

OFFER OF JUDGMENT IN CIVIL CASES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a process for an offer of judgment in civil litigation.

Highlighted Provisions:

This bill:

- ▶ outlines a process for offers of judgment in civil actions;
- ▶ requires that the offer be made more than 10 days before trial;
- ▶ requires that a response be made within 10 days of service of the offer;
- ▶ sets requirements for offers made to multiple parties;
- ▶ provides direction to the court for judgment in cases where an offer was made; and
- ▶ sets sanctions for a party who rejects an offer but does not receive a more favorable judgment.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-5-829, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section **78B-5-829** is enacted to read:

29 **78B-5-829. Offer of judgment -- Process -- Time limits -- Acceptance -- Rejection.**

30 (1) At any time before trial, but not less than 10 days before commencement of the
31 trial, any party may serve to any other party an offer to enter judgment to resolve all claims in
32 the action between those parties accrued through the date of the offer.

33 (2) When the liability of one party to another has been determined by verdict, order, or
34 judgment, but the amount or extent of the liability remains to be determined by further
35 proceedings, at any time before the commencement of the proceeding to determine the amount
36 or extent of liability, but not less than 10 days before commencement of the proceedings, any
37 party may serve to any other party an offer to enter judgment to resolve all claims in the action
38 between those parties accrued through the date of the offer.

39 (3) A party may not be subject to the sanctions of Subsections (28) through (33) for
40 rejection of an offer that is made and served pursuant to Subsection (1) or (2) less than 10 days
41 before commencement of the trial or proceedings.

42 (4) The offer shall allow judgment to be taken in accordance with its terms and may
43 include equitable remedies. Unless otherwise specified, an offer is considered to be for a
44 lump-sum, meaning the terms of the offer are considered to preclude separate post-acceptance
45 awards of costs, attorney fees and interest.

46 (5) The offer may specify that it is conditioned upon a determination of good faith
47 settlement.

48 (6) The offer may specify a longer acceptance period than the period prescribed by
49 Subsection (22), but may not permit an acceptance after the commencement of a trial if the
50 offer is made pursuant to Subsection (2) and may not permit an acceptance after the
51 commencement of the proceeding if the offer is made pursuant to Subsection (2).

52 (7) The offer shall specify that it is based upon this section or it shall specify the
53 complete basis of the offer if it is based upon a combination of this section and U.R.C.P. Rule
54 68. An offer is not void because it is based upon this section, U.R.C.P. Rule 68, or both.

55 (8) An offer that resolves less than all of the claims between all the offerors and all the
56 offerees is void.

57 (9) An offer may not be withdrawn except by written stipulation or as provided in
58 Subsection (23).

59 (10) An offer that specifies material conditions that are in addition to those provided by
60 this section or that conflict with those provided by this section is void.

61 (11) An apportioned offer jointly made to more than one party may be conditioned
62 upon the acceptance by all parties to whom the offer is directed.

63 (12) An offer jointly made by multiple offerors is not required to be apportioned
64 between the offerors.

65 (13) An unapportioned offer jointly made to multiple parties against whom claims,
66 counterclaims or cross-claims are asserted may be conditioned upon the acceptance by all
67 parties to whom the offer is directed if one entity, person, or group is authorized to accept or
68 reject an offer of settlement for all the claims against all the offerees and:

69 (a) there is a single common theory of liability against all the offerees;

70 (b) the liability of some offerees are entirely derivative of the common acts or liability
71 of the others; or

72 (c) the liability of all offerees are derivative of the common acts or liability of another.

73 (14) An unapportioned offer jointly made to multiple claimants may be conditioned
74 upon the acceptance by all parties to whom the offer is directed if one entity, person, or group
75 is authorized to accept or reject an offer of settlement for all the claims of all the offerees and:

76 (a) there is a single common theory of liability claimed by all the offerees;

77 (b) the damages claimed by some offerees are entirely derivative of an injury to the
78 others; or

79 (c) the damages claimed by all offerees are derivative of an injury to another.

80 (15) No combination of offerees that jointly claim or defend under the same common
81 theory of liability concerning jointly owned property is a group as that term is used in
82 Subsection (14) and this Subsection (15). When two or more offerees jointly claim or defend
83 under the same common theory of liability concerning jointly owned property, the burden is on
84 any offeree to establish that no one person has authority to accept or reject an offer of
85 settlement for all the offerees.

86 (16) If the offeree serves written notice that the offer is accepted within the acceptance
87 period provided by Subsection (22), the offer shall be considered accepted and either party may
88 then file the offer and notice of acceptance together with proof of service. The offer and notice
89 of acceptance shall be filed within 7 days after service of the written notice that the offer is

90 accepted or before trial or other applicable proceeding, whichever occurs earlier.

91 (17) Except as otherwise provided in Subsection (27), the clerk or judge shall enter
92 judgment accordingly. If permitted by law or contract, the court shall award costs in
93 accordance with U.R.C.P. Rule 54, attorney fees and interest as applicable, but may not make
94 an award if the terms of the offer preclude separate awards of costs, attorney fees, and interest.
95 If the terms of the offer permit an award of interest, any portion of any claim or demand for
96 damages that is asserted or disclosed in writing before the offer is served draws interest but the
97 entire claim or demand for damages that is asserted or disclosed in writing before the offer is
98 served does not draw interest. If the offer contains no apportionment between claims that do
99 and do not draw interest:

100 (a) the court shall award interest on the entirety of all damages when the offer is made
101 to a claimant and judgment is entered pursuant to this section; and

102 (b) the court may not award interest on any damages when the offer is made to a
103 defending party and judgment is entered pursuant to this section.

104 (18) Any judgment entered pursuant to this section shall be expressly designated a
105 compromise and settlement of a disputed claim.

106 (19) A defending party who pays the principal amount of the offer within a reasonable
107 time after the filing of the offer and notice of acceptance and pays any applicable awards of
108 costs, attorney fees and interest within a reasonable time after the awards are ordered shall
109 obtain an order of dismissal with prejudice and, if applicable, an order withdrawing the
110 judgment.

111 (20) A claimant who has not been paid within a reasonable time may obtain an order to
112 amend the judgment and remove the Subsection (18) designation of compromise and
113 settlement.

114 (21) A final judgment or order of dismissal entered pursuant to this section shall have
115 the preclusive effect of a valid judgment on the merits.

116 (22) An offer made pursuant to Subsection (1) may be accepted before trial or within
117 10 days after service, whichever period is shorter. An offer made pursuant to Subsection (2)
118 may be accepted before the commencement of the proceeding or within 10 days after service,
119 whichever period is shorter.

120 (23) The offer shall be considered rejected by the offeree if not accepted within the

121 period prescribed by Subsection (22). If this period is enlarged by the court, the offeror may
122 serve a written withdrawal of the offer at any time after the expiration of the initial acceptance
123 period and prior to acceptance of the offer.

124 (24) Evidence of the offer is not admissible except in a proceeding to determine costs
125 and attorney fees. Evidence of a void offer is not admissible in a proceeding to determine the
126 attorney fees of any party.

127 (25) The fact that an offer is made but not accepted does not preclude a subsequent
128 offer. The service of a subsequent offer does not operate to revoke a prior offer. A party may
129 not be subject to the sanctions of Subsections (28) through (33) for the rejection of a prior offer
130 from the same offeror.

131 (26) The service of a counter-offer does not operate as a rejection of a prior offer.

132 (27) For apportioned offers to multiple offerees that are conditioned upon the
133 acceptance by all parties to whom the offer was directed, each offeree may serve a separate
134 acceptance of the offer, but if the offer is not accepted by all offerees, no judgment or order of
135 dismissal may be entered pursuant to Subsections (16) through (21) and the action shall
136 proceed as to all. Any offeree who fails to accept the offer shall be subject to the sanctions in
137 Subsections (28) through (33).

138 (28) Except as otherwise provided in Section (32), if a party who rejects an offer fails
139 to obtain a more favorable judgment, the court:

140 (a) may not award to the party any discretionary costs or discretionary attorney fees
141 from the commencement of the action to the entry of the judgment;

142 (b) may not award to the party any other costs or attorney fees for the period from the
143 date of the service of the offer to the entry of the judgment;

144 (c) may not award to the party any interest for the period from the date of service of the
145 offer to the date of entry of the judgment;

146 (d) shall order the party to pay the taxable costs and applicable interest incurred by the
147 offering party or parties from the date of the service of the offer to the entry of the judgment;

148 and

149 (e) may order the party to pay the offering party any or all of the following:

150 (i) reasonable costs incurred by the offering party for each expert witness whose
151 services were reasonably necessary to prepare for and conduct the trial of the case for the

152 period from the date of the service of the offer to the date of the entry of judgment, together
153 with any applicable interest; or

154 (ii) reasonable attorney fees incurred by the offering party for the period from the date
155 of the service of the offer to the date of entry of the judgment, together with any applicable
156 interest.

157 (29) In determining whether and how to award attorney fees, the trial court shall
158 consider the following factors:

159 (a) whether the claim or defense was brought in good faith;

160 (b) whether the offer of judgment was reasonable and in good faith in both its timing
161 and amount; and

162 (c) whether the decision to reject the offer and proceed to trial was grossly
163 unreasonable or in bad faith.

164 (30) In determining whether an offeree acted in bad faith or was unreasonable in
165 rejecting an offer and proceeding to trial, the trial court may consider whether the offeree had
166 sufficient information to determine the merits of the offer.

167 (31) An award against a party made pursuant to Subsections (28) through (33) may not
168 exceed that portion of the costs, attorney fees, and applicable interest that are severally
169 attributable to the party.

170 (32) The court may suspend the application of this section to prevent manifest injustice
171 or if the offer was made in bad faith.

172 (33) An offeror may not be considered the prevailing party solely due to the offeree's
173 failure to obtain a more favorable judgment.

174 (34) To determine whether a party who rejected an offer failed to obtain a more
175 favorable judgment:

176 (a) If the offer provided that the court could award costs, attorney fees, or interest upon
177 acceptance, the court shall compare the amount of the offer with the principal amount of the
178 judgment, without inclusion of costs, attorney fees, or interest.

179 (b) If the offer precluded a separate award of costs, attorney fees, or interest upon
180 acceptance, the court shall compare the amount of the offer with the sum of:

181 (i) the principal amount of the judgment; and

182 (ii) the amount of applicable taxable costs, attorney fees, and interest, including

183 applicable interest on the costs and attorney fees, incurred up to and including the date the offer
184 was served.

185 (c) In making this comparison, the court shall calculate interest at the rate in effect on
186 the date the offer was rejected.

187 (35) The court shall take into account any additur or remittitur before making the
188 comparison.

189 (36) The court shall assign no value to a determination of good faith settlement when
190 making the comparison.

191 (37) Every offer shall be signed by at least one attorney of record in the attorney's
192 individual name, whose address shall be stated. An unrepresented party shall sign the
193 disclosure and state the party's address.

194 (38) An unsigned offer is void. The signature of the attorney or party certifies that the
195 offer is made in good faith and for the purpose of obtaining a settlement.

196 (39) This section does not apply to actions for personal injury, divorce, alimony,
197 separate maintenance, or custody of children.

Legislative Review Note
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Office of Legislative Research and General Counsel