



## KANSAS TRIAL LAWYERS ASSOCIATION

To: Senator Kellie Warren, Chair  
Members of the Senate Judiciary Committee

From: Rex A. Sharp, Sharp Law LLP, Prairie Village

Date: January 31, 2023

RE: **SB 75 Interest on judgments in civil actions (OPPOSED)**

About 11 years ago, the Senate Judiciary Committee considered a similar bill to water down K.S.A. 16-201. The Senate allowed the bill to die on General Orders then, and SB 75 should also not advance. Nothing has changed except that K.S.A. 16-201 has remained without problems for another decade (and SB 75 is worse than before since the 2012 bill proposed a floating rate 4% above the discount rate, now only 2% above).

The current law regarding judgment interest works well, and SB 75 will not expedite litigation and only benefits the wrongdoer.

K.S.A. 16-201, the current judgment interest statute, was last amended in 1980. Prior to that, it was not amended since its enactment in 1889. It has stood the test of time and has served litigants and the courts well.

Under the current law, parties can and often do negotiate an interest rate for a contract breach. However, when there is no agreement on the interest rate between the parties (in other words *involuntary creditors*) the interest rate is ten percent (10%) per annum, calculated as simple interest.

SB 75 proposes a floating interest rate scheme that is unwieldy and unworkable.

1. Who is being benefited? K.S.A. 16-201 is 10% but under K.S.A. 16-204(e)(1) from July 1, 2021, to June 30, 2022, it is only 4.25%. <https://sos.ks.gov/publications/Register/Volume-40/Issues/Issue%2027/07-08-21-49264.html> I wish I could borrow money at that rate, let alone without applying for a loan, providing no security, and imposing it on the party I am stiffing on a contract payment. But there is more. Under SB 75, it would be 2% less—only 2.25%! That is quite a change. The federal discount rate is increasing right now, but no commercial entity, not even Fortune 100 companies, can borrow unsecured money at 2% above the federal discount rate. The rate is too low and punishes the winning party, who is usually a Kansan.

2. The prejudgment interest rate has always been a flat rate. The reason – it is easy to calculate for the judge. Imagine an underpayment of \$15,000 for 3 months and \$20,000 for another 9 months, and then \$10,000 for a year. At 10% interest per annum, the interest can be done in your head. Not so for a floating rate that changes every July. Judges and lawyers are not strong in math, but they can argue over the amount due for interest for days.
3. Courts will be clogged litigating a prejudgment interest side issue. The parties will then hire experts and pay attorneys to fight over the calculation, and there is no certainty in the law to drive the parties toward settlement.

I urge the committee to reject SB 75. Thank you for the opportunity to present testimony today.