

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 511  
PROPOSED COMMITTEE SUBSTITUTE S511-CSRN-13 [v.4]

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Short Title: Proof Required for Debt/Fees.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED  
AN ACT TO ALLOW COLLECTION ONLY WHERE ADEQUATE PROOF OF  
INDEBTEDNESS PROVIDED; TO CONFORM TO FEDERAL LAW; TO AID  
DEBTORS IN IDENTIFYING ACCOUNT OWNERS TO RESOLVE CREDIT ISSUES;  
TO SPECIFY THAT A CHARGE-OFF STATEMENT SERVES AS PROOF OF DEBT  
OWED; AND TO MAKE VARIOUS RELATED CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** 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:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment 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.
- (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.
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor ~~or otherwise attempting to collect on a debt~~ when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.
- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (i) access to valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The original account number.

(2) The original creditor.

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

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

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

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

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

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

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

**"58-70-117. Ceasing Communication.**

(a) 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 shall not communicate further with the consumer with respect to such debt, except for the following purposes:

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

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

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

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

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