

1 **SENATE FLOOR VERSION**

2 February 21, 2023

3 SENATE BILL NO. 79

By: Howard of the Senate

4 and

5 Kannady of the House

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

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

1 reasonable ~~attorney's~~ attorney fees, court costs and interest to be  
2 set by the court and to be taxed and collected as other costs of the  
3 action.

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14 ~~given in the period limited, the offer shall be deemed withdrawn,~~  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

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1 ~~than the defendant's offer, then the plaintiff shall be entitled to~~  
2 ~~recover attorney's fees, court costs and interest.~~

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

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

21 A. MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least  
22 seven (7) days before a date set for trial, a party defending  
23 against a claim may serve on an opposing party an offer to allow  
24 judgment on specified terms. If the opposing party accepts the

1 offer, acceptance shall be made within five (5) days after service  
2 of the offer and either party may then file the offer and notice of  
3 acceptance plus proof of service. The court clerk shall then enter  
4 judgment.

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

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

15 D. PAYING COSTS AFTER AN UNACCEPTED OFFER.

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

22 a. reasonable attorney fees, if otherwise permitted by  
23 law,

24 b. court costs,

1           c. expert witness fees, and

2           d. interest to be set in accordance with Section 727.1 of  
3           this title and assessed and collected as other costs  
4           of the action.

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

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

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

14           1. The judgment offer amount;

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

18           3. If the offer includes attorney fees;

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

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

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

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

6       SECTION 3.       REPEALER       12 O.S. 2021, Sections 1101.1 and  
7 1106, are hereby repealed.

8       SECTION 4. This act shall become effective November 1, 2023.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
10 February 21, 2023 - DO PASS

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