

COMMITTEE OF ORIGIN: Committee on General Laws

This substitute changes the laws regarding the recovery of costs and attorney fees by the prevailing party in a civil action. In its main provisions, the substitute:

- (1) Specifies that the provisions of the substitute only apply to claims for monetary relief and do not apply to a class action; shareholder's derivative action; action by or against a governmental unit; action brought under chapters 210 (child protection), 211 (juvenile courts), 451 (marriage contracts), 452 (divorce), 453 (adoption and foster care), 454 (enforcement of support), and 455 (adult and child abuse); action to collect worker's compensation benefits under Chapter 287; action filed in small claims court; or any offer made in a mediation or arbitration proceeding;
- (2) Specifies that these provisions do not apply until a party files a declaration that the settlement procedure authorized is available only in relation to the party that filed the declaration and to the parties that make or receive offers of settlement in relation to the party that filed the declaration;
- (3) Specifies that these provisions do not limit or affect the ability of any person to make an offer to settle or compromise a claim that does not comply with these provisions or to which these provisions do not apply. An offer to settle or compromise that is not made under these provisions does not entitle the offering party to recover litigation costs under these provisions;
- (4) Requires a settlement offer to be in writing, state that it is made under these provisions, state the terms by which the claims may be settled, state a deadline by which the offer must be accepted, and be served on all parties to whom the offer is made;
- (5) Requires that if a settlement offer is made and rejected and the judgment to be rendered by the court will be significantly less favorable to the rejecting party than the settlement offer, the offering party must recover litigation costs from the rejecting party. A judgment will be significantly less favorable to the rejecting party than the settlement offer if the rejecting party is a claimant and the award will be less than 50% of the rejected offer or the rejecting party is a defendant and the award will be more than 150% of the rejected offer;
- (6) Specifies that the litigation costs that may be recovered by

the offering party under these provisions are limited to those incurred by the offering party after the date the rejecting party rejected the settlement offer. The litigation costs that may be awarded cannot be greater than the amount specified and if a claimant or defendant is entitled to recover fees and costs under another law, he or she cannot recover litigation costs under these provisions in addition to the fees and costs recoverable under the other law. If litigation costs are to be awarded against a claimant, the costs must be awarded to the defendant in the judgement as an offset against the claimant's recovery from the defendant;

(7) Specifies that in a civil proceeding, on a trial court's granting or denial, in whole, of a motion to dismiss for failure to state a claim upon which relief can be granted, the court may award costs and reasonable and necessary attorney fees to the prevailing party that the court determines are equitable and just;

(8) Requires the Missouri Supreme Court to submit an annual report by February 1 to the General Assembly regarding the number of cases and dollar amounts involved in each case which are dismissed under these provisions;

(9) Allows certain litigation costs to be awarded against a party who rejects an offer made substantially in accordance with these provisions to settle a claim for monetary damages, including a counterclaim, crossclaim, or third-party claim;

(10) Specifies that a settlement offer cannot be made until a party files a declaration invoking these provisions. Upon filing a declaration no later than 45 days before the case is set for trial, an offer or offers may be made to settle only those claims by and against that party;

(11) Requires a settlement offer to be in writing; state that it is made under these provisions; identify the party or parties making the offer and to whom the offer is made; state the terms by which all monetary claims between the offeror and the offeree may be settled; state a deadline that is no sooner than 14 days after the offer is served, by which the offer must be accepted; and be served on all parties to whom the offer is made. An offer may be subject to specified reasonable conditions;

(12) Specifies that an offer cannot include nonmonetary claims and other claims to which these provisions do not apply. An offer cannot be made before a party's declaration is filed or within 60 days after the appearance in the case of the offeror or offeree, whichever is later and must be made within 60 days before the date the case is set for trial, except an offer may be

made within that 60-day period if it is in response to, and within seven days of, a prior offer. A party may make an offer after having made or rejected a prior offer. A rejection of an offer is subject to the imposition of litigation costs only if the offer is more favorable to the offeree than any prior offer;

(13) Allows an offer to be withdrawn before it is accepted and specifies the procedure for withdrawing, accepting, rejecting, or objecting to an offer;

(14) Requires that if a settlement offer is rejected and the judgment to be awarded on the monetary claims covered by the offer are significantly less favorable to the offeree than was the offer, the court must award the offeror litigation costs against the offeree from the time the offer was rejected to the time of judgment;

(15) Specifies that litigation costs are the expenditures actually made and the obligations actually incurred directly in relation to the claims covered by a settlement offer under these provisions for court costs, reasonable fees for not more than two testifying expert witnesses, and reasonable attorney fees. The substitute specifies the computation of the maximum litigation costs that may be awarded;

(16) Specifies that on motion, for good cause shown, and by written order:

(a) The court may modify the time limits for filing a declaration or for making an offer if made before the commencement of a trial; and

(b) A party against whom litigation costs are to be awarded may conduct discovery to determine the reasonableness of the costs requested. The court must, upon request, conduct a hearing on a request for an award of litigation costs at which the parties may present evidence; and

(17) Specifies that evidence relating to an offer made under these provisions is not admissible except for purposes of enforcing a settlement agreement or obtaining litigation costs, and the information regarding these provisions cannot be made known to the jury by any means.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.