

# HOUSE BILL REPORT

## HB 1274

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### As Reported by House Committee On:

Judiciary  
Appropriations

**Title:** An act relating to postjudgment interest on tort judgments.

**Brief Description:** Revising the rate of interest on certain tort judgments.

**Sponsors:** Representatives Lantz, Alexander, Sommers, Rockefeller, Fromhold, Benson, Newhouse and Kagi.

### Brief History:

#### Committee Activity:

Judiciary: 2/7/03, 2/25/03 [DPS];

Appropriations: 3/5/03, 3/6/03 [DP2S(w/o sub JUDI)].

#### Brief Summary of Second Substitute Bill

- Changes the interest rate on certain judgments to four points above the 26-week treasury bill (T-bill) rate, from the current rate which is the higher of 12 percent or four points above the T-bill rate.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Lovick and Newhouse.

**Minority Report:** Do not pass. Signed by 1 member: Representative Kirby.

**Staff:** Bill Perry (786-7123).

### Background:

Interest accrues on a tort judgment from the date of entry of the judgment at a rate determined as prescribed in statute. That rate is set at the maximum rate allowed under the state's general usury law. It is the higher of the two following rates:

- 12 percent; or
- 4 points above the 26-week T-bill rate established by the Federal Reserve Board.

This method of determining the rate was enacted in 1983 and applies to tort judgments against defendants who are government entities or private entities. Prior to 1983 the interest rate on judgments against private party defendants was 12 percent, and on judgments against the state it was 8 percent.

In 1983 the 26-week T-bill rate averaged 8.75 percent. Adding 4 percent to this amount made the two alternative methods of computing the interest rate for judgments roughly equivalent. Over the past 20 years, the highest average annual T-bill rate was 9.77 percent in 1984. However, since 1991 the T-bill rate has been no higher than 5.59 percent. Currently, the rate is a little over 1 percent. As a result of these low T-bill rates, 12 percent has been the interest rate on judgments for the past decade or more.

In 1983 the legislation that created the current method of determining the interest rate on judgments expressly made the change apply only to judgments entered after the effective date of the change. (Section 3, Chapter 147, Laws of 1983.) There is case law suggesting that if legislation is silent on the issue, the courts may go either way on the question of whether the new rate will be applied to existing unpaid judgments, as well. Whatever the outcome may be if the Legislature is silent on the subject, it does appear that the Legislature may make an interest rate change apply to existing judgments if it chooses to do so expressly. The courts of this state have said that interest on a judgment is not a matter of contractual right, but rather a matter of legislative discretion. (Puget Sound Bank v. St. Paul Fire Ins., 32 Wn. App. 32 [1982], review denied, 97 Wn 2d 1036 [1982], citing Palmer v. Laberee, 23 Wash 409 [1900].)

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### **Summary of Substitute Bill:**

The interest rate on tort judgments is to be determined by adding four points to the 26-week T-bill rate.

This new method of calculating interest rates applies to interest on judgments still accruing interest on the effective date of the act, as well as to interest on judgments entered after the act takes effect.

The State Treasurer is directed to publish the rates determined under this act in the Washington State Register.

### **Substitute Bill Compared to Original Bill:**

The substitute makes two changes from the original bill:

- Makes the new rate on judgments four points above the T-bill rate, instead of making it two points above the T-bill rate.
- Clarifies that the new rate applies only to tort judgments.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The state and other judgment debtors are facing very high interest rates. This method of calculating rates may have made sense when it was enacted, but judgments are now accruing interest at well above market rates. The current law has a chilling effect on pursuing worthwhile appeals because of the risk of incurring huge interest charges. The counties' risk pool earns only about 2 percent on its investments, but has to pay 12 percent on judgments. The bill sets a reasonable rate tied to the economic conditions of the time.

**Testimony Against:** The current law is a deterrent against judgment debtors using the appeals process as a delaying tactic. The current interest rate is in part a reflection that pre-judgment interest is not allowed in this state. An injured party earns nothing on damages until after judgment is entered, and during that time he or she is incurring expenses such as medical costs. The 12 percent rate is used in other contexts, such as delinquent child support payments. Lowering the rate like this will cause a big increase in the number of appeals and will clog the courts.

**Testified:** (In support) Representative Lantz, prime sponsor; Representative Alexander, secondary sponsor; Sophia Byrd, Washington State Association of Counties; Malcolm Fleming, Kitsap County Administrator; Steve Lowe, Franklin County Prosecuting Attorney; Dana Childers, Liability Reform Coalition; Cliff Webster, Washington State Medical Association; and Kristen Sawin, Association of Washington Business.

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 22 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Buck, Clements, Cody, Cox, Dunshee, Grant, Hunter, Kagi, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Conway, Kenney and Kessler.

**Staff:** Holly Lynde (786-7153).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:**

The substitute bill clarifies that the current method of determining interest rates on criminal judgments is retained and makes it clear that the interest on criminal judgments is linked to the portions of the civil judgment interest rate law that are not affected by the bill.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Current law and the rate of interest allowed on tort judgments has a chilling effect on the state's and the local governments' abilities to pursue appeals. If a county receives a negative verdict that they believe was reached in error or that they believe has legal grounds for appeal, the financial risks of proceeding with an appeal can be daunting. The appeals process can be lengthy and, with the interest accruing at 12 percent the cost to the taxpayers can be quite large. The county risk pool, which insures most counties, earns 1.28 percent currently on its investments. The current interest rate is a strong disincentive to pursue appeals.

**Testimony Against:** The original fiscal note on this bill did not consider the impact on the state as a judgment creditor. That impact would more than offset the savings from this bill. If you delink the two interest rates, you would create a separate standard and single out vulnerable citizens who have had their court verdicts upheld on appeal. These citizens are the only ones who would be punished by the standard you would create.

This bill does not take into account the potential impacts on the appellate court. The Court of Appeals has struggled to deal with additional caseloads with no additional resources. This bill would have an adverse impact on the caseload and the ability to manage that caseload.

**Testified:** (In support) Sophia Bird, Association of Counties; and Jim Justin, Association of Washington Cities.

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.

