

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS65127-LT-17 (1/30)

Short Title: Attorneys' Fees Provisions/Business Contract. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to validate reciprocal attorneys' fees provisions in written contracts that all parties are entering into for business purposes.

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 words or phrases have the listed meanings:

- (1) Business contract. – A contract that is primarily for business or commercial purposes and that is not a consumer contract.
- (2) Consumer contract. – A contract to which (i) one or more of the parties is a natural person and (ii) the money, property, services, or other subject matter of the contract are primarily for personal, family, or household purposes.
- (3) Party or parties. – Signatories or third-party beneficiaries to a contract.
- (4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract that essentially provide that, upon the terms and subject to the conditions set forth in the contract, each party shall pay to or reimburse the other parties for the attorneys' fees and expenses incurred by the other parties in connection with any suit, action, proceeding, or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of a business contract.

1 (b) Reciprocal attorneys' fees provisions in business contracts governed by State
2 law are valid and enforceable for the recovery of reasonable attorneys' fees and
3 expenses.

4 (c) The presiding judge or arbitrator in any suit or arbitration involving the
5 construction, interpretation, enforcement, reformation, or rescission of a business
6 contract governed by State law shall award reasonable attorneys' fees and expenses in
7 accordance with the terms and conditions of the reciprocal attorneys' fees provisions of
8 the business contract. In determining reasonable attorneys' fees and expenses, the
9 presiding judge or arbitrator may consider relevant facts and circumstances, including:

10 (1) The time and labor expended by the attorneys.

11 (2) The novelty and difficulty of the questions raised in the action or
12 proceeding.

13 (3) The skill required to perform properly the legal services rendered.

14 (4) The attorneys' opportunity costs in pursuing the litigation.

15 (5) The customary fee for the type of work performed.

16 (6) The attorneys' expectations at the beginning of the litigation.

17 (7) The time limitations imposed by the client or by circumstances.

18 (8) The amount in controversy and the results obtained.

19 (9) The experience, reputation, and ability of the attorneys.

20 (10) The undesirability of the case within the legal community in which the
21 suit arose.

22 (11) The nature and length of the professional relationship between the
23 attorney and client.

24 (12) The amount of attorneys' fees awarded in similar cases.

25 Reasonable attorneys' fees and expenses shall not be governed by any other
26 applicable statutory or contractual provision providing for a stated percentage of the
27 amount at issue or the amount recovered in cases in which the business contract
28 contains reciprocal attorneys' fees provisions.

29 (d) The party seeking an award of reasonable attorneys' fees and expenses shall
30 have the burden of proving, by a preponderance of the evidence, that the amount sought
31 to be recovered is reasonable, and no presumption shall be employed in favor of or
32 against the reasonableness of the amount sought. Appellate review of an award of
33 reasonable attorneys' fees and expenses shall be by an abuse of discretion standard.

34 (e) Nothing contained in this section shall in any way make valid or invalid
35 attorneys' fees provisions in consumer contracts or any note, conditional sale contract,
36 or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2.
37 Notwithstanding subsection (c) of this section, if a business contract is also a note,
38 conditional sale contract, or other evidence of indebtedness that is otherwise governed
39 by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses
40 may elect to recover attorneys' fees and expenses either under this section or
41 G.S. 6-21.2, but shall not recover attorneys' fees and expenses under both statutes."

42 **SECTION 3.** This act becomes effective October 1, 2007, and applies to
43 contracts entered into on or after that date.