

GENERAL ASSEMBLY OF NORTH CAROLINA  
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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.