

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 414

Short Title: Allow Attorneys' Fees in Business Contracts. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Judiciary I.

March 24, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN  
3 BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER THE LAWS OF  
4 THIS STATE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The purpose of this act is to validate reciprocal attorneys' fees  
7 provisions in business contracts.

8 SECTION 2. Article 3 of Chapter 6 of the General Statutes is amended by adding a  
9 new section to read:

10 "**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

11 (a) As used in this section, the following definitions apply:

12 (1) Business contract. – A contract entered into primarily for business or  
13 commercial purposes. The term does not include a consumer contract, an  
14 employment contract, or a contract to which a government or a  
15 governmental agency of this State is a party.

16 (2) Consumer contract. – A contract entered into by one or more individuals  
17 primarily for personal, family, or household purposes.

18 (3) Employment contract. – A contract between an individual and another party  
19 to provide personal services by that individual to the other party, whether the  
20 relationship is in the nature of employee-employer or principal-independent  
21 contractor.

22 (4) Reciprocal attorneys' fees provisions. – Provisions in any written business  
23 contract by which each signatory to the contract agrees, upon the terms and  
24 subject to the conditions set forth in the contract that are made applicable to  
25 all parties, to pay or reimburse the other parties for attorneys' fees and  
26 expenses incurred by reason of any suit, action, proceeding, or arbitration  
27 involving the business contract.

28 (b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable  
29 for the recovery of reasonable attorneys' fees and expenses.

30 (c) If a business contract governed by the laws of this State contains a reciprocal  
31 attorneys' fees provision, the court or arbitrator in any suit, action, proceeding, or arbitration  
32 involving the business contract may award reasonable attorneys' fees in accordance with the  
33 terms of the business contract. In determining reasonable attorneys' fees and expenses under  
34 this section, the court or arbitrator may consider all relevant facts and circumstances, including,  
35 but not limited to, the following:

36 (1) The amount in controversy and the results obtained.



- 1           (2)    The reasonableness of the time and labor expended, and the billing rates  
2                    charged, by the attorneys.
- 3           (3)    The novelty and difficulty of the questions raised in the action.
- 4           (4)    The skill required to perform properly the legal services rendered.
- 5           (5)    The relative economic circumstances of the parties.
- 6           (6)    Settlement offers made prior to the institution of the action.
- 7           (7)    Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil  
8                    Procedure and whether judgment finally obtained was more favorable than  
9                    such offers.
- 10          (8)    Whether a party unjustly exercised superior economic bargaining power in  
11                    the conduct of the action.
- 12          (9)    The timing of settlement offers.
- 13          (10)   The amounts of settlement offers as compared to the verdict.
- 14          (11)   The extent to which the party seeking attorneys' fees prevailed in the action.
- 15          (12)   The amount of attorneys' fees awarded in similar cases.
- 16          (13)   The terms of the business contract.
- 17          (d)    Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory  
18                    presumption or provision in the business contract providing for a stated percentage of the  
19                    amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business  
20                    contract contains reciprocal attorneys' fees provisions.
- 21          (e)    Nothing in this section shall in any way make valid or invalid attorneys' fees  
22                    provisions in consumer contracts or in any note, conditional sale contract, or other evidence of  
23                    indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note,  
24                    conditional sale contract, or other evidence of indebtedness that is otherwise governed by  
25                    G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect  
26                    to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but may recover  
27                    only once for the same attorneys' fees and expenses."

28                    **SECTION 3.** This act becomes effective October 1, 2011.