



SENATE BILL 511: Proof Required for Debt/Fees

2015-2016 General Assembly

Committee:	Senate Re-ref to Judiciary I. If fav, re-ref to Finance	Date:	April 21, 2015
Introduced by:	Sens. Lee, Brown	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition S511-CSRN-13		Committee Counsel

SUMMARY: *Senate Bill 511 would allow collection only where adequate proof of indebtedness was provided, would aid debtors in identifying account owners to resolve credit issues, and would specify that a charge off statement serves as proof of debt owed. The Proposed Committee Substitute (PCS) makes changes so that Senate Bill 511 is identical to the First Edition of House Bill 541 except that: (1) Section 4-Ceasing Communication was added to the PCS and (2) the phrase "When the collection agency is a debt buyer or is acting on behalf of a debt buyer" was added to G.S. 58-70-115 (8) and (9).*

BILL ANALYSIS:

Section 1 amends the statute dealing with unfair practices of collection agencies.

Under current law, if a collection agency is a debt buyer or acting on their behalf, it is an unfair practice to sue or initiate a proceeding against the debtor or otherwise attempt to collect the debt when the collection agency knows that the collection is barred by the statute of limitations. This section removes "or otherwise attempting to collect on a debt."

Section 1 also makes changes to allow either a contract or a charge-off statement to be used for lawsuits when such lawsuits are allowed. If the debt a debt buyer is attempting to collect on has been charged off, the bill requires an itemized accounting of the amount claimed to be owed, which includes: (1) the charge off balance, (2) post charge-off interest, (3) post charge-off fees, and (4) post charge-off payments or credits.

Section 1 also provides that it is an unfair trade practice when the collection agency that is a debt buyer or is acting on their behalf, when trying to collect a time-barred debt, fails to provide notice to the debtor that the law limits how long someone can be sued on a debt.

Section 2 amends the statute which provides that the complaint of a debt buyer must be accompanied by certain materials. Current G.S. 58-70-150(a) provides that a copy of the contract or other writing evidencing the original debt must be attached to the complaint. Section 2 provides that a copy of the charge-off statement is also adequate to satisfy this requirement.

Section 3 amends the statute dealing with prerequisites to entry of a default or summary judgment. It provides that the only evidence to establish the nature and amount of the debt shall be documents that include specific information. Section 3 changes some of those items, including:

- The total amount claimed to be owed (was the amount of the original debt).
- An itemization of post charge-off payments or credits where applicable (was itemization of charges and fees claimed to be owed).

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- The date of the last payment, where applicable.
- The amount of the post charge-off interest claimed (was the amount of interest claimed).

Section 4 provides that if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector must not communicate further with the consumer with respect to such debt, except for the following purposes:

- To advise the consumer that the debt collector's further efforts are being terminated.
- To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor.
- Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If the consumer makes notification by mail, then notification shall be complete upon receipt.

EFFECTIVE DATE: The act becomes effective October 1, 2015.