

1 ENGROSSED HOUSE  
2 BILL NO. 2466

By: Stiles of the House

3 and

4 Jolley of the Senate

5  
6  
7 ( settlements - civil actions - award of litigation

8 costs - codification -

9 effective date )

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

13 SECTION 1. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1121 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. In all civil actions filed on or after November 1, 2012,  
17 except those listed in Section 2 of this act, any party may make an  
18 offer of settlement as to any claim, counterclaim or crossclaim at  
19 any time after an answer to the petition has been filed and until  
20 ten (10) days prior to trial.

21 B. The offer of settlement may include any relief entitled  
22 under law, including but not limited to: monetary damages,  
23 equitable relief, injunctive relief, dismissal, custody and  
24 visitation arrangement.

1 C. Any party that submits an offer of settlement shall be  
2 entitled to recover reasonable litigation costs and attorney fees  
3 when the offeree rejects the offer of settlement and the judgment  
4 rendered by the court is either equal to or is a greater benefit to  
5 the offeror.

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1122 of Title 12, unless there  
8 is created a duplication in numbering, reads as follows:

9 The following civil actions shall not subject to this act:

- 10 1. Guardianships;
- 11 2. Name changes; and
- 12 3. Adoptions.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1123 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

16 The offer of settlement shall be specific enough so that the  
17 offer constitutes the entire agreement between the parties. At a  
18 minimum, all offers of settlement shall include:

- 19 1. The date the offer is made;
- 20 2. The amount or a clear description of the relief being  
21 offered;
- 22 3. Any terms the offer shall be subject to;
- 23 4. Whether acceptance of the offer shall act as either a  
24 dismissal of all claims asserted against the offeror with prejudice

1 as to refilling or that the terms of the offer of settlement shall  
2 be reduced to judgment;

3 5. The following statutory disclosure statement: "This offer  
4 of settlement is made under Sections 1121 through 1127 of Title 12  
5 of the Oklahoma Statutes. You may consult with an attorney in  
6 deciding whether to accept or reject this offer. If you choose to  
7 accept this offer, you shall sign the offer and return it within ten  
8 (10) days of receipt. Failure to respond within ten (10) days shall  
9 result in a rejection of this offer. If you reject this offer and  
10 the judgment rendered by the court is either equal to or is a  
11 greater benefit to the offeror, then you could be held liable to pay  
12 the reasonable litigation expenses and attorney fees of the offering  
13 party.";

14 6. A place for the signature of the offeror with the  
15 declaration that the offeree accepts the offer on his or her own  
16 free will and not under duress; and

17 7. A place for the signature of the offeree and the attorney of  
18 the offeree, if any, affirming acceptance of the offer.

19 SECTION 4. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1124 of Title 12, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. Making an offer of settlement.

23 1. The offeror shall serve the offer of settlement by certified  
24 mail to the attorney for the offeree or by the same methods of

1 service as serving a petition in Section 2004 of Title 12 of the  
2 Oklahoma Statutes;

3 2. After service of the offer of settlement, the offeror shall  
4 file with the court a notice of service of an offer of settlement.  
5 This notice shall not contain the particulars of the offer but shall  
6 state that an offer was delivered to the offeree or attorney of the  
7 offeree and the date upon which the offer was delivered;

8 3. After service, the offeree shall have ten (10) days to  
9 respond to the offer of settlement;

10 4. If the offeree is represented by counsel, then the counsel  
11 of the offeree shall file with the court a statement of submission.  
12 Failure to file this statement shall constitute indirect civil  
13 contempt of court. This statement shall declare the following:

- 14 a. that the attorney has received the offer of  
15 settlement,  
16 b. the date upon which the attorney submitted the offer  
17 to the client, and  
18 c. that the attorney has advised the client as to the  
19 potential liability for litigation costs and attorney  
20 fees for not accepting the offer; and

21 5. No party shall be restricted as to the number of offers of  
22 settlements.

23 B. Accepting an offer of settlement.  
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1 1. The offer of settlement is considered accepted when it is  
2 signed by the offeree and delivered to the offeror;

3 2. Upon acceptance, the offeror shall file a notice of  
4 acceptance of the offer of settlement. This notice shall not  
5 contain the particulars of the offer but shall serve as notice to  
6 the court that there exists a valid offer of settlement; and

7 3. If an accepted offer of settlement requires the offer to be  
8 reduced to judgment, then the offeror shall prepare a journal entry  
9 of judgment in accordance with the terms of the offer of settlement  
10 which shall be signed by the judge and entered as a judgment on the  
11 record.

12 C. Rejection of an offer of settlement.

13 1. The offeree may reject any offer of settlement either by not  
14 signing the offer of settlement or by formal rejection;

15 2. Any counteroffer to an offer of settlement shall constitute  
16 a rejection of the offer of settlement; and

17 3. Offers of settlement shall not be used as evidence in the  
18 trial, but may be used as evidence in a motion for attorney fees or  
19 motion for sanctions.

20 SECTION 5. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1125 of Title 12, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. Acceptance of an offer of settlement constitutes a binding  
24 settlement agreement between the parties and no other documents or

1 settlement agreements are necessary. Nothing in this section shall  
2 restrict the parties from executing a more particular settlement  
3 agreement if the parties concur.

4 B. An offer of settlement shall be deemed to include any costs  
5 or attorney fees otherwise recoverable unless it expressly provides  
6 otherwise.

7 SECTION 6. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1126 of Title 12, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. To be awarded litigation costs under this act, the party  
11 shall make application to the court within thirty (30) days after  
12 filing the journal entry of judgment. This motion shall only  
13 address liability under this act and shall not address the amount of  
14 attorney fees. The court shall hold a hearing to determine  
15 liability for litigation costs and attorney fees under this act.  
16 The offeror shall prove the following by the preponderance of the  
17 evidence:

18 1. That an offer of judgment in compliance with this act was  
19 delivered to the offeree or counsel of the offeree;

20 2. That the offeror received judgment either equal to or  
21 greater than the offer of judgment. The court shall consider the  
22 offer and judgment as a whole and not whether or not each and every  
23 provision in the offer was received in the judgment; and  
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1           3. That a reasonable person should have known that he or she  
2 would have received the judgment against him or her.

3           B. If the court determines that the offeree is liable for costs  
4 and attorney fees under this act, then the offeree shall file a  
5 motion with the court addressing the reasonableness of the amount of  
6 costs and attorney fees. A second hearing shall be held to  
7 determine the amount for which the offeree shall pay in reasonable  
8 litigation costs and attorney fees. An award for reasonable  
9 litigation costs and attorney fees shall be from the date of the  
10 service of the offer to the date of judgment. The court shall  
11 consider the following:

12           1. The amount in controversy compared to the amount of attorney  
13 fees and litigation expenses;

14           2. The net worth of the party that rejected the offer;

15           3. The point in the lawsuit that the offer was rejected; and

16           4. The actions of the offeree during the litigation, including  
17 but not limited to, the amount of motions, the length of trial,  
18 noncompliance with discovery, bad faith, misconduct, and overall  
19 attempts by the offeree to fight, stall and drag the litigation.

20           C. The amount of the litigation costs and attorney fees awarded  
21 shall be offset against any judgment in the lawsuit and any  
22 remaining award shall be reduced to judgment.

23           D. Nothing in this act shall preclude a party from applying to  
24 the court for an award of attorney fees or litigation costs under

1 any other statute. If the party applying for litigation costs under  
2 this act is also the same party applying for litigation costs under  
3 any other statute, then the court shall hear each application  
4 separately, with an application under this act being heard first.  
5 If the party applying for litigation costs under this act is  
6 different than the party applying for litigation costs under any  
7 other statute, then the court shall enter separate judgments and  
8 offset the amounts against each other.

9 SECTION 7. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1127 of Title 12, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. All parties to a civil lawsuit shall submit to mediation at  
13 some time prior to the end of the discovery deadline. Any party who  
14 does not submit to mediation shall be subject to sanctions by the  
15 court including but not limited to judgment against the party not  
16 submitting.

17 B. Mediation under this act shall be conducted by:

18 1. Any judge of the district court, other than the presiding  
19 judge, chosen at random by the court clerk; or

20 2. A member of the Oklahoma Bar Association appointed by the  
21 court who is either willing to perform such services pro bono or is  
22 paid out of the court fund; or  
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3. A person licensed by the Oklahoma Bar Association to perform mediation appointed by the court who is either willing to perform such services pro bono or is paid out of the court fund; or

4. A member of the Oklahoma Bar Association or a person who is licensed by the Oklahoma Bar Association to perform mediation as agreed to and paid for by the parties.

SECTION 8. This act shall become effective November 1, 2012.

Passed the House of Representatives the 6th day of March, 2012.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2012.

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Presiding Officer of the Senate