



2009 ASSEMBLY BILL 918

April 2, 2010 – Introduced by Representatives ZIPPERER, VUKMIR, NYGREN, VOS and KLEEFISCH, cosponsored by Senators OLSEN and A. LASEE. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to repeal* 807.01 (2) and 814.04 (7); and *to amend* 807.01 (1), 807.01 (3)
2 and 814.04 (intro.) of the statutes; **relating to:** offers of settlement.

Analysis by the Legislative Reference Bureau

Under current law, parties in a civil action that reject offers of settlement may be awarded costs under certain circumstances. Under current law, costs include attorneys fees of either \$100, \$300, or \$500, depending on the amount awarded to the plaintiff.

If a plaintiff rejects an offer from a defendant that would allow the plaintiff to take judgment against the defendant and receive an award of a certain amount but, upon going to trial, the plaintiff fails to recover a more favorable judgment than the plaintiff would have received pursuant to the offer, the defendant is awarded costs.

If a plaintiff rejects an offer from a defendant that would allow the plaintiff to receive an award of a certain amount if the plaintiff proves the defendant liable but, upon going to trial, the plaintiff proves the defendant liable but is awarded less than or equal to the amount offered, neither party is awarded costs.

If a defendant rejects an offer from a plaintiff that would award the plaintiff a certain amount and the plaintiff, at trial, is awarded more than that amount, the plaintiff is awarded double costs.

Under this bill, if a defendant rejects an offer of settlement from the plaintiff and the plaintiff goes on to obtain a money judgment that is at least 120 percent of the amount offered, the plaintiff is awarded costs, including reasonable attorneys fees that the plaintiff incurred as a result of the defendant's rejection of the offer. Under the bill, if a plaintiff rejects an offer from the defendant and goes on to obtain

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a money judgment that is 80 percent or less of the amount offered, the defendant is awarded costs, including reasonable attorneys fees that the defendant incurred as a result of the plaintiff's rejection of the offer.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 807.01 (1) of the statutes is amended to read:

2 807.01 (1) After issue is joined but at least 20 days before the trial, the
3 defendant may serve upon the plaintiff a written offer to allow judgment to be taken
4 against the defendant for the sum, or property, or to the effect therein specified, with
5 costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial
6 and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof
7 of service of the notice of acceptance, and the clerk must thereupon enter judgment
8 accordingly. If notice of acceptance is not given, the offer cannot be given as evidence
9 nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff
10 ~~fails to recover a more favorable judgment~~ recovers an amount that is 80 percent of
11 the offer or less, the plaintiff shall not recover costs but defendant shall recover costs
12 ~~to be computed on the demand of the complaint.~~ Under this subsection, costs include
13 reasonable attorneys fees that the defendant incurred as a result of the plaintiff's
14 rejection of the offer.

15 **SECTION 2.** 807.01 (2) of the statutes is repealed.

16 **SECTION 3.** 807.01 (3) of the statutes is amended to read:

17 807.01 (3) After issue is joined but at least 20 days before trial, the plaintiff may
18 serve upon the defendant a written offer of settlement for the sum, or property, or to
19 the effect therein specified, with costs. If the defendant accepts the offer and serves
20 notice thereof in writing, before trial and within 10 days after receipt of the offer, the

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1 defendant may file the offer, with proof of service of the notice of acceptance, with the
2 clerk of court. If notice of acceptance is not given, the offer cannot be given as
3 evidence nor mentioned on the trial. If the offer of settlement is not accepted and the
4 plaintiff recovers a more favorable judgment, ~~the plaintiff shall recover double the~~
5 ~~amount of the taxable costs~~ an amount that is 120 percent of the offer or more, the
6 defendant shall not recover costs but the plaintiff shall recover costs. Under this
7 subsection, costs include reasonable attorneys fees that the plaintiff incurred as a
8 result of the defendant's rejection of the offer.

9 **SECTION 4.** 814.04 (intro.) of the statutes, as affected by 2009 Wisconsin Act 20,
10 is amended to read:

11 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
12 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
13 1., 767.553 (4) (d), 769.313, 802.05, 807.01, 814.245, 895.035 (4), 895.443 (3), 895.444
14 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b),
15 and 995.10 (3), when allowed costs shall be as follows:

16 **SECTION 5.** 814.04 (7) of the statutes is repealed.

17 (END)