

1                                   **OFFER OF JUDGMENT IN SETTLEMENT OF**  
2                                   **CASES RESOLUTION**

3                                   2003 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: John Dougall**

6 LaVar Christensen  
7 Greg J. Curtis

James A. Ferrin  
Mike Thompson

Stephen H. Urquhart

8   **This joint resolution modifies the Utah Rules of Civil Procedure by providing for**  
9   **attorneys' fees with costs that can be assessed in a civil action. It allows costs and**  
10 **attorneys' fees to be assessed if a final award is not more favorable than the offer of**  
11 **judgment. This act provides an effective date.**

12 This resolution proposes to amend the Utah Rules of Civil Procedure as follows:

13 AMENDS:

14           **Rule 68**, Utah Rules of Civil Procedure

15 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*  
16 *of the two houses voting in favor thereof:*

17           As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend  
18 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of  
19 all members of both houses of the Legislature:

20           Section 1. **Rule 68**, Utah Rules of Civil Procedure is amended to read:

21           **Rule 68. Offer of Judgment.**

22           (a) Tender of money before suit. When in an action for the recovery of money only, the  
23 defendant alleges in his answer that before the commencement of the action he tendered to the  
24 plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for  
25 the plaintiff the amount so tendered, and the allegation is found to be true, the plaintiff cannot  
26 recover costs, but must pay costs to the defendant.

27           (b) Offer before trial. At any time more than 10 days before the trial begins, a party



28 defending against a claim may serve upon the adverse party an offer to allow judgment to be  
29 taken against him for the money or property or to the effect specified in his offer, with costs  
30 and attorneys' fees then accrued. If within 10 days after the service of the offer the adverse  
31 party serves written notice that the offer is accepted, either party may then file the offer and  
32 notice of acceptance together with proof of service thereof and thereupon judgment shall be  
33 entered. An offer not accepted shall be deemed withdrawn and evidence [~~thereof~~] of the offer  
34 and withdrawal is not admissible except in a proceeding to determine costs and attorneys' fees.  
35 [~~If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree~~  
36 ~~must pay the costs incurred after the making of the offer.:~~] The fact that an offer is made but not  
37 accepted does not preclude a subsequent offer. If the adjusted award finally obtained by the  
38 offeree is not more favorable than the offer:

39 (i) the offeree must pay those costs and attorneys' fees of the offeror incurred after the  
40 making of the offer;

41 (ii) the offeror must pay those costs and, if allowed by statute or contract, attorneys'  
42 fees of the offeree incurred before the making of the offer; and

43 (iii) the offeror may not be liable to the offeree for costs and attorneys' fees incurred  
44 after the making of the offer.

45 After a comparison of the offer and the adjusted award, in appropriate cases, the court  
46 shall order an amount which either the offeror or the offeree must ultimately pay separate and  
47 apart from the amount owed under the verdict. A total judgment shall be entered taking into  
48 account both the verdict and the applicable costs and attorneys' fees.

49 (c) Adjusted award. Any costs and attorneys' fees awarded against the offeree shall be  
50 based upon a comparison of the offer under this rule and the adjusted award. The adjusted  
51 award is defined as the verdict in addition to the offeree's costs and attorneys' fees incurred  
52 before service of the offer of judgment. Provided, in contingent fee cases where attorneys' fees  
53 are awardable, the court shall pro rate the offeree's attorneys' fees to determine the amount  
54 incurred before the offer of judgment in reaching the adjusted award.

55 **Section 2. Effective date.**

56 As provided in Utah Constitution Article VIII, Section 4, this act takes effect upon  
57 approval by a constitutional two-thirds vote of all members elected to each house.

**Legislative Review Note**  
as of 12-5-02 5:42 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

No State or local government fiscal impact.

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**Individual and Business Impact**

Some defendants may receive an increased financial benefit while plaintiffs could end up paying more. The amount of fiscal impact to either will depend on the circumstances of the case involved.

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**Office of the Legislative Fiscal Analyst**