

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 747
HOUSE BILL 1050

AN ACT TO REVIVE AND IMPROVE CERTAIN PROVISIONS OF CHAPTER 75 OF THE GENERAL STATUTES, TO PROTECT THE CITIZENS OF NORTH CAROLINA FROM UNFAIR, UNETHICAL, DECEPTIVE AND UNSCRUPULOUS BUSINESS PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-1.1(a) is rewritten to read as follows:

"(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful."

Sec. 2. G.S. 75-1.1(b) is rewritten to read as follows:

"(b) For purposes of this section, 'commerce' includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession."

Sec. 3. Chapter 75 of the General Statutes is amended by adding a new Section 75-15.2, to read as follows:

§ 75-15.2. Civil penalty. — In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, specifically prohibited by a court order or knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. Any penalty so assessed shall be paid to the General Fund of the State of North Carolina."

Sec. 4. Chapter 75 of the General Statutes is amended by adding a new Article to read as follows:

§ 75-50. Definitions. — The following words and terms as used in this act shall be construed as follows:

- (a) 'Debt' means any obligation owed or due or alleged to be owed or due from a consumer.
- (b) 'Consumer' means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes.
- (c) 'Debt collector' means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 9, Chapter 66 of the General Statutes.

§ 75-51. Threats and coercion. — No debt collector shall collect or attempt to collect any debt alleged to be due and owing from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts include, but are not limited to, the following:

- (a) Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person.

- (b) Falsely accusing or threatening to accuse any person of fraud or any crime, or of any conduct that would tend to cause disgrace, contempt or ridicule.
- (c) Making or threatening to make false accusations to another person, including any credit reporting agency, that a consumer has not paid, or has willfully refused to pay a just debt.
- (d) Threatening to sell or assign, or to refer to another for collection, the debt of the consumer with an attending representation that the result of such sale, assignment or reference would be that the consumer would lose any defense to the debt or would be subjected to harsh, vindictive, or abusive collection attempts.
- (e) Representing that nonpayment of an alleged debt may result in the arrest of any person.
- (f) Representing that nonpayment of an alleged debt may result in the seizure, garnishment, attachment, or sale of any property or wages unless such action is in fact contemplated by the debt collector and permitted by law.
- (g) Threatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made.
- (h) Threatening to take any action not permitted by law.

"§ 75-52. Harassment. — No debt collector shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt. Such unfair acts include, but are not limited to, the following:

- (a) Using profane or obscene language, or language that would ordinarily abuse the typical hearer or reader.
- (b) Placing collect telephone calls or sending collect telegrams unless the caller fully identifies himself and the company he represents.
- (c) Causing a telephone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person.
- (d) Placing telephone calls or attempting to communicate with any person, contrary to his instructions, at his place of employment, unless the debt collector does not have a telephone number where the consumer can be reached during the consumer's nonworking hours.

"§ 75-53. Unreasonable publication. — No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

- (a) Any communication with any person other than the debtor or his attorney, except:
 - (1) with the written permission of the debtor or his attorney;
 - (2) to persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
 - (3) to the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such parent;
 - (4) for the sole purpose of locating the debtor, if no indication of indebtedness is made;
 - (5) through legal process.

- (b) Using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the debt collector except as otherwise provided in this Article.
- (c) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes and the publication and distribution of otherwise permissible 'stop lists' to the point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through legal process.

"§ 75-54. Deceptive representation. — No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- (a) Communicating with the consumer other than in the name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.
- (b) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt.
- (c) Falsely representing that the debt collector has in his possession information or something of value for the consumer.
- (d) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collector is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions.
- (e) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source.
- (f) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges.
- (g) Falsely representing the status or true nature of the services rendered by the debt collector or his business.

"§ 75-55. Unconscionable means. — No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

- (a) Seeking or obtaining any written statement or acknowledgement in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgement of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (b) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
- (c) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.

(d) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim.

"§ 75-56. Application. — The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2, G.S. 75-16, and G.S. 75-16.1, civil penalties in excess of one thousand dollars (\$1,000) shall not be imposed, nor shall damages be trebled or attorney's fees assessed for any violation under this Article nor shall the provisions of this Article be construed to confer any right of private action not already available at common law or by means of other specific statutory authorization."

Sec. 5. This act shall become effective upon ratification and shall not apply to pending litigation.

In the General Assembly read three times and ratified, this the 27th day of June, 1977.