

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 648

Short Title: NC Commerce Protection Act of 2013. (Public)

Sponsors: Senators Jackson, Meredith, J. Davis (Primary Sponsors); and Tillman.

Referred to: Commerce.

April 4, 2013

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

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 19 of Chapter 14 of the General Statutes is amended by  
9 adding a new section to read:

10 **"§ 14-105.1. Employment fraud.**

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

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

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

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

23 (1) For the first conviction, the person is guilty of a Class 1 misdemeanor.

24 (2) For a second or subsequent conviction, the person is guilty of a Class I  
25 felony.

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

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

32 (1) For the first conviction, the person is guilty of a Class 1 misdemeanor.

33 (2) For a second or subsequent conviction, the person is guilty of a Class I  
34 felony."

35 **SECTION 2.** Chapter 75 of the General Statutes is amended by adding a new  
36 Article to read:



"Article 8."Predatory Third Party Financing of Litigation Act.**"§ 75-140. Definitions.**

The following definitions apply in this Article:

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

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

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

**"§ 75-144. Penalty.**

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

**SECTION 3.1.** Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 2A."Transparency in Third-Party Contracting by Attorney General.**"§ 114-9.2. Title.**

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

**"§ 114-9.3. Definitions.**

The following definitions apply in this Article:

- 1           (1) Government attorney. – An attorney employed by the State as a staff  
2           attorney in the Attorney General's office.  
3           (2) Private attorney. – An attorney in private practice or employed by a private  
4           law firm.  
5           (3) State. – The State of North Carolina, including State officers, departments,  
6           boards, commissions, divisions, bureaus, councils, and units of organization,  
7           however designated, of the executive branch of State government, and any  
8           of its agents.

9           **"§ 114-9.4. Procurement.**

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

- 14               (1) Whether there exists sufficient and appropriate legal and financial resources  
15               within the Attorney General's office to handle the matter.  
16               (2) The time and labor required; the novelty, complexity, and difficulty of the  
17               questions involved; and the skill requisite to perform the attorney services  
18               properly.  
19               (3) The geographic area where the attorney services are to be provided.  
20               (4) The amount of experience desired for the particular kind of attorney services  
21               to be provided and the nature of the private attorney's experience with  
22               similar issues or cases.

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

29          **"§ 114-9.5. Contingency Fees.**

30          (a) The Attorney General may not enter into a contingency fee contract that provides  
31          for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs  
32          and expenses, in excess of:

- 33               (1) Twenty-five percent (25%) of any damages up to ten million dollars  
34               (\$10,000,000); plus  
35               (2) Twenty percent (20%) of any portion of such damages between ten million  
36               dollars (\$10,000,000) and fifteen million dollars (\$15,000,000); plus  
37               (3) Fifteen percent (15%) of any portion of such damages between fifteen  
38               million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); plus  
39               (4) Ten percent (10%) of any portion of such damages between twenty million  
40               dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); plus  
41               (5) Five percent (5%) of any portion of such damages exceeding twenty-five  
42               million dollars (\$25,000,000).

43          (b) In no event shall the aggregate contingency fee exceed fifty million dollars  
44          (\$50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of  
45          lawsuits filed or the number of private attorneys retained to achieve the recovery.

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

48          **"§ 114-9.6. Control.**

49          (a) The Attorney General shall not enter into a contract for contingency fee attorney  
50          services unless the following requirements are met throughout the contract period and any  
51          extensions of the contract period:

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

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

18          **"§ 114-9.7. Oversight.**

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

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

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

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

- 1           (6)    Disclose the amount of any contingency fee paid.
- 2           (7)    Include copies of any written determinations made under G.S. 114-9.4.

3 **"§ 114-9.8. No expansion of authority.**

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

7           **SECTION 3.2.** G.S. 114-2.3 reads as rewritten:

8 **"§ 114-2.3. Use of private counsel limited.**

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

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

16           **SECTION 4.** Section 1 of this act becomes effective December 1, 2013, and  
17 applies to offenses committed on or after that date. Sections 2, 3.1, and 3.2 become effective  
18 October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this  
19 act is effective when it becomes law.