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SENATE DRS15153-MD-74 (03/12)

Short Title: Modernize Collection Agency Laws.

(Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE AND MODERNIZE THE LAWS RELATED TO COLLECTION
3 AGENCIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-70-5 reads as rewritten:

6 "§ 58-70-5. Application to Commissioner for permit.

7 Any person, firm, corporation or association desiring to secure a permit as provided by
8 G.S. 58-70-1, shall make application to the Commissioner of Insurance for each physical
9 location at which such person, firm, corporation or association desires to carry on the collection
10 agency business as hereinafter defined. Such Nothing in this section shall be construed to
11 require that a person, firm, corporation, or association secure a permit for a remote location
12 from which employees work under the control and monitoring of a collection agency through
13 telecommunications and computer links, so long as (i) records required to be kept under
14 G.S. 58-70-25 are not maintained at the remote location; (ii) the remote location is not held
15 open to the public as a place of business; and (iii) the person, firm, corporation, or association
16 has a valid permit issued pursuant to this Article for at least one physical location in this State.
17 An applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of
18 the following:

19"

20 SECTION 2. G.S. 58-70-20(a) reads as rewritten:

21 "§ 58-70-20. Bond requirement.

22 (a) As a condition precedent to the issuance of any permit under this Article, every
23 applicant for a permit shall file with the Commissioner a bond in favor of the State of North
24 Carolina that is executed by a surety company licensed to transact surety business in this State.
25 The bond shall be maintained in force during the permit period, continuous in form, and remain
26 in effect until all moneys collected have been accounted for. The bond shall expressly provide
27 that the bond is for the benefit of any person, firm or corporation for whom the collection
28 agency engages in the collection of accounts. The bond shall be in the amount of ~~ten thousand~~
29 ~~dollars (\$10,000)~~ five thousand dollars (\$5,000) for the initial permit. The amount of the bond
30 for any renewal permit shall be no less than ~~ten thousand dollars (\$10,000)~~ five thousand
31 dollars (\$5,000), nor more than ~~seventy-five thousand dollars (\$75,000)~~ twenty thousand
32 dollars (\$20,000), and shall be computed as follows: The total collections paid directly to the
33 collection agency less commissions earned by the collection agency on those collections for the
34 calendar year ending immediately prior to the date of application, multiplied by one-sixth."

35 SECTION 3. G.S. 58-70-65 reads as rewritten:

36 "§ 58-70-65. Remittance trust account.



1 (a) Each permit holder shall deposit, no later than two banking days after receipt, in a
2 separate trust account in any bank located in North Carolina or in any other bank approved by
3 the Commissioner, sufficient funds to pay all moneys due or owed to all collection creditors or
4 forwarders. The funds shall remain in the trust account until remitted to the creditor or
5 forwarder, and shall not be commingled with any other operating funds. The trust account shall
6 be used only for the purpose of:

- 7 (1) Remitting to collection creditors or forwarders the proceeds to which they
8 are entitled.
- 9 (2) Remitting to the collection agency the commission that is due the collection
10 agency.
- 11 (3) Reimbursing consumers for overpayments.
- 12 (4) Making adjustments to the trust account balance for bank service charges.

13 (b) No refund for overpayment by a debtor in an amount of less than ~~one dollar~~
14 (\$1.00)ten dollars (\$10.00) is required.

15 (c) Each permit holder located outside this State shall deposit in a separate trust
16 account, designated for its North Carolina creditors, funds to pay all monies due or owing all
17 collection creditors or forwarders located within this State. In the case of alien corporations that
18 are permit holders, the trust account must be established with a bank located in the United
19 States or in any bank approved by the Commissioner."

20 **SECTION 4.** Part 2 of Article 70 of Chapter 58 of the General Statutes is amended
21 by adding two new sections to read:

22 **"§ 58-70-86. Assignment of claims.**

23 It is lawful for a collection agency, for the purpose of collecting or enforcing the payment
24 thereof, to take an assignment of any such claim from a creditor, and sue on the claim as the
25 real party in interest, if all of the following apply:

- 26 (1) The assignment between the creditor and collection agency is in writing;
- 27 (2) The original agreement between the creditor and debtor does not prohibit
28 assignment; and
- 29 (3) The collection agency gives the debtor written notice of such assignment as
30 soon as practical after the assignment is made, and at least 30 days before
31 filing any civil action to collect the debt.

32 **"§ 58-70-87. Convenience fee.**

33 After a consumer has agreed to pay a debt, or make a payment on a debt, a collection
34 agency may charge a fee for processing a particular method of payment or for initiating a
35 payment method that includes a fee charged by a payment processing company, so long as all
36 of the following are satisfied:

- 37 (1) The consumer authorizes the method of payment and has been notified in
38 advance that the payment may be made by reasonable alternative means that
39 will not result in additional charges, fees, or expenses.
- 40 (2) The fee charged does not exceed fifteen dollars (\$15.00) or five percent
41 (5%) of the payment, whichever is less.
- 42 (3) The collection agency provides written or verbal disclosure of all of the
43 following information to the consumer:
 - 44 a. That a fee will be charged.
 - 45 b. The amount of the fee.
 - 46 c. The number of times the fee will be charged.
 - 47 d. The payment method by which a consumer can avoid paying the
48 fee."

49 **SECTION 5.** G.S. 58-70-90(2) reads as rewritten:

50 **"§ 58-70-90. Definitions.**

51 As used in this Part, the following terms have the meanings specified:

1 ...
2 (2) "Consumer" means ~~an individual, aggregation of individuals, corporation,~~
3 ~~company, association, or partnership that has incurred a debt or alleged~~
4 ~~debt.~~ a natural person obligated or allegedly obligated to pay a debt."

5 **SECTION 6.** G.S. 58-70-115 reads as rewritten:

6 **"§ 58-70-115. Unfair practices.**

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

9 ...
10 (2) Collecting or attempting to collect from the consumer ~~all or any part of the~~
11 ~~collection agency's fee or charge for services rendered, collecting or~~
12 ~~attempting to collect any interest or other charge, fee or expense incidental~~
13 ~~to the principal debt unless legally entitled to such fee or charge.~~ any amount,
14 including any interest, fee, charge, or expense incidental to the principal
15 obligation, unless the amount is expressly authorized by the agreement
16 creating the debt or permitted by law.

17"

18 **SECTION 7.** G.S. 58-70-130 reads as rewritten:

19 **"§ 58-70-130. Civil liability.**

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

23 (b) Any collection agency which violates Part 3 of this Article with respect to any
24 debtor shall, in addition to actual damages sustained by the debtor as a result of the violation,
25 also be liable to the debtor for a penalty in such amount as the court may allow, which shall not
26 be less than five hundred dollars (\$500.00) ~~for each violation~~ nor greater than ~~four thousand~~
27 ~~dollars (\$4,000) for each violation.~~ one thousand dollars (\$1,000) per individual action.

28 (c) The specific and general provisions of Part 3 of this Article shall constitute unfair or
29 deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce
30 regulated thereby; provided, however, that, notwithstanding the provisions of G.S. 75-16, the
31 civil penalties provided in this section shall not be trebled. Civil penalties in excess of ~~four~~
32 ~~thousand dollars (\$4,000) for each violation~~ shall not be imposed. the amounts authorized under
33 subsection (b) of this section shall not be imposed.

34 (d) The remedies provided by this section shall be cumulative, and in addition to
35 remedies otherwise available. Any punitive damages assessed against a collection agency shall
36 not be reduced by the amount of the civil penalty assessed against such agency pursuant to
37 subsection (b) of this section.

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

41 (f) An action alleging a violation of Part 3 of this Article must be commenced within
42 one year after the cause of action accrues."

43 **SECTION 8.** This act becomes effective October 1, 2015.