

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 340**

BY SENATOR TRUMP

[Introduced February 17, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §55-7-31, relating to an offer of settlement; acceptance or rejection;  
 3 consequences; frivolous claims or defenses.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §55-7-31, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-31. Offer of settlement; acceptance or refusal; consequences; frivolous claims or  
 defenses.**

1 (a) At any time more than thirty days after the service of a summons and complaint on a  
 2 party but not less than thirty days (or twenty days if it is a counteroffer) before trial, either party  
 3 may serve upon the other party, but shall not file with the court, a written offer, denominated as  
 4 an offer under this section, to settle a tort claim for the money specified in the offer and to enter  
 5 into an agreement dismissing the claim or to allow judgment to be entered accordingly. Any offer  
 6 under this section must:

- 7 (1) Be in writing and state that it is being made pursuant to this section;
- 8 (2) Identify the party or parties making the proposal and the party or parties to whom the  
 9 proposal is being made;
- 10 (3) Identify generally the claim or claims the proposal is attempting to resolve;
- 11 (4) State with particularity any relevant conditions;
- 12 (5) State the total amount of the proposal;
- 13 (6) State with particularity the amount proposed to settle a claim for punitive damages, if  
 14 any;
- 15 (7) State whether the proposal includes attorney's fees or other expenses and whether  
 16 attorney's fees or other expenses are part of the legal claim; and
- 17 (8) Include a certificate of service and be served by certified mail.

18           (b) (1) If a defendant makes an offer of settlement which is rejected by the plaintiff, the  
19 defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation  
20 incurred by the defendant or on the defendant's behalf from the date of the rejection of the offer  
21 of settlement through the entry of judgment if the final judgment is one of no liability or the final  
22 judgment obtained by the plaintiff is less than 75 percent of such offer of settlement.

23           (2) If a plaintiff makes an offer of settlement which is rejected by the defendant and the  
24 plaintiff recovers a final judgment in an amount greater than 125 percent of such offer of  
25 settlement, the plaintiff shall be entitled to recover reasonable attorney's fees and expenses of  
26 litigation incurred by the plaintiff or on the plaintiff's behalf from the date of the rejection of the  
27 offer of settlement through the entry of judgment.

28           (c) Any offer made under this section shall remain open for thirty days unless sooner  
29 withdrawn by a writing served on the offeree prior to acceptance by the offeree, but an offeror is  
30 not entitled to attorney's fees and costs under subsection-b of this section to the extent an offer  
31 is not open for at least thirty days (unless it is rejected during that thirty day period). A counteroffer  
32 shall be deemed a rejection but may serve as an offer under this section if it is specifically  
33 denominated as an offer under this section. Acceptance or rejection of the offer by the offeree  
34 must be in writing and served upon the offeror. An offer that is neither withdrawn nor accepted  
35 within thirty days shall be considered rejected. The fact that an offer is made but not accepted  
36 does not preclude a subsequent offer. Evidence of an offer is not admissible except in  
37 proceedings to enforce a settlement or to determine reasonable attorney's fees and costs under  
38 this section.

39           (d) (1) The court shall order the payment of attorney's fees and expenses of litigation upon  
40 receipt of proof that the judgment is one to which the provisions of either subdivision 1 or  
41 subdivision 2 of subsection-b of this section apply: *Provided*, That if an appeal is taken from such  
42 judgment, the court shall order payment of such attorney's fees and expenses of litigation only  
43 upon remittitur affirming such judgment.

44 (2) If a party is entitled to costs and fees pursuant to the provisions of this section, the  
45 court may determine that an offer was not made in good faith in an order setting forth the basis  
46 for such a determination. In such a case, the court may disallow an award of attorney's fees and  
47 costs.

48 (e) Upon motion by the prevailing party at the time that the verdict or judgment is rendered,  
49 the moving party may request that the finder of fact determine whether the opposing party  
50 presented a frivolous claim or defense. In such an event, the court shall hold a separate bifurcated  
51 hearing at which the finder of fact shall make a determination of whether such frivolous claims or  
52 defenses were asserted and to award damages, if any, against the party presenting such frivolous  
53 claims or defenses. Under this subsection:

54 (1) Frivolous claims shall include, but are not limited to, the following:

55 (A) A claim, defense, or other position that lacks substantial justification or that is not made  
56 in good faith or that is made with malice or a wrongful purpose;

57 (B) A claim, defense, or other position with respect to which there existed such a complete  
58 absence of any justiciable issue of law or fact that it could not be reasonably believed that a court  
59 would accept the asserted claim, defense, or other position; and

60 (C) A claim, defense, or other position that was interposed for delay or harassment;

61 (2) Damages awarded may include reasonable and necessary attorney's fees and  
62 expenses of litigation.

NOTE: The purpose of this bill is to create an offer of settlement; acceptance or rejection; consequences; frivolous claims or defenses.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.