

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 176
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Commerce and Insurance Committee Substitute Adopted 6/22/23
Judiciary Committee Substitute Adopted 6/27/23
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Short Title: Consum. in Crisis Protect. Act/ESOPs Min. Bus.

(Public)

Sponsors:

Referred to:

March 1, 2023

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

The General Assembly of North Carolina enacts:

PART I. CONSUMERS IN CRISIS PROTECTION ACT

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

"Article 94.

"Consumers in Crisis Protection Act.

"§ 58-94-1. Short title.

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

"§ 58-94-5. Definitions.

The following definitions apply in this Article:

- (1) Affiliate. – As defined in G.S. 53-244.030.
- (2) Charges. – Any fees permitted by this Article to be charged to a consumer by a consumer legal funding company, regardless of how denominated, including fees denominated as interest or rate.
- (3) Commissioner. – The Commissioner of Insurance.
- (4) Consumer. – An individual residing in this State.
- (5) Consumer legal funding company. – A person that enters into a consumer legal funding transaction with a consumer, whether or not the person is registered under this Article.
- (6) Consumer legal funding contract. – A contract for a consumer legal funding transaction.
- (7) Consumer legal funding transaction. – A nonrecourse transaction in which a consumer sells an unvested, contingent future interest in the potential net proceeds of a settlement or judgment obtained from a legal claim in exchange



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for no more than four hundred thousand dollars (\$400,000) so long as all of the following apply:

- a. The consumer is required to use the funds to address personal needs or household expenses.
 - b. The consumer is prohibited from using the funds to pay for attorneys' fees, legal filings, legal marketing, legal document preparation or drafting, appeals, expert testimony, or other litigation-related expenses.
 - c. The consumer is not required to use the funds in a particular manner, including to make specific payments or secure specific services.
- (8) Funded amount. – The amount of money provided to, or on behalf of, a consumer pursuant to a consumer legal funding contract. The term excludes charges.
- (9) Gross proceeds. – The total amount of proceeds recovered by a consumer as a result of a legal claim.
- (10) Health care provider. – As defined in G.S. 90-21.50.
- (11) Legal claim. – A civil claim or cause of action filed in a court of law in State or federal court, including any claim that triggers obligations under G.S. 58-63-15(11) or related regulations.
- (12) Net proceeds. – The amount recovered by a consumer as a result of a legal claim, less the following associated costs and liens:
- a. Attorneys' fees and litigation costs associated with the legal claim.
 - b. Valid health care provider liens, subrogation liens, and ERISA contractual rights of recovery.
 - c. Child support, Medicare, tax, or other statutory or governmental liens.

"§ 58-94-10. Relationship with other law.

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

"§ 58-94-15. Exemptions.

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

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

"§ 58-94-20. Registration; fee; financial stability.

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

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

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

"§ 58-94-25. Registration application.

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

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

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

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

10 (4) A certificate of authority from the Secretary of State to conduct business in
11 this State or other evidence of the applicant's registration or qualification to
12 do business in this State.

13 (5) The qualifications and business history of the applicant, including a
14 description of any injunction or administrative order by any state or federal
15 authority to which the person is or has been subject for the past 10 years.

16 (6) A record of any criminal convictions for the applicant, or in the case of an
17 applicant that is an entity, every officer of the applicant, for a 10-year period
18 prior to the date of the application, including the applicant's consent to a
19 federal and State criminal background check and a set of the applicant's
20 fingerprints in a form acceptable to the Commissioner.

21 (7) Evidence of its financial stability in the form of certified financial statements
22 by the chief financial officer, or equivalent, of the applicant that include proof
23 of a surety bond or irrevocable letter of credit issued and confirmed by a
24 financial institution authorized by law to transact business in this State for
25 fifty thousand dollars (\$50,000).

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

27 (b) Abandoned Application. – The Commissioner may deem an application abandoned if
28 the applicant fails to respond to a written request for information by the Commissioner within 30
29 days of the date of the request.

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

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

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

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

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

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

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

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

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

"Do not sign this contract before you have read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim is not obligated to provide any tax, public or private benefit planning, or financial advice regarding this transaction.

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

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

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

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

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

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

(4) An itemization of charges.

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

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

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

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

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

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

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

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

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

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

- (3) Gross proceeds of the legal claim shall be deposited into the client trust account of the attorney or a settlement fund established to receive the gross proceeds of the legal claim on behalf of the consumer.
- (4) The attorney shall comply with the written irrevocable instructions of the consumer with regard to the consumer legal funding transaction.
- (5) The attorney is obligated to disburse proceeds from the legal claim and pay the funded amount and charges due per the terms of the consumer legal funding contract.
- (6) Only liens or claims related to the legal claim, including attorney fees, liens such as Medicare, Veterans Affairs, TriCare, Medicaid, State Employees Health Plan, ERISA rights of reimbursement, medical provider liens, or other statutory liens, take priority over any contractual claim of the consumer legal funding company. All other liens take priority by operation of law.
- (7) The attorney for the legal claim is not obligated to provide any tax, public or private benefit planning, or financial advice regarding the consumer legal funding transaction.

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

(h) A consumer legal funding contract remains valid and enforceable in the event that, subsequent to execution, a consumer moves to substitute counsel or pursues a legal claim pro se.

"§ 58-94-35. Nonrecourse obligation; authorized charges.

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

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

- (1) Upon funding, a charge not to exceed eighteen percent (18%) of the funded amount and a servicing charge not to exceed three and one-half percent (3.5%) of the funded amount.
- (2) Upon every subsequent six-month anniversary, a charge not to exceed eighteen percent (18%) of the funded amount and a servicing charge not to exceed three and one-half percent (3.5%) of the funded amount. If, however, within five days after the start of a new six-month interval, the consumer legal funding company receives payment of the full amount owed by the consumer for the immediately preceding six-month interval, no additional charges shall be charged for the new six-month interval.
- (3) A document preparation charge, not to exceed two hundred fifty dollars (\$250.00), that may be deducted from the funded amount, to be used to defray the cost of opening, funding, administering, and terminating a consumer legal funding transaction.

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

"§ 58-94-40. Prohibited acts.

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

- (1) Pay or offer to pay commissions, referral fees, or any other form of consideration to any attorney, law firm, health care provider, or an employee of a law firm or health care provider for referring a consumer to the company.
- (2) Accept any commissions, referral fees, or any other form of consideration from any attorney, law firm, health care provider, or an employee of a law firm or health care provider.
- (3) Refer, in furtherance of the initial legal funding, a consumer or potential consumer to an attorney, law firm, health care provider, or an employee of a law firm or health care provider; however, a consumer legal funding company may direct a consumer or potential consumer to a local or state bar association referral service or bona fide nonprofit legal aid organization.
- (4) Advertise false or misleading information regarding its products or services.
- (5) Receive any right to make any decisions with respect to or attempt to influence a decision relating to the conduct, settlement, or resolution of the consumer's legal claim. The right to make these decisions remains solely with the consumer and the consumer's attorney.
- (6) Knowingly pay or offer to pay for case expenses, including court costs, filing fees, or attorneys' fees, either during or after the resolution of the legal claim.
- (7) Fail to promptly provide copies of contract documents to the consumer or the consumer's attorney.
- (8) Provide legal advice to the consumer regarding the consumer legal funding transaction or the underlying legal claim.
- (9) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company unless the consumer has committed fraud against the consumer legal funding company.
- (10) Knowingly provide funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from the consumer's legal claim without first purchasing a prior unsatisfied consumer legal funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise expressly agreed to in writing by the consumer legal funding companies. Multiple consumer legal funding companies, however, may agree to contemporaneously provide funding to a consumer so long as the consumer and the consumer's attorney consent to the agreement in writing.
- (11) Collect from a consumer any fees or charges not authorized under this Article.
- (12) Sell a contract in whole or in part to a third party. However, if the consumer legal funding company retains responsibility for collecting payment, administering, and otherwise enforcing the consumer legal funding contract, this prohibition does not apply to any of the following:
 - a. An assignment to a wholly owned subsidiary of the consumer legal funding company.
 - b. An assignment to an affiliate of the consumer legal funding company that is under common control.
 - c. The granting of a security interest under Article 9 of Chapter 25 of the General Statutes or as otherwise permitted by law.

"§ 58-94-45. Attorney prohibitions.

An attorney retained by a consumer for a legal claim shall not have a financial interest in the consumer legal funding company offering consumer legal funding to the consumer. Additionally, any attorney who has referred the consumer to the consumer's retained attorney shall not have a financial interest in the consumer legal funding company offering consumer legal funding to the consumer. A consumer legal funding contract that violates this section is null and void, and no

person has a right to collect, attempt to collect, receive, or retain any funded amount or charges related to the consumer legal funding.

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

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

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

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

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

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

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

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

"§ 58-94-65. Examinations; charges.

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

"§ 58-94-70. Rules.

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

"§ 58-94-75. Penalties; enforcement.

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

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

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

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

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

6
7 **PART II. EXPAND DEFINITIONS OF MINORITY BUSINESS AND HISTORICALLY**
8 **UNDERUTILIZED BUSINESS FOR PURPOSES OF PUBLIC CONTRACTS TO**
9 **INCLUDE AN ESOP COMPANY WITH MAJORITY OWNERSHIP BY MINORITY**
10 **PERSONS OR SOCIALLY AND ECONOMICALLY DISADVANTAGED**
11 **INDIVIDUALS**

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

13 **"§ 143-128.2. Minority business participation goals.**

14 ...

15 (g) As used in this section:

16 (1) The term "minority business" ~~means a business;~~ means either of the following:

17 a. ~~In which at~~ A business that meets both of the following conditions:

18 1. At least fifty-one percent (51%) of the business is owned by
19 one or more minority persons or socially and economically
20 disadvantaged individuals, or in the case of a corporation, in
21 which at least fifty-one percent (51%) of the stock is owned by
22 one or more minority persons or socially and economically
23 disadvantaged individuals; and

24 ~~b.2.~~ Of which the The management and daily business operations
25 are controlled by one or more of the minority persons or
26 socially and economically disadvantaged individuals who own
27 it.

28 b. An Employee Stock Ownership Plan (ESOP) company in which at
29 least fifty-one percent (51%) of the stock is owned by one or more
30 minority persons or socially and economically disadvantaged
31 individuals.

32 "

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

34 **"§ 143-128.4. Historically underutilized business defined; statewide uniform certification.**

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

37 (1) A business that meets both of the following conditions:

38 a. At least fifty-one percent (51%) of the business is owned by one or
39 more persons who are members of at least one of the groups set forth
40 in subsection (b) of this section, or in the case of a corporation, at least
41 fifty-one percent (51%) of the stock is owned by one or more persons
42 who are members of at least one of the groups set forth in subsection
43 (b) of this section.

44 ~~(2)b.~~ The management and daily business operations are controlled by one
45 or more owners of the business who are members of at least one of the
46 groups set forth in subsection (b) of this section.

47 (2) An Employee Stock Ownership Plan (ESOP) company in which at least
48 fifty-one percent (51%) of the stock is owned by members of at least one of
49 the groups set forth in subsection (b) of this section. An ESOP company
50 applying for certification as a historically underutilized business shall provide
51 an attestation that it meets the requirements of this subdivision together with

1 such documentation supporting the attestation as may be required by the
2 Secretary.

3 "

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

5

6 **PART III. EFFECTIVE DATE**

7 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
8 law.