

1 ENGROSSED SENATE  
2 BILL NO. 1831

By: Jolley of the Senate

3 and

4 Schwartz of the House

5  
6 [ offers of judgment - modifying procedures -  
7 effective date ]  
8

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

10 SECTION 1. AMENDATORY 12 O.S. 2011, Section 1101.1, is  
11 amended to read as follows:

12 Section 1101.1. A. Actions for personal injury, and wrongful  
13 death, ~~and certain specified actions.~~

14 1. ~~Subject to the provisions of paragraph 5 of this subsection,~~  
15 ~~after~~ After a civil action is brought for the recovery of money as  
16 the result of a claim for personal injury, or wrongful death, ~~or~~  
17 ~~pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the~~  
18 ~~Oklahoma Statutes,~~ any defendant may ~~file with the court~~ deliver to  
19 any plaintiff, at any time more than ten (10) days prior to trial,  
20 an offer of judgment for a sum certain to any plaintiff with respect  
21 to the action or any claim or claims asserted in the action. An  
22 offer of judgment shall be deemed to include any costs or attorney  
23 fees otherwise recoverable unless it expressly provides otherwise.  
24 If an offer of judgment is filed, each plaintiff to whom an offer of

1 judgment is made shall, within ten (10) days, ~~file~~ serve upon the  
2 defendant making the offer:

- 3 a. a written acceptance or rejection of such offer, or
- 4 b. a counteroffer of judgment, as described in paragraph  
5 2 of this subsection.

6 If the plaintiff fails to file a timely response, the offer of  
7 judgment shall be deemed rejected. The fact an offer of judgment is  
8 made but not accepted or is deemed rejected does not preclude  
9 subsequent timely offers of judgment.

10 2. In the event a defendant files an offer of judgment, the  
11 plaintiff may, within ten (10) days, ~~file with the court~~ deliver to  
12 the defendant a counteroffer of judgment directed to each defendant  
13 who has filed an offer of judgment. If a counteroffer of judgment  
14 is filed, each defendant to whom the counteroffer of judgment is  
15 made shall, within ten (10) days, ~~file~~ deliver a written acceptance  
16 or rejection of the counteroffer of judgment. If a defendant fails  
17 to ~~file~~ deliver a timely response, the counteroffer of judgment  
18 shall be deemed rejected. The fact a counteroffer of judgment is  
19 made but not accepted or deemed rejected does not preclude  
20 subsequent counteroffers of judgment if subsequent offers of  
21 judgment are made.

22 3. In the event the plaintiff rejects the offer(s) of judgment  
23 and the judgment awarded the plaintiff is less than the final offer  
24 of judgment, then the defendant ~~filing~~ delivering the offer of

1 judgment shall be entitled to recover reasonable litigation costs  
2 and reasonable attorney fees incurred by that defendant from the  
3 date of filing of the final offer of judgment until the date of the  
4 verdict judgment, plus any costs or attorney fees incurred in  
5 enforcing the offer of judgment. Such costs and fees may be offset  
6 from ~~the~~ a monetary judgment entered against the offering defendant;  
7 provided, however, that prior to any such offset, the plaintiff's  
8 attorney may:

- 9 a. exercise any attorneys lien claimed in an amount not  
10 to exceed twenty-five percent (25%) of the judgment,  
11 and
- 12 b. recover the plaintiff's reasonable litigation costs,  
13 not to exceed an additional fifteen percent (15%) of  
14 the judgment or Five Thousand Dollars (\$5,000.00),  
15 whichever is greater.

16 4. In the event a defendant rejects the counteroffer(s) of  
17 judgment and the judgment awarded to the plaintiff is greater than  
18 the final counteroffer of judgment, the plaintiff shall be entitled  
19 to recover reasonable litigation costs and reasonable attorney fees  
20 incurred by the plaintiff from the date of filing of the final  
21 counteroffer of judgment until the date of the ~~verdict~~ judgment,  
22 plus any costs or attorney fees incurred in enforcing the offer of  
23 judgment. Such costs and fees may be added to the judgment entered  
24 in favor of the plaintiff.

1       5. ~~The provisions of this subsection shall apply only where the~~  
2 ~~plaintiff demands in a pleading or in trial proceedings more than~~  
3 ~~One Hundred Thousand Dollars (\$100,000.00), or where the defendant~~  
4 ~~makes an offer of judgment more than One Hundred Thousand Dollars~~  
5 ~~(\$100,000.00). Any offer of judgment may precede the demand.~~

6       B. Other actions.

7       1. After a civil action is brought for the recovery of money or  
8 property in an action other than for personal injury, or wrongful  
9 death ~~or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85~~  
10 ~~of the Oklahoma Statutes~~, any defendant may ~~file with the court~~  
11 deliver to any plaintiff, at any time more than ten (10) days prior  
12 to trial, an offer of judgment for a sum certain to any plaintiff  
13 with respect to the action or any claim or claims asserted in the  
14 action. An offer of judgment shall be deemed to include any costs  
15 and attorney fees otherwise recoverable unless it expressly provides  
16 otherwise. If an offer of judgment is filed, ~~the~~ each plaintiff ~~or~~  
17 ~~plaintiffs~~ to whom the offer of judgment is made shall, within ten  
18 (10) days, ~~file~~ serve upon the defendant making the offer:

- 19           a. a written acceptance or rejection of the offer, or  
20           b. a counteroffer of judgment, as described in paragraph  
21                2 of this subsection.

22       If a plaintiff fails to file a timely response, the offer of  
23 judgment shall be deemed rejected. The fact an offer of judgment is  
24

1 made but not accepted or is deemed rejected does not preclude  
2 subsequent timely offers of judgment.

3 2. In the event a defendant files an offer of judgment, the  
4 plaintiff may, within ten (10) days, ~~file with the court a~~  
5 ~~counteroffer of judgment~~ deliver to each defendant who has ~~filed~~  
6 made an offer of judgment and the claim or claims which are the  
7 subject thereof. If a counteroffer of judgment is filed, each  
8 defendant to whom a counteroffer of judgment is made shall, within  
9 ten (10) days, ~~file~~ deliver a written acceptance or rejection of the  
10 counteroffer of judgment. If a defendant fails to ~~file~~ deliver a  
11 timely response, the counteroffer of judgment shall be deemed  
12 rejected. The fact a counteroffer of judgment is made but not  
13 accepted or is deemed rejected does not preclude subsequent  
14 counteroffers of judgment if subsequent offers of judgment are made.

15 3. If no offer of judgment or counteroffer of judgment is  
16 accepted and the defendant is awarded judgment against the plaintiff  
17 or if the judgment awarded the plaintiff is less than one or more  
18 offers of judgment, the defendant shall be entitled to reasonable  
19 litigation costs and reasonable attorney fees incurred by the  
20 defendant, plus any costs and attorney fees incurred in enforcing  
21 the offer of judgment, with respect to the action or the claim or  
22 claims included in the offer of judgment from and after the date of  
23 the first offer of judgment which is greater than the judgment until  
24

1 the date of the judgment. Such costs and fees may be offset from  
2 ~~the~~ any judgment that may be entered against the offering defendant.

3 4. If no offer of judgment or counteroffer of judgment is  
4 accepted and the judgment awarded the plaintiff is greater than one  
5 or more counteroffers of judgment, the plaintiff shall be entitled  
6 to recover the reasonable litigation costs and reasonable attorney  
7 fees incurred by the plaintiff, plus any costs and attorney fees  
8 incurred in enforcing the offer of judgment, with respect to the  
9 action or the claim or claims included in the counteroffer of  
10 judgment from and after the date of the first counteroffer of  
11 judgment which is less than the judgment until the date of the  
12 judgment. Such costs and fees may be added to the judgment entered  
13 in favor of the plaintiff.

14 5. An award of reasonable litigation costs and reasonable  
15 attorneys fees under paragraph 3 of this subsection shall not  
16 preclude an award under paragraph 4 of this subsection, and an award  
17 under paragraph 4 of this subsection shall not preclude an award  
18 under paragraph 3 of this subsection.

19 ~~6. This subsection shall not apply to actions brought pursuant~~  
20 ~~to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma~~  
21 ~~Statutes.~~

22 C. For purposes of comparing the amount of a judgment with the  
23 amount of an offer under paragraph 3 or 4 of subsection A of this  
24 section or paragraph 3 or 4 of subsection B of this section,

1 attorney fees and costs otherwise recoverable shall not be included  
2 in the amount of the compared judgment ~~only if the offer was~~  
3 ~~inclusive of attorney fees and costs.~~ Fees or costs recoverable for  
4 work performed after the date of the offer shall not be included in  
5 the amount of the judgment for purposes of comparison.

6 D. Evidence of an offer of judgment or a counteroffer of  
7 judgment and the acceptance of an offer of judgment shall not be  
8 admissible in any action or proceeding for any purpose except in  
9 proceedings to enforce a settlement arising out of an offer of  
10 judgment or counteroffer of judgment or to determine reasonable  
11 attorneys fees and reasonable litigation costs under this section.  
12 Upon the acceptance of an offer of judgment, the parties will  
13 present a mutually agreeable judgment to the court or file a motion  
14 to settle journal entry of a judgment that cannot be agreed upon.  
15 The judgment shall not be admissible in any action or proceeding  
16 except as set forth in this subsection.

17 E. This section shall apply whether or not litigation costs or  
18 attorneys fees are otherwise recoverable.

19 F. ~~The provisions of this section are severable, and if any~~  
20 ~~part or provision thereof shall be held void, the decision of the~~  
21 ~~court shall not affect or impair any of the remaining parts or~~  
22 ~~provisions thereof~~ An offer of judgment or counteroffer of judgment  
23 made under this section shall be at least One Hundred Dollars  
24

1 (\$100.00). A court is not required to apply a reasonableness test  
2 to any offer or counteroffer of judgment.

3 G. For purposes of this section, any judgment entered in favor  
4 of a defendant shall be the basis for an award of costs and attorney  
5 fees.

6 H. This section shall apply to all civil actions filed after  
7 ~~the effective date of this act~~ August 25, 1995.

8 SECTION 2. This act shall become effective November 1, 2012.  
9 Passed the Senate the 14th day of March, 2012.

10  
11 \_\_\_\_\_  
12 Presiding Officer of the Senate

13 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
14 2012.

15  
16 \_\_\_\_\_  
17 Presiding Officer of the House  
18 of Representatives