

By the Committees on Banking and Insurance; and Judiciary; and
Senator Brandes

597-02689-21

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1 A bill to be entitled
2 An act relating to offers of judgment; amending s.
3 768.79, F.S.; authorizing parties to serve offers of
4 judgment that make certain stipulations relating to
5 attorney fees and costs; authorizing certain offerings
6 of judgment relating to jointly owned property to
7 require both individuals to either accept or reject
8 the offer; providing requirements relating to grounds
9 for challenging the validity of offers; defining the
10 term "judgment obtained" as it relates to certain
11 offers of judgment; providing applicability; providing
12 an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Present subsections (3) through (8) of section
17 768.79, Florida Statutes, are redesignated as subsections (5)
18 through (10), respectively, new subsections (3) and (4) are
19 added to that section, and subsection (2) and present
20 subsections (3), (4), and (6) of that section are amended, to
21 read:

22 768.79 Offer of judgment and demand for judgment.—

23 (2) The making of an offer of settlement which is not
24 accepted does not preclude the making of a subsequent offer.

25 (3) A party may make an offer of judgment that identifies
26 only the total amount of indemnity or damages and stipulates
27 that entitlement to attorney fees and costs will be established
28 at a later time by the parties or the court. An offer of
29 judgment is not required to specify an amount for attorney fees

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30 and costs.

31 (4) An offer must:

32 (a) Be in writing and state that it is being made pursuant
33 to this section.

34 (b) Name the party making it and the party to whom it is
35 being made.

36 (c) State with particularity the amount offered to settle a
37 claim for punitive damages, if any.

38 (d) State its total amount.

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40 The offer shall be construed as including all damages which may
41 be awarded in a final judgment unless it is an offer of judgment
42 that stipulates that entitlement to attorney fees and costs will
43 be established at a later time by the parties or the court.

44 (5)-(3) ~~An~~ The offer shall be served upon the party to whom
45 it is made, but it may ~~shall~~ not be filed unless it is accepted
46 or unless filing is necessary to enforce the provisions of this
47 section. In an action relating to damages to real property that
48 is jointly owned by two individuals who are insureds, an offer
49 of judgment which is served on both insureds may require that
50 both insureds either accept or reject the offer.

51 (6)-(4) An offer shall be accepted by filing a written
52 acceptance with the court within 30 days after service. Upon
53 filing of both the offer and acceptance, the court has full
54 jurisdiction to enforce the settlement agreement. Within 30 days
55 after an offer is served, the offeree must notify the offeror of
56 any grounds for challenging the validity of the offer. The
57 grounds for challenging the validity of the offer must be in
58 writing and stated with specificity. If the offeree fails to

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59 timely notify the offeror in writing of the grounds for
60 challenging the validity of the offer, the offeree waives the
61 right to object to the validity of the offer.

62 (8)-(6) Upon motion made by the offeror within 30 days after
63 the entry of judgment or after voluntary or involuntary
64 dismissal, the court shall determine the following:

65 (a) If a defendant serves an offer which is not accepted by
66 the plaintiff, and if the judgment obtained by the plaintiff is
67 at least 25 percent less than the amount of the offer, the
68 defendant shall be awarded reasonable costs, including
69 investigative expenses, and attorney ~~attorney's~~ fees, calculated
70 in accordance with the guidelines promulgated by the Supreme
71 Court, incurred from the date the offer was served, and the
72 court shall set off such costs in attorney ~~attorney's~~ fees
73 against the award. When such costs and attorney ~~attorney's~~ fees
74 total more than the amount of the judgment, the court shall
75 enter judgment for the defendant against the plaintiff for the
76 amount of the costs and fees, less the amount of the award to
77 the plaintiff.

78 (b) If a plaintiff serves an offer which is not accepted by
79 the defendant, and if the judgment obtained by the plaintiff is
80 at least 25 percent more than the amount of the offer, the
81 plaintiff shall be awarded reasonable costs, including
82 investigative expenses, and attorney ~~attorney's~~ fees, calculated
83 in accordance with the guidelines promulgated by the Supreme
84 Court, incurred from the date the offer was served.

85
86 For purposes of the determination required by paragraph (a), the
87 term "judgment obtained" means the amount of the net judgment

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88 entered, plus any postoffer collateral source payments received
89 or due as of the date of the judgment, plus any postoffer
90 settlement amounts by which the verdict was reduced. For
91 purposes of the determination required by paragraph (b), the
92 term "judgment obtained" means the amount of the net judgment
93 entered, plus any postoffer settlement amounts by which the
94 verdict was reduced. For purposes of the determination required
95 by paragraph (a) for an offer of judgment that stipulates that
96 entitlement to attorney fees and costs will be established at a
97 later time by the parties or the court, the term "judgment
98 obtained" means the total amount of damages, if any, but does
99 not include any amount awarded for attorney fees and costs.

100 Section 2. This act applies to all offers of judgment
101 served on or after July 1, 2021.

102 Section 3. This act shall take effect July 1, 2021.