



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 225

130th General Assembly  
(As Introduced)

**Reps.** Butler, J. Adams, Becker, Retherford, Scherer, Wachtmann

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## BILL SUMMARY

- Enacts a procedure in which an "entity" that is a party in a civil action may make a written offer to settle the action for a specified amount of money and prescribes the requirements for such an offer.
- Provides that if a plaintiff rejects a defendant's offer and the final judgment is one of no liability or for an amount less than 75% of the offer, the defendant may recover attorney's fees and litigation expenses from the date of rejection of the offer through the entry of judgment.
- Provides that if a defendant rejects a plaintiff's offer and the final judgment is for an amount greater than 125% of the offer, the plaintiff may recover attorney's fees and litigation expenses from the date of rejection of the offer through the entry of judgment.
- Permits a party entitled to attorney's fees to file an application for payment of the fees and expenses with the court, authorizes the court to deny the application if the offer was not made in good faith, and requires the court to deny the application if the applicant asserted a frivolous claim or defense.
- Permits a party entitled to attorney's fees to file a separate action to recover the fees and expenses and provides that it is an affirmative defense to the action that the offeror did not make the offer in good faith or asserted a frivolous claim or defense in the action in which the offer was made.
- Precludes a party entitled to attorney's fees and expenses from seeking relief both in the underlying action and in a separate action.

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## CONTENT AND OPERATION

### Offer of settlement

The bill provides that at any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days before trial, or not less than 20 days before trial in the case of a counteroffer, any party that is an "entity" (see "**Definition**") may serve on any opposing party that is an "entity" a written offer to settle a civil action for the amount of money specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. The offer must do all of the following:<sup>1</sup>

(1) State that the offer is being made pursuant to "section 2307.31 of the Revised Code";

(2) Identify the party or parties making the offer and the party or parties to whom the offer is being made;

(3) Generally identify the claim or claims the offer is attempting to resolve;

(4) State with particularity any conditions upon which the offer is being made;

(5) State the total amount of the offer;

(6) State with particularity the amount proposed to settle a claim for punitive damages, if any;

(7) State whether the offer includes attorney's fees or other expenses and whether attorney's fees or other expenses are part of the legal claim;

(8) Be accompanied by proof of service.

An offer must remain open for 30 days unless, before its expiration, the offeror withdraws the offer by a writing served on the offeree prior to acceptance by the offeree or the offeree rejects the offer. If the offeror withdraws the offer before the expiration of the 30-day period, the offeror may not recover attorney's fees and expenses. A counteroffer constitutes a rejection, but it may serve as an offer if it is specifically denominated as an offer.<sup>2</sup>

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<sup>1</sup> R.C. 2307.32(B).

<sup>2</sup> R.C. 2307.31(D).



Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine reasonable attorney's fees and costs under the bill.<sup>3</sup>

### **Acceptance or rejection of an offer of settlement**

The acceptance or rejection of an offer by the offeree must be in writing and served upon the offeror. An offer that is neither withdrawn nor accepted within 30 days after being served is deemed rejected. The rejection of an offer does not preclude the offeror from making one or more subsequent offers. A party's right to recover attorney's fees and expenses is determined in accordance with the last offer made by that party. Service of an offer or of an acceptance, rejection, or withdrawal of an offer must be made in the manner prescribed in Civil Rule 5, except that the offer, acceptance, rejection, or withdrawal must not be filed with the court.<sup>4</sup>

#### **Effect of rejection of an offer**

If a plaintiff rejects an offer of settlement made by a defendant and if the final judgment is one of no liability or for an amount that is less than 75% of the offer, the defendant may recover reasonable attorney's fees and expenses of litigation incurred by the defendant or on the defendant's behalf from the date of the rejection of the offer through the entry of judgment. If a defendant rejects an offer of settlement made by the plaintiff and the plaintiff recovers a final judgment in an amount greater than 125% of the offer, the plaintiff may recover reasonable attorney's fees and expenses of litigation incurred by the plaintiff or on the plaintiff's behalf from the date of the rejection of the offer through the entry of judgment.<sup>5</sup>

### **Recovery of attorney's fees and expenses**

The bill provides for two alternative methods to recover attorney's fees and litigation expenses: an application to the court in the underlying action or filing a separate action. A party may not seek relief under both methods.<sup>6</sup>

#### **Application to the court**

The bill provides that after affirmance of the judgment on appeal or, if no appeal is taken, after the expiration of the time within which a notice of appeal must be filed, a party may apply to the court for an order requiring payment of attorney's fees and

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<sup>3</sup> R.C. 2307.31(H).

<sup>4</sup> R.C. 2307.31(E), (F), and (G).

<sup>5</sup> R.C. 2307.31(C).

<sup>6</sup> R.C. 2307.31(K).

expenses. Upon receipt of proof that the judgment is one to which the applicant is entitled to attorney's fees and proof of the attorney's fees and expenses incurred, the court must order the payment of reasonable attorney's fees and expenses. The court may deny an application for attorney's fees if it determines that the offer was not made in good faith. The court must deny the application if it determines, on a motion under the Frivolous Claims Law, that the party making the application asserted a frivolous claim or defense. If the court denies the application, it must set forth the basis for the denial in the order denying the application.<sup>7</sup>

### **Separate action for attorney's fees**

If a party makes an offer of settlement and the offeree rejects the offer, the offeror has a cause of action against the offeree for attorney's fees and expenses. The cause of action accrues upon affirmance of the judgment on appeal or, if no appeal is taken, upon the expiration of the time within which a notice of appeal must be filed. Such an action must be brought within one year after the cause of action accrues. It is an affirmative defense to the action that the offeror did not make the offer in good faith or that the offeror asserted a frivolous claim or defense in the action in which the offer was made. A court may award reasonable attorney's fees and expenses of litigation to the prevailing party in an action brought to recover attorney's fees. The bill's provisions do not apply to such an action.<sup>8</sup>

### **Definition**

The bill defines "entity" for purposes of its provisions as any of the following:<sup>9</sup>

(1) A for-profit or nonprofit organization incorporated under R.C. Title XVII or any other law of Ohio, any other state, or the United States;

(2) A business trust, real estate investment trust, limited liability company, limited partnership, or limited partnership association organized under R.C. Title XVII or any other law of Ohio, any other state, or the United States;

(3) A bank, savings bank, or savings and loan association chartered under the laws of the United States.

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<sup>7</sup> R.C. 2307.31(I).

<sup>8</sup> R.C. 2307.31(J).

<sup>9</sup> R.C. 2307.31(A).

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## HISTORY

ACTION

DATE

Introduced

06-26-13

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