

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.