

ASSEMBLY BILL NO. 418—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Enacts provisions governing an offer of judgment.
(BDR 2-1115)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to judgments; enacting provisions governing an offer of judgment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Rules of Civil Procedure authorize a party to serve an offer of judgment upon another party prior to trial under certain circumstances. The Nevada Rules of Civil Procedure set forth the conditions of service of the offer, the manner of acceptance or rejection of the offer by a party and penalties a court may impose on a party for the rejection of such an offer. (N.R.C.P. 68)

Section 1 of this bill authorizes a party, more than 10 days before trial, to serve an offer of judgment upon another party. **Section 1** provides that if the offer is accepted within 10 days of its service, either party may file notice of its acceptance with the clerk of the court. **Section 1** requires the clerk to enter such a judgment unless: (1) the party required to pay the amount offered in the judgment requests dismissal of the claim; and (2) that party pays the amount of the offer within a reasonable time after the offer's acceptance. **Section 1** requires a court to award costs to any party entitled to be paid pursuant to the terms of the accepted offer unless the terms of the offer preclude such an award.

Section 1 provides that if such an offer is not accepted within 10 days of its service, the offer is deemed rejected and withdrawn by the party who made the offer. **Section 1** provides that if a party rejects an offer and fails to receive a more favorable judgment at trial, a court may impose certain sanctions on the party that rejected the offer of judgment. **Section 1** also provides the procedure for determining whether a party failed to receive a more favorable judgment at trial.

Section 1 authorizes multiple parties to make a joint offer of judgment. **Section 1** authorizes a party to make an apportioned offer to two or more parties that is conditioned upon acceptance by all parties to whom the offer was made. **Section 1** authorizes each party to whom such an apportioned offer was made to accept the offer separately. **Section 1** provides that if any party rejects the apportioned offer: (1) the action must proceed against all parties to whom such an offer was made; and (2) the court must impose sanctions against a party that rejected an apportioned



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offer, however, such sanctions will not be imposed against a party who accepted such an apportioned offer.

If a party is determined to be liable but the amount or extent of the party's liability has not been determined, **section 1** provides that the liable party may serve an offer of judgment upon another party. **Section 1** also provides that a court may not impose sanctions on a party who rejects an offer but fails to receive a more favorable judgment at trial under certain circumstances. **Sections 2 and 3** of this bill make conforming changes.

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

Section 1. Chapter 17 of NRS is hereby amended by adding thereto a new section to read as follows:

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.



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

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

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

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

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

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

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

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

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

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

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

32 (1) *The principal amount of the judgment; and*

33 (2) *The amount of taxable costs that the claimant who*
34 *obtained the judgment incurred before the date of service of the*
35 *offer.*

36 ➡ *As used in this subsection, "claimant" means a plaintiff,*
37 *counterclaimant, cross-claimant or third-party plaintiff.*

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

40 7. *A party may make to two or more other parties pursuant to*
41 *this section an apportioned offer of judgment that is conditioned*
42 *upon acceptance by all the parties to whom the apportioned offer*
43 *is made. Each party to whom such an offer is made may serve*
44 *upon the party who made the offer a separate written notice of*
45 *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 the liability, serve upon the party to whom he or she is liable a written offer of a judgment. An offer of a 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.*

Sec. 2. NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and



(b) Award attorney's fees and costs to the contractor.

➤ Any sums paid under a homeowner's warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

(e) Participate in mediation,

➤ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive:

(a) A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.

(b) A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.

(c) If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

(d) Statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure, ~~for~~ NRS 40.652 ~~or~~ *or section 1 of this act.*

Sec. 3. NRS 92A.500 is hereby amended to read as follows:

92A.500 1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the



1 reasonable compensation and expenses of any appraisers appointed
2 by the court. The court shall assess the costs against the subject
3 corporation, except that the court may assess costs against all or
4 some of the dissenters, in amounts the court finds equitable, to the
5 extent the court finds the dissenters acted arbitrarily, vexatiously or
6 not in good faith in demanding payment.

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


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

14 (b) Against either the subject corporation or a dissenter in favor
15 of any other party, if the court finds that the party against whom the
16 fees and expenses are assessed acted arbitrarily, vexatiously or not
17 in good faith with respect to the rights provided by NRS 92A.300 to
18 92A.500, inclusive.

19 3. If the court finds that the services of counsel for any
20 dissenter were of substantial benefit to other dissenters similarly
21 situated, and that the fees for those services should not be assessed
22 against the subject corporation, the court may award to those
23 counsel reasonable fees to be paid out of the amounts awarded to the
24 dissenters who were benefited.

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

31 5. To the extent the subject corporation fails to make a required
32 payment pursuant to NRS 92A.460, 92A.470 or 92A.480, the
33 dissenter may bring a cause of action directly for the amount owed
34 and, to the extent the dissenter prevails, is entitled to recover all
35 expenses of the suit.

36 6. This section does not preclude any party in a proceeding
37 commenced pursuant to NRS 92A.460 or 92A.490 from applying
38 the provisions of N.R.C.P. 68  *or section 1 of this act.*

