

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 648
Commerce Committee Substitute Adopted 5/7/13
Judiciary I Committee Substitute Adopted 6/11/14
Fourth Edition Engrossed 6/11/14
House Committee Substitute Favorable 6/25/14

Short Title: NC Commerce Protection Act of 2014.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY
3 GENERAL AND PRIVATE ATTORNEYS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 114 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 2A.

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

9 "**§ 114-9.2. Title.**

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

12 "**§ 114-9.3. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Contingency fee contract. – A contract entered into by a State agency to
15 retain private counsel that contains a contingency fee arrangement,
16 including, but not limited to, pure contingency fee agreements and hybrid
17 agreements, including a contingency fee aspect.
18 (2) Government attorney. – An attorney employed by the State as a staff
19 attorney in a State agency.
20 (3) Private attorney. – An attorney in private practice or employed by a private
21 law firm.
22 (4) State. – The State of North Carolina, including State officers, departments,
23 boards, commissions, divisions, bureaus, councils, and units of organization,
24 however designated, of the executive branch of State government and any of
25 its agents.
26 (5) State agency. – Every agency, institution, department, bureau, board, or
27 commission of the State of North Carolina authorized by law to retain
28 private counsel.

29 "**§ 114-9.4. Procurement.**

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



- 1 (1) Whether there exist sufficient and appropriate legal and financial resources
2 within the Attorney General's office to handle the matter.
- 3 (2) The time and labor required; the novelty, complexity, and difficulty of the
4 questions involved; and the skill requisite to perform the attorney services
5 properly.
- 6 (3) The geographic area where the attorney services are to be provided.
- 7 (4) The amount of experience desired for the particular kind of attorney services
8 to be provided and the nature of the private attorney's experience with
9 similar issues or cases.

10 (b) If the Attorney General makes the determination described in subsection (a) of this
11 section, the Attorney General shall request proposals from private attorneys to represent the
12 State agency on a contingency fee basis and draft a written request for proposals from private
13 attorneys, unless the Attorney General determines that requesting proposals is not feasible
14 under the circumstances and sets forth the basis for this determination in writing. A request for
15 proposals under this provision is not subject to Article 3 of Chapter 143 of the General Statutes.
16 Until the conclusion of the legal proceeding or other matter for which the services of the private
17 attorney were sought, all proposals received shall be maintained by the Attorney General and
18 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes.
19 All proposals maintained under this subsection shall be made available to the State Auditor for
20 oversight purposes, upon request.

21 (c) A private attorney who submits a proposal under this section shall simultaneously
22 pay a fee in the amount of fifty dollars (\$50.00). All fees collected under this subsection shall
23 be used for the maintenance of the Attorney General's Web site.

24 **"§ 114-9.5. Contingency Fees.**

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

- 28 (1) Twenty-five percent (25%) of any damages up to ten million dollars
29 (\$10,000,000); plus
- 30 (2) Twenty percent (20%) of any portion of such damages between ten million
31 dollars (\$10,000,000) and fifteen million dollars (\$15,000,000); plus
- 32 (3) Fifteen percent (15%) of any portion of such damages between fifteen
33 million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); plus
- 34 (4) Ten percent (10%) of any portion of such damages between twenty million
35 dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); plus
- 36 (5) Five percent (5%) of any portion of such damages exceeding twenty-five
37 million dollars (\$25,000,000).

38 (b) In no event shall the aggregate contingency fee exceed fifty million dollars
39 (\$50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of
40 lawsuits filed or the number of private attorneys retained to achieve the recovery.

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

43 **"§ 114-9.6. Control.**

44 (a) Decisions regarding disposition of the case are reserved exclusively to the discretion
45 of the State agency in consultation with a government attorney.

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

50 **"§ 114-9.7. Oversight.**

1 (a) Until the conclusion of the legal proceeding or other matter for which the services of
2 the private attorney have been retained, the executed contingency fee contract and the Attorney
3 General's written determination pursuant to G.S. 114-9.4 shall not be deemed a public record
4 within the meaning of Chapter 132 of the General Statutes. All records maintained under this
5 subsection shall be made available to the State Auditor for oversight purposes, upon request.

6 (b) The amount of any payment of contingency fees pursuant to a contingency fee
7 contract subject to this Article shall be posted on the Attorney General's Web site within 15
8 days after the payment of those contingency fees to the private attorney and shall remain posted
9 on the Web site for at least 365 days thereafter.

10 (c) Any private attorney under contract to provide services to a State agency on a
11 contingency fee basis shall maintain all records related to the contract in accordance with the
12 Revised North Carolina Rules of Professional Conduct.

13 (d) By February 1 of each year, the Attorney General shall submit a report to the
14 President Pro Tempore of the Senate and the Speaker of the House of Representatives
15 describing the use of contingency fee contracts with private attorneys in the preceding calendar
16 year. To the fullest extent possible without waiving the evidentiary privileges of the State in
17 any pending matters, the report shall:

18 (1) Identify each new contingency fee contract entered into during the year and
19 each previously executed contingency fee contract that remains current
20 during any part of the year.

21 (2) Include the name of the private attorney with whom the department has
22 contracted in each instance, including the name of the attorney's law firm.

23 (3) Describe the nature and status of the legal matter that is the subject of each
24 contract.

25 (4) Provide the name of the parties to each legal matter.

26 (5) Disclose the amount of recovery.

27 (6) Disclose the amount of any contingency fee paid.

28 (7) Include copies of any written determinations made under G.S. 114-9.4.

29 **"§ 114-9.8. No expansion of authority.**

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

33 **SECTION 2.** G.S. 114-2.3 reads as rewritten:

34 **"§ 114-2.3. Use of private counsel limited.**

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

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

42 **SECTION 3.** This act is effective when it becomes law and applies to any contract
43 to retain private counsel authorized by the Attorney General and entered into on or after that
44 date.