

FIRST REGULAR SESSION

# SENATE BILL NO. 37

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR ROMINE.

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0363S.04I

ADRIANE D. CROUSE, Secretary.

## AN ACT

To amend chapters 511 and 514, RSMo, by adding thereto five new sections relating to settlement offers.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapters 511 and 514, RSMo, are amended by adding thereto  
2 five new sections, to be known as sections 511.800, 511.804, 511.808, 511.812, and  
3 514.075, to read as follows:

**511.800. As used in sections 511.800 to 511.812, the following terms shall mean:**

(1) "Claim", a request, including a counterclaim, cross-claim, or  
4 third-party claim, to recover monetary damages;

(2) "Claimant", a person making a claim;

(3) "Defendant", a person from whom a claimant seeks recovery  
7 on a claim, including a counterdefendant, cross-defendant, or third-  
8 party defendant;

(4) "Governmental unit", the state, a unit of the state, or a  
10 political subdivision of this state;

(5) "Litigation costs", money actually spent and obligations  
12 actually incurred that are directly related to the case in which a  
13 settlement offer is made. Litigation costs include:

(a) Court costs;

(b) Reasonable fees for not more than two testifying expert  
16 witnesses; and

(c) Reasonable attorney's fees.

**511.804. 1. The settlement procedures provided in sections  
2 511.800 to 511.812 shall apply only to claims for monetary relief.**

**3 2. Sections 511.800 to 511.812 do not apply to:**

- 4           **(1) A class action;**
- 5           **(2) A shareholder's derivative action;**
- 6           **(3) An action by or against a governmental unit;**
- 7           **(4) An action brought under chapters 210, 211, 451, 452, 453, 454,**
- 8           **and 455;**
- 9           **(5) An action to collect workers' compensation benefits under**
- 10          **chapter 287; or**
- 11          **(6) An action filed in small claims court.**

12          **3. Sections 511.800 to 511.812 do not apply until a party files a**  
13          **declaration that the settlement procedure authorized by sections**  
14          **511.800 to 511.812 is available in the action. When a party files such**  
15          **declaration, the settlement procedure allowed under sections 511.800**  
16          **to 511.812 is available only in relation to the party that filed the**  
17          **declaration and to the parties that make or receive offers of settlement**  
18          **in relation to that party.**

19          **4. Sections 511.800 to 511.812 do not limit or affect the ability of**  
20          **any person to:**

21           **(1) Make an offer to settle or compromise a claim that does not**  
22          **comply with sections 511.800 to 511.812; or**

23           **(2) Offer to settle or compromise a claim to which sections**  
24          **511.800 to 511.812 do not apply.**

25          **5. An offer to settle or compromise that does not comply with**  
26          **sections 511.800 to 511.812 or an offer to settle or compromise made in**  
27          **an action to which sections 511.800 to 511.812 do not apply does not**  
28          **entitle any party to recover litigation costs under sections 511.800 to**  
29          **511.812.**

511.808. 1. A settlement offer shall:

- 2           **(1) Be in writing;**
- 3           **(2) State that it is made under sections 511.800 to 511.812;**
- 4           **(3) State the terms by which the claims may be settled;**
- 5           **(4) State a deadline by which the settlement offer shall be**  
6          **accepted, which shall not be sooner than sixty days after the offer is**  
7          **served; and**
- 8           **(5) Be served on all parties to whom the settlement offer is made.**

9          2. A settlement offer may be made subject to reasonable  
10         conditions, including the execution of appropriate releases,  
11         indemnities, and other documents. An offeree may object to a condition

12 by written notice served on the offeror before the deadline stated in the  
13 offer. A condition to which no such objection is made is presumed to  
14 have been reasonable. Rejection of an offer made subject to a condition  
15 determined by the trial court to have been unreasonable cannot be the  
16 basis for an award of litigation costs under this section.

17       3. An offer shall not include nonmonetary claims and other  
18 claims to which this section does not apply.

19       4. An offer shall not be made:

20           (1) Before a declaration is filed;

21           (2) Within sixty days after the appearance in the case of the  
22 offeror or offeree, whichever is later;

23           (3) Within sixty days before the date the case is set for a trial on  
24 the merits; except that, an offer may be made within that period if it is  
25 in response to, and within seven days of, a prior offer.

26       5. A party may make a settlement offer after having made or  
27 rejected a prior offer. A rejection of such offer is subject to imposition  
28 of litigation costs under this section only if the settlement offer is more  
29 favorable to the offeree than any prior settlement offer.

30       6. (1) A settlement offer may be withdrawn before being  
31 accepted by the offeree. Withdrawal is effective when written notice  
32 of the withdrawal is served on the offeree. Once an unaccepted  
33 settlement offer has been withdrawn, it cannot be accepted or be the  
34 basis for awarding litigation costs under this section.

35           (2) An offer that has not been withdrawn may be accepted only  
36 by written notice served on the offeror by the deadline stated in the  
37 offer. When an offer is accepted, the offeror or offeree may file the  
38 offer and acceptance and may move the court to enforce the settlement.

39           (3) A settlement offer that is not withdrawn or accepted is  
40 rejected. A settlement offer may also be rejected by written notice  
41 served on the offeror by the deadline stated in the settlement offer.

42           (4) A settlement offer made before an offeror joins another party  
43 or designates a responsible third party shall not be the basis for  
44 awarding litigation costs under this section against an offeree who files  
45 an objection to the settlement offer within fifteen days after service of  
46 the offeror's pleading or designation.

511.812. 1. If a settlement offer is made and rejected and the  
2 judgment to be rendered will be significantly less favorable to the

3 rejecting party than was the settlement offer, the offering party shall  
4 recover litigation costs from the rejecting party.

5       2. A judgment shall be significantly less favorable to the  
6 rejecting party than is the settlement offer if:

7       (1) The rejecting party is a claimant and the award will be less  
8 than seventy-five percent of the rejected offer; or

9       (2) The rejecting party is a defendant and the award will be more  
10 than one hundred seventy-five percent of the rejected offer.

11       3. The litigation costs that may be recovered by the offering  
12 party under this section are limited to those litigation costs incurred  
13 by the offering party after the date the rejecting party rejected the  
14 settlement offer.

15       4. The litigation costs that may be awarded under sections  
16 511.800 to 511.812 shall not be greater than an amount computed by:

17       (1) Determining the sum of:

18       (a) Fifty percent of the economic damages to be awarded to the  
19 claimant in the judgment;

20       (b) One hundred percent of the noneconomic damages to be  
21 awarded to the claimant in the judgment; and

22       (c) One hundred percent of the exemplary or additional damages  
23 to be awarded to the claimant in the judgment; and

24       (2) Subtracting from the amount determined under subdivision  
25 (1) of this subsection the amount of any statutory or contractual liens  
26 in connection with the occurrences or incidents giving rise to the  
27 claim.

28       5. If a claimant or defendant is entitled to recover fees and costs  
29 under another law, the court shall not include fees and costs incurred  
30 by such claimant or defendant after the date of rejection of the  
31 settlement offer when calculating the amount of the judgment to be  
32 rendered under subsection 1 of this section.

33       6. If litigation costs are to be awarded against a claimant, such  
34 litigation costs shall be awarded to the defendant in the judgment as  
35 an offset against the claimant's recovery from such defendant.

36       7. (1) On motion and for good cause shown, the court may, by  
37 written order made before commencement of trial on the merits, modify  
38 the time limits for filing a declaration under subsection 3 of section  
39 511.802 or for making an offer.

40       **(2) On motion and for good cause shown, a party against whom**  
41 **litigation costs are to be awarded may conduct discovery to ascertain**  
42 **the reasonableness of the costs requested. If the court determines the**  
43 **costs to be reasonable, it shall order the party requesting discovery to**  
44 **pay all attorney fees and expenses incurred by other parties in**  
45 **responding to such discovery.**

46       **(3) The court shall, upon request, conduct a hearing on a request**  
47 **for an award of litigation costs, at which the affected parties may**  
48 **present evidence.**

49       **8. Evidence relating to an offer made under this section is not**  
50 **admissible except for purposes of enforcing a settlement agreement or**  
51 **obtaining litigation costs. The provisions of this section shall not be**  
52 **made known to the jury by any means.**

53       **9. This section does not apply to any offer made in a mediation**  
54 **or arbitration proceeding. A settlement offer not made under this**  
55 **section, or made in an action to which this section does not apply, shall**  
56 **not be the basis for awarding litigation costs under this section. This**  
57 **section does not limit or affect a party's right to make a settlement**  
58 **offer that does not comply with this section, or in an action to which**  
59 **this section does not apply.**

514.075. 1. In a civil proceeding, on a trial court's granting or  
2 denial, in whole, of a motion to dismiss for failure to state a claim upon  
3 which relief can be granted, the court may award costs and reasonable  
4 and necessary attorney's fees to the prevailing party that the court  
5 determines are equitable and just.

6       **2. By February first each year, the Missouri supreme court shall**  
7 **submit an annual report to the general assembly regarding the number**  
8 **of cases and dollar amounts involved in each case which are dismissed**  
9 **under subsection 1 of this section.**