

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 381

Short Title: Modernize Collection Agency Laws. (Public)

Sponsors: Representatives B. Brown and Faircloth (Primary Sponsors).

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

Referred to: Banking.

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND MODERNIZE THE LAWS RELATED TO COLLECTION AGENCIES.

The General Assembly of North Carolina enacts:

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

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

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

...."

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

**"§ 58-70-20. Bond requirement.**

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

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



1 **"§ 58-70-65. Remittance trust account.**

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

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

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

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

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

23 **"§ 58-70-86. Assignment of claims.**

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

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

33 **"§ 58-70-87. Convenience fee.**

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

- 38 (1) The consumer authorizes the method of payment and has been notified in  
39 advance that the payment may be made by reasonable alternative means that  
40 will not result in additional charges, fees, or expenses.  
41 (2) The fee charged does not exceed the lesser of five percent (5%) of the  
42 payment or a flat rate established under this subdivision. For the calendar  
43 year beginning January 1, 2015, the flat rate established under this  
44 subdivision is fifteen dollars (\$15.00). For calendar years beginning on or  
45 after January 1, 2016, the fee is the amount of the flat rate established under  
46 this subdivision for the preceding year adjusted by the same percentage of  
47 this amount as the percentage adjustment made to the Consumer Price Index  
48 for the previous year, as determined by the Department of Insurance.  
49 (3) The collection agency provides written or verbal disclosure of all of the  
50 following information to the consumer:  
51 a. That a fee will be charged.

- b. The amount of the fee.
- c. The number of times the fee will be charged.
- d. The payment method by which a consumer can avoid paying the fee."

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

"§ 58-70-90. Definitions.

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

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

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

"§ 58-70-115. Unfair practices.

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

- ...
- (2) ~~Collecting or attempting to collect from the consumer all or any part of the collection agency'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.~~ any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law.
- ...."

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

"§ 58-70-130. Civil liability.

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

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

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

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

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

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

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