" and, therefore, subject to the law's 12 percent interest rate. (See *Yaldo v North Pointe Insurance Company*, 457 Mich 341.)

In contrast to this 12 percent interest rate, another subsection of the RJA calculates interest on money judgments recovered in civil actions for complaints filed on or after January 1, 1987 at six-month intervals from the date the complaint is filed at a rate of interest equal to one percent above the average interest rate of five year United States treasury notes during the six months immediately preceding July 1 and January 1, compounded annually. This interest rate fluctuates, but generally is substantially less than

12 percent. For example, the statutory interest rate as based on Treasury bill notes for July 1, 2000, was 7.473 percent; and the rate for January 1, 2001, had dropped to 6.965 percent.

Insurance companies, whose written instruments (such as insurance contracts) generally do not have specified interest rates, believe that the current 12 percent interest rate is too high. In early 2001, legislation was introduced, in effect, to reverse the *Yaldo* decision. House Bill 4448, which became Public Act 175 of 2001, will take effect March 22, 2002 and will allow written instruments that do not have any evidence of indebtedness with a specified rate of interest (e.g., an insurance contract) to have the interest on a money judgment calculated at the rate based on the five-year Treasury bill notes. However, various provisions in P.A. 175 are dependent upon a July 1, 2001 date; these dates need to be changed, therefore, so that the act's provisions would not be retroactive in nature.

THE CONTENT OF THE BILL:

Public Act 175 of 2001 amended the Revised Judicature Act to revise how interest is calculated on money judgments in civil cases. Under the 2001 legislation, which is to take effect March 22, 2002, interest on judgments involving written instruments (such as contracts) will be calculated as follows:

- For a complaint filed on or after January 1, 1987, but before July 1, 2001, a judgment will be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12 percent per year compounded annually. If the instrument has a higher rate of interest, interest will be calculated at the higher rate (as long as the rate was legal at the time the instrument was executed); but, once the judgment is entered, the rate cannot exceed 13 percent per year compounded annually. House Bill 5585 would change the July 1, 2001 date to July 1, 2002.

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• For a complaint filed on or after January 1, 1987, but before July 1, 2001, if a final, nonappealable judgment has not been rendered by July 1, 2001, and if the written instrument does not evidence indebtedness with a specified rate of interest, interest on a judgment will be calculated at the rate based on the five-year Treasury notes. House Bill 5585 would change the two July 1, 2001 dates to July 1, 2002. (Complaints filed after July 1, 2002 that do not evidence indebtedness with a specified rate of interest will also be calculated based on the Treasury notes. Further, though “evidencing indebtedness” is not defined in P.A. 175, it is generally accepted to apply to credit transactions such as car purchases, credit card accounts, and retail purchases for which a loan with a specified rate of interest applies. Therefore, a written instrument that does not evidence indebtedness would apply to, among other things, insurance contracts.)

• For a complaint filed on or after July 1, 2001, a judgment on a written instrument that evidences indebtedness with a specified interest rate will be calculated from the date of filing to the date of satisfaction of the judgment at the rate specified in the instrument (as long as the rate was legal at the time of execution); but, once the judgment is entered, the rate cannot exceed 13 percent compounded annually. House Bill 5585 would change the July 1, 2001 date to July 1, 2002. The bill would also delete the phrase “compounded annually” so that the pre- and post-judgment interest rate would not differ. Further, the bill would specify that if the rate in the written instrument were a variable rate, interest would be fixed at the rate in effect under the instrument at the time the complaint was filed.

MCL 600.6013

BACKGROUND INFORMATION:

The “(pre)judgment interest statute.” Section 6013 of the Revised Judicature Act (RJA) sometimes is called “the (pre)judgment interest statute.” As originally written, this section of the RJA (Public Act 236 of 1961) provided for a “post judgment” interest rate of 5 percent on money judgments in civil actions, unless the judgment were rendered on a written instrument having a higher specified rate of interest. In these cases, the higher rate of interest was used, though the maximum interest rate was capped at 7 percent.

In 1965, Public Act 240 amended the RJA to require that interest be calculated from the time of the filing of a complaint, rather than from the time the judgment was rendered. That is, the interest rate was

calculated before the judgment was rendered, which is why this section of the RJA often is called “the *prejudgment* interest statute.” The prejudgment interest rate stayed at 5 percent until 1972, when Public Act 135 increased it by one percent to 6 percent. Eight years later, in the midst of the then-current high market rates of interest, Public Act 134 of 1980 rewrote section 6013. Among other things, the 1980 amendment increased the prejudgment interest rate from 6 percent to 12 percent for complaints filed after June 1, 1980, unless the judgment were rendered on a written instrument with a specified interest rate higher than 12 percent annually. Again, the maximum prejudgment interest rate for written instruments with a specified interest rate was capped, this time at 13 percent. (See the House Legislative Analysis Section’s analysis of enrolled Senate Bill 324, dated 5-27-80.)

In 1986, as part of a “tort reform” package that set the judgment interest in tort actions at one percent over the five-year U.S. Treasury bill rate, legislation also amended the RJA to eliminate the 12 percent prejudgment interest rate as of January 1, 1987. However, the elimination of the 12 percent prejudgment interest rate was almost immediately reversed by Public Act 50 of 1987, which reinstated the 12 percent rate for judgments rendered on complaints filed on or after January 1, 1987.

U.S. Treasury bill note interest rates. According to a chart in the February 2001 *Michigan Bar Journal*, interests rates for money judgments, as based on treasury bills (plus one percent added interest) and calculated at six-month intervals from the date of filing, ranged from a low of 6.025 percent in January 1994 to a high of 10.105 percent in July of 1989. As of January 1, 2001, the interest rate was 6.965 percent.

Provisions of Public Act 175. The bill, which takes effect March 22, 2002, amended the Revised Judicature Act (RJA) to eliminate – as of July 1, 2001 – the current 12 percent interest rate on judgments involving written instruments without specified interest rates that do not evidence indebtedness. Public Act 175 instead calculates the interest rate in such cases under existing provisions of the act involving five-year Treasury bill notes.

However, Public Act 175 will allow the current 12 percent interest rate for final, nonappealable judgments rendered on written instruments that did not have specified interest rates if the complaint had been filed between January 1, 1987, and July 1, 2001, and a final, nonappealable judgment had been

rendered by July 1, 2001. Judgments on written instruments with specified rates of interest will still be calculated at that specified rate of interest.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local units of government. (2-8-02)

ARGUMENTS:

For:

Where Public Act 175 of 2001 revised several provisions of a complicated section of law, House Bill 5585 is fairly straightforward. The bill would change several July 1, 2001 dates contained in Public Act 175 to July 1, 2002. If House Bill 5585 is not enacted prior to March 22, 2002 (when P.A. 175 takes effect), the revisions of P.A. 175 will retroactively apply to complaints filed before, on, and after July 1, 2001. Since House Bill 4448, which became P.A. 175, was introduced on March 8, 2001, it would appear that the July 1 dates meant that the bill's provisions were prospective in nature, and not intended to apply retroactively. However, the bill did not move through the Senate as quickly as anticipated, and, perhaps inadvertently, the July 1, 2001 dates did not get changed. Therefore, the date change provided in House Bill 5585 represents a technical change so that the provisions of P.A. 175 would apply after the act's effective date.

Response:

Even if House Bill 5585 moves through the legislative process quickly, receives immediate effect, and is signed into law by the governor prior to March 22, 2002, wouldn't the provisions of P.A. 175, which will take effect on March 22, supercede the corrective provisions in House Bill 5585?

Rebuttal:

According to the official compiler of the state's laws, the later enactment of House Bill 5585 would supercede Public Act 175, which has an earlier enactment date of December 12, 2001. Even if P.A. 175 has a later effective date, it is the enactment date that would control.

For:

One of the revisions of P.A. 175 was to specify that for those complaints filed after July 1, 2001, if a judgment was rendered on a written instrument that evidenced indebtedness with a specified interest rate, interest would be calculated at the rate specified in the instrument. However, it has become apparent that many written instruments, particularly involving

credit cards and car loans, base the interest charged on variable rates. Since the interest on a money judgment is calculated from the day a complaint is filed to the day that the judgment has been paid in full, the time period can cover many years, especially if the case is appealed by one of the parties. Trying to accurately calculate a changing interest rate over a period of time is difficult, if not impossible.

House Bill 5585 would remedy such a scenario by specifying that – after July 1, 2002 – the interest on a money judgment involving a written instrument with a variable rate of interest would have the rate of interest fixed at the interest rate in effect on the day the complaint was filed. Further, P.A. 175 specified that once a judgment was entered, the interest rate could not exceed 13 percent compounded annually. This means that the interest before the judgment was entered could be calculated at a rate higher than 13 percent; thus, the pre-judgment interest rate could differ from the post-judgment interest rate. To avoid difficulties in calculating the interest, and to protect the consumer from rates higher than 13 percent, House Bill 5585 would revise this provision so that neither the pre- nor the post-judgment interest rate could exceed 13 percent.

POSITIONS:

The Michigan Retailers Association supports the bill. (2-12-02)

The Michigan Creditors Bar Association supports the bill. (2-12-02)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.