Aida S. Montano *Legislative Service Commission*

Sub. H.B. 212

125th General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. Seitz, McGregor, Setzer, Cates, C. Evans, Wagner, Schmidt, Gilb, Husted, Williams, Blasdel, Wolpert, Schneider, Faber, Driehaus, Webster, Gibbs, Reidelbach, Raussen, Collier, G. Smith, Latta, Widener, Harwood, Book

BILL SUMMARY

- Modifies the statutory rate of interest to which a creditor is entitled when money becomes due and payable upon instruments in writing, book accounts, settlements between parties, verbal contracts, and judgments, decrees, and orders for the payment of money arising out of tortious conduct or a contract or other transaction, unless a written contract provides a different rate of interest.

- Provides that the statutory rate of interest to which a creditor is entitled as described in the preceding dot point is to be determined by the Tax Commissioner based upon the federal short-term rate, instead of ten per cent per annum, unless a written contract provides a different rate of interest, and requires the Tax Commissioner to notify in writing each county auditor of the rate of interest per annum as determined.

- Requires a county auditor to notify in writing the clerk of the court of common pleas of the county and the clerk of each municipal and county court in the county of the rate of interest per annum and requires the clerk of each of those courts to post the rate of interest in or near the clerk's office.

- Specifies that the applicable postjudgment rate of interest is the rate as determined that is in effect on the date the judgment, decree, or order is rendered and that that rate remains in effect until the judgment, decree, or order is satisfied.

- Modifies the computation of the period for which prejudement interest is due on a judgment, decree, or order for the payment of money in a civil action based on tortious conduct that has not been settled by agreement of the parties if the court determines that the party required to pay failed to make a good faith effort to settle the case and the party to whom the payment is to be made did not fail to make a good faith effort to settle the case.

- Precludes a court from awarding interest under the bill on future damages that are found by the trier of fact.

- In any tort action to which the existing statutes on payment of certain amounts of future damages do not apply, if a plaintiff makes a good faith claim against a defendant for future damages and if the verdict is in favor of the plaintiff, requires the trier of fact to specify in the written interrogatories or findings of fact both the past damages and future damages recoverable by the plaintiff.

- Shortens the period of limitations for bringing an action to revive a dormant judgment and precludes the accrual of interest from the date a judgment becomes dormant to the date the judgment is revived.

CONTENT AND OPERATION

Statutory rate of interest

Existing law

Under existing law, in cases other than those provided for in R.C. 1343.01 and 1343.02 (see **COMMENT** 1), when money becomes due and payable upon any bond, bill, note, or other instrument of writing, any book account, or any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate of *ten per cent per annum, and no more*, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract (R.C. 1343.03(A)). (See **COMMENT** 2.)

Operation of the bill

The bill modifies the statutory rate of interest per annum that a creditor is entitled to as described in the preceding paragraph. Under the bill, in cases other than those provided for as described in **COMMENT** 1, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, any book account, or any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest *at the rate per annum determined pursuant to R.C. 5703.47 (calculation of interest at the federal short-term rate as described in the following paragraph)*, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum must be provided as described in the second preceding paragraph. (R.C. 1343.03(A).)

R.C. 5703.47, referred to in the bill, requires the Tax Commissioner, on October 15 of each year, to determine the "federal short-term rate" (defined as the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code of 1986, 26 U.S.C.A. 1274, for July of the current year). R.C. 5703.47 further provides that for purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by that section (e.g., R.C. 1343.03, as amended by the bill), the rate determined by the Tax Commissioner, rounded to the nearest whole number per cent, plus three per cent must be the interest rate per annum used in making the computation for interest that accrues during the following calendar year.

The bill requires the Tax Commissioner, within ten days after the interest rate per annum is determined as described in the preceding paragraph, to notify the auditor of each county in writing of that rate of interest. Within ten days after receiving that notification, the auditor must notify in writing the clerk of the court of common pleas and the clerk of each municipal court and county court in the county of that rate of interest. Upon receiving the notification from the county auditor, the clerk of a municipal court, a county court, or the court of common pleas, as the case may be, must post or cause to be posted notice of the interest rate per annum in a conspicuous and public location in or near the office of the clerk of the particular court in the courthouse or building in which that court is located. (R.C. 319.19, 1901.313, 1907.202, 2303.25, and 5703.47(C).)

Computation of postjudgment interest

Existing law

Under existing law, generally, interest on a judgment, decree, or order for the payment of money in a civil action *based on tortious conduct*, including, but not limited to a civil action *based on tortious conduct* that has been settled by agreement of the parties, must be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid. This provision does not apply if the prejudgment interest provisions as described below apply. The provision also does not apply to a judgment, decree, or order rendered in a civil action *based on tortious conduct* if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the Court of Claims, or in an action under R.C. Chapter 4123. (Workers' Compensation Law). (R.C. 1343.03(B) and (D).)

Operation of the bill

The bill provides that except as described in the following paragraph and the bill's provisions on prejudgment interest as described below, and subject to the computation of interest on a revived judgment as described below under "***Revivor of judgment***," interest on a judgment, decree, or order for the payment of money in a civil action based on tortious conduct *or a contract or other transaction*, including, but not limited to a civil action based on tortious conduct *or a contract or other transaction* that has been settled by agreement of the parties, must be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid *and must be at the rate determined by the Tax Commissioner, as described above, that is in effect on the date the judgment, decree, or order is rendered. That rate remains in effect until the judgment, decree, or order is satisfied.* (R.C. 1343.03(B).)

The preceding paragraph does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct *or a contract or other transaction* if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the Court of Claims, or in an action under the Workers' Compensation Law (R.C. 1343.03(D)).

Prejudgment interest

Existing law

Under existing law, interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, must be computed from the date the cause of action

accrued to the date on which the money is paid if, upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case. (See **COMMENT** 2.) This provision does not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the Court of Claims, or in an action under R.C. Chapter 4123. (Workers' Compensation Law). (R.C. 1343.03(C) and (D).)

Operation of the bill

The bill modifies the computation of the period for which interest is due on a judgment, decree, or order for the payment of money in a civil action based on tortious conduct that has not been settled by agreement of the parties. If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, interest on the judgment, decree, or order must be computed as follows (R.C. 1343.03(C)(1)):

(1) In an action in which the party required to pay the money has admitted liability in a pleading, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(2) In an action in which the party required to pay the money engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered;

(3) In all other actions, for the longer of the following periods:

(a) From the date on which the party to whom the money is to be paid gave the first notice described in this paragraph to the date on which the judgment, order, or decree was rendered. This period applies only if the party to whom the money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage for liability for the tortious conduct and gave to the party required to pay and to any identified insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action had accrued.

(b) From the date on which the party to whom the money is to be paid filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.

The bill precludes any court from awarding interest under the above described provisions on future damages that are found by the trier of fact. "Future damages" means any damages that result from an injury to person that is a subject of a tort action and that will accrue after the verdict or determination of liability by the trier of fact is rendered in that tort action. (R.C. 1343.03(C)(2) and R.C. 2323.56(A)(2)--not in the bill.)

The bill further provides that its prejudgment interest provisions do not apply to a judgment, decree, or order rendered in a civil action based on tortious conduct if a different period for computing interest on it is specified by law, or if it is rendered in an action against the state in the Court of Claims, or in an action under the Workers' Compensation Law (R.C. 1343.03(D)).

Specification of past and future damages

Under the bill, in any tort action to which R.C. 2323.55 or 2323.56 does not apply (see **COMMENT** 3), if a plaintiff makes a good faith claim against a defendant for future damages, the trier of fact must return a general verdict and, if that verdict is in favor of the plaintiff, answers to interrogatories or findings of fact that specify both of the following: (1) the past damages recoverable by that plaintiff and (2) the future damages recoverable by that plaintiff. (R.C. 2323.57.)

Revivor of judgment

Existing law provides that an action to revive a judgment can only be brought within *21 years* from the time it became dormant, unless the party entitled to bring that action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within *15 years* after the disability is removed (R.C. 2325.18). (See **COMMENT** 4.)

The bill shortens the period within which an action to revive a judgment may be brought to *ten years* (instead of 21 years) from the time the judgment became dormant, unless the party entitled to bring that action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within *ten years* (instead of 15 years) after the disability is removed. The bill provides that for the purpose of calculating interest due on a revived judgment, interest cannot accrue and cannot be computed from the date the judgment became dormant to the date the judgment is revived. (R.C. 2325.18(A) and (B).)

Applicability

The bill provides that the interest rate described above in "***Operation of the bill***" under "***Statutory rate of interest***" applies to actions pending on the effective date of the act. In the calculation of interest due under R.C. 1343.03, in actions pending on the effective date of the act, the interest rate provided for in R.C. 1343.03 prior to the amendment of that section by the act (see "***Existing law***" under "***Statutory rate of interest*** " and "***Prejudgment interest***," above) applies up to the effective date of the act, and the interest rate provided for in R.C. 1343.03, as amended by the act (see "***Operation of the bill***" under "***Statutory rate of interest*** " and "***Prejudgment interest***," above) applies on and after that effective date. (Section 3.)

COMMENT

1. R.C. 1343.01, not in the bill, permits the parties to a bond, bill, promissory note, or other instrument of writing for the forbearance or payment of money at any future time, to stipulate in the instrument for the payment of interest upon the amount of the money at any rate not exceeding eight per cent per annum payable annually, except that any party may agree to pay a rate of interest in excess of eight per cent per annum if any of specified circumstances exist.

R.C. 1343.02, not in the bill, provides that upon all judgments, decrees, or orders rendered on any bond, bill, note, or other instrument of writing containing stipulations for the payment of interest in accordance with R.C. 1343.01, interest must be computed until payment is made at the rate specified in that instrument.

2. The rate of interest described under "***Statutory rate of interest***" or "***Prejudgment interest***," above, is the applicable rate of interest prescribed in several sections of the Revised Code (sections refer to R.C. 1343.03), among which are the following:

R.C. 1353.02(C)--Repurchase of dealer's inventory; interest rate on the current net price of the inventory if the supplier fails to pay the repurchase amount within a certain period.

R.C. 1701.95(A)(2)(c)--Liability of directors for unlawful loans; interest rate on the amount of the loan until the amount has been paid.

R.C. 2323.55(G)(1)--Future damages in medical, dental, optometric, or chiropractic claims; interest on the judgment if a court approves any periodic payments plan.[1]

R.C. 2323.56(E)(1)(d)--Future damages in tort actions generally; interest on the judgment that a court must take into consideration in approving a periodic payments plan.[2]

R.C. 2335.19(C)--Entering costs on judgment and on record; rate of interest accruing from the date the clerk sends the first notice requesting payment of the fees and costs as stated in the itemized bill to the date of collection of the judgment.

R.C. 2743.18(B)--Court of Claims; prejudgment and postjudgment interest on a judgment or determination against the state.

R.C. 2744.06(B)(2)--Judgment against political subdivision; interest rate on a judgment or portion of a judgment payable in annual installments over a period not to exceed ten years.

R.C. 3123.17(A)(2)--Determination of default in issuing or modifying a support order; rate of interest that may be assessed on arrearage amount.

R.C. 3722.08(D)--Adult care facilities; rate of interest on civil penalty if the facility does not request a conference or if, after a conference, it fails to take action to correct a violation.

R.C. 4113.52(E)--Prohibition against employer's disciplinary or retaliatory action if employee reports violation of state or federal law; rate of interest may be included on award of back pay for deliberate violation.

3. R.C. 2323.55, not in the bill, pertains to civil actions based upon a medical, dental, optometric, or chiropractic claim in which a plaintiff makes a good faith claim against the defendant for future damages that exceed $50,000.

R.C. 2323.56, not in the bill, pertains to tort actions, generally, that are tried to a jury and in which a plaintiff makes a good faith claim against the defendant for future damages that exceed $200,000.

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[1] *R.C. 2323.55(G)(1) refers to R.C. 1343.03, and R.C. 1343.03, as amended by the bill, precludes a court from awarding interest on future damages.*

[2] *R.C. 2323.56(E)(1)(d) refers to R.C. 1343.03, and R.C. 1343.03, as amended by the bill, precludes a court from awarding interest on future damages.*

A court may approve a periodic payments plan with respect to the future damages awarded under either of those sections.

4. Continuing law provides the following with respect to when a judgment becomes dormant (R.C. 2329.07--not in the bill):

> If neither execution on a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which the judgment was rendered is issued, nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.
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> If the judgment is in favor of the state, the judgment shall not become dormant and shall not cease to operate as a lien against the estate of the judgment debtor unless neither such execution on the judgment is issued nor such a certificate of judgment is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within ten years from the date of the judgment or within ten years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later.
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> If, in any county other than that in which a judgment was rendered, the judgment has become a lien by reason of the filing, in the office of the clerk of the court of common pleas of that county, of a certificate of the judgment as provided in sections 2329.02 and 2329.04 of the Revised Code, and if no execution is issued for the enforcement of the judgment within that county, or no further certificate of the judgment is filed in that county, within five years or, if the judgment is in favor of the state, within ten years from the date of issuance of the last execution for the enforcement of the judgment within that county or the date of filing of

the last certificate in that county, whichever is the later, then the judgment shall cease to operate as a lien upon lands and tenements of the judgment debtor within that county.

This section applies to judgments in favor of the state.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	06-04-03	p.	537
Reported, H. Civil & Commercial Law	10-08-03	p.	1098

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