

# FORUM

## Why thousands of average citizens could get dragged into court by controversial "debt buying" legislation



**Rob Schofield**  
Guest Columnist

Debt buying' legislation is threatening consumers with court system spam

If you thought that the ignominy of being sued for "bad debt" and all the fun things that come with it is a phenomenon that only afflicts poor people and/or those desperate or gullible enough to get sucked into the vortex of predatory, high-cost loans, it may be time to think again.

Indeed, if the sponsors of two bills in the General Assembly and the giant national debt collection outfits behind them get their way, the "excitement" of the experience could soon be a part of your life and/or someone you know or love. In many parts of the country with weak consumer protection laws, this is already the case.

### The "debt buying" industry

At issue is the subject of predatory "debt buyers" – multimillion dollar collection mills that buy up old debts (both real and fictitious) and try to collect (i.e. squeeze out) what they can.

Here's the rather polite way the business was described in a 2014 report from the Center for Responsible Lending [1]:

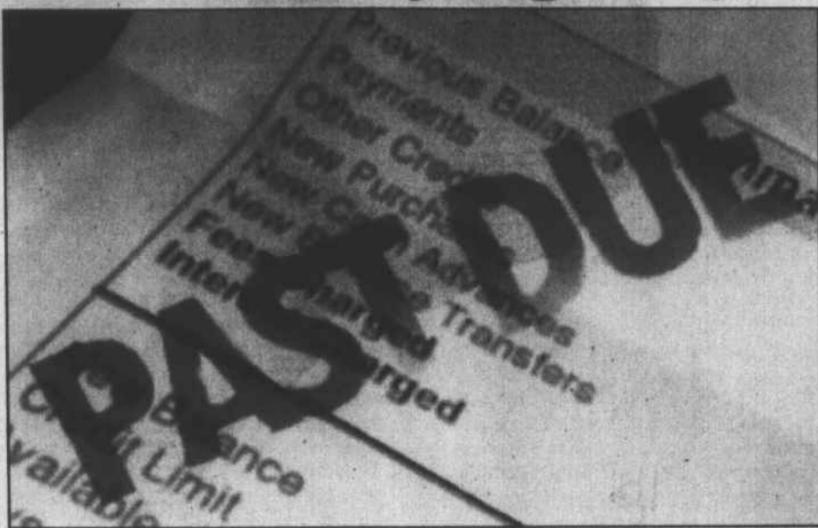
"Debt buyers are specialized companies that purchase charged-off or other delinquent debt from credit card companies, banks, and other creditors for pennies-on-the-dollar. These companies then attempt to collect the debts themselves or through collection agencies or law firms. Some debt buyers also repackage and sell the debt they have bought to another debt buyer, either almost immediately or after already having attempted to collect the debt."

The report goes on to explain that while credit card debt is the debt buying industry's bread and butter, these outfits also purchase student loans, medical debt, utility and phone bills, tax liens, car loans, and mortgage and auto deficiencies.

"So what's the problem?" you ask. "Isn't this just good old American capitalism working its magic?"  
Not exactly.

The problem – as it is in so many industries – isn't necessarily the basic concept; it's how the business has come to work in practice. Again, here's the Center for Responsible Lending report:

"When debt buyers acquire portfolios of charged-off debt, they rarely purchase documentation of the debts, but instead purchase an electronic file containing limited information on all of the debts in the portfolio. These portfolios are typically sold "as is"; often, account information is inaccurate, outdated, or missing, particularly if the debt is resold multiple times.



The inaccuracies and lack of basic information—as well as the collection tactics used by debt buyers—result in consumers being harassed and wrongly sued for debts they do not owe or have already paid or settled, and courts around the country are overwhelmed by a flood of cases filed against consumers."

An article on the international news website Reuters ("The sleazy world of predatory debt buyers" [2]) put it less gently back in 2010:

"These institutions make hundreds of millions of dollars by suing people in low-income neighborhoods, often without properly serving them with notice that they're being sued. When the alleged debtor doesn't show up for court, the debt buyers get a default judgment, and start attaching bank accounts and garnishing wages. Often they do this successfully even when the debt is not legitimate"

In other words, the debt buyers aren't really immersing themselves in the details of these debts and exploring in great detail how to target genuine deadbeats with a real ability to pay. Instead, they simply buy up old debts "by the gross" (often from other debt buyers), throw a vast number of claims at the wall (the courts system) and see what "sticks." Many of the "debts" aren't even valid. The whole thing is akin to a kind of justice system "spam."

### The situation in North Carolina

Right now in North Carolina, thanks to a bipartisan 2009 consumer protection law that is one of the strongest in the country, the worst industry practices are kept away. Prior to that time, debt buyers flooded North Carolina courts with lawsuits even where they had no actual proof that the consumer owed the debt. Many suits were filed against the wrong people, or people who had already paid or settled the debt. Many of these debts were old and way past the statute of limitations (the date set by law after which a right to sue expires).

That these practices resulted in big cash for debt buyers isn't surprising. In many instances, debtors simply did not

understand why they had been sued, or what they needed to do to defend themselves. Most consumers, of course, either could not afford an attorney or find one to take such a case. In the majority of cases, the debt buyer simply got a "default judgment" (which is what happens when the consumer fails to respond to the lawsuit) or a "summary judgment" when the consumer appeared unrepresented.

The bipartisan 2009 law, however, changed things. North Carolina became the first state in the nation to protect consumers from these frequently frivolous lawsuits with some basic, common sense protections. The law simply requires that, before debt buyers come into our court system, they must have proof that the consumer owes the debt, how much they owe, and how the total is calculated. Before they can get a "default judgment" or "summary judgment" in court, even if the consumer has failed to appear, they have to prove that they are entitled to the amount they claim is owed.

### Rolling back the protections?

Yesterday (Tuesday, April 28), the House Banking Committee heard an industry-driven proposal [3] ( [4]see the Senate version) that would roll back these protections. Under the bill, instead of proving that the consumer owes the amount claimed, the debt buyer would be able to submit a "charge-off" statement. Such statements merely summarize the amounts on the last credit card statement. There is nothing to explain how much was incurred for purchases, how the interest was calculated, or what the fees were that the consumer agreed to pay.

As consumer advocates noted at the hearing, the proposal would allow debt buyers to submit unreliable or fabricated evidence to the court. Under current North Carolina law, debt buyers have to go by the rules of evidence applicable to any litigant before they submit documents to the court. The new legislation removes that requirement.

The results that such changes would produce are predictable. A recent review of

court records in New York (where laws are much weaker) found that some lawsuits filed by debt buyers included fabricated credit card statements created years after borrowers' relationships with the creditors in question had ended.

But wait, it gets worse. The proposed legislation also allows a debt buyer to contact consumers on debts that are past the statute of limitations. Debt buyers claim that this provision will help consumers so they can get old debts cleared off their credit reports, but as consumer advocates rightfully point out, paying off a debt that appears on a credit report does NOT clear it off the report—it actually makes it stay on the report even longer.

### Cause for optimism going forward?

One small bit of good news surrounding this issue is that no vote was taken in yesterday's committee. Rather than simply ramming the bill through as is so often the pattern in the General Assembly these days, the committee, which is chaired by Rep. Julia Howard (an occasional maverick on some issues – especially consumer protection), actually took some time to hear significant outside testimony.

Let's hope lawmakers got the message and now recognize the danger in subjecting their constituents to this particular brand of legal system spam.

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URLs in this post:

[1] a 2014 report from the Center for Responsible Lending: <http://www.responsiblelending.org/state-of-lending/reports/11-Debt-Collection.pdf>

[2] ("The sleazy world of predatory debt buyers": <http://blogs.reuters.com/felix-salmon/2010/05/25/the-sleazy-world-of-predatory-debt-buyers/>)

[3] an industry-driven proposal: <http://www.ncleg.net/gascripts/BillLookUp/Session=2015&BillID=H541>

[4] here: <http://www.ncleg.net/gascripts/BillLookUp/Session=2015&BillID=H511>

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## \$400 million surplus will test McCrory's leadership ability



**Chris Fitzsimon**  
Guest Columnist

The unexpected good news last week that the state will have a \$400 million surplus at the end of the fiscal year presents another interesting test of Gov. Pat McCrory's leadership ability.

McCrory wants to use part of the surplus to reinstate the tax deduction for medical expenses for seniors, give raises to prison guards and other select groups of state employees, restore the state historic tax credit program, and fund infrastructure projects.

House leaders seem inclined to go along with the proposal from McCrory, who also wants to put a significant percentage of the surplus in the state's savings account.

Senate leaders are all for the savings idea, but don't seem too thrilled with restoring the tax deduction for medical expenses and have said many times they



oppose bringing back historic tax credits even though the program creates jobs and is popular with developers and conservationists alike.

McCrory has been crisscrossing the state for months trying to build support for the tax credit program but key senators have so far been unwilling to soften their opposition.

And the problem isn't money anyway; it is philosophical. Senate leaders are resisting any changes to the 2013 tax reform package that ended several credits and deductions while giving corporations and wealthy individuals huge tax breaks.

Despite McCrory's effort to reinstate the historic tax credit, the battle over the medical deduction for seniors may be the most explosive politically. Lawmakers were flooded by calls from seniors around Tax Day upset that the end of the deduction meant they were paying more in state taxes despite the claims by legislators that everybody received a tax cut.

Restoring the deduction would cost roughly \$40 million a year.

One other factor complicating McCrory's request is that the budget surplus is one-time money that shouldn't be used to

pay for ongoing expenses like tax credits and salary increases.

Lawmakers could use some of the projected revenue growth in next year's budget to pay for McCrory's ideas and save the surplus for one-time expenses, which would be the more prudent course.

But that would still mean that senators would have to soften their philosophical opposition to the tax credits and deductions, and there's no sign of that on the horizon.

And all this comes as McCrory continues to flounder in his Number One objective: to convince lawmakers to approve a

package of incentives to help attract new jobs to the state.

McCrory made it clear before the General Assembly session began that he wanted the House and Senate to approve incentive legislation in the first two weeks of the session that began in January. It is now May and no new incentive legislation has reached his desk.

The House has passed a plan that includes much of what McCrory is seeking in the short run, but the Senate hasn't passed any incentive plan, despite numerous hearings before the Senate Finance

Committee.

McCrory's supporters are working hard to counter the conventional wisdom that McCrory is not really in charge in Raleigh and is often overpowered by legislative leaders.

The new talking point is that he has exerted himself more with the General Assembly this year, "getting his sea legs" as one GOP political consultant put it in a recent story in the National Journal.

But that's hard to see given that Senate leaders continue to reject McCrory's top priorities and ignore his deadlines.

The newly realized budget surplus gives McCrory some momentum. Let's see if he can use it to finally take charge of the state he was elected to lead.

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