

CHAPTER 232

COURTS

SENATE BILL 95-217

BY SENATORS Feeley and Mutzebaugh;
also REPRESENTATIVE DeGette.

AN ACT**CONCERNING CLARIFICATION OF TIME DEADLINES CONCERNING OFFERS OF SETTLEMENT.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-17-202, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-17-202. Award of actual costs when offer of settlement was made.

(1) (a) Notwithstanding any other statute to the contrary, in any civil action of any nature commenced or appealed in any court of record in this state:

(I) If the plaintiff ~~makes~~ **SERVES** an offer of settlement ~~which~~ **AT ANY TIME MORE THAN TEN DAYS BEFORE THE COMMENCEMENT OF THE TRIAL THAT** is rejected by the defendant and the plaintiff recovers a final judgment in excess of the amount offered, then the plaintiff shall be awarded actual costs accruing after the offer of settlement to be paid by the defendant.

(II) If the defendant ~~makes~~ **SERVES** an offer of settlement ~~which~~ **AT ANY TIME MORE THAN TEN DAYS BEFORE THE COMMENCEMENT OF THE TRIAL THAT** is rejected by the plaintiff and the plaintiff does not recover a final judgment in excess of the amount offered, then the defendant shall be awarded actual costs accruing after the offer of settlement to be paid by the plaintiff.

(III) **IF AN OFFER OF SETTLEMENT IS NOT ACCEPTED WITHIN TEN DAYS AFTER SERVICE OF THE OFFER, THE OFFER SHALL BE DEEMED REJECTED, AND THE PARTY WHO MADE THE OFFER IS NOT PRECLUDED FROM MAKING A SUBSEQUENT OFFER. EVIDENCE THEREOF IS NOT ADMISSIBLE EXCEPT IN A PROCEEDING TO DETERMINE COSTS.**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(IV) IF AN OFFER OF SETTLEMENT IS ACCEPTED WITHIN TEN DAYS AFTER SERVICE OF THE OFFER, EITHER PARTY MAY FILE THE OFFER, WRITTEN NOTICE OF ACCEPTANCE, AND PROOF OF SERVICE WITH THE COURT, AND THE CLERK SHALL ENTER JUDGMENT UPON THE ACCEPTED OFFER OF SETTLEMENT.

(V) AN OFFER OF SETTLEMENT UNDER THIS SECTION SHALL REMAIN OPEN FOR AT LEAST TEN DAYS FROM THE DATE OF SERVICE UNLESS WITHDRAWN BY SERVICE OF WITHDRAWAL OF THE OFFER OF SETTLEMENT.

(VI) AN OFFER OF SETTLEMENT SERVED AT ANY TIME TEN DAYS OR LESS BEFORE THE COMMENCEMENT OF THE TRIAL SHALL NOT BE SUBJECT TO THIS SECTION, AND EVIDENCE THEREOF IS NOT ADMISSIBLE FOR ANY PURPOSE.

(b) For purposes of this section, "actual costs" shall not include attorney fees.

(2) When comparing the amount of any offer of settlement to the amount of a final judgment actually awarded, any amount of the final judgment representing interest subsequent to the date of the offer in settlement shall not be considered.

~~(3) At any time more than ten days before the trial begins, a party defending against a claim may serve upon the adverse party an offer of settlement to the effect specified in his offer, with costs then accrued. If within ten days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of settlement, which shall have the same effect as an offer made before trial (except with respect to costs already incurred) if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability PURSUANT TO SUBSECTION (1) OF THIS SECTION.~~

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to all civil actions commenced on or after that date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 1995