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SENATE BILL DRS45188-MUF-10

Short Title: Helping Consumers in Crisis Act. (Public)

Sponsors: Senators Johnson, Craven, and Alexander (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE HELPING CONSUMERS IN CRISIS ACT.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding a new article  
5 to read:

6 "Article 94.

7 "Helping Consumers in Crisis Act.

8 **"§ 58-94-1. Short title.**

9 This Article may be cited as the "Helping Consumers in Crisis Act."

10 **"§ 58-94-5. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Affiliate. – As defined in G.S. 53-244.030.  
13 (2) Charges. – The amount a consumer owes to a person in addition to the funded  
14 amount. The term includes an administrative fee, origination fee, underwriting  
15 fee, processing fee, and any other fee regardless of how the fee is  
16 denominated, including amounts denominated as interest or rate.  
17 (3) Commissioner. – The Commissioner of Insurance.  
18 (4) Consumer. – An individual residing in this State.  
19 (5) Consumer legal funding company. – A person that enters into a consumer  
20 legal funding transaction, whether or not the person is registered under this  
21 Article.  
22 (6) Consumer legal funding transaction. – A nonrecourse transaction in which a  
23 consumer assigns to a person the consumer's contingent right to receive an  
24 amount of potential net proceeds of a settlement or judgment obtained from  
25 the consumer's legal claim. This term does not include a transaction between  
26 a consumer and the consumer's immediate family member, as defined in  
27 G.S. 53-244.030.  
28 (7) Funded amount. – The amount of money provided to, or on behalf of, the  
29 consumer pursuant to a legal funding contract. The term excludes charges.  
30 (8) Gross proceeds. – The total amount of proceeds recovered by a consumer as  
31 a result of a legal claim.  
32 (9) Health care provider. – As defined in G.S. 90-21.50.  
33 (10) Legal claim. – A bona fide civil claim or cause of action.  
34 (11) Legal funding contract. – A contract for a consumer legal funding transaction.  
35 (12) Nationwide Mortgage Licensing System and Registry. – As defined in  
36 G.S. 53-244.030.



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1           (13) Net proceeds. – The amount recovered by a consumer as a result of a legal  
2 claim less costs and liens associated with either the legal claim or the  
3 underlying events giving rise to the legal claim, including any of the  
4 following:

5           a. Attorneys' fees and litigation costs associated with the legal claim.

6           b. Liens described in G.S. 58-94-25(c)(6)a. and b.

7           This definition of "net proceeds" does not affect the priority of claims or liens.

8 **"§ 58-94-10. Consumer legal funding transactions allowed.**

9           (a) A person registered as a consumer legal funding company under this Article may enter  
10 into a consumer legal funding transaction for an amount not to exceed five hundred thousand  
11 dollars (\$500,000). If the consumer obtains no net proceeds from the consumer's legal claim, the  
12 consumer is not required to repay the consumer legal funding company.

13           (b) A consumer legal funding transaction that complies with this Article is not a loan and  
14 is not subject to any provision of law governing loans or investment contracts. To the extent that  
15 this Article conflicts with any other law, this Article supersedes that law for purposes of  
16 regulating consumer legal funding transactions in this State.

17 **"§ 58-94-15. Registration; fee; financial stability.**

18           (a) A person shall not enter into a consumer legal funding transaction without first  
19 registering as a consumer legal funding company with the Commissioner in a format prescribed  
20 by the Commissioner and submitting a registration fee and proof of financial stability, as required  
21 by this section. A legal funding contract entered into by a consumer legal funding company that  
22 has not first registered under this Article is void and unenforceable. A consumer legal funding  
23 company shall comply with all provisions of this Article.

24           (b) A consumer legal funding company shall pay a nonrefundable fee of one thousand  
25 dollars (\$1,000) at the time of registration and at the time of each renewal. Registrations shall be  
26 renewed every three years.

27           (c) The Commissioner may deny a consumer legal funding company's registration or  
28 renewal of registration for failure to comply with this Article.

29 **"§ 58-94-20. Registration application.**

30           (a) Application. – Applications for registration under this Article shall be filed through  
31 the Nationwide Mortgage Licensing System and Registry in a form acceptable to the  
32 Commissioner. To be considered complete, the application shall be verified by attestation of the  
33 applicant or a designee of the applicant and shall include all of the following:

34           (1) The applicant's legal name, along with any assumed business name, principal  
35 address, including street address and mailing address, contact information,  
36 and social security number or taxpayer identification number.

37           (2) The applicant's form and place of organization, if applicable.

38           (3) A certificate of good standing from the state in which the applicant was  
39 organized, if applicable.

40           (4) A certificate of authority from the North Carolina Secretary of State to  
41 conduct business in this State, if required by Article 15 of Chapter 55 of the  
42 General Statutes, or other evidence of the applicant's registration or  
43 qualification to do business in this State.

44           (5) The qualifications and business history of the applicant and, if applicable, the  
45 business history of any person controlling the applicant, including a  
46 description of any injunction or administrative order by any state or federal  
47 authority to which the person is or has been subject.

48           (6) A record of any criminal convictions for the applicant, or in the case of an  
49 applicant that is an entity, each individual who has control of the applicant,  
50 for a 10-year period prior to the date of the application, including the  
51 applicant's consent to a federal and State criminal background check and a set

1 of the applicant's fingerprints in a form acceptable to the Commissioner. In  
2 the case of an applicant that is an entity, each individual who has control over  
3 the applicant shall consent to a federal and State criminal background check  
4 and shall submit a set of the individual's fingerprints.

5 (7) Evidence of its financial stability in the form of audited financial statements  
6 that include proof of a surety bond or irrevocable letter of credit issued and  
7 confirmed by a financial institution authorized by law to transact business in  
8 this State for fifty thousand dollars (\$50,000).

9 (8) Any additional information that the Commissioner deems relevant.

10 (b) Abandoned Application. – The Commissioner may deem an application abandoned if  
11 the applicant fails to respond to a written request for information by the Commissioner within 30  
12 days of the date of the request. The written request may be given to the applicant through the  
13 Nationwide Mortgage Licensing System and Registry or by other electronic means.

14 **"§ 58-94-25. Contracts; disclosures and requirements.**

15 (a) A legal funding contract shall be written using plain language and understandable to  
16 the average consumer who makes a reasonable effort under ordinary circumstances to read and  
17 comprehend the terms of the contract without having to obtain the assistance of a professional.

18 (b) All terms of the contract shall be completed when presented to the consumer for  
19 signature.

20 (c) The contract shall contain a written acknowledgement by the attorney retained by the  
21 consumer for the legal claim that attests to the following:

22 (1) To the best of the attorney's knowledge, the funded amounts and any charges  
23 relating to the consumer legal funding transaction have been disclosed to the  
24 consumer.

25 (2) The attorney is being paid on a contingency basis pursuant to a separate  
26 written fee agreement between the consumer and the attorney, and the  
27 consumer legal funding company is not a party to that agreement.

28 (3) Gross proceeds of the legal claim will be deposited into the client trust account  
29 of the attorney or a settlement fund established to receive the gross proceeds  
30 of the legal claim on behalf of the consumer.

31 (4) The attorney will comply with the written irrevocable instructions of the  
32 consumer with regard to the consumer legal funding transaction.

33 (5) The attorney is obligated to disburse proceeds from the legal claim and pay  
34 the complete funded amount and charges due per the terms of the legal funding  
35 contract.

36 (6) The lien of a consumer legal funding company on a consumer's legal claim  
37 has priority of liens that attach subsequent to its attachment, except for all of  
38 the following:

39 a. Attorney's liens, insurance carrier liens, health care provider liens, or  
40 liens based upon subrogation interest or right of reimbursement related  
41 to the consumer's legal claim.

42 b. Child support, Medicare, tax, or any other statutory or governmental  
43 lien.

44 (7) The attorney in the legal claim has provided no tax, public or private benefit  
45 planning, or financial advice regarding the consumer legal funding  
46 transaction.

47 (d) The failure of the attorney or the law firm retained by the consumer in the legal claim  
48 to comply with the written acknowledgement required in subsection (c) of this section renders  
49 the contract to be null and void.

50 (e) The contract remains valid and enforceable in the event the consumer terminates the  
51 consumer's attorney and proceeds pro se or retains a new attorney for the legal claim.

1 (f) Each contract shall include consumer disclosures on the first two pages, to the extent  
2 possible. The consumer disclosures shall be in a form prescribed by the Commissioner and shall  
3 include all of the following:

- 4 (1) Notification that some or all of the funded amount may be taxable.
- 5 (2) A description of the consumer's right of rescission.
- 6 (3) The total funded amount provided to the consumer under the contract.
- 7 (4) An itemization of charges.
- 8 (5) The total amount due from the consumer, in six-month intervals for 36  
9 months, including all charges and fees.
- 10 (6) A statement that there are no fees or charges to be paid by the consumer other  
11 than what is disclosed on the disclosure form.
- 12 (7) In the event the consumer seeks more than one legal funding contract, a  
13 disclosure providing the cumulative amount due from the consumer for all  
14 transactions, including charges under all contracts, if repayment is made any  
15 time after the contracts are executed.
- 16 (8) A statement that the company has no influence over any aspect of the legal  
17 claim or any settlement or resolution of the legal claim and that all decisions  
18 related to the legal claim remain solely with the consumer and the consumer's  
19 attorney.
- 20 (9) A statement that if there is no recovery of any money from the consumer's  
21 legal claim, the consumer shall owe nothing to the company.
- 22 (10) A statement that, if the net proceeds of the claim are insufficient to repay the  
23 consumer's indebtedness to the company, defined as the complete funded  
24 amount and charges, the company shall accept a reduced sum as full payment  
25 of its funded amount and charges.

26 (g) Each contract shall include all of the following provisions:

- 27 (1) Definitions of the terms "consumer," "consumer legal funding company," and  
28 "consumer legal funding transaction," as set forth in this Article.
- 29 (2) A right of rescission, allowing the consumer to cancel the contract without  
30 penalty or further obligation if, within five business days following the  
31 execution of the contract or the consumer's initial receipt of any portion of the  
32 funded amount, the consumer gives notice of the rescission to the company  
33 and returns all funds provided to the consumer by the company.
- 34 (3) An acknowledgement that the consumer is represented by an attorney in the  
35 legal claim and has had an opportunity to discuss the contract with the  
36 consumer's attorney.
- 37 (4) Located immediately above the place on the contract where the consumer's  
38 signature is required, the following in 12-point bold font:

39 "Do not sign this contract before you read it completely. Do not sign this  
40 contract if it contains any blank spaces. You are entitled to a contract with  
41 complete terms filled in before you sign this contract. You should obtain the  
42 advice of an attorney, depending on your circumstances. You may want to  
43 consult a tax, public or private benefits planning, or financial advisor  
44 regarding this transaction. You further acknowledge that your attorney has  
45 explained the terms and conditions of this consumer legal funding contract.  
46 Consumer legal funding shall not be used to pay for attorneys' fees or litigation  
47 costs related to the underlying legal claim."

48 (h) A copy of the executed contract shall promptly be delivered to the consumer's  
49 attorney.

50 **"§ 58-94-30. Prohibited acts.**

51 (a) A consumer legal funding company shall not engage in any of the following practices:

- 1           (1) Pay or offer to pay commissions, referral fees, or any other form of
- 2           consideration to any attorney, law firm, health care provider, or an employee
- 3           of a law firm or health care provider for referring a consumer to the company.
- 4           (2) Accept any commissions, referral fees, or any other form of consideration
- 5           from any attorney, law firm, health care provider, or an employee of a law
- 6           firm or health care provider.
- 7           (3) Advertise false or misleading information regarding its products or services.
- 8           (4) Receive any right to, nor make any decisions with respect to, the conduct,
- 9           settlement, or resolution of the consumer's legal claim. The right to make these
- 10          decisions remains solely with the consumer and the consumer's attorney.
- 11          (5) Knowingly pay or offer to pay for court costs, filing fees, or attorneys' fees,
- 12          either during or after the resolution of the legal claim.
- 13          (6) Fail to promptly provide copies of contract documents to the consumer or the
- 14          consumer's attorney.
- 15          (7) Provide legal advice to the consumer regarding the consumer legal funding
- 16          transaction or the underlying legal claim.
- 17          (8) Report a consumer to a credit reporting agency if insufficient funds remain
- 18          from the net proceeds to repay the company.
- 19          (9) Knowingly provide funding to a consumer who has previously assigned or
- 20          sold a portion of the consumer's right to proceeds from the consumer's legal
- 21          claim without first making payment to or purchasing a prior unsatisfied
- 22          consumer legal funding company's entire funded amount and contracted
- 23          charges, unless a lesser amount is otherwise expressly agreed to in writing by
- 24          the consumer legal funding companies. Multiple consumer legal funding
- 25          companies, however, may agree to contemporaneously provide funding to a
- 26          consumer so long as the consumer and the consumer's attorney consent to the
- 27          agreement in writing.
- 28          (10) Knowingly provide funding to a consumer for a claim in a pending class action
- 29          lawsuit.

30           (b) If an attorney, practicing in this State, represents a consumer who has engaged in a

31 consumer legal funding transaction, neither that attorney nor the attorney's law firm shall have a

32 financial interest in a consumer legal funding company or shall receive a referral fee or other

33 consideration from the company, its employees, or affiliates.

34 **"§ 58-94-35. Effect of communication on privileges.**

35           All communications between a consumer's attorney and a consumer legal funding company

36 are not discoverable and do not limit, waive, or abrogate the scope or nature of any statutory or

37 common-law privilege, including the work-product doctrine and the attorney-client privilege.

38 **"§ 58-94-40. Examinations; charges.**

39           For the purpose of protecting consumer interests and determining a consumer legal funding

40 company's financial stability and compliance with the requirements of this Article, the

41 Commissioner may conduct an examination of a consumer legal funding company. The company

42 shall reimburse the Department of Insurance all reasonable costs and expenses of the

43 examination. In unusual circumstances and in the interests of justice, the Commissioner may

44 waive reimbursement for the costs and expenses of an examination under this section.

45 **"§ 58-94-45. Commissioner's participation in nationwide registry.**

46           (a) The Commissioner shall require consumer legal funding companies to be registered

47 through the Nationwide Mortgage Licensing System and Registry (NMLS). In order to carry out

48 this requirement, the Commissioner may participate in the NMLS. For this purpose, the

49 Commissioner may establish by rule any requirements as necessary, including any of the

50 following:

- 51           (1) Background checks for any of the following:

- 1           a.     Criminal history through fingerprint or other databases.  
2           b.     Civil or administrative records.  
3           c.     Credit history.  
4           d.     Any other information as deemed necessary by the NMLS.  
5         (2)    The payment of fees to register or renew a registration through the NMLS.  
6         (3)    The setting or resetting as necessary of renewal or reporting dates.  
7         (4)    Requirements for cancelling a registration or any other activity as the  
8           Commissioner deems necessary for participation in the NMLS.

9         (b)    The Commissioner may establish relationships or contracts with the NMLS or other  
10        entities designated by the NMLS to collect and maintain records and process transaction fees or  
11        other fees related to consumer legal funding companies.

12        (c)    For the purpose of participating in the NMLS, the Commissioner may waive or  
13        modify, in whole or in part, any of the requirements of this Article and may establish new  
14        requirements as necessary to participate in the NMLS.

15        (d)    The Commissioner may enter into agreements to license the use of the proprietary  
16        software owned by the Department of Insurance to banking, mortgage, or financial services  
17        supervisory agencies of other states.

18        **"§ 58-94-50. Confidentiality of information.**

19        (a)    Notwithstanding any State law to the contrary, the Commissioner shall report  
20        enforcement actions under this Article and may report other relevant information to the  
21        Nationwide Mortgage Licensing System and Registry (NMLS).

22        (b)    The Commissioner may enter into agreements or sharing arrangements with other  
23        governmental agencies, the Conference of State Bank Supervisors, the American Association of  
24        Residential Mortgage Regulators, or other associations representing governmental agencies and  
25        may share otherwise confidential information pursuant to these written agreements.

26        (c)    The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any  
27        information provided under subsections (a) and (b) of this section, and any privilege arising under  
28        any other federal or State law with respect to the information, applies to the information after it  
29        has been disclosed to an entity described in subsection (a) or (b) of this section. Information held  
30        by the entity is not subject to disclosure under any State law governing the disclosure to the public  
31        of information held by an officer or agency of the State. The entities described in subsections (a)  
32        and (b) of this section may share information with all State and federal agencies with banking,  
33        mortgage, or financial services supervisory authority without the loss of privilege or the loss of  
34        confidentiality protections provided by State or federal law.

35        (d)    Any provision of Chapter 132 of the General Statutes relating to the disclosure of  
36        confidential supervisory information or of any information described in subsection (a) of this  
37        section that is inconsistent with this section is superseded by this section.

38        (e)    The confidentiality provisions contained in subsection (c) of this section do not apply  
39        to information relating to the employment history of and publicly adjudicated disciplinary and  
40        enforcement actions against consumer legal funding companies that are included in the NMLS  
41        for access by the public.

42        **"§ 58-94-55. Rules.**

43        The Commissioner may adopt rules that the Commissioner deems necessary for the proper  
44        enforcement of this Article. Before proposing a rule, the Commissioner shall notify all companies  
45        registered or pending registration under this Article.

46        **"§ 58-94-60. Penalties; enforcement.**

47        (a)    After notice and opportunity for hearing in accordance with Article 3A of Chapter  
48        150B of the General Statutes, the Commissioner may do any of the following:

- 49           (1)   Revoke, suspend, or refuse to renew a consumer legal funding company's  
50           registration.

- 1           (2)    Order a consumer legal funding company to cease and desist from entering  
2           into additional consumer legal funding transactions.
- 3           (3)    Assess a civil penalty of not more than one thousand dollars (\$1,000) for each  
4           violation or ten thousand dollars (\$10,000) for each violation that the  
5           Commissioner finds to be willful.
- 6           (4)    Order the consumer legal funding company to make restitution to the injured  
7           consumer.

8           (b)    The powers vested in the Commissioner by this Article are in addition to any other  
9           enforcement powers of the Commissioner.

10          (c)    A consumer legal funding company's failure to comply with the requirements of this  
11          Article is an unfair or deceptive trade practice under Chapter 75 of the General Statutes.

12          "**§ 58-94-65. Annual reports.**

13          (a)    On or before May 1 of each year, each consumer legal funding company shall file a  
14          report with the Commissioner under oath and in the form and manner prescribed by the  
15          Commissioner. The report shall include any information the Commissioner requires concerning  
16          the company's business and operations during the preceding calendar year in this State, as well  
17          as all of the following:

- 18               (1)    The number of legal funding contracts entered into.
- 19               (2)    The dollar value of funded amounts to consumers.
- 20               (3)    The dollar value of charges under each legal funding contract, itemized and  
21               including the annual rate of return.
- 22               (4)    The dollar amount and number of consumer legal funding transactions in  
23               which the realization to the company was as contracted.
- 24               (5)    The dollar amount and number of consumer legal funding transactions in  
25               which the realization to the company was less than as contracted.

26          (b)    To assist the general public with more fully understanding the nature of consumer  
27          legal funding transactions in this State, the Commissioner may summarize and analyze relevant  
28          data submitted under this section and publish the summary and analysis on the Department of  
29          Insurance's website and on the Department of Justice's website."

30          **SECTION 2.** If any provision of this act or its application to any person or  
31          circumstance is held invalid, the invalidity does not affect other provisions or applications of this  
32          act which can be given effect without the invalid provision or application, and, to this end, the  
33          provisions of this act are severable.

34          **SECTION 3.** This act becomes effective October 1, 2021.