

1 A bill to be entitled
2 An act relating to offers of judgment; amending s.
3 768.79, F.S.; authorizing parties to make specified
4 offers of judgment if certain criteria are met;
5 specifying that offers of judgment are not required to
6 include an amount for attorney fees and costs;
7 specifying that in certain actions involving damages
8 to real property owned by two individuals, an offer of
9 judgment may require both insureds to accept or reject
10 an offer; requiring an offeree to respond to an offer
11 within a specified timeframe; providing procedures for
12 challenging the validity of, and making corrections
13 to, an offer; providing that an offeree waives the
14 right to object to the validity of an offer under
15 specified circumstances; defining the term "judgment
16 obtained" for purposes of certain offers of judgment;
17 providing applicability; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 768.79, Florida Statutes, is amended to
22 read:

23 768.79 Offer of judgment and demand for judgment.—

24 (1) In any civil action for damages filed in the courts of
25 this state, if a defendant files an offer of judgment which is

26 | not accepted by the plaintiff within 30 days, the defendant
27 | shall be entitled to recover reasonable costs and attorney's
28 | fees incurred by her or him or on the defendant's behalf
29 | pursuant to a policy of liability insurance or other contract
30 | from the date of filing of the offer if the judgment is one of
31 | no liability or the judgment obtained by the plaintiff is at
32 | least 25 percent less than such offer, and the court shall set
33 | off such costs and attorney ~~attorney's~~ fees against the award.
34 | Where such costs and attorney ~~attorney's~~ fees total more than
35 | the judgment, the court shall enter judgment for the defendant
36 | against the plaintiff for the amount of the costs and fees, less
37 | the amount of the plaintiff's award. If a plaintiff files a
38 | demand for judgment which is not accepted by the defendant
39 | within 30 days and the plaintiff recovers a judgment in an
40 | amount at least 25 percent greater than the offer, she or he
41 | shall be entitled to recover reasonable costs and attorney
42 | ~~attorney's~~ fees incurred from the date of the filing of the
43 | demand. If rejected, neither an offer nor demand is admissible
44 | in subsequent litigation, except for pursuing the penalties of
45 | this section.

46 | (2) The making of an offer of settlement which is not
47 | accepted does not preclude the making of a subsequent offer.

48 | (3) A party may make an offer of judgment that only
49 | identifies the total amount of indemnity or damages. The offer
50 | must stipulate that entitlement to attorney fees and costs will

51 be established at a later time by the parties, the court, or an
 52 arbitrator. An offer of judgment is not required to specify an
 53 amount for attorney fees and costs. Following such an offer,
 54 either party may elect mandatory binding arbitration which must
 55 occur no later than 45 days after the date of offer acceptance
 56 or on a later date agreed to by the parties.

57 (4) An offer must:

58 (a) Be in writing and state that it is being made pursuant
 59 to this section.

60 (b) Name the party making it and the party to whom it is
 61 being made.

62 (c) State with particularity the amount offered to settle
 63 a claim for punitive damages, if any.

64 (d) State its total amount.

65
 66 The offer shall be construed as including all damages which may
 67 be awarded in a final judgment, unless it is an offer of
 68 judgment that stipulates that entitlement to attorney fees and
 69 costs will be established at a later time by the parties, the
 70 court, or an arbitrator.

71 (5)-(3) ~~An~~ The offer shall be served on ~~upon~~ the party to
 72 whom it is made, but it may ~~shall~~ not be filed unless it is
 73 accepted or unless filing is necessary to enforce the provisions
 74 of this section. In an action involving damages to real property
 75 that is jointly owned by two individuals who are insureds, an

76 offer of judgment that is served on both insureds may require
77 that both insureds either accept or reject the offer.

78 (6)-(4) An offer shall be accepted by filing a written
79 acceptance with the court within 30 days after service. Upon
80 filing of both the offer and acceptance, the court has full
81 jurisdiction to enforce the settlement agreement. Within 30 days
82 after an offer is served, the offeree must notify the offeror of
83 any grounds for challenging the validity of the offer. The
84 grounds for challenging the validity of the offer must be in
85 writing and stated with specificity to enable the offeror to
86 reevaluate the offer and make corrections, if warranted. If the
87 offeree fails to timely notify the offeror in writing of the
88 grounds for challenging the validity of the offer, the offeree
89 waives the right to object to the validity of the offer.

90 (7)-(5) An offer may be withdrawn in writing which is
91 served before the date a written acceptance is filed. Once
92 withdrawn, an offer is void.

93 (8)-(6) Upon motion made by the offeror within 30 days
94 after the entry of judgment or after voluntary or involuntary
95 dismissal, the court shall determine the following:

96 (a) If a defendant serves an offer which is not accepted
97 by the plaintiff, and if the judgment obtained by the plaintiff
98 is at least 25 percent less than the amount of the offer, the
99 defendant shall be awarded reasonable costs, including
100 investigative expenses, and attorney ~~attorney's~~ fees, calculated

101 in accordance with the guidelines promulgated by the Supreme
102 Court, incurred from the date the offer was served, and the
103 court shall set off such costs in attorney ~~attorney's~~ fees
104 against the award. When such costs and attorney ~~attorney's~~ fees
105 total more than the amount of the judgment, the court shall
106 enter judgment for the defendant against the plaintiff for the
107 amount of the costs and fees, less the amount of the award to
108 the plaintiff.

109 (b) If a plaintiff serves an offer which is not accepted
110 by the defendant, and if the judgment obtained by the plaintiff
111 is at least 25 percent more than the amount of the offer, the
112 plaintiff shall be awarded reasonable costs, including
113 investigative expenses, and attorney ~~attorney's~~ fees, calculated
114 in accordance with the guidelines promulgated by the Supreme
115 Court, incurred from the date the offer was served.

116
117 For purposes of the determination required by paragraph (a), the
118 term "judgment obtained" means the amount of the net judgment
119 entered, plus any postoffer collateral source payments received
120 or due as of the date of the judgment, plus any postoffer
121 settlement amounts by which the verdict was reduced. For
122 purposes of the determination required by paragraph (b), the
123 term "judgment obtained" means the amount of the net judgment
124 entered, plus any postoffer settlement amounts by which the
125 verdict was reduced. For purposes of the determination required

126 by paragraph (a), for an offer of judgment that stipulates that
127 entitlement to attorney fees and costs will be established at a
128 later time by the parties, the court, or an arbitrator, the term
129 "judgment obtained" means the total amount of damages, if any,
130 but does not include any amount awarded for attorney fees and
131 costs.

132 (9)~~(7)~~(a) If a party is entitled to costs and fees
133 pursuant to the provisions of this section, the court may, in
134 its discretion, determine that an offer was not made in good
135 faith. In such case, the court may disallow an award of costs
136 and attorney's fees.

137 (b) When determining the reasonableness of an award of
138 attorney's fees pursuant to this section, the court shall
139 consider, along with all other relevant criteria, the following
140 additional factors:

- 141 1. The then apparent merit or lack of merit in the claim.
- 142 2. The number and nature of offers made by the parties.
- 143 3. The closeness of questions of fact and law at issue.
- 144 4. Whether the person making the offer had unreasonably
145 refused to furnish information necessary to evaluate the
146 reasonableness of such offer.
- 147 5. Whether the suit was in the nature of a test case
148 presenting questions of far-reaching importance affecting
149 nonparties.
- 150 6. The amount of the additional delay cost and expense

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151 that the person making the offer reasonably would be expected to
152 incur if the litigation should be prolonged.

153 ~~(10)-(8)~~ Evidence of an offer is admissible only in
154 proceedings to enforce an accepted offer or to determine the
155 imposition of sanctions under this section.

156 Section 2. This act applies to all offers of judgment
157 served on or after July 1, 2021.

158 Section 3. This act shall take effect July 1, 2021.