



Jeremy Thiesfeldt

STATE REPRESENTATIVE • 52nd ASSEMBLY DISTRICT

Testimony on AB 95

Greetings Chairman Ott, members of the committee. I have authored AB 95 once again this session to restore the interest rate on judgments in small claims actions to 12%.

Sweeping legislation to limit interest rates on judgments was signed into law in 2011. The intent of the original legislation was to limit interest assessed on high dollar verdicts, but the amended final bill reduced interest on all judgments. The unintended consequence is that the law now affects judgment interest owed to small businesses, counties, cities, and collection agencies that rely on small claims court for relief in minor disputes and debt collection.

Judgments under current law are calculated twice each year using prime rate plus 1%. (3.25% + 1). Keep in mind that the prime rate is usually the interest rate that commercial banks charge their most credit-worthy customers, and certainly not those in default or with a history of default. Prior to passage of the current law, debtors were more reluctant to default on timely payments because they likely would face the prospect of paying 12% interest upon court judgment. Today, a court judgment is more beneficial to the defendant who would face a mere 4.25% rate instead. Restoring the higher judgment rate will allow the plaintiffs to recover costs of legal work in addition to the cost of time lapsed before recovery. The reduced interest rate has effectively shifted the cost of debt collection from the debtor to the victim, and reduced the profitability and growth potential of small business collection agencies across the state.

As you will hear during the testimony from credit collection agencies, creditors use the interest rate to motivate payment and to compensate them for the costs they are incurring in collecting the debt. Current law gives debtors no incentive to settle their outstanding debts in a timely manner. It actually encourages default so that debtors will get a lower interest rate.

The current law also requires the interest rate on court judgments to be adjusted biannually. This has increased administrative costs at the same time payments are being delayed. This legislation would ensure a stable rate regardless of the prime rate, which has fluctuated over 50 years from the current lowest rate of 3.25% to a high of 21.50%.

Finally, reduced collections have also negatively impacted municipalities and counties. Restoring the 12% rate will help to stabilize local government budgets with the encouragement of timely payments for water bills, citations, and unpaid taxes.

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AB 95: Interest Rate on Small Claims Judgments
Testimony of Senator Steve Nass
Assembly Judiciary Committee
April 7, 2015 | 412 East, State Capitol

Thank you Chairman Jim Ott and committee members for holding a hearing and allowing me to provide written testimony on Assembly Bill 95. This legislation will restore the interest rate on small claims judgments to 12% annually, which was state law prior to 2011.

In 2011, legislation was passed modifying the interest rate on judgments from 12 percent annually to 1 percent plus the prime rate in effect on the date of entry of judgment. The intent of the original legislation was to limit interest assessed on high dollar verdicts, but the final version of the bill reduced the interest rate on all judgments, including small claims.

This has had a significant financial impact on small businesses or anyone else that uses small claims court to recover debt in minor disputes, including grocery stores, hardware stores, veterinarians, plumbers, credit unions, banks, hospitals, doctors, lawyers, landlords, schools, local governments, non-profits, and so forth.

The interest rate is one tool that can be used by creditors to motivate payment of unpaid debts and compensate them for the time and costs they are incurring to collect the debts. The low interest rate gives debtors no incentive to pay their debts in a timely matter, and has, in effect, shifted the cost burden from the debtor to the small business or individual to which the debt or judgment is owed.

In addition, the current law requires the interest rate to be calculated bi-annually and has proven overly time-intensive, particularly for smaller judgments. This legislation would ensure a set, stable rate regardless of the prime rate, which fluctuates significantly over time.

In the private sector, the rate of 1 percent plus the prime rate is generally reserved for the most qualified borrowers with track records of paying their loans in full and on time. The lower interest rate removes the deterrent that existed with a higher rate and encourages people to default on their obligations or delay payment of judgments owed. The lower rate hurts creditors and victims by delaying payments owed to them.

Thank you again for the opportunity to provide testimony in support of AB 95. If any committee members have further questions please contact my office at (608) 266-2635.

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11th Senate District

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Augustyn, Ryan

From: Vicky S. Selkove <VSS@legalaction.org>
Sent: Tuesday, April 07, 2015 11:27 AM
To: Vicky S. Selkove
Subject: AB 95 - interest rates on judgments

Assembly Committee on Judiciary Members –

Legal Action of Wisconsin (LAW) has registered in opposition to Assembly Bill 95, related to interest rates on small claims judgments.

AB 95 creates a two-tiered system where small claims judgments would be subject to a 12% interest rate, but larger (more than \$10k, non-small claims) civil judgments would not. This will result in higher interest rates accruing on judgments only against small claims litigants who are almost entirely unrepresented and often, are those with lower education levels and lower income levels, particularly in eviction actions which are also handled in small claims court.

In their co-sponsorship memo, the bill's authors state, "Current law gives scofflaws no incentive to settle their outstanding debts in a timely manner. " To the contrary, current law gives numerous options to prevailing parties in small claims actions, all of which provide tremendous incentive for small claims debtors to settle judgments against them. Those with judgments in their favor can seek liens against real estate the debtor owns, can garnish the debtor's wages, garnish the debtor's checking and savings accounts, have the sheriff seize the debtor's property and sell it to satisfy the debt, and/or can turn the debt over to collection agencies.

Legal Action of Wisconsin frequently represents clients whose wages are being garnished from a small claims judgment against them. These clients are trying their best to pay off these debts, and, far from being "scofflaws," as the bill's authors imply, these clients feel a tremendous sense of responsibility and obligation to pay off these debts. It is not uncommon for us to work with clients who work at poverty-level wages who are paying small amounts every month for years to pay off small claims judgments. Raising the interest rates on these judgments does not provide extra "incentive" for these debtors to settle the debts, it simply raises the amount of the debt that's owed, making it even harder and ensuring that it will take even longer for the debt to be paid.

Furthermore, if the bill sincerely aims to simplify and streamline the interest rate calculation process for litigants and for the court system, then why not make the interest rate consistent across all civil judgments? Why set up a separate system wherein only those judgments in small claims court are subject to higher interest rates and larger civil judgments – more likely to be obtained via proceedings where parties have attorneys and where the playing field between the legal parties is more balanced – have lower interest rates? Why is it that only small (less than \$10k) debts need this additional interest-based incentive to pay, if indeed it is an incentive at all.

As it is, this bill is yet another example of legislation taking aim at low-income, largely unrepresented debtors, and those being evicted from their housing. This bill will make it even more difficult for low-income small claims defendants to recover from one financial mistake or unfortunate event. Legal Action of Wisconsin frequently

Please do not hesitate to contact me with any questions you might have about this or other legislation affecting Wisconsin's low-income litigants, tenants, or consumers.

Vicky Selkove
Legislative Director, Legal Action of Wisconsin



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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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To: Chairperson Jim Ott
Members, Assembly Committee on Judiciary
From: R.J. Pirlot, Wisconsin Civil Justice Council
Date: April 7, 2015
Re: **Please oppose Assembly Bill 95, relating to increasing interest rates on judgments in small claims actions.**

Plaintiffs in Wisconsin who win favorable verdicts are usually entitled to recover interest on the damages awarded to them. Some of this is in the form of post-judgment interest, which is meant to compensate the plaintiff for loss of the use of money while a defendant appeals a judgment. Plaintiffs may also be awarded pre-judgment interest, which runs from the date the plaintiff makes an offer of settlement, rather than from the time damages are awarded by a court.

September 2011 Special Session [Senate Bill 14](#), signed into law by Governor Scott Walker as 2011 Wisconsin Act 69 (Act 69), reformed Wisconsin's then high pre- and post-judgment interest rate from 12 percent to the prime rate set by the Federal Reserve Board, plus one percent. This ensures that plaintiffs do not receive a windfall, while also ensuring that defendants pay a reasonable interest rate.

2015 Assembly Bill 95 (AB 95) would change the interest rate on judgments for the recovery of money in small claims actions back to the pre-Act 69 rate of 12 percent per year. This bill also changes the interest rate on amounts recovered by a party who prevails in a small claims action after that party made an offer of settlement that was rejected back to 12 percent per year from the day on which the offer of settlement is made until the amount is paid. In short, AB 95 seeks to undo one of the first civil justice reform measures signed into law by Governor Walker.

A 12 percent interest rate is excessive and unfair. A defendant should not be required to pay an amount far above the current market rate, nor should the plaintiff receive a windfall and be unjustly enriched by such a high interest rate. Act 69 ensured that the interest rate is fair to both plaintiffs and defendants and its reforms should be untouched.

Action Requested

Act 69 was touted as a key victory by the broader business community, represented by the Wisconsin Civil Justice Council. The Wisconsin Civil Justice Council opposes AB 95 and respectfully encourages you to vote against recommending it for passage. If you have any questions or comments, please contact R.J. Pirlot at 608-258-9506.



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TESTIMONY FOR AB – 95

APRIL 7, 2015

FROM: PAULINE KUSSART, PRESIDENT
THE STARK COLLECTION AGENCY INC
MADISON WI

Chairman Ott and members of the committee, thank you for hearing my testimony. My name is Pauline Kussart. I am the owner of a collection agency here in Madison. I currently sign paychecks for 24 Wisconsin residents. The money we collect for our clients helps them continue to sign paychecks for their employees.

As you know this bill references Wis. Stats. 814.04. Act 69 in 2011 reduced the annual post-judgment interest rate from 12 percent to 1 plus the prime rate of the time of year in which the judgment was entered. The Act was originally intended to apply only to actions in tort, but a late amendment applied the change to all actions, including small claims actions. Thus Act 69 has led to numerous unintended consequences. Some of which are:

1. Because the Federal Reserve prime rate is continuously changing, creditors or their agents, have to track multiple interest rates.
 - a. Multiple rates could lead to confusion with a consumer who has one account at 4.25% and another account at 5.25% and another at 4.80%, etc.
 - b. It could cause programming issues with collection agencies as we continuously need to alter our programming based on the date of judgment, not the date of referral. This is not only an increase in our daily cost of doing business but it could lead to more frequent data entry errors, exposing us to greater risk of being sued.
 - c. The Fed last raised rates on the Federal Funds Rate in 2006. As you know this interest rate is seen as a benchmark for all other interest rates. While the Fed may raise interest rates in the future, a drastic jump which would return rates to pre-2011 rates seems very unlikely.
2. The current pre-judgment statutory legal interest rate as found in Wis. Stats 138.04 is 5% annually.
 - a. It makes no sense at all when a judgment account accrues interest at a rate less than what accrues on pre-judgment accounts.
 - b. The lower post judgment interest rate reduces a consumers' incentive to pay a debt.

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- c. Creditors need to file judgments in order to protect or enforce their rights. Filing a judgment itself costs creditors money.
 - i. Consumers actually receive a "benefit" when a judgment is filed. A delinquent credit card may accrue interest at 19%, or a local dentists' financial agreement with the patient authorizes a 12% per year rate in the event of a default. When a creditor is awarded a judgment and the interest rate drops to 4.25%, the consumer wins. Our local community banks, dentists, vet clinics, body shops and other creditors, many of them small businesses like myself, now bear the burden when you consider the time value of money. A creditor hopes that what can be collected in interest will help offset the costs of hiring someone to collect that judgment. Those hopes are now dashed. What happens? The small business has to raise prices to offset the losses.
 - d. We collect for multiple small businesses in Wisconsin. We share whatever interest we collect with our clients. Since Act 69 went into effect our clients have lost an estimated \$24,000 in interest yearly. Because we share it equally with our clients, we have lost that same amount. As many times happens, unpaid judgments do not get collected for a number of years. Because interest accrual has been drastically reduced, this loss of revenue will only increase every year.
 - e. We all know life does not play fair but we have an opportunity to create more fairness for businesses who provide services and for consumers by establishing a consistent non-changing post judgment interest rate. All consumers under a court order to pay a debt should all be subject to the same rate.
3. At this time I would also like to voice my support in favor of an amendment brought forward by the Wisconsin Clerks of Circuit Court Association.
- a. My company partners with multiple Circuit Courts to assist them in collecting delinquent fines, fees and forfeitures.
 - b. Act 69 greatly reduced the incentive to pay and interest recoveries reducing daily cash flow so desperately needed for courts to operate. And we have to remember that what the courts collect is shared with the State. Thus it would be in the best interest of the State to restore the post-judgment interest rate back to 12%.

Chairman Ott and fellow committee members and fellow consumers, I strongly urge you to support AB – 95.

Thank you.

Pauline Kussart, President
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