

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 548

Short Title: Collection Agency Amendments.

(Public)

Sponsors: Senator Daniel.

Referred to: Judiciary I.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COLLECTION AGENCY LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-49.24 reads as rewritten:

"§ 66-49.24. Permit from Commissioner of Insurance; misdemeanor to do business without permit; penalty for violation; exception.

No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business, as the same is hereinafter defined in this Article, until he or it shall have secured a permit therefor as provided in this Article.

Any person, firm, corporation or association conducting or operating a collection agency or doing a collection agency business without the permit shall be guilty of a ~~misdemeanor~~ Class J felony. Any officer or agent of any person, firm, corporation or association, who shall personally and knowingly participate in any violation of this Part shall likewise be guilty of a ~~misdemeanor~~ Class J felony. Provided, however, that nothing in this section shall be construed to require a regular employee of a duly licensed collection agency in this State to procure a collection agency permit."

Sec. 2. G.S. 66-49.25 is amended by adding new subsections to read:

"(m) A statement certifying that no principal, officer, or partner of the applicant has been convicted of a felony, a misdemeanor involving moral turpitude, or any violation of any State or federal debt collection law.

"(n) If the collection agency's office or records, as described in G.S. 66-49.29, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Department by the collection agency, of expenses incurred by the

1 Department in conducting routine examinations, audits, and in investigating written
2 complaints against the collection agency or its employees. All reimbursements shall be
3 paid to the Department no more than 30 days after the date of billing."

4 Sec. 3. G.S. 66-49.27(2) reads as rewritten:

5 "(2) Any person, firm, corporation or association which attempts to or does
6 transfer or sell to any person, firm, corporation or association not holding the permit
7 prescribed by this Article any system or series of letters or forms for use in the
8 collection of delinquent accounts or claims which by direct assertion or by implication
9 indicate that the claim or account is being asserted or collected by any person, firm,
10 corporation, or association other than the creditor or owner of the claim or demand;
11 ~~provided that no bond shall be required of any such collection agency if it does not collect any~~
12 ~~money from the debtor nor hold itself out as being authorized to receive payment of all or any~~
13 ~~part of such debt."~~

14 Sec. 4. G.S. 66-49.27(11) reads as rewritten:

15 "(11) 'Collection agency' shall not include any person, firm, corporation, or
16 association attempting to collect or collecting claims, in his or its own name, of a
17 business or businesses owned wholly or substantially by the same person, ~~or persons~~
18 ~~operating such collection agency firm, corporation, or association."~~

19 Sec. 5. G.S. 66-49.29(a) reads as rewritten:

20 "(a) Each person, firm, or corporation licensed as a collection agency in North
21 Carolina shall keep ~~within this State~~ a full and correct record of all business done in this
22 State as set forth below. All such records pertaining to collection activity, concerning
23 debtor records and client accounting records, but not general operating records, shall be
24 open to inspection by the Commissioner of Insurance or his duly authorized deputy
25 upon demand. ~~Each licensed collection agency engaged in the collection of debts shall~~
26 ~~maintain an office in this State."~~

27 Sec. 6. G.S. 66-49.30 reads as rewritten:

28 **"§ 66-49.30. Hearing granted applicant if application denied; appeal.**

29 If, upon application, the Commissioner ~~shall find~~ that ~~a~~ the permit should not be
30 issued or renewed to the applicant, he shall decline the same, giving notice of his action to
31 and denies an application for a permit or refuses to renew a permit, he shall notify the
32 applicant or permittee and advise, in writing, the applicant or permittee of the reasons
33 for the denial or nonrenewal of the permit. ~~Following notice the applicant shall have 10~~
34 Within 30 days of receipt of notification the applicant or permittee may make written
35 demand upon ~~within which to submit additional information in support of his application and~~
36 ~~if, upon further hearing upon the application and additional information the Commissioner for~~
37 a hearing to determine the reasonableness of the Commissioner's ~~shall again decline to~~
38 ~~issue the permit, the applicant shall have the right to appeal to the superior court and his appeal~~
39 ~~shall stand for hearing in the Superior Court of the County of Wake, and the evidence, data and~~
40 ~~information submitted to the Commissioner shall constitute the record in the superior court to~~
41 ~~determine whether or not the Commissioner had evidence sufficient to justify his action. Such~~
42 hearing shall be scheduled within 30 days from the date of receipt of the written
43 demand. If the Commissioner shall decline an application for renewal, the An applicant or
44 permittee may continue to do business pending any has the right to appeal taken pursuant

1 ~~hereto any order or any unreasonable delay pursuant to Article 4 of Chapter 150B of the~~
2 General Statutes."

3 Sec. 7. G.S. 66-49.31 reads as rewritten:

4 **"§ 66-49.31. Application fee; issuance of permit; contents and duration.**

5 Upon the filing of the application and information hereinbefore required, the
6 Commissioner may require the applicant to pay a fee of five hundred dollars (\$500.00),
7 and no permit may be issued until this fee is paid. If the application is denied, the
8 Commissioner shall retain fifty dollars (\$50.00) of the application fee and return the
9 remainder to the applicant. The fifty dollars (\$50.00) so retained upon applications not
10 granted, and the full fee of five hundred dollars (\$500.00) upon the applications granted,
11 shall be used in paying the expenses incurred in connection with the consideration of
12 such applications and the issuance of such permits.

13 Each permit shall state the name of the applicant, his place of business, and the
14 nature and kind of business in which he is engaged. The Commissioner shall assign to
15 the permit a serial number for each year, and each permit shall be for a period of one
16 year, beginning with July 1 and ending with June 30 of the following year.

17 A permit is assignable or transferable only if the assignee or transferee first qualifies
18 under the provisions of this Article. Upon any change in ownership of a permittee, if a
19 sole proprietorship or partnership, or upon a change in ownership of more than fifty
20 percent (50%) of the shares or voting rights of a corporate permittee, a permit issued to
21 a permittee is void unless prior to the change of ownership the prospective new owner
22 or owners have satisfied the Commissioner that he or they qualify for a permit under
23 this Article."

24 Sec. 8. G.S. 66-49.32 reads as rewritten:

25 **"§ 66-49.32. ~~Revocation of permit.~~ Restraining orders; criminal convictions; permit**
26 **revocations; other permit requirements.**

27 (a) ~~When it appears to~~ If the Commissioner shall have issued any permit to that
28 any person, firm or corporation as herein provided, and shall have information that the
29 holder of the permit is conducting business in violation of Part 1, 2, or 3 has violated, is
30 violating, or threatens to violate any provision of this Article, or has obtained said
31 permit through materially false and misleading statements in its application, he may
32 apply to the Superior Court of Wake County for shall notify the holder of the permit of
33 a restraining order date for a hearing, which notice shall name a time and place for the
34 hearing, and injunction to restrain such violation, or threatened violation at which
35 hearing any and all evidence as to the conduct of the business may be heard by the
36 Commissioner. If, upon application the hearing of the evidence, Court finds that any
37 provision of this Article has been violated, is being violated, or a violation thereof is
38 threatened, the Commissioner Court shall be of the opinion that the applicant is
39 conducting business in violation of Part 1, 2, or 3 issue an order restraining and
40 enjoining such violations; and such relief may be granted regardless of whether criminal
41 prosecution is instituted under any provision of this Article, the Commissioner shall
42 then require the holder to show cause why said permit should not be cancelled.

43 (b) The conviction by a court of competent jurisdiction of any permittee for a
44 violation of this Article shall automatically have Upon a determination that the effect of

1 ~~suspending the permit of that person until such time that the should be cancelled, the~~
2 ~~Commissioner shall cancel said permit; provided, however, pending any appeal permitted~~
3 ~~hereby, is reinstated by the permit holder may continue to do business. If the permit be~~
4 ~~cancelled upon hearing, either the holder of the permit or the complaining party shall have the~~
5 ~~right to appeal as hereinbefore provided in the case where an application is denied, and the~~
6 ~~record of the hearing before the Commissioner. As used in this subsection, 'conviction'~~
7 ~~includes an adjudication of guilt, a plea of guilty, and a plea of **nolo contendere**. shall~~
8 ~~be the record in the superior court upon which the judge shall determine whether or not~~

9 (c) In addition to the other qualifications for a permit under this Article, no
10 collection agency shall be issued or be entitled to hold a permit if the Commissioner
11 finds as had sufficient evidence upon which to the applicant or permittee any one or more
12 of the following conditions base his action:

- 13 (1) A principal, officer, or partner of the collection agency has been
14 convicted of a felony, a misdemeanor involving moral turpitude, or
15 any State or federal debt collection law.
- 16 (2) There is an unsatisfied judgment against any principal, partner, or
17 officer of the collection agency or against the collection agency.
- 18 (3) There is any materially false or misleading information in the permit
19 application.
- 20 (4) The applicant has obtained or attempted to obtain the permit through
21 misrepresentation or fraud.
- 22 (5) There has been an adjudication that a principal, partner, or officer of
23 the collection agency has violated any State or federal unfair trade
24 practice law.
- 25 (6) A principal, partner, or officer of the collection agency has violated or
26 refused to comply with any provision of this Article or any rule or
27 order of the Commissioner.
- 28 (7) Another jurisdiction has suspended or revoked a collection agency or
29 similar license or permit of the collection agency."

30 Sec. 9. G.S. 66-49.37 reads as rewritten:

31 "**§ 66-49.37. Remittance trust account.**

32 (a) Each permit holder shall deposit, no later than two banking days from receipt,
33 in a separate trust fund account in a local or approved North Carolina bank or other bank
34 approved by the Commissioner, sufficient funds to pay all moneys due or owing all
35 collection creditors or forwarders. Said funds shall remain in the trust account until
36 remitted to the creditor or forwarder, and shall not be commingled with any other
37 operating funds. The trust account shall be used only for the purpose of:

- 38 (1) Remitting to collection creditors or forwarders the proceeds to which
39 they are entitled. and
- 40 (2) Remitting to the collection agency the commission that is due the
41 collection agency.
- 42 (3) Reimbursing consumers for overpayments.
- 43 (4) Making adjustments to the trust account balance for bank service
44 charges.

1 (b) No refund for overpayment by a debtor in an amount of less than one dollar
2 (\$1.00) is required."

3 Sec. 10. G.S. 66-49.48 reads as rewritten:

4 "**§ 66-49.48. Unauthorized practice of law; court appearances.**

5 A permit holder as defined in G.S. 66-49.27 Neither a collection agency nor any
6 representative thereof who is not a duly licensed attorney shall not engage in the practice
7 of law. As used in this section, 'practice of law' includes the preparation of warrants or
8 subpoenas. A collection agency's representative is prohibited from appearing in court
9 on behalf of a creditor unless he is required to appear by court order or subpoena."

10 Sec. 11. This act shall become effective July 1, 1989.