

Amendment No. 201

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| Assembly Amendment to Assembly Bill No. 418 | (BDR 2-1115) |
| Proposed by: Assembly Committee on Judiciary | |
| Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes | |

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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 ~~of this bill~~ authorizes a party, more than ~~40~~ **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 ~~40~~ **14** days of its service ~~the party~~ **the 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** ~~requires the clerk to enter such a judgment unless: (1)~~ **provides that a judgment will not be entered by the clerk if 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~~ **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 ~~40~~ **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 ~~sanctions~~ **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: (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 ~~that is~~ **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

~~[must] may impose [sanctions] penalties against a party that rejected an apportioned offer. [f; 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 , 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. ~~[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.~~

~~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 the contingency 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, 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; and~~

~~(2) The amount of taxable costs that the 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 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.}~~

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.

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

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

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

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

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

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

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

36 40.650 1. If a claimant unreasonably rejects a reasonable written offer of
37 settlement made as part of a response pursuant to paragraph (b) of subsection 2 of
38 NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to
39 40.695, inclusive, the court in which the action is commenced may:

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

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

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

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

46 (a) Comply with the provisions of NRS 40.6472;

47 (b) Make an offer of settlement;

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

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

51 (e) Participate in mediation,

52 ➤ the limitations on damages and defenses to liability provided in NRS 40.600 to
53 40.695, inclusive, do not apply and the claimant may commence an action or amend

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

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

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

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

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

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

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

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

24 92A.500 1. The court in a proceeding to determine fair value shall
25 determine all of the costs of the proceeding, including the reasonable compensation
26 and expenses of any appraisers appointed by the court. The court shall assess the
27 costs against the subject corporation, except that the court may assess costs against
28 all or some of the dissenters, in amounts the court finds equitable, to the extent the
29 court finds the dissenters acted arbitrarily, vexatiously or not in good faith in
30 demanding payment.

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

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

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

40 3. If the court finds that the services of counsel for any dissenter were of
41 substantial benefit to other dissenters similarly situated, and that the fees for those
42 services should not be assessed against the subject corporation, the court may
43 award to those counsel reasonable fees to be paid out of the amounts awarded to the
44 dissenters who were benefited.

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

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

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