

Article 70.

Collection Agencies.

Part 1. Permit Procedures.

§ 58-70-1. Permit from Commissioner of Insurance; 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 Class I felony. Any officer or agent of any person, firm, corporation or association, who shall personally and knowingly participate in any violation of the remaining provisions of this Part shall be guilty of a Class 1 misdemeanor. Provided, however, that nothing in this section shall be construed to require a regular employee of a duly licensed collection agency licensed pursuant to this Article to procure a collection agency permit. (1931, c. 217, s. 1; 1943, c. 170; 1959, c. 1194, s. 1; 1969, c. 906, s. 1; 1979, c. 835; 1989, c. 441, s. 1; 1993, c. 539, ss. 472, 1275; 1994, Ex. Sess., c. 24, s. 14(c); 2011-320, s. 1.)

§ 58-70-5. Application to Commissioner for permit.

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which the person, firm, corporation or association desires to carry on the collection agency business as defined in this Article. An The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

- (1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different.
- (2) If the applicant is a corporation,
 - a. A certified copy of the board of director's resolution authorizing the submission of the application;
 - b. An authenticated copy of the Articles of Incorporation and all amendments thereto;
 - c. An authenticated copy of the bylaws or other governing instruments;
 - d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State.
- (3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.
- (4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.
- (5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.
- (6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.
- (7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.
- (8) A statement certifying that there are no unsatisfied judgments against the applicant.
- (9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.
- (10) The appropriate permit fee as required by G.S. 58-70-35.
- (11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.
- (12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

- (13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.
- (14) If the collection agency's office or records, as described in G.S. 58-70-25, 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 Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his or her inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.
- (15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 - see note for contingency.

(b1) In addition to the information required by subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the Commissioner.

(c) through (o) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 - see note for contingency.

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

- (1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.
- (2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subdivision (a)(11) of this section.

(t) Nothing in this section shall be construed to require that a person, firm, corporation, or association secure a permit for a remote location from which a single employee works under the control and monitoring of a collection agency through telecommunications and computer links, so long as all of the following conditions are met:

- (1) Records required to be kept under G.S. 58-70-25 are not maintained at the remote location.

- (2) The remote location is not held open to the public as a place of business.
- (3) The person, firm, corporation, or association has a valid permit issued pursuant to this Article for at least one physical location in this State. (1931, c. 217, s. 2; 1943, c. 170; 1959, c. 1194, s. 2; 1969, c. 906, s. 2; 1979, c. 835; 1989, c. 441, ss. 2, 3; 2001-269, s. 1.1; 2006-134, s. 1; 2009-566, s. 21; 2016-107, s. 5; 2016-100, s. 6.)

§ 58-70-6. Definitions.

For purposes of G.S. 58-70-5 and this section, the following definitions apply:

- (1) An "affiliate" of or a person "affiliated" with a specific person. - A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (2) Control, including the terms "controlling," "controlled by," and "under common control with." - The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.
- (3) Holding company system. - An entity comprising two or more affiliated persons.
- (4) Person. - An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.
- (5) Subsidiary of a specified person. - An affiliate controlled by that person indirectly through one or more intermediaries or directly.
- (6) Voting security. - Includes any security convertible into or evidencing a right to acquire a voting security. (2009-566, s. 22.)

§ 58-70-10. Application to Commissioner for permit renewal.

Any person, firm, corporation or association desiring to renew a permit issued pursuant to G.S. 58-70-5 shall make application to the Commissioner of Insurance not less than 30 days prior to the expiration date of the then current permit. Such renewal applicant shall be entitled to a renewal permit upon submission to the Commissioner of Insurance of all the information as required by G.S. 58-70-5; provided, however, it shall be sufficient, wherever applicable, to reference the prior year's application if there has been no change as to any of the required information and it shall not be necessary to submit with a renewal application a new director's resolution. In addition, the applicant shall submit to the Commissioner a copy of a "continuation certificate" or paid receipt for renewal premiums for the collection agency bond for the year for which the renewal permit is applied. The application shall include a calculation in accordance with G.S. 58-70-20, and if the bond is increased, an endorsement by the surety. With a renewal application, the applicant shall submit a balance sheet for the last fiscal year ending prior to the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant. In calculating its positive net worth under this section, an applicant is not required to include in its balance sheet liabilities from the purchase of stock by or in connection with the applicant's employee stock ownership plan that is qualified under 26 U.S.C. §§ 401(a) and 4975(e)(7) or to include in its balance sheet unallocated or unearned shares held in such a qualified employee stock ownership plan. (1979, c. 835; 2016-78, s. 6.5.)

§ 58-70-15. Definition of collection agency and collection agency business.

(a) "Collection agency" means a person directly or indirectly engaged in soliciting, from more than one person delinquent claims of any kind owed or due or asserted to be owed or due the solicited person and all persons directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

(b) "Collection agency" 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.
- (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.

- (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.

(c) "Collection agency" does not include any of the following:

- (1) Regular employees of a single creditor.
- (2) Banks, trust companies, or bank owned, controlled or related firms.
- (2a) Corporations or associations engaged in accounting, bookkeeping, or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors.
- (3) Mortgage banking companies.
- (4) Savings and loan associations.
- (5) Building and loan associations.
- (6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business.
- (7) Express, telephone and telegraph companies subject to public regulation and supervision.
- (8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman.
- (9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court.
- (10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands.
- (11) Any person attempting to collect or collecting claims, in that person's name, of a business or businesses owned wholly or substantially by that person.
- (12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution services.
- (13) The designated representatives of programs as defined by G.S. 110-129(5). (1969, c. 906, s. 3; 1973, c. 785; 1979, c. 835; 1989, c. 441, ss. 4, 5, 12; 1991, c. 387, s. 1; 1993, c. 553, s. 22; 1999-419, s. 1; 2001-269, s. 1.2; 2009-573, s. 4(a); 2017-149, s. 1.)

§ 58-70-20. Bond requirement.

(a) As a condition precedent to the issuance of any permit under this Article, every applicant for a permit shall file with the Commissioner a bond in favor of the State of North Carolina that is executed by a surety company licensed to transact surety business in this State. The bond shall be maintained in force during the permit period, continuous in form, and remain in effect until all moneys collected have been accounted for. The bond shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts. The bond shall be in the amount of ten thousand dollars (\$10,000) for the initial permit. The amount of the bond for any renewal permit shall be no less than ten thousand dollars (\$10,000), nor more than thirty thousand dollars (\$30,000), and shall be computed as follows: The total collections paid directly to the collection agency less commissions earned by the collection agency on those collections for the calendar year ending immediately prior to the date of application, multiplied by one-sixth.

(b) A person required by this section to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities,

which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner.

(c) In addition to the requirements of subsections (a) and (b) of this section, as a condition precedent to the issuance of any permit under this Article, every nonresident applicant for a permit shall file with the Commissioner a bond in the amount of ten thousand dollars (\$10,000) in favor of the Department that is executed by a surety company licensed to transact surety business in this State. The bond shall be maintained in force during the permit period, be continuous in form, and remain in effect until terminated by the Commissioner. The bond shall expressly provide that the bond is for the purpose of reimbursing the Department for expenses incurred in visiting and examining a nonresident collection agency in connection with a federal bankruptcy or State receivership proceeding in which the collection agency is the subject of the proceeding. (1943, c. 170; 1959, c. 1194, s. 3; 1979, c. 835; 1991, c. 212, s. 4; 2001-269, s. 1.3; 2016-107, s. 6.)

§ 58-70-25. Record of business in State.

(a) Each person, firm, or corporation licensed as a collection agency in North Carolina shall keep a full and correct record of all business done in this State as set forth below. All such records pertaining to collection activity, concerning debtor records and client accounting records, but not general operating records, shall be open to inspection by the Commissioner of Insurance or his duly authorized deputy upon demand.

(b) Every permit holder shall maintain adequate records which shall contain the items listed below. These records must be kept separate from records of any other business and must be maintained for not less than three years after the final entry has been made:

- (1) A daily collection record or cash receipt journal in which all collections are recorded and allocated as to total collections, setting forth:
 - a. The amount credited to principal and to interest, if any;
 - b. The amount due creditors or forwarders.
- (2) The amount retained as commission or commission paid to forwarders.
- (3) Payments made directly to creditors as reported to the collection agency by those creditors and commissions due the collection agency on those payments.
- (4) A record of each debtor's account shall be maintained consisting of the following:
 - a. The name and address of the debtor;
 - b. The name of the creditor or forwarder or forwarder if the account has been forwarded;
 - c. The principal amount owing and, if available, the date of the last credit or debit;
 - d. The amount and date of each payment made by the debtor; and
 - e. The date and time of each telephone or personal contact with the debtor.
- (5) A master alphabetical record by name and address of every creditor or forwarder with whom the permit holder engages in the business of collecting accounts.
- (6) A check register or carbon copies of each check issued or numerically numbered check stubs corresponding with all checks issued on the trust account for funds collected on behalf of creditors. Cancelled checks, together with voided or unused checks (adequately explained) drawn on the trust account shall be maintained in numerical order with the monthly bank statements.
- (7) A record by client or client number showing the number of accounts received from the client, the date received and the principal amount of the accounts.
- (8) A duplicate copy of each remittance statement furnished a creditor or forwarder, or other listing of the information contained on the statement. (1959, c. 1194, s. 3; 1979, c. 835; 1989, c. 441, s. 6.)

§ 58-70-30. Hearing granted applicant if application denied; appeal.

If, upon application, the Commissioner finds that the permit should not be issued or renewed and denies an application, he shall notify the applicant or permittee and advise, in writing, the applicant or permittee of the reasons for the denial or nonrenewal of the permit. Within 30 days of receipt of notification the applicant or permittee may make written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner's action. Such hearing shall be scheduled within 30 days and held within 90 days from the date of

receipt of the written demand. An applicant or permittee has the right to appeal any order or any unreasonable delay pursuant to Article 4 of Chapter 150B of the General Statutes. If the Commissioner shall decline an application for renewal, that applicant may continue to do business pending any appeal taken pursuant hereto. (1931, c. 217, s. 3; 1979, c. 835; 1989, c. 441, s. 7, c. 770, s. 51.)

§ 58-70-35. Application fee; issuance of permit; contents and duration.

(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of one thousand dollars (\$1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25.

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

(c) A permit is assignable or transferable only if the assignee or transferee qualifies under the provisions of this Article. Upon any change in ownership of a permittee, if a sole proprietorship or partnership, or upon a change in ownership of more than fifty percent (50%) of the shares or voting rights of a corporate permittee, a permit issued to a permittee is void unless within 30 days of the change of ownership the new owner or owners have satisfied the Commissioner that he or they qualify for a permit under this Article, and he or they maintain a bond in accordance with and in the amount required for a renewal bond under G.S. 58-70-20. (1931, c. 217, s. 4; 1979, c. 835; 1983, c. 790, s. 10; 1989, c. 441, s. 8; 1991, c. 721, s. 3; 2009-451, s. 21.5(a); 2011-330, s. 47(a).)

§ 58-70-40. Restraining orders; criminal convictions; permit revocations; other permit requirements.

(a) When it appears to the Commissioner that any person has violated, is violating, or threatens to violate any provision of this Article, he may apply to the superior court of any county in which the violation has occurred, is occurring, or may occur for a restraining order and injunction to restrain such violation, or threatened violation. If upon application the court finds that any provision of this Article has been violated, is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining such violations; and such relief may be granted regardless of whether criminal prosecution is instituted under any provision of this Article.

(b) If an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere.

(c) In addition to the other qualifications for a permit under this Article, no collection agency shall be issued or be entitled to hold a permit if the Commissioner finds as to the applicant or permittee any one or more of the following conditions:

- (1) An individual proprietor, officer, or partner of the collection agency has been convicted of a felony involving moral turpitude, or any State or federal debt collection law.
- (2) There is an unsatisfied judgment which is not currently the subject of litigation against any partner, individual proprietor, or officer of the collection agency or against the collection agency.
- (3) There is any materially false or misleading information in the permit application.
- (4) The applicant has obtained or attempted to obtain the permit through misrepresentation or fraud.
- (5) There has been an adjudication that a partner, individual proprietor, or officer of the collection agency has violated any State or federal unfair trade practice law.
- (6) A partner, individual proprietor, or officer of the collection agency has violated or refused to comply with any provision of this Article or any order of the Commissioner.
- (7) Another jurisdiction has suspended or revoked a collection agency or similar license or permit of the collection agency.

(d) In the case of an alien corporation that has been issued a permit under this Article, in an action brought by the Commissioner, service of process upon the parent entity is sufficient service of process on the alien

corporation.

(e) A collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action. (1931, c. 217, s. 5; 1979, c. 835; 1989, c. 441, s. 9; 2006-134, s. 2; 2009-566, ss. 16, 17.)

§ 58-70-45. Disposition of permit fees.

All permit fees collected under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25. (1931, c. 217, s. 8; 1943, c. 170; 1979, c. 835; 1991, c. 689, s. 293; 2003-221, s. 8.)

§ 58-70-50. All collection agencies to identify themselves in correspondence.

All collection agencies licensed under this Part to do the business of a collection agency in this State, shall in all correspondence with debtors use stationery or forms which contain the permit number and the true name and address of such collection agency.

The permit to engage in the business of a collection agency shall at all times be prominently displayed in each office of the person, firm, corporation or association to whom or to which the permit is issued. (1931, c. 217, s. 9; 1969, c. 906, s. 5; 1979, c. 835.)

Part 2. Operating Procedures.

§ 58-70-55. Office hours.

If an office of a duly licensed collection agency does not maintain normally accepted business hours, the hours the office is open shall be posted so as to be prominently displayed to the public at all times. If at any time it is anticipated that the permit holder's office will be closed to the public for a period exceeding seven days, the Department of Insurance shall be notified thereof in writing. (1979, c. 835.)

§ 58-70-60. Statements to be furnished each collection creditor.

(a) Acknowledgment of Accounts. - When any account is received for collection, the permit holder shall upon request furnish the collection creditor or forwarder with a written listing or acknowledgment of the accounts received.

(b) Remittance Statements. - Each permit holder shall remit all moneys due to any collection creditor or forwarder within 30 days after the end of the collection month during which the collection was effected. The remittance shall be accompanied by a statement setting forth:

- (1) The date of remittance;
- (2) The debtor's name;
- (3) The date or month of collection and amount collected from each debtor; and
- (4) A breakdown showing money collected from each debtor and the amount due the creditor or forwarder. (1979, c. 835.)

§ 58-70-65. Remittance trust account.

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

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

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

(c) Each permit holder located outside this State shall deposit in a separate trust account, designated for its North Carolina creditors, funds to pay all monies due or owing all collection creditors or forwarders located within this State. In the case of alien corporations that are permit holders, the trust account must be established

with a bank located in the United States or in any bank approved by the Commissioner. (1979, c. 835; 1989, c. 441, s. 10; c. 770, s. 52; 1991, c. 644, s. 23; 1993 (Reg. Sess., 1994), c. 678, s. 31; 2006-134, s. 3.)

§ 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. (1979, c. 835; 2009-573, s. 4(b).)

§ 58-70-75. Creditor may request return of accounts.

The written request of a creditor or forwarder for the return of any account which is not in the actual process of collection shall be complied with by the permit holder in writing within a reasonable length of time, but in any event not to exceed 60 days. All valuable papers furnished by the creditor or forwarder in connection with the account shall be returned. (1979, c. 835.)

§ 58-70-80. Return of accounts and all valuable papers upon termination of permit.

Whenever the permit of a collection agency is revoked, cancelled, or terminated for any reason, all accounts and valuable papers placed with the agency for collection shall be returned to the person placing the account for collection within five days of the termination of said permit unless, upon written application, an extension of time is granted by the Department of Insurance. All agreements between the collection agency and creditor or forwarder are automatically cancelled as of the date on which said permit is revoked, cancelled or terminated. If any of the accounts placed for collection are in the hands of others at the time of the permit termination, they shall immediately be notified by the collection agency to thereafter correspond, remit and be solely responsible to the creditor placing the accounts with the agency for collection unless the creditor has authorized a successor or other permit holder to continue to collect the accounts. In the case of dissolution of the collection agency, all accounts shall be returned within a reasonable period of time, but in any event not to exceed 60 days. Valuable papers shall include, but not be limited to, notes payable, creditor account cards and any other items placed within the collection agency by the creditor. (1979, c. 835.)

§ 58-70-85. Application of funds where there is a debtor-creditor relationship.

If a creditor has listed accounts with a permit holder for collection and also has had accounts on which he is debtor listed with the permit holder by any other creditors, collections effected in his behalf as a creditor may not be applied on accounts that he owes unless the permit holder has a written authorization on file as to how the moneys collected are to be applied. (1979, c. 835.)

Part 3. Prohibited Practices by Collection Agencies Engaged in the Collection of Debts from Consumers.

§ 58-70-90. Definitions.

As used in this Part, the following terms have the meanings specified:

- (1) Collection agency. - A collection agency as defined in G.S. 58-70-15 which engages, directly or indirectly, in debt collection from a consumer.
- (2) Consumer. - An individual, aggregation of individuals, corporation, company, association, or partnership that has incurred a debt or alleged debt.

- (2a) Credit card debt. - A debt stemming from a revolving or open-end credit card account pursuant to which a creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.
- (3) Debt. - Any obligation owed or due or alleged to be owed or due from a consumer.
- (4) Itemized accounting. - If the debt has not been charged-off, the itemized accounting is an accounting of the amount claimed to be owed, including the amount of the principal, the amount of any interest, fees or charges, and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the consumer debt. If the debt has been charged off, the itemized accounting is: (i) the charge-off balance; (ii) any post charge-off interest and fees; (iii) any post charge-off payments or credits; and (iv) the most recent twelve account statements sent to the debtor prior to charge-off. For accounts less than one year old prior to charge-off, the accounting must include every statement sent to the debtor prior to charge-off. (1979, c. 835; 2023-130, s. 7(a).)

§ 58-70-95. Threats and coercion.

No collection agency shall collect or attempt to collect any debt alleged to be due and owing from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts include, but are not limited to, the following:

- (1) Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person;
- (2) Falsely accusing or threatening to accuse any person of fraud or any crime, or of any conduct that would tend to cause disgrace, contempt or ridicule;
- (3) Making or threatening to make false accusations to another person, including any credit reporting agency, that a consumer has not paid, or has willfully refused to pay a just debt;
- (4) Threatening to sell or assign, or to refer to another for collection, the debt of the consumer with an attending representation that the result of such sale, assignment or reference would be that the consumer would lose any defense to the debt or would be subject to harsh, vindictive, or abusive collection attempts;
- (5) Representing that nonpayment of an alleged debt may result in the arrest of any person;
- (6) Representing that nonpayment of an alleged debt may result in the seizure, garnishment, attachment, or sale of any property or wages unless such action is in fact contemplated by the debt collector and permitted by law;
- (7) Threatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made;
- (8) Threatening to take any action not permitted by law. (1979, c. 835.)

§ 58-70-100. Harassment.

No collection agency shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt. Such conduct includes, but is not limited to, the following:

- (1) Using profane or obscene language, or language that would ordinarily abuse the typical hearer or reader;
- (2) Placing collect telephone calls or sending collect telegrams unless the caller fully identifies himself and the company he represents;
- (3) Causing a telephone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person;
- (4) Placing telephone calls or attempting to communicate with any person, contrary to his instructions, at his place of employment, unless the collection agency does not have a telephone number where the consumer can be reached during the consumer's nonworking hours. (1979, c. 835.)

§ 58-70-105. Unreasonable publication.

No collection agency shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

- (1) Any communication with any person other than the debtor or his attorney, except:
 - a. With the permission of the debtor or his attorney;
 - b. To persons employed by the collection agency, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
 - c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor;
 - d. For the sole purpose of locating the debtor, if no indication of indebtedness is made;
 - e. Through legal process.
- (2) Using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the collection agency except as otherwise provided in this Part.
- (3) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes. (1979, c. 835.)

§ 58-70-110. Deceptive representation.

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- (1) Communicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed;
- (2) Failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector; provided, however, that this subdivision does not apply to a formal pleading made in connection with legal action;
- (3) Falsely representing that the collection agency has in its possession information or something of value for the consumer;
- (4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collection agency is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions;
- (5) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source;
- (6) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges;
- (7) Falsely representing the status or true nature of the services rendered by the collection agency or its business.
- (8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1). (1979, c. 835; 2001-269, s. 1.4; 2009-302, s. 4.)

§ 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) 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. (1979, c. 835; 2009-573, s. 5.)

§ 58-70-120. Unauthorized practice of law; court appearances.

Neither a collection agency nor any representative thereof who is not a duly licensed attorney shall engage in the practice of law. As used in this section, "practice of law" includes the preparation of warrants or subpoenas. A collection agency's representative is prohibited from appearing in court on behalf of a creditor except as required by court order or subpoena, and except to submit and explain claims in bankruptcy court. (1979, c. 835; 1989, c. 441, s. 11.)

§ 58-70-125. Shared office space.

The office of a collection agency shall not be shared or have a common waiting room with a practicing attorney or any type of lending institution. The office may be located in a private residence only if it is solely for business purposes, has an outside entrance and can be isolated from the remainder of the residence. (1979, c. 835.)

Part 4. Enforcement.

§ 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 for a penalty in such amount as the court may allow, which shall not be less than five hundred dollars (\$500.00) for each violation nor greater than four thousand dollars (\$4,000) for each violation. The debtor need not prove actual damages to recover the civil penalty; the civil penalty is in addition to the actual damages, if any.

(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; provided, however, that, notwithstanding the provisions of G.S. 75-16, the civil penalties provided in this section shall not be trebled. Civil penalties in excess of four thousand dollars (\$4,000) for each violation shall not be imposed.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. 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) 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. (1979, c. 835; 1991, c. 68, s. 2; 1998-215, s. 89(a); 2009-573, s. 6; 2023-130, s. 7(b).)

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, shall contain the name and number, if any, of the license and the governmental agency that issued it, shall allege that notice required by [G.S.] 58-70-115(6) was sent, and shall incorporate documents sent with that notice. Any complaint that fails to comply with this section shall be dismissed by the court upon motion of the debtor or sua sponte. (2009-573, s. 8; 2023-130, s. 7(c).)

§ 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 the debt buyer alleges in the complaint that no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used, such as a purchase or cash advance, 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.

Any complaint that fails to comply with this section shall be dismissed by the court upon motion of the debtor or sua sponte. (2009-573, s. 8; 2023-130, s. 7(d).)

§ 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) If the claim is not based on a credit card debt, 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 at least all of the following:

- (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.

(c) If the claim is based on a credit card debt, 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 at least all of the following:

- (1) The original account number.
- (2) The original creditor.
- (3) An itemized accounting, as defined in G.S. 58-70-90.
- (4) The date of last payment, if any.
- (5) The basis for the interest charged.
- (6) The date the account was opened.

(d) If a debt buyer fails to satisfy the requirements of this section, the debt buyer's motion for summary judgment or default judgment shall be denied and any judgments entered in favor of the non-compliant debt buyer are void and subject to vacatur under Rule 60(b) of the Rules of Civil Procedure. (2009-573, s. 8; 2011-326, s. 7; 2023-130, s. 7(e).)