

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 648  
Commerce Committee Substitute Adopted 5/7/13

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).



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

(e) No confidential information or any other information obtained from a recording turned over to local law enforcement pursuant to subsection (c) of this section shall be admissible in any criminal proceeding for an offense based on any violations of this section nor shall it be used to initiate or facilitate the prosecution of an offense under this section. This section shall not apply to any governmental agency or law enforcement officer engaged in a lawful criminal investigation of an employer.

(f) Information obtained from a recording produced, procured, or otherwise made in violation of this section shall not be deemed a waiver of proprietary trade secrets or any legal privileges held by the employer."

**SECTION 2.** G.S. 24-5 reads as rewritten:

**"§ 24-5. Interest on judgments.**

(a) Actions on Contracts. – In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

(a1) Actions on Penal Bonds. – In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied.

(a2) Actions for Personal Injury or Wrongful Death. – In an action brought to recover damages for personal injury or wrongful death, the portion of a money judgment designated by the fact finder as compensatory damages for past economic damages bears interest from the date 90 days after the action is commenced until the judgment is satisfied. No other portion of a money judgment in an action for personal injury or wrongful death shall bear interest. Interest on any portion of a money judgment on which interest is allowed in an action for personal injury or wrongful death shall be calculated using a per annum rate of five percent (5%).

(b) Other Actions. – In an action other than contract, personal injury, or wrongful death, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, personal injury, or wrongful death, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

**SECTION 3.** Chapter 75 of the General Statutes is amended by adding a new 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.

- 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.