

Legislative History for Connecticut Act

HB 5262	PA 83 vetoed	Scan 1972
House 970-980		(11)
Senate 1696		(1)
Judiciary 30-34		(5)
LAW/LEGISLATIVE REFERENCE		17p.
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MR. OLIVER: (104th)

Point of personal privilege, a question. I believe there is a motion to pass the matter temporarily.

THE SPEAKER:

Does the gentleman press his motion?

MR. OLIVER: (104th)

Yes, I believe so.

THE SPEAKER:

Is there objection to passing this temporarily? Hearing none, the pearls of wisdom recorded for permanency, will now pass this item temporarily.

THE CLERK:

Page 3, Cal. 160, Sub. for H.B. 5262, AN ACT CONCERNING INTEREST ON JUDGMENTS RENDERED BY COURTS. From the Committee on Judiciary, File 181.

THE SPEAKER:

Rep. Oliver from the 104th.

MR. OLIVER: (104th)

I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE SPEAKER:

Will you remark.

MR. OLIVER: (104th)

Mr. Speaker, the Clerk has an amendment.

THE SPEAKER:

The Clerk will call House Amendment Schedule A.

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THE CLERK:

House Amendment Schedule A, offered by Mr. Oliver of the 104th. In line 2, after the comma delete the words "from the date of service". In line 3, delete the words "of the complaint"

MR. OLIVER: (104th)

Mr. Speaker, I move adoption of the amendment.

THE SPEAKER:

Will you remark on Amendment A.

MR. OLIVER: (104th)

Mr. Speaker, we did many things in the last session that are hard to explain to rational people outside and one of the ones is what we did to what used to be section 37-3 of the Connecticut General Statutes. Prior to last June, section 37-3 of the General Statutes read as this before us would read, if my amendment passes, that is it read - interest at the rate of 8% a year and no more may be recovered - I beg your pardon, interest at the rate of 6% a year and no more may be recovered and allowed in civil actions ~~except~~. We then passed Public Act 574 which did only one thing, although it took a few weeks to do it, and substituted eight for six and said you can get eight on judgments in the courts. The Governor signed the bill on June 30, 1971. Somehow or other we passed a bill, Public Act 783, which the Governor signed on July 8, 1971, section one of which allowed certain things, section two of which repealed section 37-3 of the Connecticut General Statutes and left us

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with an interesting situation whereby there is no statute on the books with respect to the collection of interest on judgments in the courts where it isn't provided for specifically in the instrument and this is a very, very modest bill. What it merely attempts to do is restore the situation that existed on passage of Public Act 574 and we discussed it at great length last session. My amendment Schedule A, I believe, restores it to Public Act 574, allows you when you win a lawsuit to recover interest from the date of judgment on the money that is yours and it allows it at 8%. I move adoption of the amendment.

THE SPEAKER:

Further remarks on Amendment Schedule A. Rep. Cretella.

MR. CRETELLA: (99th)

Question to the proposer, Mr. Speaker. As I read this file, in lines 4 through 8 roughly, it would appear to me that an action to recover money loaned and spelled out in the instrument upon which the suit is brought at say 10% or a 9% mortgage might be prevented from being enforced if the language here states that you can recover

THE SPEAKER:

Does the gentleman direct his question to the amendment or to the bill itself?

MR. CRETELLA: (99th)

To the bill itself, Mr. Speaker.

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THE SPEAKER:

I suggest the gentleman hold his question until we finish the debate on the amendment.

MR. CRETELLA: (99th)

Thank you, your honor....Mr. Speaker.

MR. SPEAKER:

This reminds me for the lawyers a short calendar day in Bridgeport. Further remarks on Amendment Schedule A. If not, all those in favor will indicate by saying Aye. Opposed. The Amendment is ADOPTED. It is ruled technical. The attorney for the defense now, Representative Cretella.

MR. CRETELLA: (99th)

Thank you, Mr. Speaker. Continuing with my comments, it would appear from the language in the bill itself, if I read it correctly, that you would not be able to enforce an obligation greater than 8% even though the parties so contracted. If I could have that clarified.

MR. OLIVER: (104th)

Mr. Speaker, with the exception of demand instruments referred to in 42a-3-122 subsection little four, little a, that was the existing law prior to last year. The only thing we did last year was change it from six percent from date of judgment to eight percent and then by inadvertence repeal the whole thing. So as the law is now, you can't recover anything, any interest. In fact, Mr. Speaker, directly to your question, you can recover whatever interest you bargain for up until the

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date of judgment. If it takes you two years to get judgment and you have a 15% or an 18% rate in there, then you can recover up to the date of judgment. Once you reduce it to judgment you don't have an obligation, under the original term, you have a judgment and if you are paid on the very instance, the date of judgment is entered you are only entitled to the sum of the judgment. Thereafter you have an obligation which is called a judgment. If it is not paid you can sue on the judgment and what we are doing is providing free interest on that thing called a judgment. It's a different right whatsoever. Your original cause of action has been concluded, extinguished and reduced to judgment.

THE SPEAKER:

Further remarks. The Clerk informs me he has House Amendment Schedule B for consideration before we consider the bill as amended. The Clerk call House Amendment Schedule B.

THE CLERK:

House B, offered by Mr. Camp of the 163rd.

MR. CAMP: (163rd)

Mr. Speaker, perhaps the Clerk might waive reading of the amendment.

THE SPEAKER:

Is there objection to the amendment being outlined as opposed to a reading of the amendment. Hearing none, will the gentleman outline the amendment.

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MR. CAMP: (163rd)

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Mr. Speaker, this amendment makes a rather sizeable change in the law of the State of Connecticut, considerably more than either the original or the amendment that was just proposed. Under our old familiar laws in Connecticut, we had a magical thing called the liquidated or unliquidated claim and a claim differentiation between a claim that was on a written instrument and on one which was not written. The essence of the determination here is that rather than charging interest from the date that the judgment concludes, we would charge interest from the date that the cause of action arises. We adopted this amendment in the House in the last session and under some pressure, I think from the insurance lobby, it didn't go through upstairs. What this bill would do was that if, for example, your car were injured and you got into an automobile accident and your car was damaged and your car say was worth three thousand dollars and you collected a judgment say three or four years later, you would get your interest from the date that you originally had your car damaged. It seems to me this only makes sense because it means that all of us who may be subject to some damage to something we own could have to go out to borrow money to get what we thought we started with. So, for this purpose, this bill has been amended to say that interest will accrue from the date a cause of action arises. First of all, it seems to me that this is only fair to the plaintiff. You have decided that the plaintiff or counter-

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claiming defendant was entitled. He was right and yet when he wins three or four years later, he has found that he has lost interest in the meantime. Secondly, it would considerably speed up, it seems to me, settlements of claims for there is a further provision that if you pay earlier voluntarily, then interest only accrues during the time between the cause of action arises and the time you are actually paid. This would encourage settlements of suits and it seems to me take a great deal of the pressure and a great deal of the concern which people now express and are now finding in our no-fault provisions. I understand that in the State of New Jersey several years ago they did something like this in adding six percent to settlements in order to try to speed things up. It seems to me that this would speed things up. It would have a meritorious effect on our courts. It would encourage settlements. It would stop the defendant's windfall and would provide a more reasonable basis for doing business in the courts in the State of Connecticut. Thank you.

THE SPEAKER:

Will you remark further on Amendment Schedule B. The gentleman from the 104th.

MR. OLIVER: (104th)

Mr. Speaker, reluctantly I rise to oppose my good friend from Ridgefield. I think he has made the wrong distinction. There is no debt upon which interest can run in the case of an unliquidated obligation. A mere right, chosen

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action, so-called. What you have, you could, for example, if he had drafted it that way have it as to a liquidated debt that which was due and owing, even if it wasn't provided in demand obligations, for example. You could do that even if the parties hadn't provided for it, I presume. But if you attempt to apply interest to an obligation which is not in existence, it is a mere right of action. I think there is a taking without due process. For example, it would also apply not only to your property damage in your vehicle but also to, until we pass something called no-fault, your claim for pain, suffering and inconvenience. That wasn't determined, it was not in existence until some time as the jury came in and a court entered a judgment. That was a kind of sum that adequately and fairly compensates you for the injury done you. There is nothing which the fellow could have paid you up until that time unless you agreed upon it and could settle it. If he denied liability, for example, there is nothing to which he could make provision for the interest that is accruing because noone knows what interest is accruing on. I think that the gentleman misconceives his remedy if his amendment has been drafted solely to identify bills as they occur with respect to demand allegations, I think we could do it but we can't possibly do this.

THE SPEAKER:

Will you remark further on Amendment Schedule B. Rep. Scully from the 91st in Waterbury.

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MR. SCULLY: (91st)

Mr. Speaker, I oppose this amendment, too. It could have just the opposite case where you know that it is a clear case of liability, yet you can't come to an agreed figure on the price of the automobile and this could be delayed in the courts for many years. If you have the case right there where they agree that the person is wrong but can't agree on the figure. So, therefore, I would oppose it.

THE SPEAKER:

Further remarks on Amendment Schedule B. Rep. Camp speaking for the second time, I believe on B.

MR. CAMP: (163rd)

Yes, Mr. Speaker, just briefly on the two points that were just made. I think the first point, the question about or on liquidation on unliquidated damages is something that we lawyers sometimes like to throw around. It just doesn't make very much sense. If a person has had his car damaged in 1966, say, and he doesn't get paid until 1970, he is fully as much injured as a bank is who happened to have the whole thing in writing and so they collect. It just seems to me and we have passed this amendment in the last session as I said, but it seems to me that if the fellow is out-of-pocket, he ought to be restored to as close to a position as he was originally. As to the second point that was made, one of the reasons why the settlement might not be settled is because the good old insurance company decides that it can put the money in reserve

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not pay the claim and save itself the amount of money owed from the date that the accident occurred until three or four years later when you get a judgment. This bill wouldn't be very necessary if our courts were quick. But, they aren't. You face a delay of certainly a year in our lowest courts and three to four years in our highest courts. This doesn't just apply to accidents' claims, it applies to a claim for you, for somebody else if somebody did work for you or anything else. I don't see that there is any magic and any reason why a bank or a person holding a note should be in effect treated better than somebody else. If a person does wrong, he ought to pay for that wrong from the time that he did it. Not from some mystical date of judgment which may be three or four years later.

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THE SPEAKER:

Further remarks on amendment B. Rep. Scully speaking for the second time on Amendment B.

MR. SCULLY: (91st)

Mr. Speaker, on his second point about the insurance companies making money on it, they have to reserve the money here in the State of Connecticut and put it aside to pay for these uncommitted claims. So, therefore, they wouldn't be making any interest on it.

THE SPEAKER:

The question is on adoption of Amendment Schedule B. All those in favor indicate by saying Aye. Opposed. Amendment B FAILS. Are there further amendments, Mr. Clerk?

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If not, will you remark on the bill as amended by House Amendment Schedule A. Rep. King from the 48th.

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MR. KING: (48th)

Mr. Speaker, through you a question to Rep. Oliver. I understood during Rep. Oliver's presentation that this bill was designed to pay interest from date of judgment and yet I am somewhat confused by the language on line 3 which seems to state that interest is payable from the date of the complaint. I am not certain, Mr. Speaker, whether this in fact was deleted by the amendment.

THE SPEAKER:

Does the gentleman care to respond?

MR. OLIVER: (104th)

Mr. Speaker, very simply House Amendment Schedule A deleted from the date of service in line 2 and of the complaint in line 3.

THE SPEAKER:

Further remarks on the bill as amended By A. If not, the question is on acceptance and passage as amended by House Amendment Schedule A. All those in favor will indicate by saying Aye. Opposed. THE BILL IS PASSED.

THE CLERK:

Please turn to page 2 of the Calendar. Cal. 67, Sub. for H.B. 5200, AN ACT CONCERNING PREVENTION OF SALMONELLA INFECTION. Committee on Public Health and Safety. File 233.

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Will you remark further? Hearing none, all those in favor of passage say aye. Opposed, nay. The ayes have it. The Bill is passed.

THE CLERK:

Calendar No. 261, File No. 476, Favorable Report, Joint Standing Committee on Judiciary, Substitute House Bill 5262, AN ACT CONCERNING INTEREST ON JUDGMENTS RENDERED BY COURTS.

THE CHAIR:

Senator Jackson.

SENATOR JACKSON:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Will you remark?

SENATOR JACKSON:

Mr. President, this establishes an interest rate of eight percent on Judgments and other actions in the State of Connecticut. The Bill as originally presented did not establish the interest money or establish that the interest would start running the date the writ was filed and by the House Amendment, this is changed to the actual judgment. I believe this is a good Bill and I urge passage.

THE CHAIR:

Question is on passage. Will you remark further? If not, all those in favor of passage, signify by saying aye. All those in favor of passage signify by saying aye. Thank you. Opposed, nay. The ayes have it. The Bill is passed.

JOINT
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HEARINGS

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Mr. Byrnes: I'm here talking on bill 5188 this cash bail bill. I think you have been bothered by me for the last year so you know what I'm here to talk about. That whatever the decision is going to be in reference to this particular bill, I'd like to add inserted to duck tail with public defendant Commission Bill. The idea that one of the court costs would be defined in the bill as anything rendered by the public defenders office. I talk to the people who were the authors of this particular bill and they think some lack of incentive if we said that we were to acquire everything over and above the 15% on the return and I mentioned to them, supposedly made the suggestion that it would not, we would not be entitled to anything in excess of 50% of the net difference. So I would make that suggestion if you see it fit to adopt this bill that or make a recommendation on it that we be included that we would up to 50% not more than 50% be entitled to the portion of that particular amount posted. I don't know whether or not any of the figures have been mentioned to you but I think it might be mentioned know that there has been a pilot program in Hartford since December and these figures were given to me this morning at there were 48 motions made to be released on this 10% cash bail without security. 35 were able to post the 10% without surety and as of this morning they've only had one who failed to show up for trial. So it's one out of 35. So my only comments are going to be that whatever you feel I think we ought to duck tail this with public defender bill.

Sen. Jackson: John Ahearn.

Mr. Ahearn: Mr. Chairman, members of the committee, my name is John Ahearn. I'm representing the Insurance Association of Connecticut and I'd like to address myself to HB5262 which would permit 8% interest be recovered on civil actions from the date of the complaint. The Connecticut Insurance Companies feel that this bill is unsound in theory, that it is unjust in its effect and that it is inconsistent both with attempts to encourage settlements and with the objective of lowering the cost insurance. We feel that the bill is unsound in theory because it assumes that tort damages are payable at the date of the commencement of the action by the filing of a complaint, whereas in most cases the plaintiff's full amount of damages cannot be determined until long after the date of the complaint. Therefore, the result of the imposition of interest referring back to the date of the complaint is that the plaintiff is enabled to recover interest on money damages that did not accrue to him until some time after the date

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of the complaint. Since the bill would impose interest on an amount which has not in fact been payable during the whole period for which interest is charged, the bill becomes not only unsound in theory, but also unjust in effect. The amount charged as interest ceases to be damages and becomes a penalty on the right to litigate. The imposition of interest becomes a penalty on the right to have a disputed issue settled in a court of law. I think that a good example of the possible result of a bill like this would be to encourage settlements out of court. We submit, however, that this objective is illusory because it could be achieved only at the cost of higher settlements. The settlement value of suits would become higher simply because the cost of judgments would increase. I think a good example of the possible result of a bill like this would be a case where a plaintiff submits a claim for \$1000 and the defendant offers \$500 to settle. The plaintiff refuses the offer of settlement and files a writ and the case goes all the way to judgment and may be three years by the time the verdict was returned and at the time of the verdict the jury awards the plaintiff \$400. Now two years prior to the date of the judgment he is offered \$500 which he refused. This bill would enable the plaintiff to recover 8% interest on the \$400 which was in fact less than what he was offered to settle. Some people may feel that the result of this bill would be to encourage settlements out of court. We submit however that this objective is illusory because it could be achieved only at the cost of higher settlements. The settlement value of suits would become higher simply because the cost of judgments would increase. The direct and unavoidable result of higher settlement and judgment costs will necessarily be higher insurance rates. The net effect of this bill would be to impose a penalty on the right to litigate, a penalty on settlements, and a penalty on judgments. And it's the auto insurance consumer upon much of this penalty would ultimately have to fall. At a time when the public and when the representatives of the public in this General Assembly are making a determined effort to find viable ways to reduce the cost of auto insurance, the Connecticut insurance companies feel that this bill would be seriously counterproductive, and would significantly diminish the cost reduction effects of any attempted reform of the auto insurance system. The Insurance Association of Connecticut respectfully offers firm opposition to HB 5262; and urges this committee to reject this bill.

Rep. Sullivan: When you say this would not encourage settlements would you agree with me that in a situation where

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there was a limited policy available let's assume a \$20,000 policy and the injuries that were sustained by the person in the policy; excuse me, by the plaintiff in an action were in such a degree that every body agreed that the full amount of the policy would be used up and probably a jury verdict would exceed the policy. Now it's a standard practice I believe in situations like that, the insurance carrier would want to say something on a policy in return for settling now rather than wait for 2 years. Now don't you think that if you had this type of a bill where they would have to pay interest would encourage them to dispose of these cases earlier rather than later.

Mr. Ahearn: It might encourage a settlement in the limited facts situation that you present but I think the method by which the settlement would be encouraged is unsound in that the damages in a case would be serious enough to exceed the policy limits would consist in large ...not just of special damages that are incurred early on and soon after the accident but also pain of suffering, loss of earning capacity, temporary or partial disability payments, etc. All of which damages accrued to the plaintiff over a long period of time. It could be during his whole life in the case of the reduction in his earning capacity. So that this money is not payable to the plaintiff until sometime in the future and it could be well, could well be sometime after the date of the judgment and yet the interest is imposed on the damages as if they were all due and payable at the time of the writ is submitted. So although it may encourage because of the imposition of the additional 8% it may encourage a settlement in a case like that. I think the reason that the settlement would be encouraged is somewhat unsound.

Rep. Carrozzella: Can I ask you this question. Assuming an accident on today's date, a rather serious, isn't it true that the insurance company at that point sits at the reserve \$10,000. The money's invested and take the interest from the date of the accident so that when you finally pay the \$10,000 four years from now you pay \$10,000 less the interest on the \$10,000 that you accumulate over 4 years. So you're getting it that way but you don't want to send it out the other way to give your injured party the benefit of that interest.

Mr. Ahearn: I suppose it's true that the reserve is set up. I'm not, I don't profess to know exactly how the reserve system operates but I suppose it's true that a reserve is set up at the time and that if the case is disputed to the point that it goes

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to a judgment later on that of course the time during which a company was holding on to this money in reserve the company is earning the money, is earning interest on his investments of the money but I don't think that the solution that's offered by this bill, I think the solution offered here is much more sweeping then it would have to be, to take care of a situation like that because it assumes that the reason, the only reason that the insurance company had for delaying its payment of the claim is so that it could make interest on its investment and that may not be as, probably not the only reason. It honestly believe that there is a dispute here. It may be a dispute of the amount of the damages. It may be a dispute of the liability and the result of imposing interest is to assume that alway on the part of the defendant is bad faith and that's not always true.

Rep. Carrozzella: Sometimes though.

Mr. Ahearn: Sometimes on the part of the defendant, sometimes on the part of the plaintiff.

Sen. Jackson: If a company wanted to systematically make a decision ...that it might delay claims as much as possible to take advantage of this. This bill would counteract ...along these lines would it not?

Mr. Ahearn: I would say that a company that behaved in that manner was definitely acting in bad faith and this bill would certainly take steps to correct that situation but it would take these steps as result of higher insurance rates for everyone including higher insurance rates for policy owners of those companies who act in good faith and yet have some minisque percentage of their cases go all the way to a judgment. Everyone is going to pay the results of it.

Rep. Smyth: If this bill was enacted into law would the insurance company under the existing policies be required to pay this interest?

Mr. Ahearn: Be required to pay the interest, required by the bill under its policy. Well I don't imagine that the policy required payments of 8% and if the law required it then whether or not the policy did wouldn't seem to be relevant unless I misunderstand your question.

Rep. Smyth: So you won't misunderstand it, under existing insurance policies in the state now if this was law would the insurance company be required to pay the interest required by this proposed law.

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Mr. Ahearn: Well the law says that interest maybe recovered and allowed. Are you asking in those cases where the judge does not require it, because he's not mandate to require, when he does not require it would the policy itself require it. Is that the question.

Rep. Smyth: No the question is under existing insurance policies if this bill is enacted into law and if it was imposed would the insurance company be required to pay the interest?

Mr. Ahearn: I would think so but I'm really not sure.

Rep. Healey: Simply to clarify this last point that Rep. Smyth was bringing out. I think the question is would the insurance company have to respond for the interest or would the main defendant as an individual respond for the interest.

Mr. Ahearn: I would assume that the insurance company would have to respond as to the interest because the interest would be included in the damages that would be awarded to the plaintiff and if the insurance policy covered the liability for all these damages the policy would have to cover the interest also.

Sen. Jackson: Thank you. Sylvio Grasso.

Mr. Grasso: Mr. Chairman and members of this committee, my name is Sylvio Grasso and I'm a professional bondsmen in the city of Hartford on the writing of bail bonds as agent for public service Mutual Insurance Company in New York, 393 7th Ave. I'm against this raised bill 5188 and the reason that I'm against it is that the state of Connecticut is biting more than he can chew to put such a bill into the workings of the Judicial Committee. The exorbitant amount of money that the state would have to pay is beyond reason. It cannot be calculated. Clerical staffs have to be hired. Collection departments would have to be hired. Law enforcement officers would have to be regegmented into different special squads to look for these accused that have not shown up in court. Bail Commissioners have to be increased from its present status, so forth and so along the line that the state of Connecticut is hereby trying to deviate from increase in its taxes but it's creating a burden upon its shoulder that it certainly doesn't need and it has a very excellent service at this very moment that is not costing the state of Connecticut nothing. Fortunately into the statutes that have been adopted many years ago the bail bondsmen has one power that any other law enforcement agency in the country as a whole has. It even has more