

IN THE SENATE

SENATE BILL NO. 1277

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CIVIL ACTIONS; AMENDING SECTION 7-1503, IDAHO CODE, TO REVISE
2 A PROVISION REGARDING CLAIMS FOR DAMAGES; AND AMENDING SECTION 12-120,
3 IDAHO CODE, TO REVISE A PROVISION REGARDING A PLAINTIFF'S CLAIM FOR DAM-
4 AGES.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 7-1503, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 7-1503. ACTIONS TO WHICH THE IDAHO CIVIL EVALUATION OPTION APPLIES --
10 INITIATION OF PROCESS -- OPTION TO MEDIATE -- MOTIONS FOR REMOVAL FROM EVAL-
11 UATION. (1) Civil actions in which the sole relief sought is a money judgment
12 in which the parties agree that the total claims for all damages sought by a
13 party do not exceed ~~twenty~~ thirty-five thousand dollars (\$235,000) shall be
14 subject to the provisions of this chapter. This chapter shall not apply to
15 appeals from the magistrates division, disputes subject to arbitration un-
16 der chapter 9, title 7, Idaho Code, proceedings in the small claims division
17 of the district court, cases seeking a punitive damages award, or cases in
18 which this chapter has been previously invoked.

19 (2) The provisions of this chapter may be initiated by any party by the
20 filing of a notice with the court. The notice shall be filed at least one hun-
21 dred fifty (150) days prior to a scheduled trial but, without the consent of
22 all parties, may not be filed within forty-five (45) days following the ser-
23 vice of a complaint. For actions pending in the magistrates division, how-
24 ever, notice shall be filed at least one hundred (100) days prior to a sched-
25 uled trial but, without consent of all the parties, may not be filed within
26 thirty (30) days following the service of a complaint. The trial court shall
27 retain jurisdiction over a case proceeding under this chapter and the case
28 shall remain on the court's active calendar.

29 (3) The parties shall confer after the filing of the notice to determine
30 if they wish to undertake evaluation or mediation. If they agree to medi-
31 ate, the parties may agree upon a mediator or utilize as mediator an individ-
32 ual selected pursuant to the evaluator selection provisions of this chapter.
33 If a mediation has been conducted under this chapter, and the mediation has
34 not resulted in the settlement of all claims, within fourteen (14) days fol-
35 lowing such mediation, the parties shall file a notice with the clerk of the
36 court that a mediation has been completed, that all claims have not been set-
37 tled and specifying the claims which remain.

38 (4) If the parties are not able to agree whether to undertake a media-
39 tion or an evaluation under this chapter, a party has seven (7) days after
40 the filing of the notice of the initiation of the provisions of this chapter
41 to file a motion seeking the court to order which form of alternative dispute
42 resolution will be used. The moving party has a right to a hearing pursuant

1 to the Idaho rules of civil procedure. In making its determination on the mo-
2 tion, the court shall consider, among other factors it deems relevant, the
3 nature of the claim(s) and the defense(s), the prior experience, if any, of
4 the parties or their counsel with mediation or evaluation, in this or other
5 cases, the potential likelihood that the facts alleged in a claim, if proven,
6 will lead to liability of one party to another, and the complexity of the
7 case. If the court does not determine that mediation is a preferable means of
8 alternative dispute resolution for the particular case, it shall order the
9 parties to conduct an evaluation under the provisions of this chapter. How-
10 ever, if the court determines that neither mediation nor evaluation is ap-
11 propriate in the case, it may order that the case proceed to trial in accor-
12 dance with the Idaho rules of civil procedure.

13 (5) Any party may move the court for removal from the evaluation at any
14 stage for good cause including, but not limited to, a substantial change in
15 circumstances or a reasonable potential for the moving party to later seek
16 amendment to its pleadings to allow that party to pursue punitive damages,
17 making the evaluation option an inappropriate method to obtain resolution of
18 the particular dispute.

19 SECTION 2. That Section 12-120, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in
22 subsections (3) and (4) of this section, in any action where the amount
23 pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be
24 taxed and allowed to the prevailing party, as part of the costs of the ac-
25 tion, a reasonable amount to be fixed by the court as attorney's fees. For
26 the plaintiff to be awarded attorney's fees, for the prosecution of the
27 action, written demand for the payment of such claim must have been made on
28 the defendant not less than ten (10) days before the commencement of the
29 action; provided, that no attorney's fees shall be allowed to the plaintiff
30 if the court finds that the defendant tendered to the plaintiff, prior to the
31 commencement of the action, an amount at least equal to ninety-five percent
32 (95%) of the amount awarded to the plaintiff.

33 (2) The provisions of subsection (1) of this section shall also apply to
34 any counterclaims, cross-claims or third party claims which may be filed af-
35 ter the initiation of the original action. Except that a ten (10) day written
36 demand letter shall not be required in the case of a counterclaim.

37 (3) In any civil action to recover on an open account, account stated,
38 note, bill, negotiable instrument, guaranty, or contract relating to the
39 purchase or sale of goods, wares, merchandise, or services and in any com-
40 mercial transaction unless otherwise provided by law, the prevailing party
41 shall be allowed a reasonable attorney's fee to be set by the court, to be
42 taxed and collected as costs.

43 The term "commercial transaction" is defined to mean all transactions
44 except transactions for personal or household purposes. The term "party" is
45 defined to mean any person, partnership, corporation, association, private
46 organization, the state of Idaho or political subdivision thereof.

47 (4) In actions for personal injury, where the amount of plaintiff's
48 claim for damages does not exceed ~~twenty~~ thirty-five thousand dollars
49 (\$235,000), there shall be taxed and allowed to the claimant, as part of the

1 costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

10 The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:

13 (a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid.

20 (b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages.

22 If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorney's fees under this section.

27 (5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

33 (6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney's fees shall be determined by the court after consideration of the factors set out in rule 54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney's fees exceed the principal amount of the judgment or value of property recovered.