

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 541

Short Title: Proof Required for Debt/Fees. (Public)

Sponsors: Representatives Collins, Szoka, R. Moore, and Jeter (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Banking.

April 6, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW COLLECTION ONLY WHERE ADEQUATE PROOF OF
3 INDEBTEDNESS PROVIDED; TO CONFORM TO FEDERAL LAW; TO AID
4 DEBTORS IN IDENTIFYING ACCOUNT OWNERS TO RESOLVE CREDIT ISSUES;
5 TO SPECIFY THAT A CHARGE-OFF STATEMENT SERVES AS PROOF OF DEBT
6 OWED; AND TO MAKE VARIOUS RELATED CHANGES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 58-70-115 reads as rewritten:

9 **"§ 58-70-115. Unfair practices.**

10 No collection agency shall collect or attempt to collect any debt by use of any unfair
11 practices. Such practices include, but are not limited to, the following:

- 12 (1) Seeking or obtaining any written statement or acknowledgment in any form
13 containing an affirmation of any debt by a consumer who has been declared
14 bankrupt, an acknowledgment of any debt barred by the statute of
15 limitations, or a waiver of any legal rights of the debtor without disclosing
16 the nature and consequences of such affirmation or waiver and the fact that
17 the consumer is not legally obligated to make such affirmation or waiver.
- 18 (2) Collecting or attempting to collect from the consumer all or any part of the
19 collection agency's fee or charge for services rendered, collecting or
20 attempting to collect any interest or other charge, fee or expense incidental
21 to the principal debt unless legally entitled to such fee or charge.
- 22 (3) Communicating with a consumer whenever the collection agency has been
23 notified by the consumer's attorney that he represents said consumer.
- 24 (4) When the collection agency is a debt buyer or is acting on behalf of a debt
25 buyer, bringing suit or initiating an arbitration proceeding against the debtor
26 ~~or otherwise attempting to collect on a debt~~ when the collection agency
27 knows, or reasonably should know, that such collection is barred by the
28 applicable statute of limitations.
- 29 (5) When the collection agency is a debt buyer or acting on behalf of a debt
30 buyer, bringing suit or initiating an arbitration proceeding against the debtor,
31 or otherwise attempting to collect on the debt without (i) access to valid
32 documentation that the debt buyer is the owner of the specific debt
33 instrument or account at issue and (ii) reasonable verification of the amount
34 of the debt allegedly owed by the debtor. For purposes of this subdivision,
35 reasonable verification shall include documentation of the name of the



original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the ~~contract~~-contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, ~~including all fees and charges~~.owed. If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the ~~contract~~-contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of ~~all amounts~~the amount claimed to be owed.If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

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

(8) When collecting or attempting to collect on a time-barred debt where the debt is not past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(9) When collecting or attempting to collect on a time-barred debt where the debt is past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

SECTION 2. G.S. 58-70-150(1) reads as rewritten:

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

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

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

SECTION 3. G.S. 58-70-155 reads as rewritten:

1 "§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor
2 under this Part.

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

6 (b) The only evidence sufficient to establish the amount and nature of the debt shall be
7 ~~properly authenticated business records that satisfy the requirements of Rule 803(6) of the~~
8 ~~North Carolina Rules of Evidence. The authenticated business records shall include documents~~
9 containing at least all of the following items:

- 10 (1) The original account number.
11 (2) The original creditor.
12 (3) ~~The amount of the original debt.~~ total amount claimed to be owed.
13 (4) ~~An itemization of charges and fees claimed to be owed.~~ post charge-off
14 payments or credits, where applicable.
15 (5) ~~The original charge-off balance, or, if the balance has not been charged off,~~
16 ~~an explanation of how the balance was calculated.~~
17 (6) An itemization of post charge-off ~~additions, fees,~~ where applicable.
18 (7) The date of last ~~payment.~~ payment, where applicable.
19 (8) The amount of post charge-off interest claimed. ~~claimed,~~ and the basis for the
20 interest charged."
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SECTION 4. This act becomes effective October 1, 2015.