

SENATE BILL NO. 492—COMMITTEE ON JUDICIARY

(ON BEHALF OF ADMINISTRATIVE OFFICE OF THE COURTS)

MARCH 19, 1999

Referred to Committee on Judiciary

SUMMARY—Authorizes supreme court to adopt rules concerning offers of judgments.
(BDR 2-851)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil practice; authorizing the supreme court to adopt rules to govern written offers of judgments; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 17.115 is hereby amended to read as follows:
2 17.115 1. ~~{At any time more than 10 days before trial, either~~
3 ~~informally or at any pretrial conference presided over by a judge of the~~
4 ~~court in which the action is pending,}~~ ***The supreme court may adopt rules***
5 ***governing the manner in which*** any party may serve an offer in writing to
6 allow judgment to be taken in accordance with the terms and conditions
7 stated ~~{at that time.~~
8 ~~—2.— If the offer is accepted, the judge of the court in which the action is~~
9 ~~pending shall enter judgment accordingly.~~
10 ~~—3.— If the offer is not accepted before trial or within 10 days after it is~~
11 ~~made, whichever occurs first, it shall be deemed withdrawn, and cannot be~~
12 ~~given in evidence upon the trial.~~
13 ~~—4.— If}~~ ***in the offer.***
14 ***2. The rules of the supreme court must provide that a party who***
15 ***makes an offer of judgment may receive interest on the judgment, costs***
16 ***and attorney's fees if the*** party to whom the offer of judgment is made
17 ***{fails}*** :

1 **(a) Rejects the offer of judgment; and**

2 **(b) Fails** to obtain a more favorable judgment . ~~1. he cannot recover:~~

3 ~~—(a) Interest on the judgment for the period between the time of service of~~
4 ~~the summons and complaint and the time of entry of the judgment; or~~

5 ~~—(b) Costs or attorney's fees;~~

6 ~~and the court shall order him to pay to the party who made the offer that~~
7 ~~party's taxable costs incurred from the date of filing the complaint, and~~
8 ~~may order also a reasonable sum to cover costs of the services of expert~~
9 ~~witnesses who are not regular employees of any party actually incurred and~~
10 ~~reasonably necessary in the preparation of the case for trial by the~~
11 ~~prevailing party, interest on the judgment from the time of the offer to the~~
12 ~~time of entry of the judgment and reasonable attorney's fees incurred by the~~
13 ~~party making the offer from the time of the offer.~~

14 ~~—5.— Any taxable costs, attorney's fees and interest which is not derived~~
15 ~~from an interest-bearing obligation which may have been awarded must not~~
16 ~~be considered to be part of the judgment when determining whether the~~
17 ~~judgment was more favorable than the rejected offer.~~

18 ~~—6.— If the attorney of the party for whom the offer of judgment is made~~
19 ~~is collecting a contingent fee for his services, the amount of any attorney's~~
20 ~~fees awarded to the party for whom the offer is made must be deducted~~
21 ~~from that contingent fee.~~

22 ~~—7.— Any judgment entered pursuant to this section shall be deemed a~~
23 ~~compromise settlement.]~~

24 **Sec. 2.** NRS 92A.500 is hereby amended to read as follows:

25 92A.500 1. The court in a proceeding to determine fair value shall
26 determine all of the costs of the proceeding, including the reasonable
27 compensation and expenses of any appraisers appointed by the court. The
28 court shall assess the costs against the subject corporation, except that the
29 court may assess costs against all or some of the dissenters, in amounts the
30 court finds equitable, to the extent the court finds the dissenters acted
31 arbitrarily, vexatiously or not in good faith in demanding payment.

32 2. The court may also assess the fees and expenses of the counsel and
33 experts for the respective parties, in amounts the court finds equitable:

34 (a) Against the subject corporation and in favor of all dissenters if the
35 court finds the subject corporation did not substantially comply with the
36 requirements of NRS 92A.300 to 92A.500, inclusive; or

37 (b) Against either the subject corporation or a dissenter in favor of any
38 other party, if the court finds that the party against whom the fees and
39 expenses are assessed acted arbitrarily, vexatiously or not in good faith
40 with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.

41 3. If the court finds that the services of counsel for any dissenter were
42 of substantial benefit to other dissenters similarly situated, and that the fees
43 for those services should not be assessed against the subject corporation,

1 the court may award to those counsel reasonable fees to be paid out of the
2 amounts awarded to the dissenters who were benefited.

3 4. In a proceeding commenced pursuant to NRS 92A.460, the court
4 may assess the costs against the subject corporation, except that the court
5 may assess costs against all or some of the dissenters who are parties to the
6 proceeding, in amounts the court finds equitable, to the extent the court
7 finds that such parties did not act in good faith in instituting the proceeding.

8 5. This section does not preclude any party in a proceeding
9 commenced pursuant to NRS 92A.460 or 92A.490 from applying the
10 provisions of N.R.C.P. 68 ~~for~~ *and the rules adopted pursuant to* NRS
11 17.115.

12 **Sec. 3.** This act becomes effective upon passage and approval.

~