



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 36\*

128th General Assembly  
(As Reported by S. Judiciary - Civil Justice)

Sen. Kearney

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## BILL SUMMARY

- Requests the Supreme Court to amend Rule 68 of the Ohio Rules of Civil Procedure regarding offers of judgment.

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## CONTENT AND OPERATION

### Ohio Civil Rule 68

Existing Ohio Civil Rule 68 states 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. It further states that this rule shall not be construed as limiting voluntary offers of settlement made by any party.

Under the bill, the General Assembly respectfully requests the Supreme Court to amend Ohio Civil Rule 68 regarding offers of judgment to read as follows (Section 1):

(A) **Making an offer; judgment on an accepted offer.** More than ten days before the trial begins, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within ten days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

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\* This analysis was prepared before the report of the Senate Judiciary - Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

(B) **Unaccepted offer.** An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(C) **Offer after liability is determined.** When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time--but at least ten days--before a hearing to determine the extent of liability.

(D) **Paying costs after an unaccepted offer.** If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(E) This rule does not apply to a civil action to which R.C. 2315.18(B)(2) (limit on compensatory damages for noneconomic loss in a tort action) or R.C. 2323.43(A)(2) or (3) (limits on compensatory damages for noneconomic loss in a medical malpractice action) applies.

Under the bill, the Generally Assembly also respectfully requests the Supreme Court to consider making the provisions of amended Ohio Civil Rule 68 regarding an offer of judgment applicable to a demand made by a party that is a plaintiff pursuing a claim, such that, if a demand is made to settle the case more than ten days before the trial, the demand is not accepted by the defending party, and the verdict is as favorable or more favorable than the demand, then the defending party must pay the costs incurred after the demand was made under the same terms and requirements that are applicable to a party making an offer of judgment (Section 2).

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## HISTORY

ACTION	DATE
Introduced	02-10-09
Reported, S. Judiciary - Civil Justice	---

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