

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 974
RATIFIED BILL

AN ACT TO ENACT THE CONSUMER ECONOMIC PROTECTION ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Consumer Economic Protection Act of 2009."

SECTION 2. G.S. 45-21.16(d1) reads as rewritten:

"(d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as the clerk deems adequate to protect the opposing party from any probable loss by reason of appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the appealing party owns and occupies the property to be sold as his or her principal residence, the clerk shall require a bond in the amount of one percent (1%) of the principal balance due on the note or debt instrument, provided that the clerk, in the clerk's discretion, may require a lesser amount in cases of undue hardship or for other good cause shown; and further provided that the clerk, in the clerk's discretion, may require a higher bond if there is a likelihood of waste or damage to the property during the pendency of the appeal or for other good cause shown."

SECTION 3. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential property.

(a) At the commencement of the hearing, the clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If it appears that the debtor does currently occupy the property as a principal residence, the clerk shall further inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding. The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before the hearing, an affidavit briefly describing any efforts that have been made to resolve the default with the debtor and the results of any such efforts.

(b) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing, the clerk may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an opportunity to resolve the foreclosure through forbearance, loan modification, or other commonly accepted resolution plan appropriate under the circumstances, (ii) whether the mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the debtor, including telephone conferences or in-person meetings with the debtor or other actual two-party communications, (iii) whether the debtor has indicated that he or she has the intent and ability to resolve the delinquency by making future payments under a foreclosure resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain not more than 60 days from the date scheduled for the original hearing. Nothing in this part shall limit the authority of the clerk to continue a hearing for other good cause shown."

SECTION 4.(a) G.S. 58-70-15(b) reads as rewritten:

"(b) "Collection agency" ~~includes:~~includes any of the following:



- (1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the ~~listing; and listing.~~
- (2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or ~~demand; and demand.~~
- (3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.
- (4) A 'debt buyer.' As used in this subdivision, the term 'debt buyer' means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

SECTION 4.(b) G.S. 58-70-70 reads as rewritten:

"§ 58-70-70. Receipt requirement.

(a) Whenever a payment is received in cash from a debtor, forwarder, or other person, an original receipt or an exact copy thereof shall be furnished the individual from whom payment is received. Evidence of all receipts issued shall be kept in the permit holder's office for three years. All receipts issued must:

- (1) Be prenumbered by the printer and used and filed in consecutive numerical order;
- (2) Show the name, street address and permit number of the permit holder;
- (3) Show the name of the creditor or creditors for whom collected;
- (4) Show the amount and date paid; and
- (5) Show the last name of the person accepting payment.

(b) Whenever payment in any form is received by or on behalf of a debt buyer, in addition to meeting the requirements set forth in subsection (a) of this section, the receipt shall also:

- (1) Show the name of the creditor or creditors for whom collected, the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.
- (2) State clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited."

SECTION 5. G.S. 58-70-115 reads as rewritten:

"§ 58-70-115. ~~Unconscionable means~~Unfair practices.

No collection agency shall collect or attempt to collect any debt by use of any ~~unconscionable means-unfair practices.~~ Such ~~means-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;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;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) 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 original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges.
- (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 or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.
- (7) Failing to comply with Part 5 of this Article."

SECTION 6. 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 ~~only in an individual action, and its additional liability therein to that debtor shall be~~ for a penalty in such amount as the court may allow, which shall not be less than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) for each violation nor greater than ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each violation.

(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;~~ ~~thereby;~~ provided, however, that, notwithstanding the provisions of G.S. 75-16, the civil penalties provided in this section shall not be trebled. ~~Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~ Civil penalties in excess of ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each violation shall not be imposed, nor shall damages be trebled for any violation under Part 3 of this Article imposed.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. ~~Provided, that any~~ 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).~~ 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."

SECTION 7. G.S. 6-21.2 reads as rewritten:

"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.

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

- (1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.
- (4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.
- (5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.
- (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:
 - a. A copy of the contract 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.
 - b. A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

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

SECTION 8. Article 70 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 5. Special Requirements in Actions Filed by Collection Agency Plaintiffs.

"§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.

In any cause of action that arises out of the conduct of a business for which a plaintiff must secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article and shall contain the name and number, if any, of the license and the governmental agency that issued it.

"§ 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 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.
- (2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

"§ 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(b) of the North Carolina Rules of Evidence. The authenticated business records shall include at least all of the following items:

- (1) The original account number.
- (2) The original creditor.
- (3) The amount of the original debt.
- (4) An itemization of charges and fees claimed to be owed.
- (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, where applicable.
- (7) The date of last payment.
- (8) The amount of interest claimed and the basis for the interest charged."

SECTION 9. G.S. 75-56 reads as rewritten:

"§ 75-56. Application.

(a) The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article.

(b) Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in an amount equal to the sum of (i) any actual damage sustained by such person as a result of such failure and (ii) civil penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than four thousand dollars (\$4,000) for each violation.

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

(d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of ~~two thousand dollars~~

~~(\$2,000)four thousand dollars (\$4,000) shall not be imposed, nor shall damages be trebled for any violation under this Article. imposed.~~

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

SECTION 10. G.S.75-65(h) reads as rewritten:

"(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift ~~Supervision, Supervision; or a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration;~~ and any revisions, additions, or substitutions relating to any of the said interagency guidance, shall be deemed to be in compliance with this section."

SECTION 11. This act becomes effective October 1, 2009, and applies to foreclosures initiated, debt collection activities undertaken, and actions filed on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Marc Basnight
President Pro Tempore of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2009