

## HOUSE BILL NO. 341

INTRODUCED BY C. SMITH, TAYLOR

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE INTEREST THAT MAY BE AWARDED ON CIVIL JUDGMENTS; CLARIFYING THAT THE CHANGE IN RATE DOES NOT APPLY TO SITUATIONS OTHER THAN CIVIL JUDGMENTS; AMENDING SECTIONS 25-9-205, AND 27-1-210, ~~33-3-431, AND 75-10-722~~, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 25-9-205, MCA, is amended to read:

**"25-9-205. Amount of interest.** (1) Except as provided in ~~subsection (2)~~ SUBSECTIONS (2) AND (3), interest is payable on judgments recovered in the courts of this state and on the cost incurred to obtain or enforce a judgment at the rate of ~~10% per year equal to the prime rate as published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any publication that may supersede it, on the day judgment is entered plus 1%~~ OF 10% PER YEAR. The interest may not be compounded.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation ~~not to exceed the rate calculated under subsection (1) plus 5%~~.

(3) INTEREST ON A JUDGMENT OBTAINED IN AN ACTION FOR RECOVERY ON AN INJURY, AS DEFINED IN 27-1-106, MUST BE PAID FROM THE DATE THE JUDGMENT IS ENTERED AT A RATE EQUAL TO THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE SYSTEM IN ITS STATISTICAL RELEASE H.15 SELECTED INTEREST RATES, OR IN ANY PUBLICATION THAT MAY SUPERSEDE IT, PLUS 2%."

**Section 2.** Section 27-1-210, MCA, is amended to read:

**"27-1-210. Interest on torts.** (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of ~~10%~~ equal to the prime rate as published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any publication that may supersede it, on the day judgment is entered, plus ~~4%~~ 2% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant

1 presented a written statement to the opposing party or the party's agent stating the claim and how the specific  
2 sum was calculated.

3 (2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain  
4 by calculation, including but not limited to future damages until the damages are incurred and damages for:

5 (a) pain and suffering;

6 (b) injury to credit, reputation, or financial standing;

7 (c) mental anguish or suffering;

8 (d) exemplary or punitive damages;

9 (e) loss of established way of life;

10 (f) loss of consortium; and

11 (g) attorney fees.

12 (3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest  
13 due, if any, on any judgment rendered.

14 (4) Any payment by a party of a claim or interest on a claim as set forth in subsection (1) is not an  
15 admission of liability and may not be made known to the jury."  
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17 ~~Section 3. Section 33-3-431, MCA, is amended to read:~~

18 ~~"33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the~~  
19 ~~expenses of the insurer's organization, to provide the insurer with surplus funds, or for any purpose of the~~  
20 ~~insurer's business upon a written agreement that the money is required to be repaid only out of the insurer's~~  
21 ~~surplus in excess of that stipulated in the agreement. The agreement may provide for interest at a rate not to~~  
22 ~~exceed the greater of the rate established in 25-9-205 of 10% per year or a rate that is 6 percentage points per~~  
23 ~~year higher than the prime rate of major New York banks as published in the Wall Street Journal edition dated~~  
24 ~~3 business days prior to the execution of the agreement. The agreement must specify whether the interest~~  
25 ~~constitutes a liability of the insurer. A commission or promotion expense may not be paid in connection with a loan~~  
26 ~~of the type described in this section.~~

27 ~~(2) Money borrowed, together with the interest if stipulated in the agreement, does not form a part of the~~  
28 ~~insurer's legal liabilities except as to the insurer's surplus in excess of the amount stipulated in the agreement~~  
29 ~~or the basis of any setoff. However, until the money or interest, or both, are repaid, financial statements filed or~~  
30 ~~published by the insurer must show as a footnote the amount then unpaid together with any interest accrued but~~

1 unpaid:

2 ~~———(3) A loan of this type to a mutual or stock insurer is subject to the commissioner's approval. The insurer~~  
 3 ~~shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the~~  
 4 ~~proposed loan agreement. The loan and agreement are approved unless within 15 days after filing the insurer~~  
 5 ~~is notified of the commissioner's disapproval and reasons for the disapproval. The commissioner shall disapprove~~  
 6 ~~any proposed loan or agreement if the commissioner finds the loan is unnecessary or excessive for the purpose~~  
 7 ~~intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar~~  
 8 ~~lenders, if any, to the insurer, or that the information filed by the insurer is inadequate.~~

9 ~~———(4) A loan to a mutual or stock insurer or a substantial portion of the loan must be repaid by the insurer~~  
 10 ~~when the loan is no longer reasonably necessary for the purpose originally intended. Repayment of either~~  
 11 ~~principal or interest on the loan may not be made by a mutual or stock insurer unless approved in advance by~~  
 12 ~~the commissioner.~~

13 ~~———(5) This section does not apply to loans obtained by the insurer in the ordinary course of business from~~  
 14 ~~banks and other financial institutions or to loans secured by pledge or mortgage of assets."~~

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16 ~~———Section 4. Section 75-10-722, MCA, is amended to read:~~

17 ~~———"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the~~  
 18 ~~state's remedial action costs.~~

19 ~~———(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount~~  
 20 ~~of the state's remedial action costs, including interest and, if applicable, penalties under 75-10-715(3).~~

21 ~~———(3) If the state's remedial action costs and penalties are not paid by the liable person to the department~~  
 22 ~~within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action~~  
 23 ~~in the name of the state to recover the amount owed plus reasonable legal expenses.~~

24 ~~———(4) If the department provides a notice that the state's remedial action costs are due, the department~~  
 25 ~~shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205 of 10% per year:~~

26 ~~———(a) after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is~~  
 27 ~~one-quarter of a year or less;~~

28 ~~———(b) after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is~~  
 29 ~~more than one-quarter of a year and less than or equal to one-half of a year; and~~

30 ~~———(c) after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is~~

1 more than one-half of a year.

2 ~~———(5) An action to recover remedial action costs and interest may be brought under this section at any time~~  
 3 ~~after any remedial action costs and interest have been incurred, and the court may enter a declaratory judgment~~  
 4 ~~on liability for remedial action costs and interest that is binding on any subsequent action or actions to recover~~  
 5 ~~further remedial action costs and interest. The court may disallow costs or damages only if the person liable under~~  
 6 ~~75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. The~~  
 7 ~~court may disallow the associated interest if it determines, based on the record, that the liable person can show~~  
 8 ~~that the costs are not reasonable.~~

9 ~~———(6) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part~~  
 10 ~~must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.~~

11 ~~———(7) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be~~  
 12 ~~deposited into the environmental quality protection fund established in 75-10-704."~~

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 14 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,  
 15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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 17 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable  
 18 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
 19 remains in effect in all valid applications that are severable from the invalid applications.

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 21 NEW SECTION. Section 5. Effective date. [This act] is effective ~~on passage and approval~~ JULY 1,  
 22 2011.

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 24 NEW SECTION. Section 6. Applicability. [This act] applies to contractual obligations regarding the  
 25 payment of interest that are entered into on or after ~~[the effective date of this act]~~ JULY 1, 2011.

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