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SENATE BILL NO. 347

Offered January 25, 1994

A *BILL to amend and reenact § 8.01-421 of the Code of Virginia, relating to civil actions; payment and offer of settlement.*

Patrons—Calhoun, Benedetti, Goode, Norment, Quayle and Stosch; Delegates: Clement and Mims

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-421 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-421. Payment may be pleaded; payment into court of part of claim; offer of settlement.

A. In any action for recovery of a debt the defendant may plead payment of the debt or any part thereof prior to the commencement of the action.

B. In any personal action, the defendant may pay into court a sum of money on account of what is claimed, or by way of compensation or amends, and plead that he is not indebted to the plaintiff, or that the plaintiff has not sustained damages, to a greater amount than such sum. The plaintiff may accept such sum either in full satisfaction, and then have judgment for his costs, or in part satisfaction, and reply to the allegations of the defendant's pleadings, and, if issue thereon be found for the defendant, judgment shall be given for the defendant, and he shall recover his costs. The payment of such sum into court shall not be admissible in evidence.

In any action at law for money damages between parties, none of whom is under a disability or is a fiduciary, any party may serve upon any adverse party, a written irrevocable offer, denominated as an offer under this section, to settle a claim for the money amount specified in the offer and to agree to the final dismissal of the claim or to allow judgment to be entered accordingly. The offer may be served at any time more than 120 days after service of the notice of motion for judgment, but not less than twenty-eight days, or twenty-one days if it is a counter offer, before trial. An offer shall not be filed with the court.

If, within fourteen days after service of the offer, the adverse party serves written notice that the offer is accepted, either party may then move the court for entry of an appropriate order in accordance with the terms of the agreed settlement. An offer not accepted in accordance with this section shall be deemed rejected, and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer. Service of the offer and the acceptance shall be by delivery or certified mail.

If the award to the claimant is more favorable to the offeror than was the rejected offer, then the offeree must pay or forego, as the case may be, the costs incurred after the rejection of the offer. For purposes of determining whether an award is more favorable to the offeror than was the rejected offer, (i) the last offer made by a party supersedes any previous offer by that party and (ii) an offer of settlement consisting in whole or in part of future payment or payments shall be valued in the manner provided by § 8.01-35.1 A 1.

C. When the liability of one party to another has been determined by a verdict or order or judgment, but the money award remains to be determined by further proceedings, either party may make an offer of settlement which shall have the same effect as an offer made before trial if it is served within a reasonable time prior to the commencement of hearings to determine the money award.

D. For the purposes of this section only, "costs" means (i) the costs of the action contemplated by § 14.1-178; (ii) expenses, not including attorney's fees, reasonably incurred by the offeror for depositions, travel, copying, expert witnesses and the court reporter; (iii) prejudgment interest at the judgment rate on the amount of the offer from the date of its rejection unless such interest is duplicated in the award; and (iv) the costs of the jury calculated in accordance with § 14.1-195.1. Disputes as to costs shall be resolved by the court. The court, in its discretion, may limit or allocate the award of expenses as specified in this section, taking into consideration the circumstances of the case and the equities of the parties. The assessment of costs shall be included in the judgment order. Costs assessed against a party shall not exceed fifty percent of the amount of the award.

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