

Representative John Dougall proposes the following substitute bill:

**RESOLUTION ON OFFERS FOR
SETTLEMENT OF CASES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LaVar Christensen

Greg J. Curtis

Stephen H. Urquhart

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

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

AMENDS:

Rule 68, Utah Rules of Civil Procedure

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

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

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

Rule 68. Offer of Judgment.

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



26 (b) Offer before trial. At any time more than 10 days before the trial begins, a party
27 defending against a claim may serve upon the adverse party an offer to allow judgment to be
28 taken against him for the money or property or to the effect specified in his offer, [~~with costs~~
29 ~~then accrued~~] which offer of judgment shall be considered to include all claims recoverable,
30 including any costs or reasonable attorneys' fees awardable up to the date of the offer, unless
31 otherwise specified. If within 10 days after the service of the offer the adverse party serves
32 written notice that the offer is accepted, either party may then file the offer and notice of
33 acceptance together with proof of service [~~thereof~~] and [~~thereupon~~] judgment shall be entered
34 accordingly. An offer not accepted shall be [~~deemed~~] considered withdrawn and evidence
35 [~~thereof~~] of the offer and withdrawal is not admissible except in a proceeding to determine
36 costs . If the [~~judgment~~] adjusted award finally obtained by the offeree is not more favorable
37 than the offer, the offeree [~~must~~] shall pay the costs incurred after the making of the offer, and
38 in cases where reasonable attorneys' fees may be awarded by statute or contract to the offeree,
39 the offeror may not be liable for reasonable attorneys' fees incurred by the offeree after the
40 making of the offer. The fact that an offer is made but not accepted does not preclude a
41 subsequent offer.

42 (c) Adjusted award. The adjusted award is defined as the verdict with the addition of
43 the offeree's costs incurred before service of the offer of judgment and, in cases where
44 reasonable attorneys' fees may be awarded by statute or contract, reasonable attorneys' fees
45 incurred before service of the offer of judgment. In contingent fee cases where reasonable
46 attorneys' fees are awardable, the court shall pro rate the offeree's reasonable attorneys' fees on
47 a daily basis to determine the amount incurred before the offer of judgment in reaching the
48 adjusted award.

49 Section 2. **Effective date.**

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