

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS85103-ME-24 (02/10)

Short Title: Allow Attorneys' Fees in Business Contracts.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN
3 BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER THE LAWS OF
4 THIS STATE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The purpose of this act is to validate reciprocal attorneys' fees
7 provisions in business contracts.

8 **SECTION 2.** Article 3 of Chapter 6 of the General Statutes is amended by adding a
9 new section to read:

10 "**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

11 (a) As used in this section, the following definitions apply:

12 (1) Business contract. – A contract entered into primarily for business or
13 commercial purposes. The term does not include a consumer contract, an
14 employment contract, or a contract to which a government or a
15 governmental agency of this State is a party.

16 (2) Consumer contract. – A contract entered into by one or more individuals
17 primarily for personal, family, or household purposes.

18 (3) Employment contract. – A contract between an individual and another party
19 to provide personal services by that individual to the other party, whether the
20 relationship is in the nature of employee-employer or principal-independent
21 contractor.

22 (4) Reciprocal attorneys' fees provisions. – Provisions in any written business
23 contract by which each signatory to the contract agrees, upon the terms and
24 subject to the conditions set forth in the contract that are made applicable to
25 all parties, to pay or reimburse the other parties for attorneys' fees and
26 expenses incurred by reason of any suit, action, proceeding, or arbitration
27 involving the business contract.

28 (b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable
29 for the recovery of reasonable attorneys' fees and expenses.

30 (c) If a business contract governed by the laws of this State contains a reciprocal
31 attorneys' fees provision, the court or arbitrator in any suit, action, proceeding, or arbitration
32 involving the business contract may award reasonable attorneys' fees in accordance with the
33 terms of the business contract. In determining reasonable attorneys' fees and expenses under
34 this section, the court or arbitrator may consider all relevant facts and circumstances, including,
35 but not limited to, the following:



- 1 (1) The amount in controversy and the results obtained.
2 (2) The reasonableness of the time and labor expended, and the billing rates
3 charged, by the attorneys.
4 (3) The novelty and difficulty of the questions raised in the action.
5 (4) The skill required to perform properly the legal services rendered.
6 (5) The relative economic circumstances of the parties.
7 (6) Settlement offers made prior to the institution of the action.
8 (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil
9 Procedure and whether judgment finally obtained was more favorable than
10 such offers.
11 (8) Whether a party unjustly exercised superior economic bargaining power in
12 the conduct of the action.
13 (9) The timing of settlement offers.
14 (10) The amounts of settlement offers as compared to the verdict.
15 (11) The extent to which the party seeking attorneys' fees prevailed in the action.
16 (12) The amount of attorneys' fees awarded in similar cases.
17 (13) The terms of the business contract.
18 (d) Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory
19 presumption or provision in the business contract providing for a stated percentage of the
20 amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business
21 contract contains reciprocal attorneys' fees provisions.
22 (e) Nothing in this section shall in any way make valid or invalid attorneys' fees
23 provisions in consumer contracts or in any note, conditional sale contract, or other evidence of
24 indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note,
25 conditional sale contract, or other evidence of indebtedness that is otherwise governed by
26 G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect
27 to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but may recover
28 only once for the same attorneys' fees and expenses."

29 **SECTION 3.** This act becomes effective October 1, 2011.