

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 511
PROPOSED COMMITTEE SUBSTITUTE S511-PCS25251-RN-13

Short Title: Proof Required for Debt/Fees.

(Public)

Sponsors:

Referred to:

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW COLLECTION ONLY WHERE ADEQUATE PROOF OF
3 INDEBTEDNESS IS 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
36 original creditor, the name and address of the debtor as appearing on the



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

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

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

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

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

32 (9) When the collection agency is a debt buyer or is acting on behalf of a debt
 33 buyer, when collecting or attempting to collect on a time-barred debt where
 34 the debt is past the date for obsolescence provided for in section 605(a) of
 35 the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to
 36 conspicuously include the following notice in every written communication
 37 with the debtor:

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

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

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

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

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

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

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

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

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

11 (1) The original account number.

12 (2) The original creditor.

13 (3) ~~The amount of the original debt.~~total amount claimed to be owed.

14 (4) ~~An itemization of charges and fees claimed to be owed.~~post charge-off
15 payments or credits, where applicable.

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

18 (6) An itemization of post charge-off ~~additions, fees,~~ where applicable.

19 (7) The date of last ~~payment.~~payment, where applicable.

20 (8) The amount of post charge-off interest ~~claimed.~~claimed, and the basis for the
21 interest charged."

22 **SECTION 4.** Part 3 of Article 70 of Chapter 58 of the General Statutes is amended
23 by adding a new section to read:

24 "**§ 58-70-117. Ceasing communication.**

25 (a) If a consumer notifies a debt collector in writing that the consumer refuses to pay a
26 debt or that the consumer wishes the debt collector to cease further communication with the
27 consumer, the debt collector shall not communicate further with the consumer with respect to
28 such debt, except for the following purposes:

29 (1) To advise the consumer that the debt collector's further efforts are being
30 terminated.

31 (2) To notify the consumer that the debt collector or creditor may invoke
32 specified remedies which are ordinarily invoked by such debt collector or
33 creditor.

34 (3) Where applicable, to notify the consumer that the debt collector or creditor
35 intends to invoke a specified remedy.

36 If such notice from the consumer is made by mail, notification shall be complete upon receipt."

37 **SECTION 5.** This act becomes effective October 1, 2015.