

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 648
PROPOSED COMMITTEE SUBSTITUTE S648-PCS35337-TP-10

Short Title: NC Commerce Protection Act of 2013.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIMINAL OFFENSE OF EMPLOYMENT FRAUD, TO
3 CLARIFY THE CALCULATION OF INTEREST FOR ACTIONS FOR PERSONAL
4 INJURY OR WRONGFUL DEATH, TO PROHIBIT PREDATORY THIRD-PARTY
5 FINANCING OF LITIGATION BY ASSIGNMENT OF PLAINTIFF'S RIGHT TO
6 RECEIVE PROCEEDS, AND TO CREATE TRANSPARENCY IN CONTRACTS THE
7 ATTORNEY GENERAL ENTERS INTO WITH PRIVATE ATTORNEYS TO
8 REPRESENT THE STATE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 13 of Chapter 66 of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 66-67.6. Employment fraud.**

13 (a) It is unlawful for any person to willfully make false statements or representations or
14 to fail to disclose requested information as part of an employment application that the person
15 knows to be false or incomplete for the purpose of gaining access to the employer's facilities to
16 do any of the following:

17 (1) To create or produce a record that reproduces an image or sound occurring
18 within the employer's facility, including a photographic, video, or audio
19 medium record.

20 (2) To capture or remove data, paper, records, or any other documents through
21 duplication, downloading, image capture, electronic mail, electronic transfer,
22 or other means.

23 (b) A person who commits an offense under subsection (a) of this section is guilty of an
24 offense punishable as follows:

25 (1) For the first violation, the person shall be subject to a civil penalty of ten
26 thousand dollars (\$10,000).

27 (2) For a second or subsequent violation, the person shall be subject to a civil
28 penalty of fifty thousand dollars (\$50,000).

29 (c) Any recording made or information obtained pursuant to subsection (a) of this
30 section shall be turned over to local law enforcement within 24 hours of recording or
31 procurement. No recording or information submitted under this subsection shall be spliced,
32 edited, or manipulated in any way prior to its submission.

33 (d) Any person who fails to turn over a record as required by subsection (c) of this
34 section is guilty of an offense punishable as follows:

35 (1) For the first violation, the person shall be subject to a civil penalty of ten
36 thousand dollars (\$10,000).



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- 1 (3) Lawsuit loan company. – A person or entity that enters into a lawsuit loan
2 contract with a consumer. The term does not include an attorney who
3 provides professional legal services to a consumer on a contingency basis.
4 The term does include without limitation all of the following:
5 a. An affiliate or subsidiary of a lawsuit loan company.
6 b. An entity or person who purchases an interest in a lawsuit loan.
7 c. A person who acts as an agent to provide a lawsuit loan from a third
8 party for a fee.
9 d. A person who acts as an agent for a third party in providing a lawsuit
10 loan for a fee, regardless of whether approval or acceptance by the
11 third party is necessary to create a legal obligation for the third party.
12 e. Any other person or entity that the Attorney General determines is
13 engaged in a transaction that is a disguised lawsuit loan or a
14 subterfuge for the purpose of evading this Article.
15 (4) Lawsuit loan contract. – A written or oral agreement between a consumer
16 and a lawsuit loan company in which the consumer assigns, conveys, or
17 otherwise confers to the lawsuit loan company the right to receive some or
18 all of the proceeds of a settlement, insurance payment, or award of damages
19 obtained in the consumer's legal action.
20 (5) Legal action. – A bona fide civil claim for which damages may be awarded
21 to the claimant whether a lawsuit has been initiated or not. It includes any
22 settlement of a lawsuit and any agreement to not initiate a lawsuit.
23 (6) Proceeds. – The funds from a settlement, insurance payment, or award of
24 damages obtained in the consumer's legal action.

25 **§ 75-142. Lawsuit loan contracts prohibited.**

26 It is unlawful for a lawsuit loan company to enter into a lawsuit loan with a consumer with
27 respect to a legal action in which the consumer is a party. All lawsuit loan contracts are void
28 and unenforceable.

29 **§ 75-144. Penalty.**

30 A violation of G.S. 75-142 is an unfair trade practice under G.S. 75-1.1. The rights and
31 remedies provided herein are cumulative to, and not a limitation of, any other rights and
32 remedies provided by law or equity."

33 **SECTION 4.1.** Chapter 114 of the General Statutes is amended by adding a new
34 Article to read:

35 "Article 2A.

36 "Transparency in Third-Party Contracting by Attorney General.

37 **§ 114-9.2. Title.**

38 This Article shall be known and may be cited as the "Transparency in Private Attorney
39 Contracts Act (TIPAC)."

40 **§ 114-9.3. Definitions.**

41 The following definitions apply in this Article:

- 42 (1) Contingency fee contract. – A contract entered into by a State agency to
43 retain private counsel that contains a contingency fee arrangement,
44 including, but not limited to, pure contingency fee agreements and hybrid
45 agreements including a contingency fee aspect.
46 (2) Government attorney. – An attorney employed by the State as a staff
47 attorney in a State agency.
48 (3) Private attorney. – An attorney in private practice or employed by a private
49 law firm.
50 (4) State. – The State of North Carolina, including State officers, departments,
51 boards, commissions, divisions, bureaus, councils, and units of organization,

1 however designated, of the executive branch of State government and any of
2 its agents.

3 (5) State agency. – Every agency, institution, department, bureau, board, or
4 commission of the State of North Carolina authorized by law to retain
5 private counsel.

6 **"§ 114-9.4. Procurement.**

7 (a) A State agency may not enter into a contingency fee contract with a private attorney
8 unless the Attorney General makes a written determination prior to entering into the contract
9 that contingency fee representation is both cost-effective and in the public interest. Any written
10 determination shall include specific findings for each of the following factors:

11 (1) Whether there exists sufficient and appropriate legal and financial resources
12 within the Attorney General's office to handle the matter.

13 (2) The time and labor required; the novelty, complexity, and difficulty of the
14 questions involved; and the skill requisite to perform the attorney services
15 properly.

16 (3) The geographic area where the attorney services are to be provided.

17 (4) The amount of experience desired for the particular kind of attorney services
18 to be provided and the nature of the private attorney's experience with
19 similar issues or cases.

20 (b) If the Attorney General makes the determination described in subsection (a) of this
21 section, the Attorney General shall request proposals from private attorneys to represent the
22 State on a contingency fee basis, draft a written request for proposal from private attorneys, and
23 post this request for proposal prominently on the Attorney General's Web site, unless the
24 Attorney General determines that requesting proposals is not feasible under the circumstances
25 and sets forth the basis for this determination in writing.

26 **"§ 114-9.5. Contingency fees.**

27 (a) The Attorney General may not give permission under G.S. 114-2.3 for a State
28 agency to enter into a contingency fee contract that provides for the private attorney to receive
29 an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of:

30 (1) Twenty-five percent (25%) of any damages up to ten million dollars
31 (\$10,000,000); plus

32 (2) Twenty percent (20%) of any portion of such damages between ten million
33 dollars (\$10,000,000) and fifteen million dollars (\$15,000,000); plus

34 (3) Fifteen percent (15%) of any portion of such damages between fifteen
35 million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); plus

36 (4) Ten percent (10%) of any portion of such damages between twenty million
37 dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); plus

38 (5) Five percent (5%) of any portion of such damages exceeding twenty-five
39 million dollars (\$25,000,000).

40 (b) In no event shall the aggregate contingency fee exceed fifty million dollars
41 (\$50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of
42 lawsuits filed or the number of private attorneys retained to achieve the recovery.

43 (c) A contingency fee shall not be based on penalties or civil fines awarded or any
44 amounts attributable to penalties or civil fines.

45 **"§ 114-9.6. Control.**

46 (a) The Attorney General may not give permission under G.S. 114-2.3 for a State
47 agency to enter into a contingency fee contract unless the following requirements are met
48 throughout the contract period and any extensions of the contract period:

49 (1) A government attorney retains complete control over the course and conduct
50 of the case.

- 1 (2) A government attorney with supervisory authority is personally involved in
2 overseeing the litigation.
- 3 (3) A government attorney retains the full authority to reject any decisions made
4 by the private attorney.
- 5 (4) Any defendant that is the subject of such litigation may contact the lead
6 government attorney directly, without having to confer with the private
7 attorney.
- 8 (5) A government attorney with supervisory authority for the case attends all
9 settlement conferences.
- 10 (6) Decisions regarding settlement of the case are reserved exclusively to the
11 discretion of the government attorneys and the State.

12 (b) The Attorney General shall develop a standard addendum to every contract for
13 contingency fee attorney services that shall be used in all cases, describing in detail what is
14 expected of both the contracted private attorney and the State, including, without limitation, the
15 requirements listed in subsection (a) of this section.

16 "**§ 114-9.7. Oversight.**"

17 (a) Copies of any executed contingency fee contract and the Attorney General's written
18 determination that contingency fee representation is both cost-effective and in the public
19 interest shall be posted on the Attorney General's Web site for public inspection within five
20 business days after the date the contract is executed and shall remain posted on the Web site for
21 the duration of the contingency fee contract, including any extensions or amendments of the
22 contract period. Any payment of contingency fees shall be posted on the Attorney General's
23 Web site within 15 days after the payment of those contingency fees to the private attorney and
24 shall remain posted on the Web site for at least 365 days thereafter.

25 (b) Any private attorney under contract to provide services to the State on a
26 contingency fee basis shall, from the inception of the contract until at least four years after the
27 contract expires or is terminated, maintain detailed current records, including documentation of
28 all expenses, disbursements, charges, credits, underlying receipts and invoices, and other
29 financial transactions that concern the provision of those attorney services. The private attorney
30 shall make all such records available for inspection and copying upon request in accordance
31 with G.S. 132-6. The Attorney General may take reasonable steps to protect the evidentiary
32 privileges of the State when producing these records under G.S. 132-6. In addition, the private
33 attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals
34 working on the matter in increments of no greater than one-tenth of an hour and shall promptly
35 provide these records to the Attorney General, upon request.

36 (c) By February 1 of each year, the Attorney General shall submit a report to the
37 President Pro Tempore of the Senate and the Speaker of the House of Representatives
38 describing the use of contingency fee contracts with private attorneys in the preceding calendar
39 year. The Attorney General may take reasonable steps to protect the evidentiary privileges of
40 the State when producing this report. At a minimum, the report shall:

- 41 (1) Identify each new contingency fee contract entered into during the year and
42 each previously executed contingency fee contract that remains current
43 during any part of the year.
- 44 (2) Include the name of the private attorney with whom the department has
45 contracted in each instance, including the name of the attorney's law firm.
- 46 (3) Describe the nature and status of the legal matter that is the subject of each
47 contract.
- 48 (4) Provide the name of the parties to each legal matter.
- 49 (5) Disclose the amount of recovery.
- 50 (6) Disclose the amount of any contingency fee paid.
- 51 (7) Include copies of any written determinations made under G.S. 114-9.4.

1 **"§ 114-9.8. No expansion of authority.**

2 Nothing in this Article shall be construed to expand the authority of any State agency or
3 officer or employee of this State to enter into contracts for legal representation where no
4 authority previously existed."

5 **SECTION 4.2.** G.S. 114-2.3 reads as rewritten:

6 **"§ 114-2.3. Use of private counsel limited.**

7 (a) Every agency, institution, department, bureau, board, or commission of the State,
8 authorized by law to retain private counsel, shall obtain written permission from the Attorney
9 General prior to employing private counsel. This section does not apply to counties, cities,
10 towns, other municipal corporations or political subdivisions of the State, or any agencies of
11 these municipal corporations or political subdivisions, or to county or city boards of education.

12 (b) Article 2A of this Chapter applies to any contract to retain private counsel
13 authorized by the Attorney General under this section."

14 **SECTION 5.** Section 1 of this act becomes effective December 1, 2013, and
15 applies to offenses committed on or after that date. Sections 3, 4.1, and 4.2 become effective
16 October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this
17 act is effective when it becomes law.