

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

FILED SENATE
Feb 28, 2023
S.B. 176
PRINCIPAL CLERK

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SENATE BILL DRS45082-MUF-10

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

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE CONSUMERS IN CRISIS PROTECTION 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 "Consumers in Crisis Protection Act.

8 **"§ 58-94-1. Short title.**

9 This Article may be cited as the "Consumers in Crisis Protection 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. – Any fees permitted by this Article to be charged to a consumer by
14 a consumer legal funding company, regardless of how denominated, including
15 fees denominated as interest or rate.
16 (3) Commissioner. – The Commissioner of Insurance.
17 (4) Consumer. – An individual residing in this State.
18 (5) Consumer legal funding company. – A person that enters into a consumer
19 legal funding transaction with a consumer, whether or not the person is
20 registered under this Article.
21 (6) Consumer legal funding contract. – A contract for a consumer legal funding
22 transaction.
23 (7) Consumer legal funding transaction. – A nonrecourse transaction in which a
24 consumer sells an unvested, contingent future interest in the potential net
25 proceeds of a settlement or judgment obtained from a legal claim in exchange
26 for no more than four hundred thousand dollars (\$400,000) so long as all of
27 the following apply:
28 a. The consumer is required to use the funds to address personal needs or
29 household expenses.
30 b. The consumer is prohibited from using the funds to pay for attorneys'
31 fees, legal filings, legal marketing, legal document preparation or
32 drafting, appeals, expert testimony, or other litigation-related
33 expenses.
34 c. The consumer is not required to use the funds in a particular manner,
35 including to make specific payments or secure specific services.



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- 1 (8) Funded amount. – The amount of money provided to, or on behalf of, a
2 consumer pursuant to a consumer legal funding contract. The term excludes
3 charges.
- 4 (9) Gross proceeds. – The total amount of proceeds recovered by a consumer as
5 a result of a legal claim.
- 6 (10) Health care provider. – As defined in G.S. 90-21.50.
- 7 (11) Legal claim. – A civil claim or cause of action.
- 8 (12) Net proceeds. – The amount recovered by a consumer as a result of a legal
9 claim, less the following associated costs and liens:
- 10 a. Attorneys' fees and litigation costs associated with the legal claim.
- 11 b. Attorney, health care provider, or subrogation liens.
- 12 c. Child support, Medicare, tax, or other statutory or governmental liens.

13 **§ 58-94-10. Relationship with other law.**

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

18 **§ 58-94-15. Exemptions.**

19 All of the following are exempt from this Article's requirements:

- 20 (1) An immediate family member of the consumer.
- 21 (2) A bank, lender, financing entity, or other special purpose entity that either
22 provides financing to a consumer legal funding company or receives an
23 interest in a consumer legal funding from a consumer legal funding company.
- 24 (3) An attorney or accountant who provides services to a consumer.

25 **§ 58-94-20. Registration; fee; financial stability.**

26 (a) No person shall enter into a consumer legal funding transaction with a consumer
27 without first registering as a consumer legal funding company with the Commissioner, in a
28 format prescribed by the Commissioner, and submitting a registration fee and proof of financial
29 stability, as required by this Article. A consumer legal funding contract between a consumer and
30 a consumer legal funding company that has not registered under this Article is void and
31 unenforceable.

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

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

37 **§ 58-94-25. Registration application.**

38 (a) Application. – Applications for registration under this Article shall be filed in a form
39 determined by the Commissioner. To be considered complete, the application shall be verified
40 by attestation of the applicant or a designee of the applicant and shall include all of the following:

- 41 (1) The applicant's legal name, along with any assumed business name, principal
42 address, including street address and mailing address, contact information,
43 and social security number or taxpayer identification number.
- 44 (2) The applicant's form and place of organization, if applicable.
- 45 (3) A certificate of good standing from the state in which the applicant was
46 organized, if applicable.
- 47 (4) A certificate of authority from the Secretary of State to conduct business in
48 this State or other evidence of the applicant's registration or qualification to
49 do business in this State.

- 1 (5) The qualifications and business history of the applicant, including a
2 description of any injunction or administrative order by any state or federal
3 authority to which the person is or has been subject for the past 10 years.
4 (6) A record of any criminal convictions for the applicant, or in the case of an
5 applicant that is an entity, every officer of the applicant, for a 10-year period
6 prior to the date of the application, including the applicant's consent to a
7 federal and State criminal background check and a set of the applicant's
8 fingerprints in a form acceptable to the Commissioner.
9 (7) Evidence of its financial stability in the form of certified financial statements
10 by the chief financial officer, or equivalent, of the applicant that include proof
11 of a surety bond or irrevocable letter of credit issued and confirmed by a
12 financial institution authorized by law to transact business in this State for
13 fifty thousand dollars (\$50,000).
14 (8) Any additional information that the Commissioner deems relevant.
15 (b) Abandoned Application. – The Commissioner may deem an application abandoned if
16 the applicant fails to respond to a written request for information by the Commissioner within 30
17 days of the date of the request.

18 **§ 58-94-30. Contents of consumer legal funding contract.**

19 (a) Prior to entering into a consumer legal funding transaction in this State, a consumer
20 legal funding company shall file with the Commissioner a template of a consumer legal funding
21 contract.

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

26 (c) All terms of the consumer legal funding contract shall be completed when presented
27 to the consumer for signature.

28 (d) Each consumer legal funding contract shall include the following provisions:

29 (1) Definitions of the terms "consumer," "consumer legal funding company," and
30 "consumer legal funding transaction," as set forth in this Article.

31 (2) An acknowledgement that the consumer is represented by an attorney for the
32 legal claim and has had an opportunity to discuss the contract with the
33 consumer's attorney.

34 (3) A right of rescission, allowing the consumer to cancel the contract without
35 penalty or further obligation if, within 10 business days following the
36 execution of the contract or the consumer's initial receipt of any portion of the
37 funded amount, the consumer gives notice of the rescission to the company
38 and returns all funds provided to the consumer by the company.

39 (4) Located immediately above the place on the contract where the consumer's
40 signature is required, the following in 12-point bold font:

41 "Do not sign this contract before you have read it completely or if it
42 contains any blank spaces. You are entitled to a completely filled-in copy of
43 the contract. Before you sign this contract, you should obtain the advice of an
44 attorney. Depending on the circumstances, you may want to consult a tax,
45 public or private benefits planning, or financial professional. You
46 acknowledge that your attorney in the legal claim has provided no tax, public
47 or private benefit planning, or financial advice regarding this transaction.

48 You shall not use funds from this transaction to pay attorneys' fees or costs
49 related to the litigation of your claim."

50 (5) A requirement that a copy of the executed consumer legal funding contract
51 shall promptly be delivered to the consumer's attorney upon request.

1 (e) 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.
- 10 (6) A statement that no additional charges may accrue 36 months after execution
11 of the consumer legal funding contract.
- 12 (7) A statement that there are no payments owed by the consumer other than what
13 is disclosed on the disclosure form.
- 14 (8) In the event the consumer seeks more than one consumer legal funding
15 contract, a disclosure providing the cumulative amount due from the consumer
16 for all transactions, including charges under all contracts, if repayment is made
17 any time after the contracts are executed.
- 18 (9) A statement that the company has no influence over any aspect of the
19 consumer's legal claim or any settlement or resolution of the consumer's legal
20 claim and that all decisions related to the consumer's legal claim remain solely
21 with the consumer and the consumer's attorney.
- 22 (10) A statement that if there is no recovery of any money from the consumer's
23 legal claim, the consumer has no further financial obligation to the company
24 unless the consumer committed fraud against the consumer legal funding
25 company.
- 26 (11) A statement that, if the net proceeds of the claim are insufficient to repay the
27 consumer's financial obligation to the company, defined as the complete
28 funded amount and charges, the consumer is not responsible to the company
29 for any amount in excess of the net proceeds.

30 (f) The consumer legal funding contract shall contain a written acknowledgement by the
31 attorney retained by the consumer for the legal claim that attests to the following:

- 32 (1) To the best of the attorney's knowledge, the funded amounts and any charges
33 relating to the consumer legal funding transaction have been disclosed to the
34 consumer.
- 35 (2) The attorney is being paid pursuant to a separate written fee agreement
36 between the consumer and the attorney, and the consumer legal funding
37 company is not a party to that agreement.
- 38 (3) Gross proceeds of the legal claim shall be deposited into the client trust
39 account of the attorney or a settlement fund established to receive the gross
40 proceeds of the legal claim on behalf of the consumer.
- 41 (4) The attorney shall comply with the written irrevocable instructions of the
42 consumer with regard to the consumer legal funding transaction.
- 43 (5) The attorney is obligated to disburse proceeds from the legal claim and pay
44 the funded amount and charges due per the terms of the consumer legal
45 funding contract.
- 46 (6) Only liens related to the legal claim, including attorney liens, Medicare, or
47 other statutory liens, take priority over any lien of the consumer legal funding
48 company. All other liens take priority by operation of law.
- 49 (7) The attorney for the legal claim has provided no tax, public or private benefit
50 planning, or financial advice regarding the consumer legal funding
51 transaction.

1 (g) The failure of the attorney retained by the consumer for the legal claim to provide
2 written attestation as required by this section renders the contract null and void.

3 (h) A consumer legal funding contract remains valid and enforceable in the event that,
4 subsequent to execution, a consumer moves to substitute counsel or pursues a legal claim pro se.
5 **"§ 58-94-35. Nonrecourse obligation; authorized charges.**

6 (a) If a consumer obtains no recovery from the consumer's legal claim, the consumer is
7 not required to repay a consumer legal funding company unless the consumer committed fraud
8 against the consumer legal funding company. If the net proceeds of the claim are insufficient to
9 repay the consumer's financial obligation to the company, defined as the complete funded amount
10 plus charges authorized by this section, the consumer is not responsible to the company for any
11 amount in excess of the net proceeds.

12 (b) A consumer legal funding company may charge a consumer only the following:

13 (1) Upon funding, a charge not to exceed eighteen percent (18%) of the funded
14 amount and a servicing charge not to exceed three and one-half percent (3.5%)
15 of the funded amount.

16 (2) Upon every subsequent six-month anniversary, a charge not to exceed
17 eighteen percent (18%) of the funded amount and a servicing charge not to
18 exceed three and one-half percent (3.5%) of the funded amount. If, however,
19 within five days after the start of a new six-month interval, the consumer legal
20 funding company receives payment of the full amount owed by the consumer
21 for the immediately preceding six-month interval, no additional charges shall
22 be charged for the new six-month interval.

23 (3) A document preparation charge, not to exceed two hundred fifty dollars
24 (\$250.00), that may be deducted from the funded amount, to be used to defray
25 the cost of opening, funding, administering, and terminating a consumer legal
26 funding transaction.

27 (c) No charges shall accrue on a consumer legal funding transaction more than 36 months
28 after execution of the consumer legal funding contract. A consumer legal funding company,
29 however, may assess charges on any additional funding, whether by amendment to the consumer
30 legal funding contract or by execution of a new consumer legal funding contract, for 36 months
31 after the provision of the additional funding.

32 **"§ 58-94-40. Prohibited acts.**

33 A consumer legal funding company shall not do any of the following:

34 (1) Pay or offer to pay commissions, referral fees, or any other form of
35 consideration to any attorney, law firm, health care provider, or an employee
36 of a law firm or health care provider for referring a consumer to the company.

37 (2) Accept any commissions, referral fees, or any other form of consideration
38 from any attorney, law firm, health care provider, or an employee of a law
39 firm or health care provider.

40 (3) Refer, in furtherance of the initial legal funding, a consumer or potential
41 consumer to an attorney, law firm, health care provider, or an employee of a
42 law firm or health care provider; however, a consumer legal funding company
43 may direct a consumer or potential consumer to a local or state bar association
44 referral service or bona fide nonprofit legal aid organization.

45 (4) Advertise false or misleading information regarding its products or services.

46 (5) Receive any right to make any decisions with respect to or attempt to influence
47 a decision relating to the conduct, settlement, or resolution of the consumer's
48 legal claim. The right to make these decisions remains solely with the
49 consumer and the consumer's attorney.

50 (6) Knowingly pay or offer to pay for case expenses, including court costs, filing
51 fees, or attorneys' fees, either during or after the resolution of the legal claim.

- 1 (7) Fail to promptly provide copies of contract documents to the consumer or the
2 consumer's attorney upon request.
- 3 (8) Provide legal advice to the consumer regarding the consumer legal funding
4 transaction or the underlying legal claim.
- 5 (9) Report a consumer to a credit reporting agency if insufficient funds remain
6 from the net proceeds to repay the company unless the consumer has
7 committed fraud against the consumer legal funding company.
- 8 (10) Knowingly provide funding to a consumer who has previously assigned or
9 sold a portion of the consumer's right to proceeds from the consumer's legal
10 claim without first purchasing a prior unsatisfied consumer legal funding
11 company's entire funded amount and contracted charges, unless a lesser
12 amount is otherwise expressly agreed to in writing by the consumer legal
13 funding companies. Multiple consumer legal funding companies, however,
14 may agree to contemporaneously provide funding to a consumer so long as
15 the consumer and the consumer's attorney consent to the agreement in writing.
- 16 (11) Collect from a consumer any fees or charges not authorized under this Article.
- 17 (12) Sell a contract in whole or in part to a third party. However, if the consumer
18 legal funding company retains responsibility for collecting payment,
19 administering, and otherwise enforcing the consumer legal funding contract,
20 this prohibition does not apply to any of the following:
- 21 a. An assignment to a wholly owned subsidiary of the consumer legal
22 funding company.
- 23 b. An assignment to an affiliate of the consumer legal funding company
24 that is under common control.
- 25 c. The granting of a security interest under Article 9 of Chapter 25 of the
26 General Statutes or as otherwise permitted by law.

27 **"§ 58-94-45. Attorney prohibitions.**

28 An attorney retained by a consumer for a legal claim shall not have a financial interest in the
29 consumer legal funding company offering consumer legal funding to the consumer. Additionally,
30 any attorney who has referred the consumer to the consumer's retained attorney shall not have a
31 financial interest in the consumer legal funding company offering consumer legal funding to the
32 consumer. A consumer legal funding contract that violates this section is null and void, and no
33 person has a right to collect, attempt to collect, receive, or retain any funded amount or charges
34 related to the consumer legal funding.

35 **"§ 58-94-50. Effect of communication on privileges.**

36 Communications between a consumer's attorney and a consumer legal funding company
37 necessary to ascertain the status of a legal claim or a legal claim's expected value shall not be
38 discoverable by a party with whom the claim is filed or against whom the claim is asserted. This
39 section does not limit, waive, or abrogate the scope or nature of any statutory or common-law
40 privilege, including the work-product doctrine and the attorney-client privilege.

41 **"§ 58-94-55. Disclosure of consumer legal funding transactions.**

42 (a) Within 30 calendar days of receipt of a written request, a consumer shall disclose to
43 any party to a legal claim whether the consumer has entered into a consumer legal funding
44 transaction.

45 (b) If a consumer enters into a consumer legal funding transaction after responding to a
46 request pursuant to subsection (a) of this section, the consumer shall disclose this fact to the
47 requesting person within 30 calendar days after the consumer entered into the transaction.

48 **"§ 58-94-60. Discovery and admission of consumer legal funding contracts.**

49 (a) Discovery. – Consumer legal funding contracts are presumed to be discoverable in a
50 civil action, notwithstanding any agreement or provision with respect to confidentiality. A
51 consumer may seek to rebut this presumption.

1 (b) Admission. – Consumer legal funding transactions disclosed pursuant to
2 G.S. 58-94-55 and consumer legal funding contracts discovered pursuant to subsection (a) of this
3 section are presumed to be inadmissible as evidence. A party may seek to rebut this presumption.
4 **"§ 58-94-65. Examinations; charges.**

5 For the purpose of protecting consumer interests and determining a consumer legal funding
6 company's financial stability and compliance with the requirements of this Article, the
7 Commissioner may conduct an examination of a consumer legal funding company. The company
8 shall reimburse the Department of Insurance all reasonable costs and expenses of the
9 examination. In unusual circumstances and in the interests of justice, the Commissioner may
10 waive reimbursement for the costs and expenses of an examination under this section.

11 **"§ 58-94-70. Rules.**

12 The Commissioner may adopt rules necessary for the proper enforcement of this Article.
13 Before proposing a rule, the Commissioner shall notify all companies registered or pending
14 registration under this Article.

15 **"§ 58-94-75. Penalties; enforcement.**

16 (a) After notice and an opportunity for hearing, the Commissioner may do any of the
17 following if the Commissioner determines that a consumer legal funding company intentionally
18 violated any provision of this Article:

- 19 (1) Revoke, suspend, or refuse to renew a consumer legal funding company's
20 registration.
- 21 (2) Order a consumer legal funding company to cease and desist from entering
22 into additional consumer legal funding transactions.
- 23 (3) Assess a civil penalty of not more than ten thousand dollars (\$10,000) for each
24 violation. The clear proceeds of any penalty assessed pursuant to this section
25 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
26 G.S. 115C-457.2.
- 27 (4) Order the consumer legal financing company to make restitution to an injured
28 consumer.

29 (b) The powers vested in the Commissioner by this Article are in addition to and do not
30 limit the ability of the Commissioner or any other officer, employee, or agent of the State to take
31 enforcement action."

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

36 **SECTION 3.** This act becomes effective October 1, 2023.