

OFFER OF SETTLEMENT PROVISIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill provides for offers of settlement in litigation.

Highlighted Provisions:

This bill:

- ▶ specifies criteria for making an offer of settlement;
- ▶ excludes public entities and employees;
- ▶ requires that a party who rejects an offer to settle and loses in a lawsuit pays the costs of the offeror from the date the offer was made; and
- ▶ allows expert witness fees to be awarded as part of costs.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78-21-4, Utah Code Annotated 1953

78-21-5, Utah Code Annotated 1953

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

Section 1. Section **78-21-4** is enacted to read:

78-21-4. Offer of settlement -- Recovery of costs.



28 (1) Not less than ten days prior to commencement of trial, any party may serve an offer
29 in writing upon any other party to the action to allow judgment to be taken and entered in
30 accordance with the terms and conditions stated at that time.

31 (a) If the offer is accepted, the offer with proof of acceptance shall be filed and the
32 clerk or the judge shall enter judgment accordingly.

33 (b) If the offer is not accepted prior to trial, within 30 days after it is made, whichever
34 occurs first, it shall be considered withdrawn, and cannot be given in evidence upon the trial.

35 (c) For purposes of this section, a trial shall be considered to be actually commenced at
36 the beginning of the opening statement of the plaintiff or counsel, and if there is no opening
37 statement, then at the time of the administering of the oath or affirmation to the first witness, or
38 the introduction of any evidence.

39 (2) (a) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a
40 more favorable judgment or award, the plaintiff may not recover his or her postoffer costs and
41 shall pay the defendant's costs from the time of the offer. In addition, in any action or
42 proceeding, the court in its discretion, may require the plaintiff to pay a reasonable sum to
43 cover costs of the services of expert witnesses who are not regular employees of any party,
44 actually incurred and reasonably necessary in either, or both, preparation for trial or during trial
45 of the case by the defendant.

46 (b) In determining whether the plaintiff obtains a more favorable judgment, the court
47 shall exclude the postoffer costs.

48 (3) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a
49 more favorable judgment or award in any action or proceeding, the court, in its discretion, may
50 require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses
51 who are not regular employees of any party, actually incurred and reasonably necessary in
52 either, or both, preparation for trial or during trial of the case by the plaintiff in addition to
53 plaintiff's costs.

54 (4) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a
55 more favorable judgment, the costs under this section, from the time of the offer, shall be
56 deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this
57 section exceed the amount of the damages awarded to the plaintiff, the net amount shall be
58 awarded to the defendant and judgment shall be entered accordingly.

59 (5) Plaintiff includes a cross-complainant and defendant includes a cross-defendant.
60 Any judgment entered pursuant to this section shall be considered to be a compromise
61 settlement.

62 (6) This section does not apply to a public entity or to a public employee for an act or
63 omission within the scope of employment.

64 (7) The recoverable costs for services of expert witnesses for trial under this section
65 may not be excessive or unreasonable as determined by the court.

66 Section 2. Section **78-21-5** is enacted to read:

67 **78-21-5. Personal injury actions.**

68 (1) As used in this section, "person" means any individual, corporation, association,
69 limited liability company, or partnership.

70 (2) In any action brought to recover damages for personal injury sustained by any
71 individual resulting from or occasioned by the tort of any other person, whether by negligence
72 or by willful intent of the other person, and whether the injury was fatal or otherwise, it is
73 lawful for the plaintiff in the complaint to claim interest on the damages alleged as provided in
74 this section.

75 (3) If the plaintiff makes an offer pursuant to Section 78-21-4 which the defendant does
76 not accept prior to trial or within 30 days, whichever occurs first, and the plaintiff obtains a
77 more favorable judgment, the judgment shall bear interest at the legal rate of 10% per annum
78 calculated from the date of the plaintiff's first offer, which is exceeded by the judgment, and
79 interest shall accrue until the satisfaction of judgment.

80 (4) This section does not apply to a public entity or to a public employee for an act or
81 omission within the scope of employment, and neither the public entity nor the public
82 employee shall be liable, directly or indirectly, to any person for any interest imposed by this
83 section.

Legislative Review Note

as of 2-4-05 10:37 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0127****Offer of Settlement Provisions***11-Feb-05**3:39 PM*

State Impact

No state or local government fiscal impact.

Individual and Business Impact

Provisions of this bill could shift legal expenses from one party to another under certain circumstances.

Office of the Legislative Fiscal Analyst