

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 477

AMENDMENT NO. A1  
(to be filled in by  
Principal Clerk)

S477-ATG-92 [v.4]

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Amends Title [YES]  
Fifth Edition

Date \_\_\_\_\_, 2023

Representative John

1 moves to amend the bill on page 1, lines 6-8, by rewriting the lines to read:

2 "RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, TO MODIFY  
3 THE RIGHT OF A SHAREHOLDER OF A CORPORATION TO INSPECT THE  
4 RECORDS OF A SUBSIDIARY ENTITY OF THAT CORPORATION, AND TO  
5 STANDARDIZE THE EVIDENCE REQUIRED TO PROVE A DEBT.";

6  
7 and on page 12, line 46 through page 13, line 2, by rewriting the lines to read:

8  
9 **"PART VII: STANDARDIZE THE EVIDENCE TO PROVE A DEBT**

10 **SECTION 7.(a) G.S. 58-70-90 reads as rewritten:**

11 **"§ 58-70-90. Definitions.**

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

- 13 (1) "Collection agency" means a Collection agency. – A collection agency as  
14 defined in G.S. 58-70-15 which engages, directly or indirectly, in debt  
15 collection from a consumer.
- 16 (2) "Consumer" means an Consumer. – An individual, aggregation of individuals,  
17 corporation, company, association, or partnership that has incurred a debt or  
18 alleged debt.
- 19 (2a) Credit card debt. – A debt stemming from a revolving or open-end credit card  
20 account pursuant to which a creditor reasonably contemplates repeated  
21 transactions, which prescribes the terms of such transactions, and which  
22 provides for a finance charge which may be computed from time to time on  
23 the outstanding unpaid balance.
- 24 (3) "Debt" means any Debt. – Any obligation owed or due or alleged to be owed  
25 or due from a consumer.
- 26 (4) Itemized accounting. – If the debt has not been charged-off, the itemized  
27 accounting is an accounting of the amount claimed to be owed, including the  
28 amount of the principal, the amount of any interest, fees or charges, and  
29 whether the charges were imposed by the original creditor, a debt collector, or  
30 a subsequent owner of the consumer debt. If the debt has been charged off,  
31 the itemized accounting is: (i) the charge-off balance; (ii) any post charge-off  
32 interest and fees; (iii) any post charge-off payments or credits; and (iv) the



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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."

**SECTION 7.(b)** G.S. 58-70-130 reads as rewritten:

**"§ 58-70-130. Civil liability.**

...

(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.

...."

**SECTION 7.(c)** G.S. 58-70-145 reads as rewritten:

**"§ 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~~ 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 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."

**SECTION 7.(d)** G.S. 58-70-150 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 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~~ 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."

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1           **SECTION 7(e).** G.S. 58-70-155 reads as rewritten:  
2   "**§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor**  
3   **under this Part.**

4           ...

5           (b) ~~The~~If the claim is not based on a credit card debt, the only evidence sufficient to  
6 establish the amount and nature of the debt shall be properly authenticated business records that  
7 satisfy the requirements of Rule 803(6) of the North Carolina Rules of Evidence. The  
8 authenticated business records shall include at least all of the ~~following items:~~following:

- 9           (1) The original account number.
- 10           (2) The original creditor.
- 11           (3) The amount of the original debt.
- 12           (4) An itemization of charges and fees claimed to be owed.
- 13           (5) The original charge-off balance, or, if the balance has not been charged off,  
14 an explanation of how the balance was calculated.
- 15           (6) An itemization of post charge-off additions, where applicable.
- 16           (7) The date of last payment.
- 17           (8) The amount of interest claimed and the basis for the interest charged.

18           (c) If the claim is based on a credit card debt, the only evidence sufficient to establish the  
19 amount and nature of the debt shall be properly authenticated business records that satisfy the  
20 requirements of Rule 803(6) of the North Carolina Rules of Evidence. The authenticated business  
21 records shall include at least all of the following:

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

28           (d) If a debt buyer fails to satisfy the requirements of this section, the debt buyer's motion  
29 for summary judgment or default judgment shall be denied and any judgments entered in favor  
30 of the non-compliant debt buyer are void and subject to vacatur under Rule 60(b) of the Rules of  
31 Civil Procedure."

32           **SECTION 7.(f)** This section becomes effective on January 1, 2024, and applies to  
33 debt collection activities undertaken and actions filed on or after that date.

34

35 **PART VIII. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS**

36           **SECTION 8.(a)** The Revisor of Statutes shall cause to be printed, as annotations to  
37 Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to  
38 the Model Business Corporation Act and all explanatory comments of the drafters of this act as  
39 the Revisor may deem appropriate.

40           **SECTION 8.(b)** Except as otherwise provided, this act is effective when it becomes  
41 law."

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SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

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and vote information, is available in the  
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