

SECOND REGULAR SESSION

# SENATE BILL NO. 895

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 10, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5768S.02I

## AN ACT

To repeal section 408.040, RSMo, and to enact in lieu thereof one new section relating to interest on judgments.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 408.040, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 408.040, to read as follows:

408.040. 1. Judgments shall accrue interest on the judgment balance as  
2 set forth in this section. The "judgment balance" is defined as the total amount  
3 of the judgment awarded on the day judgment is entered including, but not  
4 limited to, principal, prejudgment interest, and all costs and fees. Postjudgment  
5 payments or credits shall be applied first to postjudgment costs, then to  
6 postjudgment interest, and then to the judgment balance.

7 2. In all nontort actions, interest shall be allowed on all money due upon  
8 any judgment or order of any court from the date judgment is entered by the trial  
9 court until satisfaction be made by payment, accord or sale of property; all such  
10 judgments and orders for money upon contracts bearing more than [nine] **five**  
11 percent interest shall bear the same interest borne by such contracts, and all  
12 other judgments and orders for money shall bear [nine percent] **a per annum**  
13 **interest rate of the lesser of five percent or the Federal Funds Rate, as**  
14 **established by the Federal Reserve Board, plus two percent,** until  
15 satisfaction made as aforesaid.

16 3. Notwithstanding the provisions of subsection 2 of this section, in tort  
17 actions, interest shall be allowed on all money due upon any judgment or order  
18 of any court from the date judgment is entered by the trial court until full  
19 satisfaction. All such judgments and orders for money shall bear a per annum

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 interest rate equal to the intended Federal Funds Rate, as established by the  
21 Federal Reserve Board, plus [five] **two** percent, until full satisfaction is made. **In**  
22 **no case shall the per annum interest rate on any judgment or order**  
23 **exceed five percent.** The judgment shall state the applicable interest rate,  
24 which shall not vary once entered. In tort actions, if a claimant has made a  
25 demand for payment of a claim or an offer of settlement of a claim, to the party,  
26 parties or their representatives, and to such party's liability insurer if known to  
27 the claimant, and the amount of the judgment or order exceeds the demand for  
28 payment or offer of settlement, then prejudgment interest shall be awarded,  
29 calculated from a date ninety days after the demand or offer was received, as  
30 shown by the certified mail return receipt, or from the date the demand or offer  
31 was rejected without counter offer, whichever is earlier. In order to qualify as a  
32 demand or offer pursuant to this section, such demand must:

33 (1) Be in writing and sent by certified mail return receipt requested; and

34 (2) Be accompanied by an affidavit of the claimant describing the nature  
35 of the claim, the nature of any injuries claimed and a general computation of any  
36 category of damages sought by the claimant with supporting documentation, if  
37 any is reasonably available; and

38 (3) For wrongful death, personal injury, and bodily injury claims, be  
39 accompanied by a list of the names and addresses of medical providers who have  
40 provided treatment to the claimant or decedent for such injuries, copies of all  
41 reasonably available medical bills, a list of employers if the claimant is seeking  
42 damages for loss of wages or earning, and written authorizations sufficient to  
43 allow the party, its representatives, and liability insurer if known to the claimant  
44 to obtain records from all employers and medical care providers; and

45 (4) Reference this section and be left open for ninety days.

46 Unless the parties agree in writing to a longer period of time, if the claimant fails  
47 to file a cause of action in circuit court prior to a date one hundred twenty days  
48 after the demand or offer was received, then the court shall not award  
49 prejudgment interest to the claimant. If the claimant is a minor or incompetent  
50 or deceased, the affidavit may be signed by any person who reasonably appears  
51 to be qualified to act as next friend or conservator or personal representative. If  
52 the claim is one for wrongful death, the affidavit may be signed by any person  
53 qualified pursuant to section 537.080 to make claim for the death. Nothing  
54 contained herein shall limit the right of a claimant, in actions other than tort  
55 actions, to recover prejudgment interest as otherwise provided by law or contract.

56           4. In tort actions, a judgment for prejudgment interest awarded pursuant  
57 to this section [should] **shall** bear interest at a per annum interest rate equal to  
58 the intended Federal Funds Rate, as established by the Federal Reserve Board,  
59 plus [three] **two** percent. **In no case shall the per annum interest rate on**  
60 **any judgment or order exceed five percent.** The judgment shall state the  
61 applicable interest rate, which shall not vary once entered.

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