

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/31/03 H4/7/03

A Bill

HOUSE BILL 2395

5 By: Representative Hathorn
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For An Act To Be Entitled

9 AN ACT PERTAINING TO THE PROCEDURES FOR FILING AN
10 OFFER OF JUDGMENT; AND FOR OTHER PURPOSES.

Subtitle

12 AN ACT PERTAINING TO THE PROCEDURES FOR
13 FILING AN OFFER OF JUDGMENT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. (a) In any civil action for damages filed in the courts of
20 this state, if a defendant files an offer of judgment that is not accepted by
21 the plaintiff within thirty (30) days, the defendant shall be entitled to
22 recover reasonable costs and attorney's fees incurred by her or him or on the
23 defendant's behalf, pursuant to a policy of liability insurance or other
24 contract after the date of filing of the offer, if the judgment is one of no
25 liability or the judgment obtained by the plaintiff is at least twenty-five
26 percent (25%) less than the offer, and the court shall set off the costs and
27 attorney's fees against the award.

28 (b) If the costs and attorney's fees total more than the judgment, the
29 court shall enter judgment for the defendant against the plaintiff for the
30 amount of the costs and fees, less the amount of the plaintiff's award.

31 (c) If a plaintiff files a demand for judgment which is not accepted
32 by the defendant within thirty (30) days and the plaintiff recovers a
33 judgment in an amount at least twenty-five percent (25%) greater than the
34 offer, she or he shall be entitled to recover reasonable costs and attorney's
35 fees incurred from the date of the filing of the demand.

36 (d) If rejected, neither an offer nor demand is admissible in



1 subsequent litigation, except for pursuing the penalties of this section.

2 (e)(1) The making of an offer of settlement which is not accepted does
3 not preclude the making of a subsequent offer.

4 (2) An offer shall:

5 (A) Be in writing and state that it is being made under
6 this section;

7 (B) Name the party making it and the party to whom it is
8 being made;

9 (C) State with particularity the amount offered to settle
10 a claim for punitive damages, if any; and

11 (D) State its total amount.

12 (3) The offer shall be construed as including all damages which
13 may be awarded in a final judgment.

14 (f) The offer shall be served upon the party to whom it is made, but
15 it shall not be filed unless it is accepted or unless filing is necessary to
16 enforce the provisions of this section.

17 (g)(1) An offer shall be accepted by filing a written acceptance with
18 the court within thirty (30) days after service.

19 (2) Upon filing of both the offer and acceptance, the court has
20 full jurisdiction to enforce the settlement agreement.

21 (h)(1) An offer may be withdrawn in writing that is served before the
22 date a written acceptance is filed.

23 (2) Once withdrawn, an offer is void.

24 (i)(1) Upon motion made by the offeror within thrity (30) days after
25 the entry of judgment or after voluntary or involuntary dismissal, the court
26 shall determine the following:

27 (A) If a defendant serves an offer that is not accepted by
28 the plaintiff, and if the judgment obtained by the plaintiff is at least
29 twenty-five percent (25%) less than the amount of the offer, the defendant
30 shall be awarded reasonable costs, including investigative expenses, and
31 attorney's fees incurred after the date the offer was served, and the court
32 shall set off the costs in attorney's fees against the award;

33 (B) When the costs and attorney's fees total more than the
34 amount of the judgment, the court shall enter judgment for the defendant
35 against the plaintiff for the amount of the costs and fees, less the amount
36 of the award to the plaintiff; and

1 (C) If a plaintiff serves an offer that is not accepted by
2 the defendant, and if the judgment obtained by the plaintiff is at least
3 twenty-five percent (25%) more than the amount of the offer, the plaintiff
4 shall be awarded reasonable costs, including investigative expenses, and
5 attorney's fees incurred after the date the offer was served.

6 (2) For purposes of the determination required by subdivision
7 (h)(1)(A), the term "judgment obtained" means the amount of the net judgment
8 entered, plus any post offer collateral source payments received or due as of
9 the date of the judgment, plus any post offer settlement amounts by which the
10 verdict was reduced.

11 (3) For purposes of the determination required by subdivision
12 (h)(1)(C), the term "judgment obtained" means the amount of the net judgment
13 entered, plus any post offer settlement amounts by which the verdict was
14 reduced.

15 (j)(1) If a party is entitled to costs and fees under this section,
16 the court may, in its discretion, determine that an offer was not made in
17 good faith and in that case, the court may disallow an award of costs and
18 attorney's fees.

19 (2) When determining the reasonableness of an award of
20 attorney's fees under this section, the court shall consider, along with all
21 other relevant criteria, the following additional factors:

22 (A) The then apparent merit or lack of merit in the claim;

23 (B) The number and nature of offers made by the parties;

24 (C) The closeness of questions of fact and law at issue;

25 (D) Whether the person making the offer had unreasonably
26 refused to furnish information necessary to evaluate the reasonableness of
27 the offer;

28 (E) Whether the suit was in the nature of a test case
29 presenting questions of far-reaching importance affecting nonparties; and

30 (F) The amount of the additional delay cost and expense
31 that the person making the offer reasonably would be expected to incur if the
32 litigation should be prolonged.

33 (k) Evidence of an offer is admissible only in proceedings to enforce
34 an accepted offer or to determine the imposition of sanctions under this
35 section.

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/s/ Hathorn