

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 176
PROPOSED COMMITTEE SUBSTITUTE S176-PCS45354-BAf-31

Short Title: Consum. in Crisis Protect. Act/ESOPs Min. Bus.

(Public)

Sponsors:

Referred to:

March 1, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE CONSUMERS IN CRISIS PROTECTION ACT AND TO EXPAND
3 THE DEFINITIONS OF MINORITY BUSINESS AND HISTORICALLY
4 UNDERUTILIZED BUSINESS FOR PURPOSES OF PUBLIC CONTRACTS TO
5 INCLUDE ESOP COMPANIES WITH MAJORITY OWNERSHIP BY MINORITY
6 PERSONS OR SOCIALLY AND ECONOMICALLY DISADVANTAGED
7 INDIVIDUALS.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. CONSUMERS IN CRISIS PROTECTION ACT**

11 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding a new Article
12 to read:

13 "Article 94.

14 "Consumers in Crisis Protection Act.

15 **"§ 58-94-1. Short title.**

16 This Article may be cited as the "Consumers in Crisis Protection Act."

17 **"§ 58-94-5. Definitions.**

18 The following definitions apply in this Article:

- 19 (1) Affiliate. – As defined in G.S. 53-244.030.
20 (2) Charges. – Any fees permitted by this Article to be charged to a consumer by
21 a consumer legal funding company, regardless of how denominated, including
22 fees denominated as interest or rate.
23 (3) Commissioner. – The Commissioner of Insurance.
24 (4) Consumer. – An individual residing in this State.
25 (5) Consumer legal funding company. – A person that enters into a consumer
26 legal funding transaction with a consumer, whether or not the person is
27 registered under this Article.
28 (6) Consumer legal funding contract. – A contract for a consumer legal funding
29 transaction.
30 (7) Consumer legal funding transaction. – A nonrecourse transaction in which a
31 consumer sells an unvested, contingent future interest in the potential net
32 proceeds of a settlement or judgment obtained from a legal claim in exchange
33 for no more than four hundred thousand dollars (\$400,000) so long as all of
34 the following apply:
35 a. The consumer is required to use the funds to address personal needs or
36 household expenses.



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1 **b.** The consumer is prohibited from using the funds to pay for attorneys'
2 fees, legal filings, legal marketing, legal document preparation or
3 drafting, appeals, expert testimony, or other litigation-related
4 expenses.

5 **c.** The consumer is not required to use the funds in a particular manner,
6 including to make specific payments or secure specific services.

7 **(8)** Funded amount. – The amount of money provided to, or on behalf of, a
8 consumer pursuant to a consumer legal funding contract. The term excludes
9 charges.

10 **(9)** Gross proceeds. – The total amount of proceeds recovered by a consumer as
11 a result of a legal claim.

12 **(10)** Health care provider. – As defined in G.S. 90-21.50.

13 **(11)** Legal claim. – A civil claim or cause of action, including any claim that
14 triggers obligations under G.S. 58-63-15(11) or related regulations.

15 **(12)** Net proceeds. – The amount recovered by a consumer as a result of a legal
16 claim, less the following associated costs and liens:

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

18 **b.** Attorney, health care provider, or subrogation liens.

19 **c.** Child support, Medicare, tax, or other statutory or governmental liens.

20 **§ 58-94-10. Relationship with other law.**

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

25 **§ 58-94-15. Exemptions.**

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

27 **(1)** An immediate family member of the consumer.

28 **(2)** A bank, lender, financing entity, or other special purpose entity that either
29 provides financing to a consumer legal funding company or receives an
30 interest in a consumer legal funding from a consumer legal funding company.

31 **(3)** An attorney or accountant who provides services to a consumer.

32 **§ 58-94-20. Registration; fee; financial stability.**

33 **(a)** No person shall enter into a consumer legal funding transaction with a consumer
34 without first registering as a consumer legal funding company with the Commissioner, in a
35 format prescribed by the Commissioner, and submitting a registration fee and proof of financial
36 stability, as required by this Article. A consumer legal funding contract between a consumer and
37 a consumer legal funding company that has not registered under this Article is void and
38 unenforceable.

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

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

44 **§ 58-94-25. Registration application.**

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

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

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

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

23 **"§ 58-94-30. Contents of consumer legal funding contract.**

- 24 (a) Prior to entering into a consumer legal funding transaction in this State, a consumer
25 legal funding company shall file with the Commissioner a template of a consumer legal funding
26 contract.
- 27 (b) A consumer legal funding contract shall be written using plain language and
28 understandable to the average consumer who makes a reasonable effort under ordinary
29 circumstances to read and comprehend the terms of the contract without having to obtain the
30 assistance of a professional.
- 31 (c) All terms of the consumer legal funding contract shall be completed when presented
32 to the consumer for signature.
- 33 (d) Each consumer legal funding contract shall include the following provisions:
- 34 (1) Definitions of the terms "consumer," "consumer legal funding company," and
35 "consumer legal funding transaction," as set forth in this Article.
- 36 (2) An acknowledgement that the consumer is represented by an attorney for the
37 legal claim and has had an opportunity to discuss the contract with the
38 consumer's attorney.
- 39 (3) A right of rescission, allowing the consumer to cancel the contract without
40 penalty or further obligation if, within 10 business days following the
41 execution of the contract or the consumer's initial receipt of any portion of the
42 funded amount, the consumer gives notice of the rescission to the company
43 and returns all funds provided to the consumer by the company.
- 44 (4) Located immediately above the place on the contract where the consumer's
45 signature is required, the following in 12-point bold font:
- 46 "Do not sign this contract before you have read it completely or if it
47 contains any blank spaces. You are entitled to a completely filled-in copy of
48 the contract. Before you sign this contract, you should obtain the advice of an
49 attorney. Depending on the circumstances, you may want to consult a tax,
50 public or private benefits planning, or financial professional. You

1 acknowledge that your attorney in the legal claim has provided no tax, public
2 or private benefit planning, or financial advice regarding this transaction.

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

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

7 (e) Each contract shall include consumer disclosures on the first two pages, to the extent
8 possible. The consumer disclosures shall be in a form prescribed by the Commissioner and shall
9 include all of the following:

10 (1) Notification that some or all of the funded amount may be taxable.

11 (2) A description of the consumer's right of rescission.

12 (3) The total funded amount provided to the consumer under the contract.

13 (4) An itemization of charges.

14 (5) The total amount due from the consumer, in six-month intervals for 36
15 months, including all charges.

16 (6) A statement that no additional charges may accrue 36 months after execution
17 of the consumer legal funding contract.

18 (7) A statement that there are no payments owed by the consumer other than what
19 is disclosed on the disclosure form.

20 (8) In the event the consumer seeks more than one consumer legal funding
21 contract, a disclosure providing the cumulative amount due from the consumer
22 for all transactions, including charges under all contracts, if repayment is made
23 any time after the contracts are executed.

24 (9) A statement that the company has no influence over any aspect of the
25 consumer's legal claim or any settlement or resolution of the consumer's legal
26 claim and that all decisions related to the consumer's legal claim remain solely
27 with the consumer and the consumer's attorney.

28 (10) A statement that if there is no recovery of any money from the consumer's
29 legal claim, the consumer has no further financial obligation to the company
30 unless the consumer committed fraud against the consumer legal funding
31 company.

32 (11) A statement that, if the net proceeds of the claim are insufficient to repay the
33 consumer's financial obligation to the company, defined as the complete
34 funded amount and charges, the consumer is not responsible to the company
35 for any amount in excess of the net proceeds.

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

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

41 (2) The attorney is being paid pursuant to a separate written fee agreement
42 between the consumer and the attorney, and the consumer legal funding
43 company is not a party to that agreement.

44 (3) Gross proceeds of the legal claim shall be deposited into the client trust
45 account of the attorney or a settlement fund established to receive the gross
46 proceeds of the legal claim on behalf of the consumer.

47 (4) The attorney shall comply with the written irrevocable instructions of the
48 consumer with regard to the consumer legal funding transaction.

49 (5) The attorney is obligated to disburse proceeds from the legal claim and pay
50 the funded amount and charges due per the terms of the consumer legal
51 funding contract.

1 (6) Only liens related to the legal claim, including attorney liens, Medicare, or
2 other statutory liens, take priority over any lien of the consumer legal funding
3 company. All other liens take priority by operation of law.

4 (7) The attorney for the legal claim has provided no tax, public or private benefit
5 planning, or financial advice regarding the consumer legal funding
6 transaction.

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

9 (h) A consumer legal funding contract remains valid and enforceable in the event that,
10 subsequent to execution, a consumer moves to substitute counsel or pursues a legal claim pro se.
11 **§ 58-94-35. Nonrecourse obligation; authorized charges.**

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

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

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

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

29 (3) A document preparation charge, not to exceed two hundred fifty dollars
30 (\$250.00), that may be deducted from the funded amount, to be used to defray
31 the cost of opening, funding, administering, and terminating a consumer legal
32 funding transaction.

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

38 **§ 58-94-40. Prohibited acts.**

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

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

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

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

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

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

33 **"§ 58-94-45. Attorney prohibitions.**

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

41 **"§ 58-94-50. Effect of communication on privileges.**

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

47 **"§ 58-94-55. Disclosure of consumer legal funding transactions.**

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

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

4 **"§ 58-94-60. Discovery and admission of consumer legal funding contracts.**

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

8 (b) Admission. – Consumer legal funding transactions disclosed pursuant to
9 G.S. 58-94-55 and consumer legal funding contracts discovered pursuant to subsection (a) of this
10 section are presumed to be inadmissible as evidence. A party may seek to rebut this presumption.

11 **"§ 58-94-65. Examinations; charges.**

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

18 **"§ 58-94-70. Rules.**

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

22 **"§ 58-94-75. Penalties; enforcement.**

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

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

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

39 **SECTION 2.** If any provision of this Part or its application to any person or
40 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
41 Part that can be given effect without the invalid provision or application and, to this end, the
42 provisions of this Part are severable.

43 **SECTION 3.** This Part becomes effective October 1, 2023.

44
45 **PART II. EXPAND DEFINITIONS OF MINORITY BUSINESS AND HISTORICALLY**
46 **UNDERUTILIZED BUSINESS FOR PURPOSES OF PUBLIC CONTRACTS TO**
47 **INCLUDE AN ESOP COMPANY WITH MAJORITY OWNERSHIP BY MINORITY**
48 **PERSONS OR SOCIALLY AND ECONOMICALLY DISADVANTAGED**
49 **INDIVIDUALS**

50 **SECTION 4.(a)** G.S. 143-128.2 reads as rewritten:

51 **"§ 143-128.2. Minority business participation goals.**

- 1 ...
- 2 (g) As used in this section:
- 3 (1) The term "minority business" ~~means a business;~~means either of the following:
- 4 a. ~~In which at~~A business that meets both of the following conditions:
- 5 1. At least fifty-one percent (51%) of the business is owned by
- 6 one or more minority persons or socially and economically
- 7 disadvantaged individuals, or in the case of a corporation, in
- 8 which at least fifty-one percent (51%) of the stock is owned by
- 9 one or more minority persons or socially and economically
- 10 disadvantaged individuals; and
- 11 ~~b.2. Of which the~~The management and daily business operations
- 12 are controlled by one or more of the minority persons or
- 13 socially and economically disadvantaged individuals who own
- 14 it.
- 15 b. An Employee Stock Ownership Plan (ESOP) company in which at
- 16 least fifty-one percent (51%) of the stock is owned by one or more
- 17 minority persons or socially and economically disadvantaged
- 18 individuals.

19"

20 SECTION 4.(b) G.S. 143-128.4 reads as rewritten:

21 "§ 143-128.4. Historically underutilized business defined; statewide uniform certification.

22 (a) As used in this Chapter, the term "historically underutilized business" ~~means a~~
23 ~~business that meets all of the following conditions;~~means either of the following:

- 24 (1) A business that meets both of the following conditions:
- 25 a. At least fifty-one percent (51%) of the business is owned by one or
- 26 more persons who are members of at least one of the groups set forth
- 27 in subsection (b) of this section, or in the case of a corporation, at least
- 28 fifty-one percent (51%) of the stock is owned by one or more persons
- 29 who are members of at least one of the groups set forth in subsection
- 30 (b) of this section.
- 31 ~~(2)b.~~ The management and daily business operations are controlled by one
- 32 or more owners of the business who are members of at least one of the
- 33 groups set forth in subsection (b) of this section.
- 34 (2) An Employee Stock Ownership Plan (ESOP) company in which at least
- 35 fifty-one percent (51%) of the stock is owned by members of at least one of
- 36 the groups set forth in subsection (b) of this section.

37"

38 SECTION 4.(c) This Part is effective when it becomes law.

39 PART III. EFFECTIVE DATE

40 SECTION 5. Except as otherwise provided, this act is effective when it becomes
41 law.
42