

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 codifies into statute Rule 68 of the Nevada Rules of Civil Procedure.

Section 1 authorizes a party, more than 21 days before trial, to serve an offer of judgment upon another party. **Section 1** provides that such an offer is an offer that resolves all claims in the action under certain circumstances. **Section 1** provides that if the offer is accepted within 14 days of its service: (1) either party may file notice of its acceptance and proof of service with the clerk of the court not earlier than 21 days after the party's acceptance of the offer; and (2) the clerk must enter the judgment accordingly. **Section 1** provides that a judgment will not be entered by the clerk if the party required to pay the amount offered in the judgment pays the amount of the offer within 21 days 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 such an offer must be expressly designated as a compromise settlement.

Section 1 provides that if such an offer is not accepted within 14 days of its service, the offer is deemed rejected and withdrawn by the party who made the offer.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 penalties 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** also provides the circumstances in which penalties will be imposed concerning:



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(1) an offer of judgment made to multiple defendants; or (2) an offer of judgment made to multiple plaintiffs.

Section 1 authorizes a party to make an apportioned offer to two or more parties and such an offer may be 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 may impose penalties against a party that rejected 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, not less than 14 days before the commencement of the action to determine the amount and extent of a party's liability, the liable party may serve an offer of judgment upon another party. **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 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with the terms and conditions of the offer. Unless otherwise specified, an offer made under this section is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest and, if attorney's fees are permitted by law or contract, attorney's fees.

2. An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

3. A joint offer may be made by multiple offerors.

4. An offer made to multiple defendants will invoke the penalties of this section only if:

(a) There is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another; and

(b) The same entity, person or group is authorized to decide whether to settle the claims against the offerees.

5. An offer made to multiple plaintiffs will invoke the penalties of this section only if:

(a) The damages claimed by all the offeree plaintiffs are solely derivative, such as where the damages claimed by some offerees are entirely derivative of an injury to the others or where the damages claimed by all offerees are derivative of an injury to another; and



(b) The same entity, person or group is authorized to decide whether to settle the claims of the offerees.

6. Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.

7. Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain dismissal of the claims, rather than entry of a judgment.

8. If the claims are not dismissed, at any time after 21 days after service of written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service. The clerk must then enter judgment accordingly. The court must allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered under this subsection must be expressly designated a compromise settlement.

9. If the offer is not accepted within 14 days after service, the offer will be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs, expenses and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action will proceed as to all offerees. Any offeree who fails to accept the offer may be subject to the penalties of this section.

10. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(a) The offeree may not recover any costs, expenses or attorney's fees and may not recover interest for the period after the service of the offer and before the judgment; and

(b) The offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of the entry of the judgment and reasonable attorney's fees, if any allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingency fee.

11. The penalties in this section run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment.



12. *To invoke the penalties of this section, the court must determine if the offeree failed to obtain a more favorable judgment. If the offer provided that costs, expenses, interests and, if attorney's fees are permitted by law or contract, attorney's fees would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs, expenses, interest and, if attorney's fees are permitted by law or contract, attorney's fees. If a party made an offer in a set amount that precluded a separate award of costs, expenses, interest and, if attorney's fees are permitted by law or contract, attorney's fees, the court must compare the amount of the offer, together with the offeree's pre-offer taxable costs, expenses, interest and, if attorney's fees are permitted by law or contract, attorney's fees with the principal amount of the judgment.*

13. *When the liability of one party to another has been determined by verdict, order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which has the same effect as an offer made before trial if it is served within a reasonable time not less than 14 days before the commencement of hearings to determine the amount or extent of liability.*

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



1 commence an action or amend a complaint to add a cause of action
2 for a constructional defect without satisfying any other requirement
3 of NRS 40.600 to 40.695, inclusive.

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

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

12 (b) A claimant may include in a notice given pursuant to NRS
13 40.645 only claims for the constructional defects that were denied
14 by the insurer.

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

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

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

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

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

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

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

44 (b) Against either the subject corporation or a dissenter in favor
45 of any other party, if the court finds that the party against whom the



1 fees and expenses are assessed acted arbitrarily, vexatiously or not
2 in good faith with respect to the rights provided by NRS 92A.300 to
3 92A.500, inclusive.

4 3. If the court finds that the services of counsel for any
5 dissenter were of substantial benefit to other dissenters similarly
6 situated, and that the fees for those services should not be assessed
7 against the subject corporation, the court may award to those
8 counsel reasonable fees to be paid out of the amounts awarded to the
9 dissenters who were benefited.

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

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

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

