

**ASSEMBLY BILL**

**No. 1254**

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**Introduced by Assembly Member Gorell**

February 22, 2013

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An act to amend Section 998 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1254, as introduced, Gorell. Civil actions: settlement offers.

Existing law governs offers by a party to compromise a dispute that is to be resolved by trial or arbitration. Existing law provides that not less than 10 days prior to commencement of trial or arbitration of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. Existing law sets forth the requirements for the written offer and for the acceptance of the offer.

This bill would make technical, nonsubstantive changes to these provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 998 of the Code of Civil Procedure is
- 2 amended to read:
- 3 998. (a) The costs allowed under Sections 1031 and 1032 shall
- 4 be withheld or augmented as provided in this section.

1 (b) ~~Not less than~~ *Within* 10 days prior to commencement of trial  
2 or arbitration ~~(as, provided in Section 1281 or 1295)~~ 1295, of a  
3 dispute to be resolved by arbitration, any party may serve an offer  
4 in writing upon any other party to the action to allow judgment to  
5 be taken or an award to be entered in accordance with the terms  
6 and conditions stated at that time. The written offer shall include  
7 a statement of the offer, containing the terms and conditions of the  
8 judgment or award, and a provision that allows the accepting party  
9 to indicate acceptance of the offer by signing a statement that the  
10 offer is accepted. Any acceptance of the offer, whether made on  
11 the document containing the offer or on a separate document of  
12 acceptance, shall be in writing and shall be signed by counsel for  
13 the accepting party or, if not represented by counsel, by the  
14 accepting party.

15 (1) If the offer is accepted, the offer with proof of acceptance  
16 shall be filed and the clerk or the judge shall enter judgment  
17 accordingly. In the case of an arbitration, the offer with proof of  
18 acceptance shall be filed with the arbitrator or arbitrators who shall  
19 promptly render an award accordingly.

20 (2) If the offer is not accepted prior to trial or arbitration or  
21 within 30 days after it is made, whichever occurs first, it shall be  
22 deemed withdrawn, and cannot be given in evidence upon the trial  
23 or arbitration.

24 (3) For purposes of this subdivision, a trial or arbitration shall  
25 be deemed to be actually commenced at the beginning of the  
26 opening statement of the plaintiff or counsel, and if there is no  
27 opening statement, then at the time of the administering of the oath  
28 or affirmation to the first witness, or the introduction of any  
29 evidence.

30 (c) (1) If an offer made by a defendant is not accepted and the  
31 plaintiff fails to obtain a more favorable judgment or award, the  
32 plaintiff shall not recover his or her postoffer costs and shall pay  
33 the defendant's costs from the time of the offer. In addition, in any  
34 action or proceeding other than an eminent domain action, the  
35 court or arbitrator, in its discretion, may require the plaintiff to  
36 pay a reasonable sum to cover costs of the services of expert  
37 witnesses, who are not regular employees of any party, actually  
38 incurred and reasonably necessary in either, or both, preparation  
39 for trial or arbitration, or during trial or arbitration, of the case by  
40 the defendant.

1 (2) (A) In determining whether the plaintiff obtains a more  
2 favorable judgment, the court or arbitrator shall exclude the  
3 postoffer costs.

4 (B) It is the intent of the Legislature in enacting subparagraph  
5 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,  
6 209 Cal.App.3d 996, that attorney’s fees awarded to the prevailing  
7 party were not costs for purposes of this section but were part of  
8 the judgment.

9 (d) If an offer made by a plaintiff is not accepted and the  
10 defendant fails to obtain a more favorable judgment or award in  
11 any action or proceeding other than an eminent domain action, the  
12 court or arbitrator, in its discretion, may require the defendant to  
13 pay a reasonable sum to cover postoffer costs of the services of  
14 expert witnesses, who are not regular employees of any party,  
15 actually incurred and reasonably necessary in either, or both,  
16 preparation for trial or arbitration, or during trial or arbitration, of  
17 the case by the plaintiff, in addition to plaintiff’s costs.

18 (e) If an offer made by a defendant is not accepted and the  
19 plaintiff fails to obtain a more favorable judgment or award, the  
20 costs under this section, from the time of the offer, shall be  
21 deducted from any damages awarded in favor of the plaintiff. If  
22 the costs awarded under this section exceed the amount of the  
23 damages awarded to the plaintiff the net amount shall be awarded  
24 to the defendant and judgment or award shall be entered  
25 accordingly.

26 (f) Police officers shall be deemed to be expert witnesses for  
27 the purposes of this section. For purposes of this section, “plaintiff”  
28 includes a cross-complainant and “defendant” includes a  
29 cross-defendant. Any judgment or award entered pursuant to this  
30 section shall be deemed to be a compromise settlement.

31 (g) This chapter does not apply to either of the following:

32 (1) An offer that is made by a plaintiff in an eminent domain  
33 action.

34 (2) Any enforcement action brought in the name of the people  
35 of the State of California by the Attorney General, a district  
36 attorney, or a city attorney, acting as a public prosecutor.

37 (h) The costs for services of expert witnesses for trial under  
38 subdivisions (c) and (d) shall not exceed those specified in Section  
39 68092.5 of the Government Code.

1 (i) This section shall not apply to labor arbitrations filed pursuant  
2 to memoranda of understanding under the Ralph C. Dills Act  
3 (Chapter 10.3 (commencing with Section 3512) of Division 4 of  
4 Title 1 of the Government Code).

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