

1 **OFFER OF JUDGMENT IN CIVIL CASES**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: Aaron Osmond

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**LONG TITLE**

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

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

17 judgment.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 ENACTS:

24 **78B-5-829**, Utah Code Annotated 1953

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*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.

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**Legislative Review Note**  
as of 1-27-12 8:27 AM

**Office of Legislative Research and General Counsel**