

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2395

"AN ACT PERTAINING TO THE PROCEDURES FOR FILING AN OFFER OF JUDGMENT."

Amendment No. 2 to House Bill No. 2395.

Amend House Bill No. 2395 as originally introduced:

Delete section 1 in its entirety and substitute the following:

"SECTION 1. (a) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment that is not accepted by the plaintiff within thirty (30) days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf, pursuant to a policy of liability insurance or other contract after the date of filing of the offer, if the judgment is one of no liability or the judgment obtained by the plaintiff is at least twenty-five percent (25%) less than the offer, and the court shall set off the costs and attorney's fees against the award.

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

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

(d) If rejected, neither an offer nor demand is admissible in subsequent litigation, except for pursuing the penalties of this section.

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

(2) An offer shall:

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

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

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

(D) State its total amount.

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



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

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

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

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

(2) Once withdrawn, an offer is void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Amendment was read _____
By: Representative Hathorn
LDH/MHF - 031220031603
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Chief Clerk