

By Senator Brandes

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1 A bill to be entitled
2 An act relating to offers of judgment; amending s.
3 768.79, F.S.; authorizing parties to serve exclusive
4 offers of judgment; specifying that parties serving
5 exclusive offers of judgment are not required to
6 specify an amount being offered for attorney fees and
7 costs; providing construction; authorizing certain
8 offerings of judgment require both individuals to
9 either accept or reject the offer; providing
10 requirements relating to grounds for challenging the
11 validity of offers; defining the term "judgment
12 obtained" as it relates to exclusive offers of
13 judgment; providing applicability; providing an
14 effective date.

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

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18 Section 1. Present subsections (3) through (8) of section
19 768.79, Florida Statutes, are redesignated as subsections (5)
20 through (10), respectively, new subsections (3) and (4) are
21 added to that section, and subsection (2) and present
22 subsections (3), (4), and (6) of that section are amended, to
23 read:

24 768.79 Offer of judgment and demand for judgment.—

25 (2) The making of an offer of settlement which is not
26 accepted does not preclude the making of a subsequent offer.

27 (3) Parties may serve an exclusive offer of judgment
28 identifying only the total amount of indemnity or damages and
29 stipulating to entitlement to attorney fees and costs to be

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30 determined at a later time by the parties or the court. A party
31 -serving an exclusive offer of judgment is not required to
32 specify an amount being offered for attorney fees and costs.

33 (4) An offer must:

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

36 (b) Name the party making it and the party to whom it is
37 being made.

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

40 (d) State its total amount.

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42 The offer shall be construed as including all damages which may
43 be awarded in a final judgment unless it is an exclusive offer
44 of judgment. An exclusive offer of judgment shall be construed
45 as including all damages, if any, that may be awarded in a final
46 judgment, not including any amount that may be awarded for
47 attorney fees, costs, or interest.

48 (5)~~(3)~~ The offer shall be served upon the party to whom it
49 is made, but it shall not be filed unless it is accepted or
50 unless filing is necessary to enforce the provisions of this
51 section. In an action relating to damages to real property that
52 is jointly owned by two individuals who are insureds, an offer
53 of judgment which is served on both insureds may require that
54 both insureds either accept or reject the offer.

55 (6)~~(4)~~ An offer shall be accepted by filing a written
56 acceptance with the court within 30 days after service. Upon
57 filing of both the offer and acceptance, the court has full
58 jurisdiction to enforce the settlement agreement. Within 30 days

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59 after service of an offer of judgment, the offeree must notify
60 the offeror of any grounds for challenging the validity of the
61 offer. The grounds for challenging the validity of the offer
62 must be in writing and stated with specificity to enable the
63 offeror to reevaluate the offer and make corrections, if
64 warranted. If the offeree fails to timely notify the offeror in
65 writing of the grounds for challenging the validity of the
66 offer, the offeree waives the right to object to the validity of
67 the offer.

68 (8)~~(6)~~ Upon motion made by the offeror within 30 days after
69 the entry of judgment or after voluntary or involuntary
70 dismissal, the court shall determine the following:

71 (a) If a defendant serves an offer which is not accepted by
72 the plaintiff, and if the judgment obtained by the plaintiff is
73 at least 25 percent less than the amount of the offer, the
74 defendant shall be awarded reasonable costs, including
75 investigative expenses, and attorney's fees, calculated in
76 accordance with the guidelines promulgated by the Supreme Court,
77 incurred from the date the offer was served, and the court shall
78 set off such costs in attorney's fees against the award. When
79 such costs and attorney's fees total more than the amount of the
80 judgment, the court shall enter judgment for the defendant
81 against the plaintiff for the amount of the costs and fees, less
82 the amount of the award to the plaintiff.

83 (b) If a plaintiff serves an offer which is not accepted by
84 the defendant, and if the judgment obtained by the plaintiff is
85 at least 25 percent more than the amount of the offer, the
86 plaintiff shall be awarded reasonable costs, including
87 investigative expenses, and attorney's fees, calculated in

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88 accordance with the guidelines promulgated by the Supreme Court,
89 incurred from the date the offer was served.

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91 For purposes of the determination required by paragraph (a), the
92 term "judgment obtained" means the amount of the net judgment
93 entered, plus any postoffer collateral source payments received
94 or due as of the date of the judgment, plus any postoffer
95 settlement amounts by which the verdict was reduced. For
96 purposes of the determination required by paragraph (b), the
97 term "judgment obtained" means the amount of the net judgment
98 entered, plus any postoffer settlement amounts by which the
99 verdict was reduced. However, for purposes of determinations
100 required by paragraph (a) or paragraph (b), whenever the offer
101 is an exclusive offer of judgment, the term "judgment obtained"
102 means the total amount of damages recovered, if any, but does
103 not include any amount awarded for attorney fees, costs, or
104 interest.

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

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