

The Basics

- Higher copays and deductibles, more health savings plans, and more uninsured patients have resulted in more payment from patients than ever before.
- This results in an increased collections burden on practices that comes with significant expense.
- Practices now are in the position of figuring out deductibles and co-insurance obligations for the patient.
- Consumer-driven healthcare results in significant refunds (or in the alternative, waiting a long time to be paid) and possibly estimating the mix of pre-tax and taxed dollars.
- More self-pay revenue is written off than insurance-paid claims.
- The choice is to limit self-pay business or implement “best practices” to improve collections.

Fee Schedules and Discounts

- Should have one fee schedule with negotiated discounts
- Must preserve your “usual” charges so as not to lower your reimbursement from Medicare or MCOs

An Ideal Process per the AMA

The AMA has a publication for Members that outlines 9 opportunities to educate patients and thereby increase your chances of collection. (https://ssl3.ama-assn.org/apps/ldap/login.cgi/id/members-staff?URL=http://www.ama-assn.org/ama1/x-ama/upload/mm/368/patient_edu.pdf&M=GET)

- Opportunity #1 – Pre-registration (on the phone)
- Opportunity #2 – Practice Website (collect online payments)
- Opportunity #3 – Welcome letter
- Opportunity #4 – Insurance verification
- Opportunity #5 – Patient appointment reminder
- Opportunity #6 – Patient check-in
- Opportunity #7 – Patient check-out
- Opportunity #8 – Claims Processing/Patient Invoice/Claims Collections
- Opportunity #9 – Physician appeal letter if there is a medical necessity denial

What do your Managed Care Contracts say about collecting upfront?

My Experience as a Patient

- How long I waited to pay my bill
- Which bill I paid first, second and last and why

Collections Law (for when that doesn't work)

- State Law
- Fair Debt Collections Act
- Federal Truth in Lending Act
 - Credit must be extended
 - The extension must be done “regularly” which is defined as more than 25 times per year
 - The credit must be subject to a finance charge or payable by a written agreement in more than 4 installments
 - The credit must be extended primarily for personal, family, or household purposes

If all else fails, can I sue them?

- The NC Medical Board's opinion
- Small Claims Court
 - File your claim, have the defendant served and appear before the magistrate on the scheduled day.
 - Once you obtain the judgment, they must pay you or the court within 10 days. If they don't you have the clerk issue an order to the sheriff called an execution. This enables the sheriff to make a demand and seize cash, vehicles, goods or other property.
 - In order for this to happen, you will need to file a Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property.

Article 2.

Prohibited Acts by Debt Collectors.

§ 75-50. Definitions.

The following words and terms as used in this Article shall be construed as follows:

- (1) "Consumer" means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes.
- (2) "Debt" means any obligation owed or due or alleged to be owed or due from a consumer.
- (3) "Debt collector" means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 70, Chapter 58 of the General Statutes. (1977, c. 747, s. 4; 1989, c. 770, s. 15.)

§ 75-51. Threats and coercion.

No debt collector 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 subjected 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. (1977, c. 747, s. 4.)

§ 75-52. Harassment.

No debt collector 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 unfair acts include, but are 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 debt collector does not have a telephone number where the consumer can be reached during the consumer's nonworking hours. (1977, c. 747, s. 4.)

§ 75-53. Unreasonable publication.

No debt collector 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 written permission of the debtor or his attorney given after default;
 - b. To persons employed by the debt collector, 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 and lives in the same household with such parent;
 - 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 debt collector except as otherwise provided in this Article.
- (3) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes and the publication and distribution of otherwise permissible "stop lists" to the point-of-sale locations where credit is extended, or by advertising

for sale any claim to enforce payment thereof or in any other manner other than through legal process. (1977, c. 747, s. 4; 1979, c. 910.)

§ 75-54. Deceptive representation.

No debt collector 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 (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.
- (2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt.
- (3) Falsely representing that the debt collector has in his 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 collector 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 debt collector or his business. (1977, c. 747, s. 4.)

§ 75-55. Unconscionable means.

No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means 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 debt collector'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 (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.
- (4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim. (1977, c. 747, s. 4.)

§ 75-56. Application.

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. 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) shall not be imposed, nor shall damages be trebled for any violation under this Article. 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. (1977, c. 747, s. 4; 1983, c. 417, s. 1; 1985 (Reg. Sess., 1986), c. 802; 1991, c. 68, s. 1; 1998-215, s. 101.)

§§ 75-57 through 75-59. Reserved for future codification purposes.



THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sec.

- 801. Short Title
- 802. Congressional findings and declaration of purpose
- 803. Definitions
- 804. Acquisition of location information
- 805. Communication in connection with debt collection
- 806. Harassment or abuse
- 807. False or misleading representations
- 808. Unfair practice
- 809. Validation of debts
- 810. Multiple debts
- 811. Legal actions by debt collectors
- 812. Furnishing certain deceptive forms
- 813. Civil liability
- 814. Administrative enforcement
- 815. Reports to Congress by the Commission
- 816. Relation to State laws
- 817. Exemption for State regulation
- 818. Effective date

§ 801. Short Title [15 USC 1601 note]

This title may be cited as the "Fair Debt Collection Practices Act."

§ 802. Congressional findings and declarations of purpose [15 USC 1692]

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.
- (e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 803. Definitions [15 USC 1692a]

As used in this title --

- (1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information [15 USC 1692b]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) **COMMUNICATION WITH THE CONSUMER GENERALLY.** Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

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

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

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

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

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse [15 USC 1692d]

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)¹ of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 807. False or misleading representations [15 USC 1692e]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of --

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure 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, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 808. Unfair practices [15 USC 1692f]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 809. Validation of debts [15 USC 1692g]

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

§ 810. Multiple debts [15 USC 1692h]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors [15 USC 1692j]

(a) Any debt collector who brings any legal action on a debt against any consumer shall --

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability [15 USC 1692k]

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures

reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement [15 USC 1692f]

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission [15 USC 1692m]

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

§ 817. Exemption for State regulation [15 USC 1692o]

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

§ 818. Effective date [15 USC 1692 note]

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved September 20, 1977

ENDNOTES

1. So in original; however, should read "604(a)(3)."

LEGISLATIVE HISTORY:

Public Law 95-109 [H.R. 5294]

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).

SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:

Sept. 20, Presidential statement.

AMENDMENTS:

SECTION 621, SUBSECTIONS (b)(3), (b)(4) and (b)(5) were amended to transfer certain administrative enforcement responsibilities, pursuant to Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 166; Pub. L. 95-630, Title V, § 501, November 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(h), Oct. 4, 1984, 98 Stat. 708.

SECTION 803, SUBSECTION (6), defining "debt collector," was amended to repeal the attorney at law exemption at former Section (6)(F) and to redesignate Section 803(6)(G) pursuant to Pub. L. 99-361, July 9, 1986, 100 Stat. 768. For legislative history, see H.R. 237, HOUSE REPORT No. 99-405 (Comm. on Banking, Finance and Urban Affairs). CONGRESSIONAL RECORD: Vol. 131 (1985): Dec. 2, considered and passed House. Vol. 132 (1986): June 26, considered and passed Senate.

SECTION 807, SUBSECTION (11), was amended to affect when debt collectors must state (a) that they are attempting to collect a

debt and (b) that information obtained will be used for that purpose, pursuant to Pub. L. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996).

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File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division-Small Claims

_____ County

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	\$	
Interest Owed (if any)	\$	
Total Amount Owed	\$	0.00

(check one below)

County	Telephone No.	<input type="checkbox"/> On An Account (attach a copy of the account)	Date From Which Interest Due	Interest Rate	
VERSUS Name And Address Of Defendant 1 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation		<input type="checkbox"/> For Goods Sold And Delivered Between	Beginning Date	Ending Date	Interest Rate
		<input type="checkbox"/> For Money Lent	Date From Which Interest Due		Interest Rate
County		<input type="checkbox"/> On a Promissory Note (attach copy)	Date Of Note	Date From Which Interest Due	Interest Rate
		<input type="checkbox"/> For a Worthless Check (attach a copy of the check)			

County	Telephone No.	<input type="checkbox"/> For conversion (describe property)
Name And Address Of Defendant 2 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation		<input type="checkbox"/> Other: (specify)

County	Telephone No.
Name And Address Of Plaintiff's Attorney	
I demand to recover the total amount listed above, plus interest and reimbursement for court costs.	

Date _____ Signature Of Plaintiff Or Attorney _____

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court for more than \$5,000.00 excluding interest and costs.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.
6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.
8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.
9. **10. The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

_____ County

In The General Court Of Justice
District Court Division - Small Claims

Plaintiff(s)

MAGISTRATE SUMMONS

ALIAS AND PLURIES SUMMONS

G.S. 7A-217, -232; 1A-1, Rule 4

VERSUS

Defendant(s)

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

TO:

Name And Address Of Defendart 1

TO:

Name And Address Of Defendart 2

A Small Claim Action Has Been Commenced Against You!

You are notified to appear before the magistrate at the specified date, time and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint.

You may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate.

If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.

Date of Trial

Time Of Trial

AM PM

Location Of Court

Name And Address Of Plaintiff Or Plaintiff's Attorney

Date Issued

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Other manner of service: *(specify)*.

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Other manner of service: *(specify)*.

Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY

- Service was made by mailing by first class mail a copy of the summons and complaint to the defendant(s) and by posting a copy of the summons and complaint at the following premises.

<i>Date Served</i>	<i>Name(s) Of The Defendant(s) Served By Posting</i>
--------------------	--

Address Of Premises Where Posted

<i>Service Fee</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
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<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
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<i>Date Of Return</i>	<i>County Of Sheriff</i>
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