

**ASSEMBLY BILL**

**No. 732**

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**Introduced by Assembly Member Wayne**

February 22, 2001

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An act to amend Section 998 of the Code of Civil Procedure, relating to settlement offers.

LEGISLATIVE COUNSEL'S DIGEST

AB 732, as introduced, Wayne. Civil procedure: settlement offers.

Under existing law, any party may serve an offer in writing, not less than 10 days prior to the commencement of trial or arbitration, 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 provides that if an offer made by a defendant is rejected and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of offer. Further, the court or arbitrator, in its discretion, may require either a plaintiff or defendant who rejected such an offer and failed to obtain a more favorable judgment or award to pay the offering party's costs of the services of expert witnesses, as specified, actually incurred and reasonably necessary in preparation for trial or arbitration of the case. These provisions are not applicable to an offer that is made by a plaintiff in an eminent domain action.

This bill would make this law also inapplicable to any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor.

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  
 4 shall be withheld or augmented as provided in this section.  
 5 (b) Not less than 10 days prior to commencement of trial or  
 6 arbitration (as provided in Section 1281 or 1295) of a dispute to  
 7 be resolved by arbitration, any party may serve an offer in writing  
 8 upon any other party to the action to allow judgment to be taken  
 9 or an award to be entered in accordance with the terms and  
 10 conditions stated at that time.  
 11 (1) If the offer is accepted, the offer with proof of acceptance  
 12 shall be filed and the clerk or the judge shall enter judgment  
 13 accordingly. In the case of an arbitration, the offer with proof of  
 14 acceptance shall be filed with the arbitrator or arbitrators who shall  
 15 promptly render an award accordingly.  
 16 (2) If the offer is not accepted prior to trial or arbitration, within  
 17 30 days after it is made, whichever occurs first, it shall be deemed  
 18 withdrawn, and cannot be given in evidence upon the trial or  
 19 arbitration.  
 20 (3) For purposes of this subdivision, a trial or arbitration shall  
 21 be deemed to be actually commenced at the beginning of the  
 22 opening statement of the plaintiff or counsel, and if there is no  
 23 opening statement, then at the time of the administering of the oath  
 24 or affirmation to the first witness, or the introduction of any  
 25 evidence.  
 26 (c) (1) If an offer made by a defendant is not accepted and the  
 27 plaintiff fails to obtain a more favorable judgment or award, the  
 28 plaintiff shall not recover his or her postoffer costs and shall pay  
 29 the defendant's costs from the time of the offer. In addition, in any  
 30 action or proceeding other than an eminent domain action, the  
 31 court or arbitrator, in its discretion, may require the plaintiff to pay  
 32 a reasonable sum to cover costs of the services of expert witnesses,  
 33 who are not regular employees of any party, actually incurred and  
 34 reasonably necessary in either, or both, preparation for trial or



1 arbitration, or during trial or arbitration, of the case by the  
2 defendant.

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

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

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

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

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

32 (g) This chapter does not apply to ~~an~~ *either of the following*:

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

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

38 (h) The costs for services of expert witnesses for trial under  
39 subdivisions (c) and (d) shall not exceed those specified in Section  
40 68092.5 of the Government Code.



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

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