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SENATE BILL 954
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Short Title: Protections From Abusive Debt Buyers.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS,
3 AND TO INCREASE THE CIVIL LIABILITY OF COLLECTION AGENCIES AND
4 DEBT COLLECTORS WHO VIOLATE THE PROVISIONS OF STATE LAW
5 RELATING TO PROHIBITED ACTS OF COLLECTION AGENCIES AND DEBT
6 COLLECTORS.

7 The General Assembly of North Carolina enacts:

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

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

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

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

28 "§ 58-70-70. Receipt requirement.

29 (a) Whenever a payment is received in cash from a debtor, forwarder, or other person,
30 an original receipt or an exact copy thereof shall be furnished the individual from whom
31 payment is received. Evidence of all receipts issued shall be kept in the permit holder's office
32 for three years. All receipts issued must:

- 33 (1) Be prenumbered by the printer and used and filed in consecutive numerical
34 order;
- 35 (2) Show the name, street address and permit number of the permit holder;



1 (3) Show the name of the creditor or creditors for whom collected;

2 (4) Show the amount and date paid; and

3 (5) Show the last name of the person accepting payment.

4 (b) Whenever a payment is received by a debt buyer, the receipt required by subsection
5 (a) of this section shall also:

6 (1) Show the name of the creditor or creditors for whom collected, the account
7 number assigned by the creditor or creditors for whom collected, and if the
8 current creditor is not the original creditor, the account number assigned by
9 the original creditor.

10 (2) State clearly whether the payment is accepted as either payment in full or as
11 a full and final compromise of the debt, and if not, the receipt shall state
12 clearly the balance due after payment is credited."

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

14 "**§ 58-70-115. Unconscionable means.**

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

21 (1) Seeking or obtaining any written statement or acknowledgment in any form
22 containing an affirmation of any debt by a consumer who has been declared
23 bankrupt, an acknowledgment of any debt barred by the statute of
24 limitations, or a waiver of any legal rights of the debtor without disclosing
25 the nature and consequences of such affirmation or waiver and the fact that
26 the consumer is not legally obligated to make such affirmation or ~~waiver;~~
27 waiver.

28 (2) Collecting or attempting to collect from the consumer all or any part of the
29 collection agency's fee or charge for services rendered, collecting or
30 attempting to collect any interest or other charge, fee or expense incidental
31 to the principal debt unless legally entitled to such fee or ~~charge;~~ charge.

32 (3) Communicating with a consumer whenever the collection agency has been
33 notified by the consumer's attorney that he represents said consumer.

34 (4) For a debt buyer as defined in G.S. 58-70-15(b)(4), collecting, or attempting
35 to collect, from a consumer a debt that is barred by a statute of limitations or
36 is otherwise unrecoverable as a matter of law without fully informing the
37 consumer that the debt is barred by a statute of limitations or is otherwise
38 unrecoverable as a matter of law.

39 (5) Failing to comply with Part 5 of this Article.

40 (6) Filing or threatening to file a lawsuit or initiating or threatening to initiate an
41 arbitration proceeding that is barred by a statute of limitations or is otherwise
42 unrecoverable as a matter of law."

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

44 "**§ 58-70-130. Civil liability.**

45 (a) Any collection agency which violates Part 3 of this ~~Article~~ or G.S. 58-70-70(b) with
46 respect to any debtor shall be liable to that debtor in an amount equal to the sum of any actual
47 damages sustained by the debtor as a result of the violation.

48 (b) Any collection agency which violates Part 3 of this ~~Article~~ or G.S. 58-70-70(b) with
49 respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of
50 the violation, also be liable to the ~~debtor only in an individual action, and its additional liability~~
51 ~~therein to that debtor shall be~~ debtor for a penalty in such amount as the court may allow, which

1 shall not be less than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) for each
2 violation nor greater than ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each
3 violation.

4 (c) The specific and general provisions of Part 3 of this ~~Article~~ or G.S. 58-70-70(b)
5 shall constitute unfair or deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the
6 area of commerce regulated ~~thereby~~ thereby; provided, however, that notwithstanding the
7 provisions of G.S. 75-16, the civil penalties provided in this section shall not be trebled.
8 ~~Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~ Civil penalties in excess of ~~two~~
9 ~~thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each violation shall not be
10 ~~imposed, nor shall damages be trebled for any violation under Part 3 of this Article imposed.~~

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

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

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

19 **"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.**

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

- 25 (1) If such note, conditional sale contract or other evidence of indebtedness
26 provides for attorneys' fees in some specific percentage of the "outstanding
27 balance" as herein defined, such provision and obligation shall be valid and
28 enforceable up to but not in excess of fifteen percent (15%) of said
29 "outstanding balance" owing on said note, contract or other evidence of
30 indebtedness.
- 31 (2) If such note, conditional sale contract or other evidence of indebtedness
32 provides for the payment of reasonable attorneys' fees by the debtor, without
33 specifying any specific percentage, such provision shall be construed to
34 mean fifteen percent (15%) of the "outstanding balance" owing on said note,
35 contract or other evidence of indebtedness.
- 36 (3) As to notes and other writing(s) evidencing an indebtedness arising out of a
37 loan of money to the debtor, the "outstanding balance" shall mean the
38 principal and interest owing at the time suit is instituted to enforce any
39 security agreement securing payment of the debt and/or to collect said debt.
- 40 (4) As to conditional sale contracts and other such security agreements which
41 evidence both a monetary obligation and a security interest in or a lease of
42 specific goods, the "outstanding balance" shall mean the "time price
43 balance" owing as of the time suit is instituted by the secured party to
44 enforce the said security agreement and/or to collect said debt.
- 45 (5) The holder of an unsecured note or other writing(s) evidencing an unsecured
46 debt, and/or the holder of a note and chattel mortgage or other security
47 agreement and/or the holder of a conditional sale contract or any other such
48 security agreement which evidences both a monetary obligation and a
49 security interest in or a lease of specific goods, or his attorney at law, shall,
50 after maturity of the obligation by default or otherwise, notify the maker,
51 debtor, account debtor, endorser or party sought to be held on said obligation

1 that the provisions relative to payment of attorneys' fees in addition to the
2 "outstanding balance" shall be enforced and that such maker, debtor, account
3 debtor, endorser or party sought to be held on said obligation has five days
4 from the mailing of such notice to pay the "outstanding balance" without the
5 attorneys' fees. If such party shall pay the "outstanding balance" in full
6 before the expiration of such time, then the obligation to pay the attorneys'
7 fees shall be void, and no court shall enforce such provisions.

8 (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer,
9 as defined in G.S. 58-70-15, all of the following materials setting forth a
10 party's obligation to pay attorneys' fees shall be provided to the court before
11 a court may enforce those provisions:

12 a. A copy of the contract or other writing evidencing the original debt,
13 which must contain a signature of the defendant. If a claim is based
14 on credit card debt and no such signed writing evidencing the
15 original debt ever existed, then copies of documents generated when
16 the credit card was actually used must be attached.

17 b. A copy of the assignment or other writing establishing that the
18 plaintiff is the owner of the debt. If the debt has been assigned more
19 than once, then each assignment or other writing evidencing transfer
20 of ownership must be attached to establish an unbroken chain of
21 ownership. Each assignment or other writing evidencing transfer of
22 ownership must contain the original account number of the debt
23 purchased and must clearly show the debtor's name associated with
24 that account number.

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

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

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

36 "**§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.**

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

41 "**§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain**
42 **materials.**

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

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

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

8 **"§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor**
9 **under this Part.**

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

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

17 (1) The original account number.

18 (2) The original creditor.

19 (3) The amount of the original debt.

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

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

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

24 (7) The date of last payment.

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

26 **SECTION 6.** G.S. 75-56 reads as rewritten:

27 **"§ 75-56. Application.**

28 (a) The specific and general provisions of this Article shall exclusively constitute the
29 unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce
30 regulated by this Article.

31 (b) Any debt collector who fails to comply with any provision of this Article with
32 respect to any person is liable to such person in a private action in an amount equal to the sum
33 of (i) any actual damage sustained by such person as a result of such failure; and (ii) civil
34 penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than
35 four thousand dollars (\$4,000) for each violation.

36 (c) The remedies provided by this section shall be cumulative and in addition to
37 remedies otherwise available. Any punitive damages assessed against a debt collector shall not
38 be reduced by the amount of the civil penalty assessed against such debt collector pursuant to
39 subsection (d) of this section.

40 (d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or
41 actions instituted by the Attorney General, civil penalties in excess of ~~two thousand dollars~~
42 ~~(\$2,000) four thousand dollars (\$4,000) shall not be imposed, nor shall damages be trebled for~~
43 ~~any violation under this Article. imposed.~~

44 (e) The clear proceeds of civil penalties imposed in actions instituted by the Attorney
45 General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
46 G.S. 115C-457.2."

47 **SECTION 7.** Article 2 of Chapter 75 of the General Statutes is amended by adding
48 a new section to read:

49 **"§ 75-57. Receipt requirement.**

1 Whenever a payment is received from a debtor, forwarder, or other person, an original
2 receipt or an exact copy thereof shall be furnished the individual from whom payment is
3 received. Evidence of all receipts issued shall be kept for three years. All receipts issued must:

4 (1) Show the name of the creditor or creditors for whom collected, the account
5 number assigned by the creditor or creditors for whom collected, and if the
6 current creditor is not the original creditor, the account number assigned by
7 the original creditor.

8 (2) Show the amount and date paid.

9 (3) Show the last name of the person accepting payment.

10 (4) State clearly whether the payment is accepted as either payment in full or as
11 a full and final compromise of the debt, and if not, the receipt shall state
12 clearly the balance due after payment is credited."

13 **SECTION 8.** This act becomes effective October 1, 2009, and applies to violations
14 that occur on or after that date.