

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1073

Short Title: Counteroffer of Judgment.

(Public)

Sponsors: Representatives Flaherty and Richardson.

Referred to: Courts and Justice.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PARTY UPON WHOM AN OFFER OF JUDGMENT IS
SERVED BY A PARTY DEFENDING A CLAIM TO MAKE A
COUNTEROFFER FOR THE JUDGMENT AGAINST THE PARTY
DEFENDING THE CLAIM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 68, reads as rewritten:

"Rule 68. Offer of judgment and disclaimer.

(a) **Offer of judgment.** – At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted within 10 days after its service shall be deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(a1) **Counteroffer of judgment.** – A party upon whom an offer of judgment is served pursuant to subsection (a) of this section may, within 10 days after the service of the offer, serve on the adverse party a counteroffer for the entry of judgment against the adverse party for the money or property or to the effect specified in the counteroffer. If

1 within 10 days after the service of the counteroffer the adverse party serves written
2 notice that the counteroffer is accepted, either party may then file the counteroffer and
3 notice of acceptance together with proof of service thereof and thereupon the clerk shall
4 enter judgment. A counteroffer not accepted within 10 days after its service shall be
5 deemed withdrawn and evidence of the counteroffer is not admissible except in a
6 proceeding to determine costs. If the judgment finally obtained by the counterofferee is
7 not more favorable than the counteroffer, the counterofferee must pay all reasonable
8 attorneys' fees incurred by the counterofferor after the making of the counteroffer, the
9 amount of which fees shall be determined by the judge and are to be in addition to the
10 other costs to be paid by the counterofferee. The fact that a counteroffer is made but not
11 accepted does not preclude a subsequent counteroffer.

12 (b) **Conditional offer of judgment for damages.** – A party defending against a
13 claim arising in contract or quasi contract may, with his responsive pleading, serve upon
14 the claimant an offer in writing that if he fails in his defense, the damages shall be
15 assessed at a specified sum; and if the claimant signifies his acceptance thereof in
16 writing within 20 days of the service of such offer, and on the trial prevails, his damages
17 shall be assessed accordingly. If the claimant does not accept the offer, he must prove
18 his damages as if the offer had not been made. If the damages assessed in the claimant's
19 favor do not exceed the sum stated in the offer, the party defending shall recover the
20 costs in respect to the question of damages."

21 Sec. 2. This act becomes effective September 1, 1993, and applies to any
22 action commenced on or after that date.