

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

1

SENATE BILL 954

Short Title: Protections from Abusive Debt Buyers. (Public)

Sponsors: Senator Nesbitt.

Referred to: Judiciary I.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 58-70-15(b) reads as rewritten:

5 "(b) "Collection agency" ~~includes:~~includes any of the following:

- 6 (1) Any person that procures a listing of delinquent debtors from any creditor
7 and that sells the listing or otherwise receives any fee or benefit from
8 collections made on the ~~listing; and~~listing.
- 9 (2) Any person that attempts to or does transfer or sell to any person not holding
10 the permit prescribed by this Article any system or series of letters or forms
11 for use in the collection of delinquent accounts or claims which by direct
12 assertion or by implication indicate that the claim or account is being
13 asserted or collected by any person, firm, corporation, or association other
14 than the creditor or owner of the claim or ~~demand; and~~demand.
- 15 (3) An in-house collection agency, whereby a person, firm, corporation, or
16 association sets up a collection service for his or its own business and the
17 agency has a name other than that of the business.
- 18 (4) A 'debt buyer.' As used in this subdivision the term 'debt buyer' means a
19 person or entity that purchases delinquent or charged-off consumer loans,
20 receivables, or other consumer debt, whether it collects the debt itself or
21 hires a third party for collection or an attorney-at-law for litigation in order
22 to collect such debt."

23 **SECTION 2.** G.S. 58-70-115 reads as rewritten:

24 "**§ 58-70-115. Unconscionable means.**

25 No collection agency shall collect or attempt to collect any debt by use of any
26 unconscionable means. ~~Such means include, but are not limited to,~~This prohibition applies to
27 both collection agencies and third parties acting on behalf of collection agencies. For purposes
28 of this section, a third party's use of an unconscionable mean may be attributed to the collection
29 agency on behalf of whom the third party acts. As used in this section, the term 'unconscionable
30 means' includes, but is not limited to, the following:

- 31 (1) Seeking or obtaining any written statement or acknowledgment in any form
32 containing an affirmation of any debt by a consumer who has been declared
33 bankrupt, an acknowledgment of any debt barred by the statute of
34 limitations, or a waiver of any legal rights of the debtor without disclosing
35 the nature and consequences of such affirmation or waiver and the fact that
36 the consumer is not legally obligated to make such affirmation or waiver;



- 1 (2) Collecting or attempting to collect from the consumer all or any part of the
2 collection agency's fee or charge for services rendered, collecting or
3 attempting to collect any interest or other charge, fee or expense incidental
4 to the principal debt unless legally entitled to such fee or charge;
- 5 (3) Communicating with a consumer whenever the collection agency has been
6 notified by the consumer's attorney that he represents said consumer.
- 7 (4) Collecting, or attempting to collect, from a consumer a debt that is barred by
8 a statute of limitations or is otherwise unrecoverable as a matter of law.
- 9 (5) Failing to comply with Part 5 of this Article."

10 **SECTION 3.** G.S. 58-70-130 reads as rewritten:

11 **"§ 58-70-130. Civil liability.**

12 (a) Any collection agency which violates Part 3 of this Article with respect to any
13 debtor shall be liable to that debtor in an amount equal to the sum of any actual damages
14 sustained by the debtor as a result of the violation.

15 (b) Any collection agency which violates Part 3 of this Article with respect to any
16 debtor shall, in addition to actual damages sustained by the debtor as a result of the violation,
17 also be liable to the ~~debtor only in an individual action, and its additional liability therein to that~~
18 ~~debtor shall be~~ debtor for a penalty in such amount as the court may allow, which shall not be
19 less than ~~one hundred dollars (\$100.00)~~ three thousand dollars (\$3,000) for each violation nor
20 greater than ~~two thousand dollars (\$2,000)~~ six thousand dollars (\$6,000) for each violation.

21 (c) The specific and general provisions of Part 3 of this Article shall constitute unfair or
22 deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce
23 regulated thereby. ~~Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~ Civil
24 penalties in excess of ~~two thousand dollars (\$2,000)~~ six thousand dollars (\$6,000) for each
25 violation shall not be imposed, ~~nor shall damages be trebled for any violation under Part 3 of~~
26 ~~this Article imposed.~~

27 (d) The remedies provided by this section shall be cumulative, and in addition to
28 remedies otherwise available. ~~Provided, that any~~ Any punitive damages assessed against a
29 collection agency shall not be reduced by the amount of the civil penalty assessed against such
30 agency pursuant to subsection (b).

31 (e) The clear proceeds of civil penalties imposed under this section in suits instituted by
32 the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance
33 with G.S. 115C-457.2."

34 **SECTION 4.** G.S. 6-21.2 reads as rewritten:

35 **"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.**

36 Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence
37 of indebtedness, in addition to the legal rate of interest or finance charges specified therein,
38 shall be valid and enforceable, and collectible as part of such debt, if such note, contract or
39 other evidence of indebtedness be collected by or through an attorney at law after maturity,
40 subject to the following provisions:

- 41 (1) If such note, conditional sale contract or other evidence of indebtedness
42 provides for attorneys' fees in some specific percentage of the "outstanding
43 balance" as herein defined, such provision and obligation shall be valid and
44 enforceable up to but not in excess of fifteen percent (15%) of said
45 "outstanding balance" owing on said note, contract or other evidence of
46 indebtedness.
- 47 (2) If such note, conditional sale contract or other evidence of indebtedness
48 provides for the payment of reasonable attorneys' fees by the debtor, without
49 specifying any specific percentage, such provision shall be construed to
50 mean fifteen percent (15%) of the "outstanding balance" owing on said note,
51 contract or other evidence of indebtedness.

- 1 (3) As to notes and other writing(s) evidencing an indebtedness arising out of a
2 loan of money to the debtor, the "outstanding balance" shall mean the
3 principal and interest owing at the time suit is instituted to enforce any
4 security agreement securing payment of the debt and/or to collect said debt.
- 5 (4) As to conditional sale contracts and other such security agreements which
6 evidence both a monetary obligation and a security interest in or a lease of
7 specific goods, the "outstanding balance" shall mean the "time price
8 balance" owing as of the time suit is instituted by the secured party to
9 enforce the said security agreement and/or to collect said debt.
- 10 (5) The holder of an unsecured note or other writing(s) evidencing an unsecured
11 debt, and/or the holder of a note and chattel mortgage or other security
12 agreement and/or the holder of a conditional sale contract or any other such
13 security agreement which evidences both a monetary obligation and a
14 security interest in or a lease of specific goods, or his attorney at law, shall,
15 after maturity of the obligation by default or otherwise, notify the maker,
16 debtor, account debtor, endorser or party sought to be held on said obligation
17 that the provisions relative to payment of attorneys' fees in addition to the
18 "outstanding balance" shall be enforced and that such maker, debtor, account
19 debtor, endorser or party sought to be held on said obligation has five days
20 from the mailing of such notice to pay the "outstanding balance" without the
21 attorneys' fees. If such party shall pay the "outstanding balance" in full
22 before the expiration of such time, then the obligation to pay the attorneys'
23 fees shall be void, and no court shall enforce such provisions.
- 24 (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer,
25 as defined in G.S. 58-70-15, a copy of the note, conditional sale contract, or
26 other evidence of indebtedness, setting forth a party's obligation to pay
27 attorneys' fees and containing a signature of the party, together with
28 documents evidencing that the assignee or debt buyer owns the obligation to
29 collect such fees, must be provided to the court before a court may enforce
30 those provisions.

31 Notwithstanding the foregoing, however, if debtor has defaulted or
32 violated the terms of the security agreement and has refused, on demand, to
33 surrender possession of the collateral to the secured party as authorized by
34 G.S. 25-9-609, with the result that said secured party is required to institute
35 an ancillary claim and delivery proceeding to secure possession of said
36 collateral; no such written notice shall be required before enforcement of the
37 provisions relative to payment of attorneys' fees in addition to the
38 outstanding balance."

39 **SECTION 5.** Article 70 of Chapter 58 of the General Statutes is amended by
40 adding a new Part to read:

41 "Part 5. Special Requirements in Actions Filed by Collection Agency Plaintiffs.

42 **"§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.**

43 In any cause of action that arises out of the conduct of a business for which a plaintiff must
44 secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action
45 that the plaintiff is duly licensed under this Article and shall contain the name and number, if
46 any, of the license and the governmental agency that issued it.

47 **"§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain**
48 **materials.**

49 In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt
50 buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached
51 to the complaint:

1 (1) A copy of the contract or other writing evidencing the original debt, which
2 must contain a signature of the defendant. If a claim is based on credit card
3 debt and no such signed writing evidencing the original debt ever existed,
4 then copies of documents generated when the credit card was actually used
5 must be attached.

6 (2) A copy of the assignment or other writing establishing that the plaintiff is the
7 owner of the debt. If the debt has been assigned more than once, then each
8 assignment or other writing evidencing transfer of ownership must be
9 attached to establish an unbroken chain of ownership. Each assignment or
10 other writing evidencing transfer of ownership must contain the original
11 account number of the debt purchased and must clearly show the debtor's
12 name associated with that account number.

13 **"§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor**
14 **under this Part.**

15 (a) Prior to entry of a default judgment or summary judgment against a debtor in a
16 complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish
17 the amount and nature of the debt.

18 (b) The only evidence sufficient to establish the amount and nature of the debt shall be
19 properly authenticated business records that satisfy the requirements of Rule 803(b) of the
20 North Carolina Rules of Evidence. The authenticated business records shall include at least all
21 of the following items:

22 (1) The original account number.

23 (2) The original creditor.

24 (3) The amount of the original debt.

25 (4) An itemization of charges and fees claimed to be owed.

26 (5) The original charge-off balance, or, if the balance has not been charged off,
27 an explanation of how the balance was calculated.

28 (6) An itemization of post charge-off additions, where applicable.

29 (7) The date of last payment.

30 (8) The amount of interest claimed and the basis for the interest charged."

31 **SECTION 6.** This act becomes effective October 1, 2009.