

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1609

By: Cotner

AS INTRODUCED

An Act relating to offer and acceptance of judgment; amending 12 O.S. 1991, Section 940, which relates to offer and acceptance of judgments for the negligent or willful injury to property; amending 12 O.S. 1991, Section 1101, which relates to offer and acceptance of judgment in actions for the recovery of money; modifying procedures governing offer and acceptance of judgment; repealing 12 O.S. 1991, Section 1106, which relates to offer to confess judgment in part; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 940, is amended to read as follows:

Section 940. ~~A.~~ In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, court costs and interest to be set by

the court and to be taxed and collected as other costs of the action.

~~B. Provided that, the defendant in such action may, not less than ten (10) days after being served with summons, serve upon the plaintiff or his attorney a written offer to allow judgment to be taken against him. If the plaintiff accepts the offer and 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, verified by affidavit. 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 If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned at the trial. If upon the action being adjudicated the judgment rendered is for the defendant or for the plaintiff and is for a lesser amount than the defendant's offer, then the plaintiff shall not be entitled to recover attorney's fees, court costs and interest. If the judgment rendered is for the plaintiff, and is for the same amount as the defendant's offer, then the plaintiff and defendant shall incur their own attorney's fees, court costs and interest. And if the judgment rendered is for the plaintiff, and is for a larger amount than the defendant's offer, then the plaintiff shall be entitled to recover attorney's fees, court costs and interest.~~

SECTION 2. AMENDATORY 12 O.S. 1991, 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 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~~ is 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.~~ If upon the action being adjudicated, the judgment rendered is for the defendant or the plaintiff and is for a lesser amount than the defendant's offer, then the plaintiff shall pay the defendant's costs. If the judgment rendered is for the plaintiff and is for the same amount as the defendant's offer, then the plaintiff and defendant shall incur their own costs. If the judgment rendered is for the plaintiff, and is for a larger amount than the defendant's offer, the defendant shall pay the plaintiff's costs. The comparison of the defendant's offer and the plaintiff's judgment shall be based on the defendant's last filed offer and shall be made without regard to costs, including attorney's fees, or interest, incurred by either party.

B. As used in subsection A of this section, "costs" shall include a reasonable attorney's fee.

C. If the plaintiff accepts the defendant's offer, pursuant to this section, the plaintiff shall not be considered the prevailing party in the action and shall not be entitled to recover costs, interest or attorney's fees from the defendant, in addition to the amount of the defendant's offer.

D. The defendant may offer to allow judgment to be taken against him for part of the amount claimed by the plaintiff or part of the causes involved in the action, in which event, the partial

offer and the plaintiff's acceptance or rejection of the partial offer shall be subject to all provisions of this section.

E. Any offer or the acceptance of any offer, pursuant to this section, shall not constitute an admission of liability by the defendant or an admission by either party for any other purpose.

SECTION 3. REPEALER 12 O.S. 1991, Section 1106, is hereby repealed.

SECTION 4. This act shall become effective September 1, 1993.

44-1-5543 PS