

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**HOUSE BILL 356
RATIFIED BILL**

AN ACT TO UPDATE THE BOND REQUIREMENTS FOR COLLECTION AGENCIES; TO CLARIFY THE DEFINITION OF COLLECTION AGENCY; TO REQUIRE NONRESIDENT COLLECTION AGENCIES TO POST A SECOND BOND FOR EXPENSES INCURRED BY THE STATE IN A RECEIVERSHIP PROCEEDING INVOLVING THE COLLECTION AGENCY; TO CONFORM THE LAW ON DECEPTIVE REPRESENTATION BY COLLECTION AGENCIES TO FEDERAL LAW; TO MAKE TECHNICAL CORRECTIONS; TO ALLOW BAIL BONDSMEN TO CREATE SHARED TRUST ACCOUNTS; TO CODIFY AN ADMINISTRATIVE RULE ON BONDSMEN AFFIDAVITS; AND TO AUTHORIZE THE COMMISSIONER TO DENY LICENSE RENEWALS TO PROFESSIONAL BONDSMEN UNTIL THEY CURE DEPOSIT DEFICIENCIES.

The General Assembly of North Carolina enacts:

PART I. COLLECTION AGENCIES

SECTION 1.1. G.S. 58-70-5(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~~ and officer 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 the~~ individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of ~~such the~~ individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;"

SECTION 1.2. G.S. 58-70-15 reads as rewritten:

"§ 58-70-15. Definition of collection agency and collection agency business.

(a) ~~'Collection agency' means and includes all persons, firms, corporations, and associations~~ a person directly or indirectly engaged in soliciting, from more than one ~~person, firm, corporation or association, person~~ delinquent claims of any kind owed or due or asserted to be owed or due the solicited ~~person, firm, corporation or association, person~~ and all ~~persons, firms, corporations and associations~~ persons directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

(b) ~~'Collection agency' shall include:~~ includes:

- (1) Any ~~person, firm, corporation or association who shall procure~~ person that procures a listing of delinquent debtors from any creditor and ~~who shall sell such that sells the listing or otherwise receive~~ receives any fee or benefit from collections made on ~~such the~~ listing; and
- (2) Any ~~person, firm, corporation or association which~~ person that attempts to or does transfer or sell to any ~~person, firm, corporation or association~~ person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or demand; and

- (3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.
- (c) 'Collection agency' does not ~~mean or include~~ mean:
- (1) Regular employees of a single creditor;
 - (2) Banks, trust companies, or bank-owned, controlled or related firms, corporations or associations engaged in accounting, bookkeeping or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors;
 - (3) Mortgage banking companies;
 - (4) Savings and loan associations;
 - (5) Building and loan associations;
 - (6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business;
 - (7) Express, telephone and telegraph companies subject to public regulation and supervision;
 - (8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman;
 - (9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court;
 - (10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands;
 - (11) ~~"Collection agency" shall not include any person, firm, corporation or association. Any person attempting to collect or collecting claims, in his or its own that person's name, of a business or businesses owned wholly or substantially by the same person, firm, corporation, or association; that person;~~
 - (12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution services; and
 - (13) The designated representatives of programs as defined by G.S. 110-129(5)."

SECTION 1.3. G.S. 58-70-20 reads as rewritten:

"§ 58-70-20. Bond requirement.

(a) As a condition precedent to the issuance of any permit under ~~G.S. 58-70-1, any this Article, every~~ applicant for such a permit shall file with the Commissioner of ~~Insurance and shall thereafter maintain in force while licensed~~ a bond in favor of the State of North Carolina ~~and that is~~ executed by a surety company ~~duly authorized licensed~~ to transact surety business in this State. The bond shall be maintained in force during the permit period, continuous in ~~form form~~, and shall remain in ~~full force and effect until all moneys collected have been accounted for, and it shall be expressly stated in the for.~~ The bond shall expressly provide that it the bond is for the benefit of any person, firm or corporation for whom ~~such the~~ collection agency engages in the collection of accounts. ~~Such The~~ bond shall be in the amount of ~~five thousand dollars (\$5,000) ten thousand dollars (\$10,000)~~ for the initial permit. The amount of ~~such the~~ bond for any renewal permit shall be no less than ~~five thousand dollars (\$5,000) ten thousand dollars (\$10,000)~~, nor more than ~~fifty thousand dollars (\$50,000), seventy-five thousand dollars (\$75,000)~~, and shall be computed as follows: The total collections paid directly to the collection agency less commissions earned by the collection agency on

those collections for the calendar year ending immediately prior to the date of application, multiplied by one-sixth.

(b) A person required by this section to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities, which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner.

(c) In addition to the requirements of subsections (a) and (b) of this section, as a condition precedent to the issuance of any permit under this Article, every nonresident applicant for a permit shall file with the Commissioner a bond in the amount of ten thousand dollars (\$10,000) in favor of the Department that is executed by a surety company licensed to transact surety business in this State. The bond shall be maintained in force during the permit period, be continuous in form, and remain in effect until terminated by the Commissioner. The bond shall expressly provide that the bond is for the purpose of reimbursing the Department for expenses incurred in visiting and examining a nonresident collection agency in connection with a federal bankruptcy or State receivership proceeding in which the collection agency is the subject of the proceeding."

SECTION 1.4. G.S. 58-70-110 reads as rewritten:

"§ 58-70-110. Deceptive representation.

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- (1) Communicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed;
- (2) ~~Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt;~~ Failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector; provided, however, that this subdivision does not apply to a formal pleading made in connection with legal action;
- (3) Falsely representing that the collection agency has in its possession information or something of value for the consumer;
- (4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collection agency is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions;
- (5) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source;

- (6) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges;
- (7) Falsely representing the status or true nature of the services rendered by the collection agency or its business."

PART II. BAIL BONDSMEN

SECTION 2.1. G.S. 58-71-1(1) reads as rewritten:

"(1) 'Accommodation bondsman' is a ~~natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no~~ who shall not charge a fee or receive any consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, ~~value~~ value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that ~~such the~~ such the real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized ~~in the event of if there is a breach of the conditions thereof. of the bond.~~ 'Consideration' as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety ~~so~~ as long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of ~~said the~~ the bail bond."

SECTION 2.2. G.S. 58-71-10 reads as rewritten:

"§ 58-71-10. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications.

(a) No undertaking shall be ~~invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed, nor shall judgment thereon be stayed, set aside or reversed, the collection of any such judgment be barred or defeated by reason~~ invalid because of any defect of form, omission or recital or of condition, failure to note or record the default of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, irregularity, if it appears from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

(b) The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement whether or not the agreement is expressed in the undertaking, or because the defendant has not joined in the undertaking."

SECTION 2.3. G.S. 58-71-20 reads as rewritten:

"§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the ~~official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed; sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded;~~ in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if the defendant does any of the following:

- (1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.

- (2) Changes his or her address without notifying the surety before the address change.
- (3) Physically hides from the surety.
- (4) Leaves the State without the permission of the surety.
- (5) Violates any order of the court."

SECTION 2.4. G.S. 58-71-40 reads as rewritten:

"§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications generally.

(a) No person shall act in the capacity of a ~~bail bondsman~~ professional bondsman, surety bondsman, or runner or perform any of the functions, duties, or powers prescribed for ~~bail bondsmen~~ professional bondsmen, surety bondsmen, or runners under the provisions of this Article unless that person ~~shall be~~ is qualified and ~~(except as regards an accommodation bondsman)~~ licensed in accordance with the provisions of under this Article. No license shall be issued to a ~~professional bondsman or runner under this Article~~ except to an individual natural person.

(b) The applicant shall apply for a license on forms prepared and supplied by the ~~Commissioner and the Commissioner.~~ The Commissioner may propound any reasonable interrogatories to an applicant for a license under this Article ~~relating to~~ about the applicant's qualifications, residence, prospective place of business, and any other matters ~~which, in the opinion of the Commissioner, are deemed that the Commissioner considers necessary in order to~~ protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(c) A person whose application is denied may reapply, but the Commissioner ~~may~~ shall not consider more than one application submitted by the same person within any one-year period.

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license is terminated ~~must~~ shall surrender the identification card to the Commissioner within 10 working days ~~of~~ after the termination.

(e) This section does not prohibit the hiring of personnel by a bail bondsman to perform only normal office duties. As used in this subsection, 'normal office duties' do not include acting as a bail bondsman or runner."

SECTION 2.5. G.S. 58-71-100 reads as rewritten:

"§ 58-71-100. Receipts for collateral; trust accounts.

(a) When a bail bondsman accepts collateral he shall give a written receipt for the collateral. The receipt shall give in detail a full description of the collateral received. Collateral security shall be held and maintained in trust. When collateral security is received in the form of cash or check or other negotiable instrument, the licensee shall deposit the cash or instrument within two banking days after receipt, in an established, separate noninterest-bearing trust account in any bank located in North Carolina. The trust account funds under this section shall not be commingled with other operating funds.

(b) With the approval of the Commissioner, bail bondsmen operating out of the same business office or location may establish a shared trust account for collateral security received by them. The Commissioner may require the bondsmen desiring to establish the shared trust account to furnish the Commissioner information about their business that the Commissioner considers necessary to administer this Article effectively."

SECTION 2.6. G.S. 58-71-140 reads as rewritten:

"§ 58-71-140. Registration of licenses and power of appointments by insurers.

(a) No professional bail bondsman shall become a surety on an undertaking unless he or she has registered his or her current license in the office of the clerk of superior court in the county in which he or she resides and a certified copy of the same with the clerk of superior court in any other county in which he or she shall write bail bonds.

(b) A surety bondsman shall register his or her current surety bondsman's license and a certified copy of his or her power of appointment with the clerk of superior court in the county in which the surety bondsman resides and with the clerk of superior court in any other county in which the surety bondsman writes bail bonds on behalf of an insurer.

(c) No runner shall become surety on an undertaking on behalf of a professional bondsman unless that runner has registered his or her current license and a certified copy of his or her power of attorney in the office of the clerk of superior court in the county in which the runner resides and with the clerk of superior court in any other county in which the runner writes bail bonds on behalf of the professional bondsman.

(d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts. The affidavit shall include, but not be limited to:

- (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing this appearance bond.
- (2) If promised a premium, the amount of the premium promised and the due date.
- (3) If the bondsman has received a premium, the amount of premium received.
- (4) If given collateral security, the name of the person from whom it is received and the nature and amount of the collateral security listed in detail."

SECTION 2.7. G.S. 58-71-160 reads as rewritten:

"§ 58-71-160. Security deposit to be maintained.

(a) Any professional bondsman, whose security deposits with the Commissioner are, for any reason, reduced in value below the requirements of this Article, shall immediately upon receipt of a notice of deficiency from the Commissioner ~~of Insurance~~ deposit such additional securities as are necessary to comply with the law. No professional bondsman shall sign, endorse, ~~execute~~ execute, or become surety on any additional bail bonds, or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina until ~~such time as he the professional bondsman~~ has made such additional deposit of securities as ~~shall be~~ required by the notice of deficiency.

(b) The Commissioner may deny the renewal of any license held by a professional bondsman under this Chapter or may deny the issuance of any license applied for by a professional bondsman under this Chapter if, at the time of the renewal application or license application, the professional bondsman has not complied with a notice of deficiency under subsection (a) of this section. The Commissioner may issue the renewal license or the new license upon compliance by the professional bondsman with the notice of deficiency."

SECTION 2.8. G.S. 58-71-170(a) reads as rewritten:

"(a) Whenever the Commissioner ~~deems~~ considers it prudent, the Commissioner shall visit and examine or cause to be visited and examined by a competent person appointed by the Commissioner for that purpose any professional bail ~~bondsman~~ bondsman, surety bondsman, or runner subject to ~~the provisions of this Article~~. For this purpose the Commissioner or person making the examination shall have free access to all ~~books and papers~~ records of the ~~bondsman~~ licensee that relate to the ~~bondsman's~~ licensee's business and to the ~~books and papers~~ records kept by any of the ~~bondsman's~~ agents or runners-licensee's agents."

SECTION 3. This act becomes effective October 1, 2001, and applies to permits or licenses issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2001.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2001