

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 548
Judiciary I Committee Substitute Adopted 4/11/89

Short Title: Collection Agency Amendments.

(Public)

Sponsors:

Referred to:

March 20, 1989

A BILL TO BE ENTITLED
AN ACT TO AMEND THE COLLECTION AGENCY LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-49.24 reads as rewritten:

"§ 66-49.24. Permit from Commissioner of Insurance; ~~misdemeanor to do business without permit; penalty for violation; exception.~~

No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business, as the same is hereinafter defined in this Article, until he or it shall have secured a permit therefor as provided in this Article. Any person, firm, corporation or association conducting or operating a collection agency or doing a collection agency business without the permit shall be guilty of a ~~misdemeanor~~ Class J felony. Any officer or agent of any person, firm, corporation or association, who shall personally and knowingly participate in any violation of ~~this the remaining provisions of this Part~~ shall ~~likewise~~ be guilty of a misdemeanor. Provided, however, that nothing in this section shall be construed to require a regular employee of a duly licensed collection agency in this State to procure a collection agency permit."

Sec. 2. G.S. 66-49.25 (f) reads as rewritten:

"(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, officer, office manager, sales representative or other collector actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by such individual, each conviction of any criminal offense and any criminal charges pending other than minor

1 traffic violations of such individual, and the name and address of three people not
2 related to the individual who can attest to the individual's reputation for honesty and fair
3 dealings;".

4 Sec. 3. G.S. 66-49.25 is amended by adding new subsections to read:

5 "(m) A statement certifying that no officer, individual proprietor or partner of the
6 applicant has been convicted of a felony involving moral turpitude, or any violation of
7 any State or federal debt collection law.

8 "(n) If the collection agency's office or records, as described in G.S. 66-49.29,
9 are located outside of North Carolina, a statement sworn to by an appropriate corporate
10 officer, partner, or individual proprietor consenting to and authorizing the
11 reimbursement, to the Commissioner by the collection agency, of expenses incurred by
12 the Commissioner in conducting routine examinations, audits, and in investigating
13 written complaints against the collection agency or its employees. All reimbursements
14 shall be paid to the Commissioner no more than 30 days after the date of billing."

15 Sec. 4. G.S. 66-49.27(2) reads as rewritten:

16 "(2) Any person, firm, corporation or association which attempts to or does
17 transfer or sell to any person, firm, corporation or association not holding the permit
18 prescribed by this Article any system or series of letters or forms for use in the
19 collection of delinquent accounts or claims which by direct assertion or by implication
20 indicate that the claim or account is being asserted or collected by any person, firm,
21 corporation, or association other than the creditor or owner of the claim or demand;
22 ~~provided that no bond shall be required of any such collection agency if it does not collect any~~
23 ~~money from the debtor nor hold itself out as being authorized to receive payment of all or any~~
24 ~~part of such debt."~~

25 Sec. 5. G.S. 66-49.27(11) reads as rewritten:

26 "(11) 'Collection agency' shall not include any person, firm, corporation, or
27 association attempting to collect or collecting claims, in his or its own name, of a
28 business or businesses owned wholly or substantially by the same person, ~~or persons~~
29 ~~operating such collection agency firm, corporation, or association."~~

30 Sec. 6. G.S. 66-49.29(a) reads as rewritten:

31 "(a) Each person, firm, or corporation licensed as a collection agency in North
32 Carolina shall keep ~~within this State~~ a full and correct record of all business done in this
33 State as set forth below. All such records pertaining to collection activity, concerning
34 debtor records and client accounting records, but not general operating records, shall be
35 open to inspection by the Commissioner of Insurance or his duly authorized deputy
36 upon demand. ~~Each licensed collection agency engaged in the collection of debts shall~~
37 ~~maintain an office in this State."~~

38 Sec. 7. G.S. 66-49.30 reads as rewritten:

39 "**§ 66-49.30. Hearing granted applicant if application denied; appeal.**

40 If, upon application, the Commissioner ~~shall find~~ that ~~a the~~ permit should not be
41 issued or renewed to the applicant, he shall decline the same, giving notice of his action to
42 and denies an application, he shall notify the applicant or permittee and advise, in
43 writing, the applicant or permittee of the reasons for the denial or nonrenewal of the
44 permit. Following notice the applicant shall have 10 Within 30 days of receipt of

1 notification the applicant or permittee may make written demand upon ~~within which to~~
2 ~~submit additional information in support of his application and if, upon further hearing upon~~
3 ~~the application and additional information the Commissioner for a hearing to determine the~~
4 ~~reasonableness of the Commissioner's shall again decline to issue the permit, the applicant~~
5 ~~shall have the right to appeal to the superior court and his appeal shall stand for hearing in the~~
6 ~~Superior Court of the County of Wake, and the evidence, data and information submitted to the~~
7 ~~Commissioner shall constitute the record in the superior court to determine whether or not the~~
8 ~~Commissioner had evidence sufficient to justify his action. Such hearing shall be scheduled~~
9 ~~within 30 days and held within 90 days from the date of receipt of the written demand.~~
10 ~~If the Commissioner shall decline an application for renewal, the~~ An applicant or permittee
11 ~~may continue to do business pending any~~ has the right to appeal taken pursuant hereto
12 any order or any unreasonable delay pursuant to Article 4 of Chapter 150B of the General
13 Statutes. If the Commissioner shall decline an application for renewal, that applicant
14 may continue to do business pending any appeal taken pursuant hereto."

15 Sec. 8. G.S. 66-49.31 reads as rewritten:

16 **"§ 66-49.31. Application fee; issuance of permit; contents and duration.**

17 Upon the filing of the application and information hereinbefore required, the
18 Commissioner may require the applicant to pay a fee of five hundred dollars (\$500.00),
19 and no permit may be issued until this fee is paid. If the application is denied, the
20 Commissioner shall retain fifty dollars (\$50.00) of the application fee and return the
21 remainder to the applicant. The fifty dollars (\$50.00) so retained upon applications not
22 granted, and the full fee of five hundred dollars (\$500.00) upon the applications granted,
23 shall be used in paying the expenses incurred in connection with the consideration of
24 such applications and the issuance of such permits.

25 Each permit shall state the name of the applicant, his place of business, and the
26 nature and kind of business in which he is engaged. The Commissioner shall assign to
27 the permit a serial number for each year, and each permit shall be for a period of one
28 year, beginning with July 1 and ending with June 30 of the following year.

29 A permit is assignable or transferable only if the assignee or transferee qualifies
30 under the provisions of this Article. Upon any change in ownership of a permittee, if a
31 sole proprietorship or partnership, or upon a change in ownership of more than fifty
32 percent (50%) of the shares or voting rights of a corporate permittee, a permit issued to
33 a permittee is void unless within 30 days of the change of ownership the new owner or
34 owners have satisfied the Commissioner that he or they qualify for a permit under this
35 Article, and he or they maintain a bond in accordance with and in the amount required
36 for a renewal bond under G.S. 66-49.28."

37 Sec. 9. G.S. 66-49.32 reads as rewritten:

38 **"§ 66-49.32. ~~Revocation of permit.~~ Restraining orders; criminal convictions; permit**
39 **revocations; other permit requirements.**

40 (a) When it appears to ~~If the Commissioner shall have issued any permit to that~~
41 ~~any person, firm or corporation as herein provided, and shall have information that the~~
42 ~~holder of the permit is conducting business in violation of Part 1, 2, or 3~~ has violated, is
43 violating, or threatens to violate any provision of this Article, or has obtained said
44 permit through materially false and misleading statements in its application, he may

1 apply to the Superior Court of Wake County for shall notify the holder of the permit of
2 a restraining order date for a hearing, which notice shall name a time and place for the
3 hearing, and injunction to restrain such violation, or threatened violation at which
4 hearing any and all evidence as to the conduct of the business may be heard by the
5 Commissioner. If, upon application the hearing of the evidence, Court finds that any
6 provision of this Article has been violated, is being violated, or a violation thereof is
7 threatened, the Commissioner Court shall be of the opinion that the applicant is
8 conducting business in violation of Part 1, 2, or 3 issue an order restraining and
9 enjoining such violations; and such relief may be granted regardless of whether criminal
10 prosecution is instituted under any provision of this Article, the Commissioner shall
11 then require the holder to show cause why said permit should not be cancelled.

12 (b) The conviction by a court of competent jurisdiction of any permittee for a
13 violation of this Article shall automatically have Upon a determination that the effect of
14 suspending the permit of that permittee until such time that the should be cancelled, the
15 Commissioner shall cancel said permit; provided, however, pending any appeal permitted
16 hereby, is reinstated by the permit holder may continue to do business. If the permit be
17 cancelled upon hearing, either the holder of the permit or the complaining party shall have the
18 right to appeal as hereinbefore provided in the case where an application is denied, and the
19 record of the hearing before the Commissioner. As used in this subsection, 'conviction'
20 includes an adjudication of guilt, a plea of guilty, and a plea of **nolo contendere**. shall
21 be the record in the superior court upon which the judge shall determine whether or not

22 (c) In addition to the other qualifications for a permit under this Article, no
23 collection agency shall be issued or be entitled to hold a permit if the Commissioner
24 finds as had sufficient evidence upon which to the applicant or permittee any one or more
25 of the following conditions base his action:

- 26 (1) An individual proprietor, officer, or partner of the collection agency
27 has been convicted of a felony involving moral turpitude, or any State
28 or federal debt collection law.
- 29 (2) There is an unsatisfied judgment which is not currently the subject of
30 litigation against any partner, individual proprietor, or officer of the
31 collection agency or against the collection agency.
- 32 (3) There is any materially false or misleading information in the permit
33 application.
- 34 (4) The applicant has obtained or attempted to obtain the permit through
35 misrepresentation or fraud.
- 36 (5) There has been an adjudication that a partner, individual proprietor, or
37 officer of the collection agency has violated any State or federal unfair
38 trade practice law.
- 39 (6) A partner, individual proprietor, or officer of the collection agency has
40 violated or refused to comply with any provision of this Article or any
41 order of the Commissioner.
- 42 (7) Another jurisdiction has suspended or revoked a collection agency or
43 similar license or permit of the collection agency."

44 Sec. 10. G.S. 66-49.37 reads as rewritten:

1 **"§ 66-49.37. Remittance trust account.**

2 (a) Each permit holder shall deposit, no later than two banking days from receipt,
3 in a separate trust ~~fund~~ account in any bank located in local or approved North Carolina
4 or other bank approved by the Commissioner, sufficient funds to pay all moneys due or
5 owing all collection creditors or forwarders. Said funds shall remain in the trust account
6 until remitted to the creditor or forwarder, and shall not be commingled with any other
7 operating funds. The trust account shall be used only for the purpose of:

8 (1) R~~r~~emitting to collection creditors or forwarders the proceeds to which
9 they are entitled. ~~and~~

10 (2) R~~r~~emitting to the collection agency the commission that is due the
11 collection agency.

12 (3) Reimbursing consumers for overpayments.

13 (4) Making adjustments to the trust account balance for bank service
14 charges.

15 (b) No refund for overpayment by a debtor in an amount of less than one dollar
16 (\$1.00) is required."

17 Sec. 11. G.S. 66-49.48 reads as rewritten:

18 **"§ 66-49.48. Unauthorized practice of law; court appearances.**

19 A permit holder as defined in G.S. 66-49.27 ~~Neither a collection agency nor any~~
20 representative thereof who is not a duly licensed attorney shall not engage in the practice
21 of law. As used in this section, 'practice of law' includes the preparation of warrants or
22 subpoenas. A collection agency's representative is prohibited from appearing in court
23 on behalf of a creditor except as required by court order or subpoena, and except to
24 submit and explain claims in bankruptcy court."

25 Sec. 12. This act shall become effective July 1, 1989.