

Senate Committee on Judiciary

Testimony in Support of Senate Bill 75- Modifying Pre-Judgement Interest Rate

Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber

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Madam Chair and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of Senate Bill 75, which modifies K.S.A. 16-201 dealing with pre-judgment interest rates.

In Kansas, as in many states, plaintiffs may recover interest on certain damages claimed in lawsuits. Statutes that allow pre-judgment interest do so to compensate the plaintiff for the lost time value of money resulting from the time spent litigating the claims to the trial court and potentially on appeal. In light of this purpose, pre-judgment interest rates should reflect real-world marketplace conditions.

In Kansas, however, the interest rates used to calculate pre-judgment interest have no connection to current economic circumstances. Kansas' statutory pre-judgment interest rate for is 10%, unless the contract specifies a higher rate. This rate is simply too high. Kansas' statutory pre-judgment interest rate does not fairly reimburse the lost time value of money when the interest rates on savings accounts and government bonds have hovered below 4% for a long time. Interest at a whopping 10% amounts to a bonus to the plaintiff and a penalty to defendants for exercising their right to defend claims.

A variable rate would better reflect prevailing economic conditions than a fixed 10% rate. Because the recent history of interest rates has involved both very low market rates and significant upswings, several state legislatures have adopted market-based pre-judgment interest rates to match the changing economic reality. Doing so ensures that judgment interest rates do not greatly differ from average investment returns, and that neither plaintiffs nor defendants receive an unexpected benefit from artificially high or low rates. Examples from other states are:

- Oklahoma (Treasury Bill rate pre-judgment; Federal prime plus 2% post-judgment)
- Arizona (Federal prime rate plus 1%, not to exceed 10%)
- Wisconsin (Federal prime rate plus 1%)
- Pennsylvania (Federal prime rate plus 1%)
- Michigan (Treasury note rate plus 1%)

Now is the time for Kansas to revisit its pre-judgment interest rate statute and bring it in line with economic realities. SB 75 will reduce the excessively high fixed pre-judgment interest rate from 10% to the federal discount rate plus 2%.

Through feedback received since the bill was introduced, we would ask the committee to consider the attached amendment with our testimony clarifying the new rate applies only to civil actions, and leaves the application of 16-201 as it exists today untouched. Thank you for allowing us to testify in support of SB 74, and I am happy to answer questions at the appropriate time.

Section 1. K.S.A. 16-201 is hereby amended to read as follows:
16-201. (a) Except as provided in subsection (b), cCreditors shall be allowed to receive interest at the rate of ten percent per annum, when no other rate of interest is agreed upon, for any money after it becomes due; for money lent or money due on settlement of account, from the day of liquidating the account and ascertaining the balance; for money received for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; for all other money due and to become due for the forbearance of payment whereof an express promise to pay interest has been made; and for money due from corporations and individuals to their daily or monthly employees, from and after the end of each month, unless paid within fifteen days thereafter.

(b) In all civil tort actions filed under the Chapter 60 code of civil procedure in which the court determines that prejudgment interest shall be awarded, the judgment creditor shall be allowed to receive interest at the rate per annum two percentage points below the rate per annum specified in K.S.A. 16-204(e)(1).