

# Bill as Introduced

HB 1386 - AS INTRODUCED

2012 SESSION

12-2473  
09/04

HOUSE BILL            **1386**

AN ACT                relative to offers of judgments.

SPONSORS:            Rep. B. Murphy, Rock 18; Rep. Sorg, Graf 3; Sen. Sanborn, Dist 7; Sen. Bradley,  
Dist 3

COMMITTEE:          Judiciary

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ANALYSIS

This bill establishes procedures for offers of judgments in civil cases.

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Explanation:        Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to offers of judgments.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Offers of Judgments in Civil Cases. Amend RSA 507 by inserting after  
2 section 17 the following new subdivision:

3 Offers of Judgments in Civil Cases

4 507:18 Time and Manner of Making and Accepting Offer.

5 I. Except in a matrimonial action, any party may, at any time more than 20 days before the  
6 actual trial date, serve on any adverse party, without prejudice, and file with the court, an offer to  
7 take a monetary judgment in the offeror's favor, or as the case may be, to allow judgment to be taken  
8 against the offeror, for a sum stated in the offer, including costs. The offer shall not be effective  
9 unless, at the time the offer is extended, the relief sought by the parties in the case is exclusively  
10 monetary in nature.

11 II. If at any time on or prior to the 10th day before the actual trial date the offer is accepted,  
12 the offeree shall serve on the offeror and file a notice of acceptance with the court. The making of a  
13 further offer shall constitute a withdrawal of all previous offers made by that party. An offer shall  
14 not, however, be deemed withdrawn upon the making of a counter-offer by an adverse party but shall  
15 remain open until accepted or withdrawn as provided in this subdivision. If the offer is not accepted  
16 on or prior to the 10th day before the actual trial date or within 90 days of its service, whichever  
17 period first expires, it shall be deemed withdrawn and evidence thereof shall not be admissible  
18 except in a proceeding after the trial to fix costs, interest, and attorney's fee. The fact that an offer is  
19 not accepted does not preclude a further offer within the time prescribed in this subdivision in the  
20 same or another amount or as specified in the offer.

21 507:19 Consequences of Non-Acceptance of Claimant's Offer.

22 I. If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an  
23 amount that is 120 percent of the offer or more, excluding allowable prejudgment interest and  
24 counsel fees, the claimant shall be allowed, in addition to costs of suit.

25 (a) All reasonable litigation expenses incurred following non-acceptance;

26 (b) Prejudgment interest of 8 percent on the amount of any money recovery from the  
27 date of the offer or the date of completion of discovery, whichever is later, but only to the extent that  
28 such prejudgment interest exceeds the interest prescribed by RSA 336:1, which also shall be  
29 allowable; and

30 (c) A reasonable attorney's fee for such subsequent services as are compelled by the non-  
31 acceptance.

1           II. No allowances shall be granted pursuant to paragraph I if they would impose undue  
2 hardship. If undue hardship can be eliminated by reducing the allowance to a lower sum, the court  
3 shall reduce the amount of the allowance accordingly.

4           507:20 Consequences of Non-Acceptance of Offer of Party Not a Claimant.

5           I. If the offer of a party other than the claimant is not accepted, and the claimant obtains a  
6 monetary judgment that is favorable to the offeror as defined by this subdivision, the offeror shall be  
7 allowed, in addition to costs of suit, the allowances as prescribed by RSA 507:19, which shall  
8 constitute a prior charge on the judgment.

9           II. A favorable determination qualifying for allowances under this rule is a money judgment  
10 in an amount, excluding allowable prejudgment interest and counsel fees, that is 80 percent of the  
11 offer or less.

12           III. No allowances shall be granted if:

13           (a) The claimant's claim is dismissed;

14           (b) A no-cause verdict is returned;

15           (c) Only nominal damages are awarded;

16           (d) A fee allowance would conflict with the policies underlying a fee-shifting statute or  
17 rule of court; or

18           (e) An allowance would impose undue hardship. If, however, undue hardship can be  
19 eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the  
20 allowance accordingly.

21           507:21 Multiple Claims; Multiple Parties.

22           I. If a party joins as plaintiff for the purpose of asserting a per quod claim, the claimants  
23 may make a single unallocated offer.

24           II. If there are multiple defendants against whom a joint and several judgment is sought,  
25 and one of the defendants offers in response less than a pro rata share, that defendant shall, for  
26 purposes of the allowances under RSA 507:19 and RSA 507:20, be deemed not to have accepted the  
27 claimant's offer. If, however, the offer of a single defendant, whether or not intended as the offer of a  
28 pro-rated share, is at least as favorable to the offeree as the determination of total damages to which  
29 the offeree is entitled, the single offering defendant shall be entitled to the allowances prescribed in  
30 RSA 507:20, provided, however, that the single defendant's offer is at least 80 percent of the total  
31 damages determined.

32           III. If a claimant asserts multiple claims for relief or if a counterclaim has been asserted  
33 against the claimant, the claimant's offer shall include all claims made by or against that claimant.  
34 If a party not originally a claimant asserts a counterclaim, that party's offer shall also include all  
35 claims by and against that party.

36           507:22 Application for Fee; Limitations. If an action is required to be retried, a party who made  
37 a rejected offer of judgment in the original trial may, within 10 days after the fixing of the first date

1 for the retrial, serve the actual notice on the offeree that the offer then made is renewed and, if the  
2 offeror prevails, the renewed offer shall be effective as of the date of the original offer. If the offeror  
3 elects not to so renew the original offer, a new offer may be made under this rule, which shall be  
4 effective as of the date of the new offer.

5 507:23 Application for Fee; Limitations. Applications for allowances pursuant to this  
6 subdivision shall be made within 20 days after entry of final judgment. A party who is awarded  
7 attorneys' fees, costs, or interest as a prevailing party pursuant to a fee-shifting statute, rule of  
8 court, contractual provision, or decisional law shall not be allowed to recover duplicative fees, costs,  
9 or interest under this subdivision.

10 2 Effective Date. This act shall take effect January 1, 2013.

# Speakers



# Hearing Minutes



HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1386

**BILL TITLE:** relative to offers of judgments.

**DATE:** January 25, 2012

**LOB ROOM:** 208                      **Time Public Hearing Called to Order:** 4:02 pm

**Time Adjourned:** 4:12 pm

(please circle if present)

**Committee Members:** Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse,  
McClarren, Murphy, Palmer, Peterson, Wall, Potter, Weber and Watrous

**Bill Sponsors:** Rep. B. Murphy, Rock 18; Rep. Sorg, Graf 3; Sen. Sanborn, Dist 7; Sen. Bradley, Dist 3

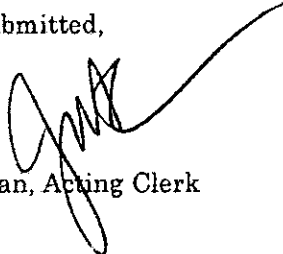
TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Sorg**, co-sponsor – supports  
Introduced the bill and spoke of implementation details.

**Atty. D. Gattelman**, - opposed  
Detrimental to consumer. 20-day threshold for offer is too short (costs already incurred)

Respectfully submitted,



Joseph M. Hagan, Acting Clerk

HOUSE COMMITTEE ON JUDICIARY  
PUBLIC HEARING ON HOUSE BILL 1386

BILL TITLE: relative to offers of judgments.

DATE: {Type HEARING DATE here} 01/25/2012

LOB ROOM: 208

Time Public Hearing Called to Order: {Time} 16<sup>02</sup>

Time Adjourned: {Time} 16<sup>12</sup>

(please circle if present)

~~Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Wall, Potter, Weber and Watrous.~~

Bill Sponsors: Rep. B. Murphy, Rock 18; Rep. Sorg, Graf 3; Sen. Sanborn, Dist 7; Sen. Bradley, Dist 3

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep Souza cosponsor/supports ... implementation details  
ATTY D. GOTTESMAN opposed ... DETRIMENTAL TO CONSUMER  
today threshold for offer is too short (costs already incorporated)

Respectfully submitted,

*Smith*  
Joseph Hagan  
for

Lenette M. Peterson, Clerk

# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY  
EXECUTIVE SESSION ON HOUSE BILL 1386

**BILL TITLE:** relative to offers of judgments.

**DATE:** February 7, 2012

**LOB ROOM:** 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Brian Murphy

Seconded by Rep. Janet Wall

Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

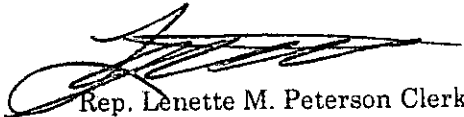
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. Lenette M. Peterson Clerk

HOUSE COMMITTEE ON JUDICIARY  
EXECUTIVE SESSION ON HOUSE BILL 1386

BILL TITLE: relative to offers of judgments.

DATE: {Type DATE} 2/7/12

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Murphy

Seconded by Rep. Wall

Vote: (Please attach record of roll call vote.) 16-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

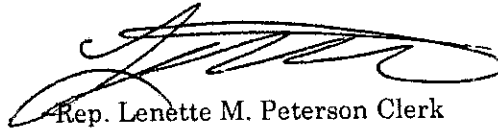
Murphy

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. Lenette M. Peterson Clerk

JUDICIARY

Bill #: HB 1386 Title: \_\_\_\_\_

PH Date: 1/25/12

Exec Session Date: 2/7/12

Motion: ITL

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	✓	
Sorg, Gregory M, V Chairman	✓	
Souza, Kathleen F	✓	
Hagan, Joseph M	✓	
Silva, Peter L	—	—
Hopper, Gary S	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	✓	
<del>Palmer, Barry J</del> <u>Rappler</u>	✓	
Peterson, Lenette M, Clerk	✓	
Wall, Janet G	✓	
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	✓	
	16	0

# Committee Report

**CONSENT CALENDAR**

**February 14, 2012**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Committee on JUDICIARY to which was referred

HB 1386,

AN ACT relative to offers of judgments. Having considered  
the same, report the same with the following Resolution:

**RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

**Rep. Brian JX Murphy**

**FOR THE COMMITTEE**



## COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB 1386
Title:	relative to offers of judgments.
Date:	February 14, 2012
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill seeks to address the very real problem of protracted litigation in New Hampshire civil courts. The bill offers a comprehensive statute designed to deal with the treatment and consequences of formal offers of settlement between civil litigants. The Committee has acknowledged the need for tort reform in this area. However, the Committee believes that a previous bill - already passed through the House this session (HB 1181) - would be a better mechanism to affect the necessary change.

Vote 16-0.

Rep. Brian JX Murphy  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### JUDICIARY

**HB 1386**, relative to offers of judgments. **INEXPEDIENT TO LEGISLATE.**

Rep. Brian JX Murphy for JUDICIARY. This bill seeks to address the very real problem of protracted litigation in New Hampshire civil courts. The bill offers a comprehensive statute designed to deal with the treatment and consequences of formal offers of settlement between civil litigants. The Committee has acknowledged the need for tort reform in this area. However, the Committee believes that a previous bill - already passed through the House this session (HB 1181) - would be a better mechanism to affect the necessary change. **Vote 16-0.**

Original: House Clerk  
Cc: Committee Bill File