

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 1388
Committee Substitute Favorable 6/1/05
Senate Commerce Committee Substitute Adopted 6/28/06**

Short Title: Debt Collection Licensing Changes.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ISSUE
2 PERMITS TO ALIEN DEBT COLLECTORS.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 58-70-5 reads as rewritten:

6 "**§ 58-70-5. Application to Commissioner for permit.**

7 Any person, firm, corporation or association desiring to secure a permit as provided
8 by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each
9 location at which such person, firm, corporation or association desires to carry on the
10 collection agency business as hereinafter defined. Such applicant shall be entitled to a
11 permit upon submission to the Commissioner of Insurance of the following:

12 (a) The name, trade name if any, street address, and telephone number of the
13 applicant, including any home office address and telephone number, if different;

14 (b) If the applicant is a corporation,

15 (1) A certified copy of the board of director's resolution authorizing the
16 submission of the application;

17 (2) An authenticated copy of the Articles of Incorporation and all
18 amendments thereto;

19 (3) An authenticated copy of the bylaws or other governing instruments;

20 (4) If the applicant is a foreign corporation, a copy of the certificate of
21 authority to transact business in this State issued by the North Carolina
22 Secretary of State;

23 (b1) In addition to the information required by subsection (b) of this section, if the
24 applicant is an alien corporation, the corporation must be owned or majority controlled
25 ultimately by a parent entity incorporated or organized under the laws of the United
26 States or any jurisdiction within the United States, and the alien corporation may only
27 service accounts held by an affiliate or subsidiary of the same parent entity. For
28 purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien

1 corporation be sold to an entity unrelated to the parent entity, notice shall be provided to
2 the Department of the pending sale 30 days in advance of the sale. Provision of Form
3 8-K, properly filed with the Securities and Exchange Commission, shall be deemed
4 compliance with the notice requirement of this subsection. In the event of a sale, the
5 new parent entity shall provide evidence to the Department within 30 days of the sale of
6 its and the alien corporation's compliance with the requirements of this section. In the
7 event that the new parent entity does not provide the evidence within 30 days after the
8 sale, the alien corporation's permit shall be automatically suspended until the
9 Department is provided the evidence of compliance which is satisfactory to the
10 Commissioner;

11 (c) If the applicant is a partnership, an authenticated copy of the then current
12 partnership agreement;

13 (d) If the trade name is used, certificates showing that the trade name has been
14 filed as required by G.S. 66-68;

15 (e) A surety bond as required by ~~G.S. 58-70-20~~; G.S. 58-70-20. In the case of an
16 alien corporation, the surety bond requirements shall be double the amount set by
17 G.S. 58-70-20;

18 (f) A completed statement by each stockholder owning ten percent (10%) or
19 more of the applicant's outstanding voting stock and each partner, director, and officer
20 actively engaged in the collection agency business, containing: the name of the
21 collection agency, the name and address of the individual completing the form, the
22 positions held by the individual, each conviction of any criminal offense and any
23 criminal charges pending other than minor traffic violations of the individual, and the
24 name and address of three people not related to the individual who can attest to the
25 individual's reputation for honesty and fair dealings;

26 (g) A statement sworn to by an appropriate corporate officer, partner, or
27 individual proprietor giving a description of the collection method to be employed in
28 North Carolina;

29 (h) A statement certifying that there are no unsatisfied judgments against the
30 applicant;

31 (i) A list of all telephone numbers assigned to, or to be used by the applicant in
32 the operation of the collection agency;

33 (j) The appropriate permit fee as required by G.S. 58-70-35;

34 (k) A balance sheet as of the last day of the month prior to the date of submission
35 of the application, certified true and correct by a corporate officer, partner, or proprietor,
36 setting forth the current assets, fixed assets, current liabilities and positive net worth of
37 the applicant;

38 (l) The address of the location at which the applicant will make those records of
39 its collection agency business described in G.S. 58-70-25 available for inspection by the
40 Commissioner of Insurance.

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

1 (n) If the collection agency's office or records, as described in G.S. 58-70-25, are
2 located outside of North Carolina, a statement sworn to by an appropriate corporate
3 officer, partner, or individual proprietor consenting to and authorizing the
4 reimbursement, to the Commissioner by the collection agency, of expenses incurred by
5 the Commissioner in conducting routine examinations, audits, and in investigating
6 written complaints against the collection agency or its employees. All reimbursements
7 shall be paid to the Commissioner no more than 30 days after the date of billing. In the
8 case of an alien corporation, the sworn statement must provide that the corporation will
9 make available to the Commissioner for his inspection, in North Carolina, those records
10 described in G.S. 58-70-25, at the expense of the corporation;

11 (o) If the applicant is a foreign corporation, a statement authorizing the
12 Commissioner to be its agent for service of process, which shall be administered
13 pursuant to the provisions of G.S. 58-16-30.

14 (p) In the case of an alien corporation, when the corporation is in violation of this
15 Article, the parent entity must agree to cure the violation by the alien corporation.

16 (q) For purposes of this Article, the following definitions apply:

17 (1) "Alien corporation" means a company incorporated or organized under
18 the laws of any jurisdiction outside of the United States.

19 (2) "Foreign corporation" means a company incorporated or organized
20 under the laws of the United States or of any jurisdiction within the
21 United States other than this State."

22 **SECTION 2.** G.S. 58-70-40 is amended by adding a new subsection to read:

23 "(d) In the case of an alien corporation that has been issued a permit under this
24 Article, in an action brought by the Commissioner, service of process upon the parent
25 entity is sufficient service of process on the alien corporation."

26 **SECTION 3.** G.S. 58-70-65(c) reads as rewritten:

27 "(c) Each permit holder located outside this State shall deposit in a separate trust
28 account, designated for its North Carolina creditors, funds to pay all monies due or
29 owing all collection creditors or forwarders located within this State. In the case of alien
30 corporations that are permit holders, the trust account must be established with a bank
31 located in the United States or in any bank approved by the Commissioner."

32 **SECTION 4.** This act becomes effective October 1, 2006.