STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1655 BY: MAXEY

AS INTRODUCED

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING 12 O.S. 1981, SECTIONS 1101 AND 1106, WHICH RELATE TO FULL AND PARTIAL OFFERS TO ALLOW JUDGMENT TO BE TAKEN; PROVIDING FOR FULL AND PARTIAL OFFERS TO SETTLE CLAIMS BY PLAINTIFFS AND PROVIDING PROCEDURES INCLUDING NOTICE AND AFFIDAVIT; STATING WHEN OFFERS DEEMED WITHDRAWN; PROHIBITING USE OF OFFERS IN TRIAL; REQUIRING DEFENDANT TO PAY PLAINTIFF'S COSTS IF AMOUNT OF OFFER OR MORE IS OBTAINED IN JUDGMENT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1981, Section 1101, is amended to read as follows:

Section 1101. A. The defendant, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer, in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff ~~accept~~ accepts the offer and ~~give~~ gives notice thereof to the defendant or his attorney, within five (5) days after the offer was served, the offer, and an affidavit that the notice of

acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

B. The plaintiff, in an action for the recovery of money only, may, at any time before the trial, serve upon the defendant or his attorney an offer, in writing, to settle for a sum specified therein. If the defendant accepts the offer and gives notice thereof to the plaintiff or his attorney, within five (5) days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered in a timely manner, may be filed by the defendant, or the plaintiff may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the limited time period, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff obtains judgment for the amount offered or more, the defendant shall pay the plaintiff's expenses from the time of the offer.

SECTION 2. AMENDATORY 12 O.S. 1981, Section 1106, is amended to read as follows:

Section 1106. A. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action; whereupon, if the plaintiff, being present, ~~refuse~~ refuses

to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial ~~do~~ does not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or the amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

B. After an action for the recovery of money is brought, the plaintiff may offer in court to settle for part of the amount claimed, or part of the causes involved in the action; whereupon, if the defendant, being present, refuses to accept such settlement in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fails to attend, and on the trial the plaintiff recovers the amount of the offer or more, the defendant shall pay all the expenses of the plaintiff incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or the amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

SECTION 3. This act shall become effective September 1, 1991.

43-1-5885 SCE