

By the Committee on Judiciary; and Senator Brandes

590-02141-21

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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 offers of
4 judgment that make certain stipulations relating to
5 attorney fees and costs; authorizing certain offerings
6 of judgment relating to jointly owned property to
7 require both individuals to either accept or reject
8 the offer; providing requirements relating to grounds
9 for challenging the validity of offers; defining the
10 term "judgment obtained" as it relates to certain
11 offers of judgment; providing applicability; providing
12 an effective date.

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

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16 Section 1. Present subsections (3) through (8) of section
17 768.79, Florida Statutes, are redesignated as subsections (5)
18 through (10), respectively, new subsections (3) and (4) are
19 added to that section, and subsection (2) and present
20 subsections (3), (4), and (6) of that section are amended, to
21 read:

22 768.79 Offer of judgment and demand for judgment.—

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

25 (3) A party may make an offer of judgment that identifies
26 only the total amount of indemnity or damages and stipulates
27 that entitlement to attorney fees and costs will be established
28 at a later time by the parties or the court. An offer of
29 judgment is not required to specify an amount for attorney fees

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30 and costs.

31 (4) An offer must:

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

34 (b) Name the party making it and the party to whom it is
35 being made.

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

38 (d) State its total amount.

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40 The offer shall be construed as including all damages which may
41 be awarded in a final judgment unless it is an offer of judgment
42 that stipulates that entitlement to attorney fees and costs will
43 be established at a later time by the parties or the court.

44 (5)~~(3)~~ An ~~The~~ offer shall be served upon the party to whom
45 it is made, but it may ~~shall~~ not be filed unless it is accepted
46 or unless filing is necessary to enforce the provisions of this
47 section. In an action relating to damages to real property that
48 is jointly owned by two individuals who are insureds, an offer
49 of judgment which is served on both insureds may require that
50 both insureds either accept or reject the offer.

51 (6)~~(4)~~ An offer shall be accepted by filing a written
52 acceptance with the court within 30 days after service. Upon
53 filing of both the offer and acceptance, the court has full
54 jurisdiction to enforce the settlement agreement. Within 30 days
55 after an offer is served, the offeree must notify the offeror of
56 any grounds for challenging the validity of the offer. The
57 grounds for challenging the validity of the offer must be in
58 writing and stated with specificity to enable the offeror to

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59 reevaluate the offer and make corrections, if warranted. If the
60 offeree fails to timely notify the offeror in writing of the
61 grounds for challenging the validity of the offer, the offeree
62 waives the right to object to the validity of the offer.

63 (8)~~(6)~~ Upon motion made by the offeror within 30 days after
64 the entry of judgment or after voluntary or involuntary
65 dismissal, the court shall determine the following:

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

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

86
87 For purposes of the determination required by paragraph (a), the

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88 term "judgment obtained" means the amount of the net judgment
89 entered, plus any postoffer collateral source payments received
90 or due as of the date of the judgment, plus any postoffer
91 settlement amounts by which the verdict was reduced. For
92 purposes of the determination required by paragraph (b), the
93 term "judgment obtained" means the amount of the net judgment
94 entered, plus any postoffer settlement amounts by which the
95 verdict was reduced. For purposes of the determination required
96 by paragraph (a) for an offer of judgment that stipulates that
97 entitlement to attorney fees and costs will be established at a
98 later time by the parties or the court, the term "judgment
99 obtained" means the total amount of damages, if any, but does
100 not include any amount awarded for attorney fees and costs.

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

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