

Assembly Bill No. 166—Assemblymen Hardy, Anderson, Hettrick, Sibley, Parks, Christensen, Claborn, Conklin, Denis, Gansert, Holcomb, Manendo, McCleary and Seale

Joint Sponsors: Senators Hardy, Nolan and Raggio

CHAPTER.....

AN ACT relating to civil actions; revising certain provisions relating to an offer of judgment in a civil action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a court from awarding court costs or attorney's fees to a party in a civil action who rejects a settlement offer that is served more than 10 days before trial and who fails to obtain a more favorable judgment at trial. Existing law requires the court to use certain formulas to determine whether such a party failed to obtain a more favorable judgment. In cases where a party made a settlement offer that provided that the court would award costs, the court must compare the amount of the judgment with the amount of the settlement offer, without the inclusion of costs. In cases where a party made a settlement offer that precluded a separate award of costs, the court must compare the amount of the judgment with the sum of the settlement offer and the taxable costs that the party who received the settlement offer incurred before service of the settlement offer. (NRS 17.115; N.R.C.P. 68)

This bill revises the formulas for determining whether a party obtained a more favorable judgment. In cases where a party made a settlement offer that provided that the court would award costs, the court must compare the amount of the settlement offer with the amount of the judgment, without the inclusion of costs. In cases where a party made a settlement offer that precluded a separate award of costs, the court must compare the amount of the settlement offer with the sum of the judgment and the taxable costs that the claimant who obtained the judgment incurred before service of the settlement offer. This bill defines the term "claimant" to mean a plaintiff, counterclaimant, cross-claimant or third-party plaintiff.

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

Section 1. NRS 17.115 is hereby amended to read as follows:

17.115 1. At any time more than 10 days before trial, any party may serve upon one or more other parties a written offer to allow judgment to be taken in accordance with the terms and conditions of the offer of judgment.

2. Except as otherwise provided in subsection 7, if, within 10 days after the date of service of an offer of judgment, the party to whom the offer was made serves written notice that the offer is accepted, the party who made the offer or the party who accepted the offer may file the offer, the notice of acceptance and proof of service with the clerk. Upon receipt by the clerk:

(a) The clerk shall enter judgment according to the terms of the offer unless:

(1) A party who is required to pay the amount of the offer requests dismissal of the claim instead of entry of the judgment; and

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

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

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

3. If the offer of judgment is not accepted pursuant to subsection 2 within 10 days after the date of service, the offer shall be deemed rejected by the party to whom it was made and withdrawn by the party who made it. The rejection of an offer does not preclude any party from making another offer pursuant to this section. Evidence of a rejected offer is not admissible in any proceeding other than a proceeding to determine costs and fees.

4. Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court:

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

(b) May not award to the party any interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment;

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

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

(1) A reasonable sum to cover any costs incurred by the party who made the offer for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case.

(2) Any applicable interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment.

(3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee.

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 amount of the offer with* 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 *amount of the offer with the sum of:*

~~(1) 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]~~ *claimant who obtained the judgment* incurred before the date of service of the offer.

↪ *As used in this subsection, “claimant” means a plaintiff, counterclaimant, cross-claimant or third-party plaintiff.*

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.

9. The sanctions set forth in subsection 4 do not apply to:

(a) An offer of judgment made to multiple defendants unless the same person is authorized to decide whether to settle the claims against all the defendants to whom the offer is made and:

(1) There is a single common theory of liability against all the defendants to whom the offer is made;

(2) The liability of one or more of the defendants to whom the offer is made is entirely derivative of the liability of the remaining defendants to whom the offer is made; or

(3) The liability of all the defendants to whom the offer is made is entirely derivative of a common act or omission by another person.

(b) An offer of judgment made to multiple plaintiffs unless the same person is authorized to decide whether to settle the claims of all the plaintiffs to whom the offer is made and:

(1) There is a single common theory of liability claimed by all the plaintiffs to whom the offer is made;

(2) The damages claimed by one or more of the plaintiffs to whom the offer is made are entirely derivative of an injury to the remaining plaintiffs to whom the offer is made; or

(3) The damages claimed by all the plaintiffs to whom the offer is made are entirely derivative of an injury to another person.