

SENATE BILL NO. 492—COMMITTEE ON JUDICIARY

(ON BEHALF OF ADMINISTRATIVE OFFICE OF THE COURTS)

MARCH 19, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing offer of judgment in civil action. (BDR 2-851)

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

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

AN ACT relating to civil actions; revising the provisions governing an offer of judgment in a civil action; 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,~~ any party may serve ~~an offer in~~
5 ~~writing~~ **upon one or more other parties a written offer** to allow judgment
6 to be taken in accordance with the terms and conditions ~~stated at that time.~~
7 ~~—2.—If~~ **of the offer of judgment.**
8 **2. Except as otherwise provided in subsection 7, if, within 10 days**
9 **after the date of service of an offer of judgment, the party to whom the**
10 **offer was made serves written notice that** the offer is accepted, the ~~judge~~
11 ~~of the court in which the action is pending~~ **party who made the offer or**
12 **the party who accepted the offer may file the offer, the notice of**
13 **acceptance and proof of service with the clerk. Upon receipt by the clerk:**
14 **(a) The clerk shall enter judgment** ~~accordingly.~~ **according to the**
15 **terms of the offer unless:**
16 **(1) A party who is required to pay the amount of the offer requests**
17 **dismissal of the claim instead of entry of the judgment; and**

1 (2) The party pays the amount of the offer within a reasonable time
2 after the offer is accepted.

3 (b) Regardless of whether a judgment or dismissal is entered pursuant
4 to paragraph (a), the court shall award costs in accordance with
5 NRS 18.110 to each party who is entitled to be paid under the terms of
6 the offer, unless the terms of the offer preclude a separate award of
7 costs.

8 Any judgment entered pursuant to this section shall be deemed a
9 compromise settlement.

10 3. If the offer of judgment is not accepted ~~{before trial or}~~ pursuant to
11 subsection 2 within 10 days after ~~{it is made, whichever occurs first, it}~~ the
12 date of service, the offer shall be deemed rejected by the party to whom it
13 was made and withdrawn ~~{, and cannot be given in evidence upon the trial~~
14 ~~—4.— If the party to whom the}~~ by the party who made it. The rejection of
15 an offer does not preclude any party from making another offer pursuant
16 to this section. Evidence of a rejected offer is not admissible in any
17 proceeding other than a proceeding to determine costs and fees.

18 4. Except as otherwise provided in this section, if a party who rejects
19 an offer of judgment ~~{is made}~~ fails to obtain a more favorable judgment ~~{~~
20 he cannot recover:

21 ~~—(a) Interest}~~, the court:

22 (a) May not award to the party any costs or attorney's fees;

23 (b) May not award to the party any interest on the judgment for the
24 period ~~{between the time}~~ from the date of service of the ~~{summons and~~
25 ~~complaint and the time}~~ offer to the date of entry of the judgment; ~~{or~~

26 ~~—(b) Costs or attorney's fees,~~
27 ~~and the court shall order him}~~

28 (c) Shall order the party to pay ~~{to the party who made the offer that~~
29 ~~party's}~~ the taxable costs incurred ~~{from the date of filing the complaint,~~
30 ~~and may order also a}~~ by the party who made the offer; and

31 (d) May order the party to pay to the party who made the offer any or
32 all of the following:

33 (1) A reasonable sum to cover any costs ~~{of the services of expert~~
34 ~~witnesses who are not regular employees of any party actually incurred~~
35 ~~and}~~ incurred by the party who made the offer for each expert witness
36 whose services were reasonably necessary ~~{in the preparation}~~ to prepare
37 for and conduct the trial of the case . ~~{for trial by the prevailing party,}~~

38 (2) Any applicable interest on the judgment for the period from the
39 ~~{time}~~ date of service of the offer to the ~~{time}~~ date of entry of the
40 judgment . ~~{and reasonable}~~

41 (3) Reasonable attorney's fees incurred by the party ~~{making}~~ who
42 made the offer for the period from the ~~{time}~~ date of service of the offer ~~{~~

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

~~—6.] to the date of entry of the judgment.~~ If the attorney of the party ~~{for whom the offer of judgment is}~~ **who** made **the offer** is collecting a contingent fee , ~~{for his services,}~~ the amount of any attorney’s fees awarded to the party ~~{for whom the offer is made}~~ **pursuant to this subparagraph** must be deducted from that contingent fee.

~~{7.—Any judgment entered pursuant to this section shall be deemed a compromise settlement.}~~

5. To determine whether a party who rejected an offer of judgment failed to obtain a more favorable judgment:

(a) If the offer provided that the court would award costs, the court must compare the principal amount of the judgment with the amount of the offer, without inclusion of costs.

(b) If the offer precluded a separate award of costs, the court must compare the principal amount of the judgment with the sum of:

(1) The amount of the offer; and

(2) The amount of taxable costs that the party to whom the offer was made incurred before the date of service of the offer.

6. Multiple parties may make a joint offer of judgment pursuant to this section.

7. A party may make to two or more other parties pursuant to this section an apportioned offer of judgment that is conditioned upon acceptance by all the parties to whom the apportioned offer is made. Each party to whom such an offer is made may serve upon the party who made the offer a separate written notice of acceptance of the offer. If any party rejects the apportioned offer:

(a) The action must proceed as to all parties to whom the apportioned offer was made, whether or not the other parties accepted or rejected the offer; and

(b) The sanctions set forth in subsection 4:

(1) Apply to each party who rejected the apportioned offer.

(2) Do not apply to any party who accepted the apportioned offer.

8. If the liability of one party to another party has been determined by verdict, order or judgment, but the amount or extent of the liability of the party remains to be determined by further proceedings, the party found liable may, not later than 10 days before commencement of the proceedings to determine the amount or extent of his liability, serve upon the party to whom he is liable a written offer of judgment. An offer of judgment made pursuant to this subsection shall be deemed to have the same effect as an offer of judgment made before trial.

- 1 **9. The sanctions set forth in subsection 4 do not apply to:**
2 **(a) An offer of judgment made to multiple defendants unless the same**
3 **person is authorized to decide whether to settle the claims against all the**
4 **defendants to whom the offer is made and:**
5 **(1) There is a single common theory of liability against all the**
6 **defendants to whom the offer is made;**
7 **(2) The liability of one or more of the defendants to whom the offer**
8 **is made is entirely derivative of the liability of the remaining defendants**
9 **to whom the offer is made; or**
10 **(3) The liability of all the defendants to whom the offer is made is**
11 **entirely derivative of a common act or omission by another person.**
12 **(b) An offer of judgment made to multiple plaintiffs unless the same**
13 **person is authorized to decide whether to settle the claims of all the**
14 **plaintiffs to whom the offer is made and:**
15 **(1) There is a single common theory of liability claimed by all the**
16 **plaintiffs to whom the offer is made;**
17 **(2) The damages claimed by one or more of the plaintiffs to whom**
18 **the offer is made are entirely derivative of an injury to the remaining**
19 **plaintiffs to whom the offer is made; or**
20 **(3) The damages claimed by all the plaintiffs to whom the offer is**
21 **made are entirely derivative of an injury to another person.**
22 **Sec. 2.** The amendatory provisions of this act do not apply to an offer
23 of judgment that was made in a civil action before the effective date of this
24 act.
25 **Sec. 3.** This act becomes effective upon passage and approval.