

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REENGROSSED

This Version Includes All Amendments

LLS NO. 17-0908.01 Jerry Barry x4341

Adopted in the House of Introduction

SENATE SPONSORSHIP

Tate,

HOUSE SPONSORSHIP

Wist and Willett,

Senate Committees
Judiciary

House Committees
State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING MARKET-BASED RATES FOR INTEREST ON JUDGMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The current rate of postjudgment interest is 2% over the Kansas City discount rate with a floor of 8%. The bill eliminates the floor.

The current interest rate for judgments for personal injury damages caused by a tort is 9%. The bill ties this interest rate to the current rate of postjudgment interest.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 16, 2017

SENATE
2nd Reading Unamended
March 15, 2017

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares:

4 (a) The general assembly instituted statutory interest on judgments
5 to account for the time value of money between the filing of an action and
6 the ultimate satisfaction of a judgment in a civil action. Interest can be
7 awarded both prejudgment and postjudgment.

8 (b) The Colorado supreme court has repeatedly stated that the
9 purpose of prejudgment interest is to reimburse a plaintiff for inflation
10 and lost return. The purpose of interest is not to excessively compensate
11 a plaintiff, punish a defendant, or influence the outcome of lawsuits. As
12 the Colorado supreme court has written, "In keeping with precedent, we
13 hold that the legislative purpose behind awarding interest under section
14 13-21-101 is to compensate the plaintiff for the time value of the amount
15 of his or her judgment", *Morris v. Goodwin*, 185 P.3d 777, 780 (Colo.
16 2008).

17 (c) Statutory interest rates are intended to be a stand-in for
18 inflation, as the Colorado supreme court has noted. The current interest
19 rate was set by the general assembly at nine percent in 1975 when
20 inflation, as measured by the consumer price index, was 9.1 percent. In
21 2015, inflation was just 0.1 percent. Since 1975, inflation has varied
22 between a high of 13.5 percent and a deflationary low of negative 0.4
23 percent.

24 (d) Arbitrarily fixing interest rates, which constantly fluctuate, in
25 statute harms either the plaintiff or the defendant, depending on current
26 market conditions. That is why twenty-three states tie prejudgment
27 interest rates to the federal reserve discount rate or some similar analog

1 for inflation. Twenty-six states do the same for postjudgment interest.

2 (e) In order to properly, but not excessively, compensate a
3 plaintiff for the time value of money, Colorado's statutory interest rates
4 on judgments should accurately reflect market reality by floating with
5 inflation.

6 **SECTION 2.** In Colorado Revised Statutes, 5-12-106, **amend** (2)
7 as follows:

8 **5-12-106. Rate of interest on judgments that are appealed.**

9 (2) ~~(a)~~ The SECRETARY OF STATE SHALL CERTIFY THE rate of interest ~~shall~~
10 ~~be certified on each January 1 by the secretary of state~~ to be two
11 percentage points above the discount rate, which discount rate shall be the
12 rate of interest a commercial bank pays to the federal reserve bank of
13 Kansas City using a government bond or other eligible paper as security,
14 and shall be rounded to the nearest full percent. ~~Such~~ THE SECRETARY OF
15 STATE SHALL ESTABLISH THE annual rate of interest ~~shall be so established~~
16 as of ~~December 31, 1982~~ JANUARY 2, 2018, to become effective January
17 1, ~~1983~~ 2018. Thereafter, as of ~~December 31~~ JANUARY 2 of each year, the
18 SECRETARY OF STATE SHALL ESTABLISH THE annual rate of interest ~~shall~~
19 ~~be established~~ in the same manner, to become effective on January 1 of
20 the ~~following~~ SAME year.

21 (b) ~~Notwithstanding any other provision of this subsection (2), the~~
22 ~~rate of interest shall be no lower than the percentage authorized in section~~
23 ~~5-12-102 (4)(b).~~

24 **SECTION 3.** In Colorado Revised Statutes, **amend** 13-21-101 as
25 follows:

26 **13-21-101. Interest on damages.** (1) In all actions brought to
27 recover damages for personal injuries sustained by any person resulting

1 from or occasioned by the tort of any other person, corporation,
2 association, or partnership, whether by negligence or by willful intent of
3 such other person, corporation, association, or partnership and whether
4 such injury has resulted fatally or otherwise, it is lawful for the plaintiff
5 in the complaint to claim interest on the damages alleged from the date
6 said suit is filed; and, on and after July 1, 1979, it is lawful for the
7 plaintiff in the complaint to claim interest on the damages claimed from
8 the date the action accrued. When such interest is so claimed, it is the
9 duty of the court in entering judgment for the plaintiff in ~~such~~ THE action
10 to add to the amount of damages assessed by the verdict of the jury, or
11 found by the court, interest on ~~such~~ THE amount calculated ~~at the rate of~~
12 ~~nine percent per annum on actions filed on or after July 1, 1975, and at~~
13 ~~the legal rate on actions filed prior to such date, and~~ AS PROVIDED FOR IN
14 SECTION 5-12-106, calculated from the date ~~such~~ THE suit was filed to the
15 date of satisfying the judgment and to include the same in said judgment
16 as a part thereof. On actions filed on or after July 1, 1979, the calculation
17 ~~shall include~~ INCLUDES compounding of interest annually from the date
18 ~~such~~ THE suit was filed. On and after January 1, 1983, if a judgment for
19 money in an action brought to recover damages for personal injuries is
20 appealed by the judgment debtor, interest, whether prejudgment or
21 postjudgment, ~~shall be~~ IS calculated on ~~such~~ THE sum at the rate set forth
22 in ~~subsections (3) and (4) of this section~~ SECTION 5-12-106, from the date
23 the action accrued and ~~shall include~~ INCLUDES compounding of interest
24 annually from the date ~~such~~ THE suit was filed.

25 (2) (a) If a judgment for money in an action brought to recover
26 damages for personal injuries is appealed by a judgment debtor and the
27 judgment is affirmed, interest, as set out in ~~subsections (3) and (4) of this~~

1 ~~section, shall be~~ SECTION 5-12-106, IS payable from the date the action
2 accrued until satisfaction of the judgment.

3 (b) If a judgment for money in an action to recover damages for
4 personal injuries is appealed by a judgment debtor and the judgment is
5 modified or reversed with a direction that a judgment for money be
6 entered in the trial court, interest, as set out in ~~subsections (3) and (4) of~~
7 ~~this section, shall be~~ SECTION 5-12-106, IS payable from the date the
8 action accrued until the judgment is satisfied. This interest ~~shall be~~ IS
9 payable on the amount of the final judgment.

10 (3) ~~The rate of interest shall be certified on each January 1 by the~~
11 ~~secretary of state to be two percentage points above the discount rate,~~
12 ~~which discount rate shall be the rate of interest a commercial bank pays~~
13 ~~to the federal reserve bank of Kansas City using a government bond or~~
14 ~~other eligible paper as security, and shall be rounded to the nearest full~~
15 ~~percent. Such annual rate of interest shall be so established as of~~
16 ~~December 31, 1982, to become effective January 1, 1983. Thereafter, as~~
17 ~~of December 31 of each year, the annual rate of interest shall be~~
18 ~~established in the same manner, to become effective on January 1 of the~~
19 ~~following year.~~

20 (4) ~~The rate at which interest shall accrue during each year shall~~
21 ~~be the rate which the secretary of state has certified as the annual interest~~
22 ~~rate under subsection (3) of this section.~~

23 **SECTION 4. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect January 1, 2018; except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within the ninety-day period after final adjournment of the general

1 assembly, then the act, item, section, or part will not take effect unless
2 approved by the people at the general election to be held in November
3 2018 and, in such case, will take effect on the date of the official
4 declaration of the vote thereon by the governor.

5 (2) This act applies to judgments entered and causes of action
6 accruing on or after the applicable effective date of this act.