
SENATE BILL 5226

State of Washington

56th Legislature

1999 Regular Session

By Senator Heavey

Read first time 01/18/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to offers of settlement; amending RCW 4.84.250 and
2 12.20.060; adding new sections to chapter 4.84 RCW; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.84.250 and 1984 c 258 s 88 are each amended to read
6 as follows:

7 Notwithstanding any other provisions of chapter 4.84 RCW and RCW
8 12.20.060, in any action for damages where the amount pleaded by the
9 prevailing party as ~~((hereinafter))~~ defined in RCW 4.84.260, exclusive
10 of costs, is ~~((seven))~~ thirty-five thousand ~~((five hundred))~~ dollars or
11 less, there shall be taxed and allowed to the prevailing party as a
12 part of the costs of the action a reasonable amount to be fixed by the
13 court as attorneys' fees. ~~((After July 1, 1985, the maximum amount of
14 the pleading under this section shall be ten thousand dollars.))~~

15 **Sec. 2.** RCW 12.20.060 and 1993 c 341 s 1 are each amended to read
16 as follows:

17 When the prevailing party in district court is entitled to recover
18 costs as authorized in RCW 4.84.010 in a civil action, the judge shall

1 add the amount thereof to the judgment; in case of failure of the
2 plaintiff to recover or of dismissal of the action, the judge shall
3 enter up a judgment in favor of the defendant for the amount of his or
4 her costs(~~(; and in case any party so entitled to costs is represented~~
5 ~~in the action by an attorney, the judge shall include attorney's fees~~
6 ~~of one hundred twenty five dollars as part of the costs: PROVIDED,~~
7 ~~HOWEVER, That the plaintiff shall not be entitled to such attorney fee~~
8 ~~unless he or she obtains, exclusive of costs, a judgment in the sum of~~
9 ~~fifty dollars or more)).~~

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.84 RCW
11 to read as follows:

12 (1) In any civil cause of action where the amount pleaded is over
13 thirty-five thousand dollars, exclusive of costs, if a defendant serves
14 on the plaintiff a written offer of settlement that is rejected or that
15 is not accepted by the plaintiff within thirty days and the judgment
16 obtained by the plaintiff is less than this offer, the defendant is
17 entitled to recover statutory costs and attorneys' fees as allowed in
18 subsection (3) of this section, including interest thereon, incurred
19 from the date of service of the offer and the court shall set off such
20 costs and attorneys' fees against the judgment. If the costs and
21 attorneys' fees total more than the judgment, the court shall enter
22 judgment for the defendant against the plaintiff for the amount of the
23 costs and fees, less the amount of the plaintiff's award.

24 (2) In any civil cause of action, if a plaintiff serves on the
25 defendant a written offer of settlement that is rejected or that is not
26 accepted by the defendant within thirty days and the plaintiff recovers
27 a judgment in an amount greater than the offer, the plaintiff is
28 entitled to recover statutory costs, interest on the judgment from the
29 date of service of process, and attorneys' fees as allowed in
30 subsection (3) of this section incurred from the date of the service of
31 the offer and the court shall enter judgment for the plaintiff against
32 the defendant for the amount of the costs, interest, and fees so
33 awarded.

34 (3) Unless otherwise modified by the court under subsection (7) of
35 this section, "reasonable attorneys' fees" means ten percent of the
36 judgment obtained.

37 (4) Service of an offer of settlement shall be made in the manner
38 provided by superior court civil rule 5.

1 (5) An offer shall not be filed with the court or be made known in
2 any way to the trier of fact until the judgment is presented to the
3 court.

4 (6) Unless otherwise agreed to by the parties, any offer made
5 pursuant to this section shall not be made prior to ninety days after
6 filing of the suit, nor later than sixty days prior to the scheduled
7 trial date, and shall not be accepted later than thirty days before the
8 scheduled trial date.

9 (7) The payment of attorneys' fees and statutory costs under this
10 section shall not be excused or modified unless the court finds that
11 one or more of the following factors so require:

12 (a) The closeness of questions of fact and law at issue;

13 (b) Whether the cause of action was in the nature of a test case,
14 presenting questions of far-reaching importance affecting nonparties;
15 or

16 (c) Additional relevant facts or information becoming known after
17 the offer is rejected or not accepted.

18 If payment is excused or modified, the court shall enter written
19 findings setting forth in detail the basis for the decision to excuse
20 payment.

21 (8) Interest shall accrue on any award under this section at the
22 rate of interest for judgments under RCW 4.56.110 or 4.56.115.

23 (9) An attorney shall not receive as compensation any portion of
24 the interest awarded pursuant to this section.

25 (10) In no event may any judgment for attorneys' fees and costs
26 entered pursuant to this section for the rejection or failure to accept
27 an offer become a lien against or in any manner enforceable against the
28 primary residence of the party to whom the offer was directed or
29 against any other property otherwise exempt by law.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.84 RCW
31 to read as follows:

32 (1) For purposes of section 3 of this act:

33 (a) "Judgment" does not include awards rendered in proceedings
34 pursuant to: (i) Chapters 26.09, 19.86, and 7.06 RCW; (ii) mandatory
35 arbitration rule 1.1 et seq.; or (iii) proceedings involving a contract
36 or lease which specifically provides for the payment of attorneys' fees
37 and costs incurred to enforce the provisions of the contract or lease.

1 (b) "Judgment" is the sum of all damages found and interest
2 awarded, less all set-offs allowed on affirmative defenses and
3 counterclaims, except for the set-off contemplated in section 3(1) of
4 this act, all as calculated before any statutorily required limitation
5 on periodic payment adjustments or cost award.

6 (3) In the event of a partial settlement involving some, but not
7 all defendants, the sum paid in settlement by each defendant is deemed
8 to be allocated between that defendant's total contribution to the
9 plaintiff's ultimate damages found and interest awarded, and to the
10 plaintiff's statutory costs and attorneys' fees incurred to date of
11 that partial settlement.

12 (4) All amounts awarded for statutory costs and attorneys' fees
13 under section 3 of this act are payable in a lump sum and are not
14 subject to periodic payment.

15 (5) If a party is entitled to statutory costs and attorneys' fees
16 pursuant to section 3 of this act, that party's attorney shall file and
17 serve on all parties an affidavit setting forth with reasonable
18 specificity the nature and amount of legal services rendered and costs
19 incurred since the date the offer of settlement was served, in addition
20 to a cost bill required by RCW 4.84.090.

21 NEW SECTION. **Sec. 5.** This act applies to offers of settlement
22 made after the effective date of this section.

23 NEW SECTION. **Sec. 6.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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