



**House  
Legislative  
Analysis  
Section**

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**PREJUDGMENT INTEREST RATES  
ON "WRITTEN INSTRUMENTS"**

**House Bill 4448 as enrolled  
Public Act 175 of 2001  
Second Analysis (1-9-02)**

**Sponsor: Rep. Andrew Richner  
House Committee: Civil Law and the  
Judiciary  
Senate Committee: Judiciary**

***THE APPARENT PROBLEM:***

The Revised Judicature Act (RJA) provides for the calculation and payment of interest on money judgments in civil cases. (See BACKGROUND INFORMATION.) With regard specifically to complaints filed on or after January 1, 1987, if a judgment is rendered on a "written instrument," a 12 percent interest rate (calculated from the date the complaint is filed to the date the judgment is satisfied), compounded annually, is applied, unless the instrument has a higher rate of interest, which then is the rate that is applied to the judgment. The law does not define "written instrument," but a 1998 state supreme court decision ruled that the lower courts properly found that an insurance contract was a "written instrument" and, therefore, subject to the law's 12 percent interest rate. (See *Yaldo v North Pointe Insurance Company*, 457 Mich 341.)

In contrast to the this 12 percent interest rate, another subsection of the RJA calculates interest on money judgements recovered in civil actions for complaints filed on or after January 1, 1987 at six-month intervals from the date the complaint is filed at a rate of interest equal to one percent above the average interest rate of five year United States treasury notes during the six months immediately preceding July 1 and January 1, compounded annually. This interest rate fluctuates, but generally is substantially less than 12 percent. For example, the statutory interest rate as based on Treasury bill notes for July 1, 2000, was 7.473 percent; and the rate for January 1, 2001, had dropped to 6.965 percent.

Insurance companies, whose written instruments (such as insurance contracts) generally do not have specified interest rates, believe that the current 12 percent interest rate is too high. Legislation has been introduced to reverse the *Yaldo* decision.

***THE CONTENT OF THE BILL:***

The bill would amend the Revised Judicature Act (RJA) to abolish – as of July 1, 2001 and with one narrow exception – the current 12 percent interest rate on judgments involving written instruments without specified interest rates. The bill instead would calculate the interest rate in such cases under existing provisions of the act involving five-year Treasury bill notes. (See BACKGROUND INFORMATION.)

Exception. The bill would not retroactively void final, nonappealable judgments rendered as of July 1, 2001, on written instruments that did not have specified interest rates. That is, the bill would allow the current 12 percent interest rate for final, nonappealable judgments rendered on written instruments that did not have specified interest rates if the complaint had been filed between January 1, 1987, and July 1, 2001, and the final, nonappealable judgment had been rendered by July 1, 2001.

Written instruments with specified interest rates. For complaints filed on or after July 1, 2001, if a judgment were rendered on a written instrument that had a specified interest rate, the judgment of interest would calculate the interest from the date the complaint had been filed to the date the judgment were satisfied. The rate of interest would be that specified in the written instrument, if that rate were legal at the time the instrument were executed. In any case, the bill would prohibit the rate of interest from exceeding 13 percent per year (as currently), compounded annually, after the judgment were entered.

MCL 600.6013

House Bill 4448 (1-9-02)

## ***BACKGROUND INFORMATION:***

Other legislation. Senate Bill 207, which was introduced on February 14, 2001, and referred to the Senate Judiciary Committee, would amend the same section of the Revised Judicature Act. According to the Senate Fiscal Agency Committee Summary, dated 2-16-01, the Senate bill would amend the Revised Judicature Act (RJA) so that the current 12 percent interest rate that is applied to judgments rendered on written instruments under section 6013 of the act would, instead, “apply if a judgment were rendered on a note, bond, land contract, insurance contract, or other written instrument evidencing indebtedness with a specified interest rate.”

The “(pre)judgment interest statute.” Section 6013 of the Revised Judicature Act (RJA) sometimes is called “the (pre)judgment interest statute.” As originally written, this section of the RJA (Public Act 236 of 1961) provided for a “post judgment” interest rate of 5 percent on money judgments in civil actions, unless the judgment were rendered on a written instrument having a higher specified rate of interest. In these cases, the higher rate of interest was used, though the maximum interest rate was capped at 7 percent.

In 1965, Public Act 240 amended the RJA to require that interest be calculated from the time of the filing of a complaint, rather than from the time the judgment was rendered. That is, the interest rate was calculated before the judgment was rendered, which is why this section of the RJA often is called “the *prejudgment* interest statute.” The *prejudgment* interest rate stayed at 5 percent until 1972, when Public Act 135 increased it by one percent to 6 percent. Eight years later, in the midst of the then-current high market rates of interest, Public Act 134 of 1980 rewrote section 6013. Among other things, the 1980 amendment increased the *prejudgment* interest rate from 6 percent to 12 percent for complaints filed after June 1, 1980, unless the judgment were rendered on a written instrument with a specified interest rate higher than 12 percent annually. Again, the maximum *prejudgment* interest rate for written instruments with a specified interest rate was capped, this time at 13 percent. (See the House Legislative Analysis Section analysis of enrolled Senate Bill 324, dated 5-27-80.)

In 1986, as part of a “tort reform” package that set the judgment interest in tort actions at one percent over the five-year U.S. Treasury bill rate, legislation also amended the RJA to eliminate the 12 percent *prejudgment* interest rate as of January 1, 1987. However, the elimination of the 12 percent

*prejudgment* interest rate was almost immediately reversed by Public Act 50 of 1987, which reinstated the 12 percent rate for judgments rendered on complaints filed on or after January 1, 1987.

U.S. Treasury bill note interest rates. According to a chart in the February 2001 *Michigan Bar Journal*, interests rates for money judgments, as based on treasury bills (plus one percent added interest) and calculated at six-month intervals from the date of filing, ranged from a low of 6.025 percent in January 1994 to a high of 10.105 percent in July of 1989. As of January 1, 2001, the interest rate was 6.965 percent.

## ***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill has no fiscal implications for the state. (10-17-01)

## ***ARGUMENTS:***

### ***For:***

Proponents of the bill argue for it on a number of grounds. One is that the interest rate on written contracts should not be greater than that imposed on oral contracts or tort defendants. Another is that the current 12 percent interest rate in the Revised Judicature Act is both punitive and unnecessary, especially since there already are punitive provisions in the Uniform Trade Practices Act [MCL 500.2006(4)] that allow an insured to recover 12 percent interest from its insurer where no complaint has been filed to force payment and those provisions apply when an insurance company is dilatory in making timely payments to the insured. Although the defendant insurance company in *Yaldo* argued that the court of appeals was wrong in saying that the Uniform Trade Practices Act (UTPA) applied in this case because 12 percent interest can be awarded under the UTPA only when a claim is not reasonably in dispute, the state supreme court majority ruling held that that the insurance company misread the UTPA; the plaintiff in *Yaldo* could have filed a claim under the UTPA because with respect to collecting a 12 percent interest, “reasonable dispute is applicable only when the claimant is a third-party tort claimant. Here [in *Yaldo*], plaintiff is not such a claimant. Rather he is seeking reimbursement for the loss of his business due to a fire. Therefore plaintiff could have recovered interest at the rate of twelve percent per annum under the Uniform Trade Practices Act.” Moreover, proponents of the bill argue that when

interest rates are low, the 12 percent rate currently in the RJA serves as a financial incentive for plaintiffs to delay settling.

The defendant insurance company in *Yaldo* argued that “written instrument” in this section of the Revised Judicature Act must be defined as a writing that expressly contains a rate of interest, such as a negotiable instrument. The dissenting opinion in *Yaldo* agrees, arguing in part that the legislative history of this section of the RJA shows that “written instrument” was intended to cover only interest-bearing instruments.

The bill would statutorily affirm the dissenting opinion in *Yaldo*, thereby treating oral and written contracts equally. The bill also would strike the current provision that a 12 percent rate apply to prejudgment interest so that the rate of interest in the written instrument would be the applicable prejudgment interest rate.

**Response:**

In the words of the state supreme court, in *Yaldo v North Point Ins Co* (1998), the legislature’s choice “to impose a higher rate of interest on defendants who enter into written contracts is not arbitrary. First, there is a distinction between contract claims and tort claims. Tort claimants often do not have a preexisting relationship with their tortfeasors. On the other hand, there is a preexisting relationship between two parties who have signed a written contract. Greater expectations regarding performance and payments are likely to exist when the parties have established their rights and responsibilities before a controversy arises. While so great a distinction is not found between written contracts and oral contracts, there is nevertheless a greater degree of certainty when a written contract is involved. It would be logical for the Legislature to impose a higher interest rate for written instruments. Defendant’s [i.e., the North Pointe Insurance Company] argument is especially weak in light of [provisions] in the Uniform Trade Practices Act, MCL 500.2006(4), which provides for a twelve percent interest rate when an insurance company does not pay a claim on a timely basis.” Moreover, as the state supreme court ruled in *Yaldo*, merely because, under some circumstances, the Revised Judicature Act and the Uniform Trade Practices Act overlap does not mean that the “clear and unambiguous language” in the disputed provision of the RJA – namely, “written instrument” – must be changed. An insurance contract clearly and unambiguously is a “written instrument,” and so falls under the 12 percent interest provisions of the RJA.

**Against:**

The purpose of the current law in section 6013(5) of the Revised Judicature Act, in the words of the state supreme court in *Yaldo*, is to compensate plaintiffs for delays in recovering money damages, and serves as a consumer protection measure. Current law provides insurance companies in particular with a financial incentive to make timely payment on valid claims rather than waiting to pay on valid claims until the insured is forced to take on the expense of suing the insurance company. Since there is such an immense disparity in bargaining power between individuals and large insurance companies, it is virtually certain that individuals will be unable to “negotiate” an interest rate with the insurance companies when taking out insurance policies. Eliminating the current 12 percent interest rate on money judgments involving written instruments without a specified interest rate, as proposed by the bill, would simply further disadvantage individuals vis a vis their insurance companies. Removing the current 12 percent prejudgment interest rate would encourage defendants, such as large insurance companies and manufacturers, to prolong litigation rather than settle claims or warranties in a timely manner. Increasing the financial incentives for insurance companies not to pay out claims, when many consumers already complain bitterly about the difficulty of getting insurance companies to pay on legitimate claims, is a very bad idea from a consumer perspective. At the very least, the bill should be amended to include among the written instruments that would be subject to the 12 percent interest rate not only interest-bearing instruments but also notes, bonds, land contracts, insurance contracts, and written warranties, as Senate Bill 207 would do.

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