

March 26, 2009

S 954. PROTECTIONS FROM ABUSIVE DEBT BUYERS. Filed 3/25/09. *TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS.*

Amends GS 58-70-15 to provide that the term collection agency includes debt buyers, as defined in new subsection (b)(4). Amends GS 58-70-115 to provide that the prohibition on use of unconscionable means to collect debts applies to both collection agencies and third parties acting on behalf of such agencies and to provide that a third party's use of an unconscionable mean may be attributed to the collection agency for whom the third party is acting. Expands the definition of unconscionable means to include collecting or attempting to collect from a consumer a debt that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law as well as failing to comply with Part 5 of Article 70 on Collection Agencies. Amends GS 58-70-130 increasing the civil penalties for violations. Amends GS 6-21.2 (attorneys' fees in notes, etc., in addition to interest), adding a new subsection (6) pertaining to attorney's fees for services rendered to an assignee or debt buyer as defined in GS 58-70-15. Enacts a new Part 5 (Special Requirements in Actions Filed by Collection Agency Plaintiffs) to GS Chapter 58, Article 70. Enacts in that Part GS 58-70-145 specifying the allegations that must be contained in a collection agency plaintiff's complaint, GS 58-70-150 providing that a debt buyer plaintiff's complaint must be accompanied by certain materials, and GS 58-70-155 setting forth the prerequisites to entering a default or summary judgment against a debtor under the new Part. Effective October 1, 2009.

Intro. by Nesbitt.

GS 6, 58

May 11, 2009

S 954. PROTECTIONS FROM ABUSIVE DEBT BUYERS. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Changes title to *AN ACT TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS, AND TO INCREASE THE CIVIL LIABILITY OF COLLECTION AGENCIES AND DEBT COLLECTORS WHO VIOLATE THE PROVISIONS OF STATE LAW RELATING TO PROHIBITED ACTS OF COLLECTION AGENCIES AND DEBT COLLECTORS.*

Amends definition of *debt buyer* in new GS 58-70-15(b)(4) to include person or entity that purchases debts involving bankruptcy. Further amends GS 58-70-115, governing unconscionable collection methods, to specify that such means also include collecting or attempting to collect a debt that is barred by a statute of limitations or is otherwise legally unrecoverable without fully informing the consumer of this fact, or filing or threatening to file a lawsuit or initiating or threatening to initiate an arbitration proceeding that is similarly barred.

Amends civil liability provisions in GS 58-70-130 to specify that the penalty for each violation is not less than \$500 and not more than \$4,000 (was, not less than \$3,000 and not more than \$6,000). Adds new provisions in GS 75-56, part of the law governing unfair and deceptive trade practices, to provide a private right of action to any person with respect to whom a debt collector has failed to comply with any provision of GS Chapter 75, Article 2. Person wronged is entitled to actual damages and civil penalties of between \$500 and \$4,000 per violation. Provides that remedies under GS 75-56 are cumulative and are in addition to remedies otherwise available. Specifies that any punitive damages assessed against a debt collector are not to be reduced by the amount of the civil penalty assessed. Also amends GS 75-56(d) to specify that limit on civil penalties is \$4,000.

Adds new GS 58-70-70(b) to specify that whenever a payment is received by a debt buyer, the receipt required by GS 58-70-70(a) must also show (1) the name of the creditor or creditors for whom collected; (2) the account number assigned by the creditor or creditors for whom collected; and (3) if the current creditor is not the original creditor, the account number assigned by the original creditor. The receipt must state clearly that the payment is accepted as either payment in full or as a full and final compromise of the debt, and if it is not, the balance due after payment is credited. Adds new GS 75-57 to unfair and deceptive practices law. Section parallels GS 58-70-70(b) and provides that whenever a payment is received from a debtor, forwarder, or other person, an original receipt or exact copy thereof must be furnished to the individual from

whom payment was received; evidence of all receipts must be kept for three years. Receipt must contain much of the same information as under GS 58-70-70(b).

Adds new GS 6-21.2(6), concerning attorneys' fees, to specify rules in cases where the fees are for services rendered to an assignee or a debt buyer as defined in GS 58-70-15. Provision requires that documentation similar to that required in proposed GS 58-70-150(1) and (2) be provided to the court.

Effective Oct. 1, 2009, and applies to violations that occur on or after that date.

May 13, 2009

S 954. PROTECTIONS FROM ABUSIVE DEBT BUYERS. Filed 3/25/09. Senate amendment makes the following changes to 2nd edition. Makes a clarifying change.