



SENATE BILL 357: Helping Consumers in Crisis Act.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2021-2022 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	September 20, 2021
Introduced by:	Sens. Johnson, Craven, Alexander	Prepared by:	Bill Patterson
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 357 would regulate the operations of persons engaged in consumer legal funding transactions. Among other things, it would require a consumer legal funding company to register with the Commissioner of Insurance and would authorize a registered company to advance up to \$500,000 to a consumer who is pursuing a legal claim, to be used for expenses other than those related to the legal claim. The consumer would repay the funded amount together with any fees due under the contract entirely out of any net proceeds recovered in the legal claim, without recourse in the event that the net proceeds are insufficient to fully repay the amounts due.*

CURRENT LAW: State law does not currently regulate business transactions under which individuals in need of funds as a result of an event giving rise to a legal claim are advanced funds, in exchange for an assignment of the right to be repaid out of any recovery the consumer obtains through the legal claim.

BILL ANALYSIS:

Section 1 of the bill would add a new Article 94 in Chapter 58 of the General Statutes, entitled the "Helping Consumers in Crisis Act."

New Article 94 would:

- Define a consumer legal funding transaction as a nonrecourse transaction under which a consumer who is a North Carolina resident assigns to a person who is not an immediate family member the consumer's contingent right to receive the net proceeds of a settlement or judgment obtained from the consumer's legal claim
- Require a consumer legal funding company to register with the Commissioner of Insurance and to be registered with the Nationwide Multistate Licensing System and Registry ("NMLS")
- Require an applicant for registration to pay a \$1,000 registration fee and renewal fee, with renewal due every three years
- Authorize a registered company to enter into a consumer legal funding transaction for a funded amount not to exceed \$500,000
- Provide that a consumer legal funding transaction in compliance with Article 94 is not a loan and is not subject to any laws governing loans or investment contracts
- Define net proceeds as the amount recovered by the consumer in the legal claim, after payment of attorneys' fees, litigation costs, certain liens related to the legal claim, and liens for child support, Medicare, tax, or other statutory or governmental liens

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- Provide that if the consumer obtains no net proceeds from the legal claim, the consumer is not obligated to repay the consumer legal funding company, and if the amount of any net proceeds obtained from the legal claim is insufficient to fully repay the funded amount and charges due under the contract, the company will accept a reduced amount as full payment
- Provide that the contract must contain a provision giving the consumer the right to rescind the contract within five days from its execution
- Require the contract to include certain disclosures, including the right of rescission rescind the contract within five days, and seven written attestations made by the attorney representing the consumer in the legal claim
- Render the contract null and void if the consumer's attorney fails to provide the written attestations
- Prohibit certain acts by a consumer legal funding company, including paying or receiving any commissions from a consumer's attorney or health care provider, paying any consideration to the attorney or health care provider for referrals, reporting a consumer to a credit reporting agency, providing legal advice to the consumer, and advancing funds to be repaid from a recovery in a class action lawsuit
- Authorize the Commissioner of Insurance to participate in the NMLS and to adopt rules governing registration by consumer legal funding companies
- Require the Commissioner to report any enforcement actions against a consumer legal funding company to the NMLS
- Authorize the Commissioner to enter into agreements with other governmental agencies and associations representing them and to share otherwise confidential information pursuant to those agreements
- Provide for confidentiality of information relating to enforcement actions or information shared pursuant to agreements with other government agencies, and exempting such information from disclosure requirements of public records laws
- Grant disciplinary authority to the Commissioner, including imposition of a civil penalty of \$1,000 per violation or \$10,000 per willful violation
- Make a consumer legal finance company's noncompliance with the requirements of Article 94 an unfair or deceptive trade practice under Chapter 75 of the General Statutes

Section 2 contains a severability clause.

EFFECTIVE DATE: This act becomes effective October 1, 2021.