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SENATE BILL DRS35033-MU-5

Short Title: GSC Attorneys' Fees in Debt Instruments. (Public)

Sponsors: Senator Galey (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY HOW A CREDITOR MAY ENFORCE AN OBLIGATION TO PAY  
3 ATTORNEYS' FEES IN A DEBT INSTRUMENT AND TO AMEND THE DEFAULT  
4 RATE FOR THESE FEES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 6-21.2 reads as rewritten:

7 "**§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.**~~debt instruments.~~

8 ~~Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence~~  
9 ~~of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall~~  
10 ~~be valid and enforceable, and collectible as part of such debt, if such note, contract or other~~  
11 ~~evidence of indebtedness be collected by or through an attorney at law after maturity, subject to~~  
12 ~~the following provisions:~~

- 13 (1) ~~If such note, conditional sale contract or other evidence of indebtedness~~  
14 ~~provides for attorneys' fees in some specific percentage of the "outstanding~~  
15 ~~balance" as herein defined, such provision and obligation shall be valid and~~  
16 ~~enforceable up to but not in excess of fifteen percent (15%) of said~~  
17 ~~"outstanding balance" owing on said note, contract or other evidence of~~  
18 ~~indebtedness.~~
- 19 (2) ~~If such note, conditional sale contract or other evidence of indebtedness~~  
20 ~~provides for the payment of reasonable attorneys' fees by the debtor, without~~  
21 ~~specifying any specific percentage, such provision shall be construed to mean~~  
22 ~~fifteen percent (15%) of the "outstanding balance" owing on said note,~~  
23 ~~contract or other evidence of indebtedness.~~
- 24 (3) ~~As to notes and other writing(s) evidencing an indebtedness arising out of a~~  
25 ~~loan of money to the debtor, the "outstanding balance" shall mean the~~  
26 ~~principal and interest owing at the time suit is instituted to enforce any security~~  
27 ~~agreement securing payment of the debt and/or to collect said debt.~~
- 28 (4) ~~As to conditional sale contracts and other such security agreements which~~  
29 ~~evidence both a monetary obligation and a security interest in or a lease of~~  
30 ~~specific goods, the "outstanding balance" shall mean the "time price balance"~~  
31 ~~owing as of the time suit is instituted by the secured party to enforce the said~~  
32 ~~security agreement and/or to collect said debt.~~
- 33 (5) ~~The holder of an unsecured note or other writing(s) evidencing an unsecured~~  
34 ~~debt, and/or the holder of a note and chattel mortgage or other security~~  
35 ~~agreement and/or the holder of a conditional sale contract or any other such~~  
36 ~~security agreement which evidences both a monetary obligation and a security~~



1 interest in or a lease of specific goods, or his attorney at law, shall, after  
2 maturity of the obligation by default or otherwise, notify the maker, debtor,  
3 account debtor, endorser or party sought to be held on said obligation that the  
4 provisions relative to payment of attorneys' fees in addition to the "outstanding  
5 balance" shall be enforced and that such maker, debtor, account debtor,  
6 endorser or party sought to be held on said obligation has five days from the  
7 mailing of such notice to pay the "outstanding balance" without the attorneys'  
8 fees. If such party shall pay the "outstanding balance" in full before the  
9 expiration of such time, then the obligation to pay the attorneys' fees shall be  
10 void, and no court shall enforce such provisions.

11 (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer,  
12 as defined in G.S. 58-70-15, all of the following materials setting forth a  
13 party's obligation to pay attorneys' fees shall be provided to the court before a  
14 court may enforce those provisions:

15 a. A copy of the contract or other writing evidencing the original debt,  
16 which must contain a signature of the defendant. If a claim is based on  
17 credit card debt and no such signed writing evidencing the original  
18 debt ever existed, then copies of documents generated when the credit  
19 card was actually used must be attached.

20 b. A copy of the assignment or other writing establishing that the plaintiff  
21 is the owner of the debt. If the debt has been assigned more than once,  
22 then each assignment or other writing evidencing transfer of  
23 ownership must be attached to establish an unbroken chain of  
24 ownership. Each assignment or other writing evidencing transfer of  
25 ownership must contain the original account number of the debt  
26 purchased and must clearly show the debtor's name associated with  
27 that account number.

28 Notwithstanding the foregoing, however, if debtor has defaulted or violated  
29 the terms of the security agreement and has refused, on demand, to surrender  
30 possession of the collateral to the secured party as authorized by G.S.  
31 25-9-609, with the result that said secured party is required to institute an  
32 ancillary claim and delivery proceeding to secure possession of said collateral;  
33 no such written notice shall be required before enforcement of the provisions  
34 relative to payment of attorneys' fees in addition to the outstanding balance.

35 (a) Definitions. – The following definitions apply in this section:

36 (1) Creditor. – A person seeking to collect an amount owed pursuant to a debt  
37 instrument, including an assignee or debt buyer as defined in  
38 G.S. 58-70-15(b)(4).

39 (2) Debt instrument. – A note, conditional sale contract, lease agreement, credit  
40 agreement, or other evidence of indebtedness. The term does not include a  
41 residential rental agreement governed by Article 5 of Chapter 42 of the  
42 General Statutes.

43 (3) Debtor. – A person from which a creditor is seeking to collect an amount owed  
44 pursuant to a debt instrument, including a guarantor or accommodation party.

45 (4) Person. – An individual, a firm, a partnership, an association, a corporation, a  
46 limited liability company, or any other organization or group acting as a unit.

47 (b) Scope. – This section applies to debt instruments governed by the law of this State.

48 (c) Attorneys' Fees. – An obligation in a debt instrument to pay attorneys' fees is valid  
49 and enforceable if a creditor uses an attorney to collect an amount owed pursuant to the debt  
50 instrument after a debtor's default and complies with the requirements of this section. If the debt  
51 instrument specifies an amount or percentage, a court shall award that amount or percentage. The

award, however, shall not exceed a maximum rate of fifteen percent (15%) of the principal and interest owed at the time the lawsuit commenced or, in the case of a conditional sale contract, fifteen percent (15%) of the time price balance owed at the time the lawsuit commenced. If the debt instrument does not specify an amount or percentage, a court shall award attorneys' fees as follows:

(1) Unless subdivision (2) of this subsection applies, the court shall award the maximum rate.

(2) If the amount in controversy computed in accordance with G.S. 7A-243 is greater than or equal to the amount described in G.S. 7A-45.4(a)(9)c., the court shall award reasonable attorneys' fees, not to exceed the maximum rate.

(d) Notice. – After the debtor has defaulted, the creditor shall give notice to the debtor if the creditor intends to collect attorneys' fees under this section. The creditor shall include in the notice the total amount owed under the debt instrument at that time, excluding attorneys' fees. If the debtor pays this amount within 14 days after the creditor has given the notice, the obligation to pay attorneys' fees becomes unenforceable. This subsection does not apply, however, to a debtor that has defaulted on a secured indebtedness and has refused to surrender possession of the collateral to the creditor under G.S. 25-9-609.

(e) Assignees and Debt Buyers. – If the creditor is an assignee or debt buyer as defined in G.S. 58-70-15(b)(4), the creditor shall provide the materials described in G.S. 58-70-150 to the court."

**SECTION 2.** G.S. 45-21.31 reads as rewritten:

**"§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

(a) The proceeds of any sale shall be applied by the person making the ~~sale,~~ sale in the following ~~order, to the payment of~~ order:

(1) Costs and expenses of the sale, including the trustee's commission, if any, ~~and~~ a reasonable auctioneer's fee if ~~such~~ this expense has been incurred, and reasonable counsel fees for an attorney serving as a trustee if allowed pursuant to subsection (a1) of this ~~section;~~ section.

(2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes ~~thereon~~ on it and the property was so ~~sold;~~ sold.

(3) Special assessments, or any installments thereof, against the property ~~sold,~~ which ~~sold~~ that are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments ~~thereon~~ on it and the property was so ~~sold;~~ sold.

(4) The obligation secured by the mortgage, deed of ~~trust~~ trust, or conditional sale contract.

(a1) The clerk of the superior court of the county where the sale was ~~had~~ conducted may exercise discretion to allow reasonable counsel fees to an attorney serving as a trustee (in addition to the compensation allowed to the attorney as a trustee) ~~where~~ if the attorney, on behalf of the trustee, renders professional services as an attorney that are different from the services normally performed by a trustee and of a type ~~which~~ that would reasonably justify the retention of legal counsel by a trustee who is not licensed to practice law. Counsel fees are presumed reasonable if ~~in compliance with G.S. 6-21.2(1) and (2), they do not exceed fifteen percent (15%) of the obligation.~~ Nothing in this section, however, shall preclude ~~precludes~~ the clerk of superior court from deeming a higher fee reasonable.

(b) Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) of this section shall be paid to the person ~~or persons~~ entitled thereto, ~~to it~~ if the person ~~who~~ that made the sale knows ~~who is entitled thereto,~~ that person's identity and location. Otherwise, in the following cases, the surplus shall be paid to the clerk of the superior court of the county where the sale was ~~had~~ conducted:

- 1           (1) In all cases when the owner of the property sold is dead and there is no  
2           qualified and acting personal representative of ~~his estate, and~~the owner's  
3           estate.
- 4           (2) In all cases when ~~he~~the person that made the sale is unable to locate the  
5           ~~persons person~~entitled thereto, and to it.
- 6           (3) In all cases when the ~~mortgagee, trustee or vendor~~person that made the sale  
7           is, for any cause, in doubt as to who is entitled to ~~such the surplus money,~~  
8           ~~and~~money.
- 9           (4) In all cases when adverse claims ~~thereto to it~~ are asserted.
- 10          (c) ~~Such payment~~Payment to the clerk pursuant to subsection (b) of this section  
11          discharges the ~~mortgagee, trustee or vendor~~person that made the sale from liability to the extent  
12          of the amount so paid.
- 13          (d) The clerk shall ~~receive such money from the mortgagee, trustee or vendor and shall~~  
14          execute a receipt ~~therefor.~~for money received under this section.
- 15          (e) Repealed by Session Laws 2024-33, s. 23, effective July 8, 2024."
- 16          **SECTION 3.** This act becomes effective October 1, 2025, and applies to debt  
17          instruments executed on or after that date.