

1 ENGROSSED SENATE
2 BILL NO. 1428

By: Howard of the Senate

3 and

4 Stinson of the House

5
6 An Act relating to civil procedure; amending 12 O.S.
7 2021, Sections 940 and 1101, which relate to offers
8 of judgment; conforming language; modifying
9 procedures for offers of judgment; establishing
10 deadline for filing certain offer; requiring filing
11 of accepted offer with court clerk; providing for
12 inadmissibility of unaccepted offer; requiring
13 payment of certain costs after unaccepted offer under
14 certain circumstances; specifying acceptable
15 litigation costs; establishing requirements for
16 comparison of judgment and offer; requiring offer of
17 judgment letter to include certain information;
18 stating applicability of provisions; repealing 12
19 O.S. 2021, Sections 1101.1 and 1106, which relate to
20 offers of judgment and offer in court by defendant to
21 confess judgment for part of amount claimed; and
22 providing an effective date.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2021, 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

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

3 ~~B. Provided that, the defendant in such action may, not less~~
4 ~~than ten (10) days after being served with summons, serve upon the~~
5 ~~plaintiff or his attorney a written offer to allow judgment to be~~
6 ~~taken against him. If the plaintiff accepts the offer and gives~~
7 ~~notice thereof to the defendant or his attorney, within five (5)~~
8 ~~days after the offer was served, the offer, and an affidavit that~~
9 ~~the notice of acceptance was delivered within the time limited, may~~
10 ~~be filed by the plaintiff, or the defendant, verified by affidavit.~~
11 ~~The offer and acceptance shall be noted in the journal, and judgment~~
12 ~~shall be rendered accordingly. If the notice of acceptance is not~~
13 ~~given in the period limited, the offer shall be deemed withdrawn,~~
14 ~~and shall not be given in evidence or mentioned at the trial. If~~
15 ~~upon the action being adjudicated the judgment rendered is for the~~
16 ~~defendant or for the plaintiff and is for a lesser amount than the~~
17 ~~defendant's offer, then the plaintiff shall not be entitled to~~
18 ~~recover attorney's fees, court costs and interest. If the judgment~~
19 ~~rendered is for the plaintiff, and is for the same amount as the~~
20 ~~defendant's offer, then the plaintiff and defendant shall incur~~
21 ~~their own attorney's fees, court costs and interest. And if the~~
22 ~~judgment rendered is for the plaintiff, and is for a larger amount~~
23 ~~than the defendant's offer, then the plaintiff shall be entitled to~~
24 ~~recover attorney's fees, court costs and interest.~~

1 SECTION 2. AMENDATORY 12 O.S. 2021, Section 1101, is
2 amended to read as follows:

3 Section 1101. ~~The defendant, in an action for the recovery of~~
4 ~~money only, may, at any time before the trial, serve upon the~~
5 ~~plaintiff or his attorney an offer, in writing, to allow judgment to~~
6 ~~be taken against him for the sum specified therein. If the~~
7 ~~plaintiff accept the offer and give notice thereof to the defendant~~
8 ~~or his attorney, within five days after the offer was served, the~~
9 ~~offer, and an affidavit that the notice of acceptance was delivered~~
10 ~~within the time limited, may be filed by the plaintiff, or the~~
11 ~~defendant may file the acceptance, with a copy of the offer,~~
12 ~~verified by affidavit; and in either case, the offer and acceptance~~
13 ~~shall be noted in the journal, and judgment shall be rendered~~
14 ~~accordingly. If the notice of acceptance be not given in the period~~
15 ~~limited, the offer shall be deemed withdrawn, and shall not be given~~
16 ~~in evidence or mentioned on the trial. If the plaintiff fails to~~
17 ~~obtain judgment for more than was offered by the defendant, he shall~~
18 ~~pay the defendant's costs from the time of the offer~~

19 A. MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least
20 seven (7) days before a date set for trial, a party defending
21 against a claim may serve on an opposing party an offer to allow
22 judgment on specified terms. If the opposing party accepts the
23 offer, acceptance shall be made within five (5) days after service
24 of the offer and either party may then file the offer and notice of

1 acceptance plus proof of service. The court clerk shall then enter
2 judgment.

3 B. UNACCEPTED OFFER. An unaccepted offer is considered
4 withdrawn, but shall not preclude a later offer. Evidence of an
5 unaccepted offer is not admissible except in a proceeding to
6 determine costs.

7 C. OFFER AFTER LIABILITY IS DETERMINED. When the liability of
8 one party to another has been established but the extent of
9 liability remains to be determined, the party held liable may make
10 an offer of judgment. Any such offer shall be served no fewer than
11 seven (7) days prior to the date set for a hearing to determine the
12 extent of liability.

13 D. PAYING COSTS AFTER AN UNACCEPTED OFFER.

14 1. If the judgment the offeree obtains is less than or equal to
15 the unaccepted offer or the judgment is for the offering party, the
16 offeree shall pay the litigation costs of the offeror incurred after
17 the offer was made. Litigation costs shall include recovery of all
18 allowable costs associated with the litigation process after the
19 offer was rejected including but not limited to:

- 20 a. reasonable attorney fees, if otherwise permitted by
21 law,
22 b. court costs,
23 c. expert witness fees, and
24

1 d. interest to be set by the court and to be taxed and
2 collected as other costs of the action.

3 2. If the judgment the offeree obtains exceeds the offer of
4 judgment, the offeree shall be entitled to recover reasonable
5 attorney fees, court costs, and interest to the extent otherwise
6 permitted by law for the offeree's claim.

7 3. For purposes of comparing the amount of a judgment with the
8 amount of an offer, any recoverable litigation costs shall not be
9 included in the amount of the compared judgment.

10 E. OFFER OF JUDGMENT LETTER. An offer of judgment letter shall
11 include the following:

12 1. The judgment offer amount;

13 2. If the offer of judgment is for part of the amount claimed
14 or part of the causes involved in the action, then specifically to
15 which cause or causes the offer of judgment applies;

16 3. If the offer includes attorney fees;

17 4. If the action involves multiple opposing parties, then to
18 which party the offer of judgment applies;

19 5. If the action involves multiple opposing parties and the
20 offer of judgement is for all parties, then specifically how much
21 each opposing party is to receive of the offer amount; and

22 6. The expiration date of the offer as determined pursuant to
23 subsection A of this section.

F. EFFECTIVENESS. The provisions of this section shall be applicable to an action filed on or after the effective date of this act.

SECTION 3. REPEALER 12 O.S. 2021, Sections 1101.1 and 1106, are hereby repealed.

SECTION 4. This act shall become effective November 1, 2022.

Passed the Senate the 22nd day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2022.

Presiding Officer of the House
of Representatives