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SENATE BILL 414
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Short Title: Allow Attorneys' Fees in Business Contracts.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER THE LAWS OF THIS STATE.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

(4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract by which each party to the contract agrees, in the manner set out in subsection (b) of this section, upon the terms and subject to the conditions set forth in the contract that are made applicable to all parties, to pay or reimburse the other parties for attorneys' fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract.

(b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses only if all of the parties to the business contract sign by hand the business contract. In any suit, action, proceeding, or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the monetary damages awarded.



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

- 7 (1) The amount in controversy and the results obtained.
- 8 (2) The reasonableness of the time and labor expended, and the billing rates
9 charged, by the attorneys.
- 10 (3) The novelty and difficulty of the questions raised in the action.
- 11 (4) The skill required to perform properly the legal services rendered.
- 12 (5) The relative economic circumstances of the parties.
- 13 (6) Settlement offers made prior to the institution of the action.
- 14 (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil
15 Procedure and whether judgment finally obtained was more favorable than
16 such offers.
- 17 (8) Whether a party unjustly exercised superior economic bargaining power in
18 the conduct of the action.
- 19 (9) The timing of settlement offers.
- 20 (10) The amounts of settlement offers as compared to the verdict.
- 21 (11) The extent to which the party seeking attorneys' fees prevailed in the action.
- 22 (12) The amount of attorneys' fees awarded in similar cases.
- 23 (13) The terms of the business contract.

24 (d) Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory
25 presumption or provision in the business contract providing for a stated percentage of the
26 amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business
27 contract contains reciprocal attorneys' fees provisions.

28 (e) Nothing in this section shall in any way make valid or invalid attorneys' fees
29 provisions in consumer contracts or in any note, conditional sale contract, or other evidence of
30 indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note,
31 conditional sale contract, or other evidence of indebtedness that is otherwise governed by
32 G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect
33 to recover attorneys' fees and expenses either under this section or G.S. 6-21.2 but may recover
34 only once for the same attorneys' fees and expenses.

35 (f) In any suit, action, proceeding, or arbitration primarily for the recovery of monetary
36 damages, the award of reasonable attorneys' fees may not exceed the amount in controversy.

37 (g) Nothing in this section shall in any way make valid or invalid attorneys' fees
38 provisions in a contract of insurance governed by Chapter 58 of the General Statutes."

39 **SECTION 3.** This act becomes effective October 1, 2011, and applies to business
40 contracts entered into on or after that date.