

SECOND REGULAR SESSION

HOUSE BILL NO. 2353

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

5212H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 408.040, RSMo, and to enact in lieu thereof one new section relating to judgment interest rates.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 408.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 408.040, to read as follows:

408.040. 1. Judgments shall accrue interest on the judgment balance as set forth in this section. The "judgment balance" is defined as the total amount of the judgment awarded on the day judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees. Postjudgment payments or credits shall be applied first to postjudgment costs, then to postjudgment interest, and then to the judgment balance.

2. In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

3. Notwithstanding the provisions of subsection 2 of this section, in tort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until full satisfaction. All such judgments and orders for money shall bear a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus ~~five~~ **two** percent, until full satisfaction is made.

In no case shall the per annum interest rate on any judgment or order exceed five percent.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 The judgment shall state the applicable interest rate, which shall not vary once entered. In tort
19 actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a
20 claim, to the party, parties or their representatives, and to such party's liability insurer if known
21 to the claimant, and the amount of the judgment or order exceeds the demand for payment or
22 offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety
23 days after the demand or offer was received, as shown by the certified mail return receipt, or
24 from the date the demand or offer was rejected without counter offer, whichever is earlier. In
25 order to qualify as a demand or offer pursuant to this section, such demand must:

26 (1) Be in writing and sent by certified mail return receipt requested; and

27 (2) Be accompanied by an affidavit of the claimant describing the nature of the claim,
28 the nature of any injuries claimed and a general computation of any category of damages sought
29 by the claimant with supporting documentation, if any is reasonably available; and

30 (3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a
31 list of the names and addresses of medical providers who have provided treatment to the claimant
32 or decedent for such injuries, copies of all reasonably available medical bills, a list of employers
33 if the claimant is seeking damages for loss of wages or earning, and written authorizations
34 sufficient to allow the party, its representatives, and liability insurer if known to the claimant to
35 obtain records from all employers and medical care providers; and

36 (4) Reference this section and be left open for ninety days.

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38 Unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause
39 of action in circuit court prior to a date one hundred twenty days after the demand or offer was
40 received, then the court shall not award prejudgment interest to the claimant. If the claimant is
41 a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably
42 appears to be qualified to act as next friend or conservator or personal representative. If the
43 claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to
44 section 537.080 to make claim for the death. Nothing contained herein shall limit the right of
45 a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise
46 provided by law or contract.

47 4. In tort actions, a judgment for prejudgment interest awarded pursuant to this section
48 ~~should~~ **may** bear interest at a per annum interest rate equal to the intended Federal Funds Rate,
49 as established by the Federal Reserve Board, plus ~~three~~ **two** percent. **In no case shall the per**
50 **annum interest rate on any judgment or order exceed five percent.** The judgment shall state
51 the applicable interest rate, which shall not vary once entered.

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