



Ohio Legislative Service Commission

Bill Analysis

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S.B. 36

128th General Assembly
(As Introduced)

Sen. Kearney

BILL SUMMARY

- Permits a defending party in a civil action at any time more than 20 days before trial begins to serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property specified in the offer.
- Provides that if the adverse party provides notice to the defending party within 20 days after receipt of the offer that the adverse party accepts the offer, either party may file with the court the offer and the notice of acceptance together with proof of service of the offer and notice of acceptance.
- Provides that if the offer is not accepted, the offer is considered withdrawn, and evidence of the offer and nonacceptance is not admissible at the trial or in any proceeding in the action.

CONTENT AND OPERATION

Offer of judgment in a civil action

The bill provides that at any time more than 20 days before the trial begins, a party defending against a claim in a civil action may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property specified in the offer. If within 20 days after the defending party's service of the offer the adverse party serves upon that defending party written notice that the offer is accepted, either party may then file with the court the offer and the notice of acceptance together with proof of service of the offer and notice of acceptance. Upon that filing, the clerk of the court must enter judgment in the action. An offer made that is not accepted is considered withdrawn, and evidence of the offer is not admissible at the trial or in any proceeding in the action. If the judgment that is finally obtained by

the adverse party to whom the offer is made under the bill is not more favorable than the offer, that party must pay the costs incurred by the defending party after making the offer. (R.C. 2311.16.)

COMMENT

Rule 68 of the Ohio Rules of Civil Procedure provides that an offer of judgment by any party, if refused by an opposite party, may not be filed with the court by the offering party for purposes of a proceeding to determine costs. The bill provides that if the offer is not accepted, it is considered withdrawn and evidence of the offer and nonacceptance *is not admissible at the trial or in any proceeding in the action*. This provision of the bill potentially conflicts with Ohio Civil Rule 68. In *State v. Slatter* (1981), 66 Ohio St.2d 452, 453, the Ohio Supreme Court stated as follows:

Article IV, Section 5(B) of the Ohio Constitution, provides, in part: "The Supreme Court shall prescribe rules governing practice and procedure, in all courts of the State, which rules shall not abridge, enlarge, or modify any substantive right * * *. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." Rules promulgated pursuant to this constitutional provision must be procedural in nature. Where a conflict arises between a rule and a statute, the rule will control the statute on matters of procedure. *Boyer v. Boyer* (1976), 46 Ohio St.2d 83, 86 Conversely, a rule may not abridge, enlarge, or modify any substantive right and a statute will control a rule on matters of substantive law. *Id.*

The word "substantive," as used in Section 5(B) of Article IV, Ohio Constitution, is in contradistinction to the words "adjective" or "procedural" that pertain to the method of enforcing rights or obtaining redress. "Substantive" means the body of law that creates, defines, and regulates the rights of the parties. *Krause v. State* (1972), 31 Ohio St.2d 132, 145.¹ If the costs provision in the bill draft is considered substantive, it would prevail over Civil Rule 68. If the costs provision is considered procedural, Civil Rule 68 would prevail.

¹ Overruled on other grounds, *Schenkolewski v. Cleveland Metroparks Sys.* (1981), 67 Ohio St.2d 31, paragraph one of the syllabus.

HISTORY

ACTION

DATE

Introduced

02-10-09

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