

303 W. MADISON STREET
SUITE 700
CHICAGO, IL 60606
312-855-9300
FAX: 312-855-9310



2020 CALAMOS COURT
SUITE 200
NAPERVILLE, IL 60563
630-780-1000
FAX: 630-780-1001

February 9, 2021

Honorable JB Pritzker
Governor, State of Illinois
207 State House
Springfield, IL 62706

Dear Governor Pritzker:

Barker, Castro, Kuban & Steinback, LLC is a civil defense law firm that focuses on the defense of physicians, hospitals, and insurers. Barker, Castro, Kuban & Steinback opposes HB3360, as amended and urges you to veto the bill.

HB3360, as amended penalizes civil defendants for exercising their inviolate right to litigate a case through trial by rendering defendants responsible for pre-judgment interest at a rate of 9 percent per annum which begins to accrue on the date that the defendant “has notice” of the injury. HB3360, as amended is special legislation that favors plaintiffs and violates both the goal and necessity of a fair and balanced judicial system.

The process by which the legislature passed this highly inequitable change to the Illinois civil justice system is notable in that the bill passed within 48 hours of its proposal and effectively denied those who are most affected by the bill to be heard. The extent of this bill’s change to Illinois law will serve only to exacerbate the widespread financial strain on Illinois hospitals and healthcare providers secondary to the Covid-19 pandemic, and inordinately impact the very individuals that Illinoisans have called heroes and who have placed their own lives at risk to serve others. In the immediate future, the bill penalizes hospitals and healthcare providers for any pandemic related delays in discovery, all of which are beyond defendants’ control and which arise from our healthcare heroes’ efforts to save the lives of Illinoisans.

In addition to penalizing and denying Illinois hospitals and healthcare providers of their constitutional right to litigate a case through a jury trial, the bill’s language permitting the accrual of interest upon a defendant’s “notice” of an injury significantly conflicts with the purpose and process of the Medical Studies Act, 735 ILCS 5/8-2101 to 8-2105, and the Patient Safety and Quality Improvement Act of 2005, Pub. L. No. 109-41, 119 Stat. 424 (codified as amended at 42 U.S.C. §§ 299b21 to 299b-26). The bill would thwart hospital investigations of injuries pursuant to these Acts where to do so would financially penalize the hospital even where no claim is filed.

The 9 percent interest provided under HB3360, as amended is in addition to the value of the case determined by a jury, and thus improperly usurps the role of the jury as well the court’s discretion related

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to whether an additur or remittitur is appropriate, thereby creating a windfall for plaintiffs regardless of the facts and strength of the claim. Further, the percentage of interest accrued may actually exceed the value of the alleged damages.

Another striking issue with HB3360, as amended is that it will permit the accrual of interest upon “notice” and prior to the plaintiff’s filing of the requisite 735 ILCS 5/2-622 report rendering such a meritorious claim. Indeed, the fundamental fallacy of HB3360, as amended is that it both presumes and permits that plaintiffs are entitled to a monetary award from the date of the injury absent the burden to prove liability in cases where liability, causation, and/or damages are contested.

HB3360, as amended penalizes defendants for conducting good faith investigations of claims and for conducting discovery under well-settled Illinois Supreme Court Rules. At the same time, the bill permits plaintiffs to delay responding to written and oral discovery, to disclose excessive and cumulative witnesses, and to withhold reasonable settlement demands.

Ultimately, HB3360, as amended will not result in a more efficient resolution of claims. Rather, the bill provides an incentive for plaintiffs to not seek settlement, but instead to delay resolution knowing that 9 percent interest is accruing. This incentive is in addition to plaintiffs’ ability to wait two years to file a claim, to delay service of process under Rule 103(b), to file Complaints without the requisite 735 ILCS 5/2-622 healthcare provider report, to seek multiple extensions to file the requisite report, and delay the conversion of respondents in discovery pursuant to 735 ILCS 5/2-402. All of this occurs before the defendant even has an opportunity to answer the Complaint. Notably absent from the bill is language relative to the plaintiffs’ use of a voluntary dismissal pursuant to 735 ILCS 5/2-1009 affording plaintiffs one year to re-file a claim, and to begin the process all over again 735 ILCS 5/13-217.

While it has been claimed by proponents of the bill that 46 other states have some form of pre-judgment interest, these same proponents have omitted the glaringly significant fact that such states have limitations placed on such interest and/or have previously imposed tort reform creating limitations or caps on the amount permitted to be awarded to a plaintiff. As you are well aware, the Illinois Supreme Court has rejected tort reform based, in part on the fact that such amounted to special legislation which favored one party.

Every party to a lawsuit must be treated equally. HB3360, as amended is not only inequitable wherein it penalizes defendants for defending a claim and exercising the right to a jury trial, but it also creates a windfall for plaintiffs. Further, the bill lacks a reasonable basis where it will not promote a more efficient resolution of claims, but rather will serve only to encourage plaintiffs to delay the resolution of a claim. On behalf of not only our clients, but all hospitals and healthcare providers, we urge you to veto this bill.

Sincerely,

BARKER, CASTRO, KUBAN & STEINBACK, LLC



Krista R. Frick