



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

SENATE BILL 176: Consumers in Crisis Protection Act.

2023-2024 General Assembly

Committee: Senate Finance. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules and Operations of the Senate **Date:** June 21, 2023

Introduced by: Sens. Johnson, Britt, Craven **Prepared by:** Nicholas Giddings
Analysis of: First Edition Staff Attorney

OVERVIEW: *Senate Bill 176 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 \$400,000 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 charges 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.*

The finance provision of Senate Bill 176 would require a consumer legal funding company to pay a nonrefundable \$1,000 fee to the Commissioner of Insurance at the time of registration and at the time of each renewal. Registrations would be renewable every three years.

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:

Senate Bill 176 would add a new Article 94 in Chapter 58 of the General Statutes, entitled the "Consumers in Crisis Protection Act."

New Article 94 would:

- Define a consumer legal funding transaction as 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 for no more than \$400,000 so long as the consumer uses the funds to address personal needs or household expenses. The consumer would be prohibited from using the funding to pay attorneys' fees or other legal fees.
- Require a consumer legal funding company to register with the Commissioner of Insurance.
- Require an applicant for registration to pay a nonrefundable \$1,000 fee at the time of registration and renewal, with renewal due every three years.
- Authorize a registered consumer legal funding company to enter into a consumer legal funding transaction for a funded amount not to exceed \$400,000.
- Provide that a consumer legal funding transaction in compliance with the Article is not a loan and is not subject to any laws governing loans or investment contracts.

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- 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.
- 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 consumer is not responsible to the company for any amount in excess of the net proceeds.
- Provide that the contract must contain a provision giving the consumer the right to rescind the contract within 10 business days from its execution.
- Require the contract to include certain disclosures 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.
- Allow a consumer legal funding company to charge a consumer the following:
 - At funding – a charge up to 18% of the funded amount, plus a service charge up to 3.5%.
 - Every 6-months thereafter (up to 36 months) – a charge up to 18% of the funded amount, plus a service charge up to 3.5%.
 - \$250 document preparation charge.
- Prohibit certain acts by a consumer legal funding company, including paying commissions or referral fees to or receiving commissions or referral fees from a consumer's attorney or health care provider, reporting a consumer to a credit reporting agency, providing legal advice to the consumer, attempting to influence the consumer's legal claim, collecting charges not authorized under the Article, or selling a consumer legal funding contract to a third party.
- Provide that an attorney retained by a consumer for a legal claim, or any attorney who has referred the consumer to the consumer's retained attorney, may not have a financial interest in the consumer legal funding company offering consumer legal funding to the consumer.
- Provide that communications between the consumer's attorney and the consumer legal funding company necessary to determine the status or value of a legal claim is not discoverable in court. However, consumer legal funding contracts are presumed to be discoverable.
- Provide that, upon written request, a consumer must disclose to any party to a legal claim within 30 days of the request whether the consumer has entered into a consumer legal funding transaction.
- Authorize the Commissioner of Insurance to conduct an examination of a consumer legal finance company to determine the company's financial stability and compliance with the Article. The company may be required to reimburse the Department of Insurance for any reasonable costs or expenses associated with the examination.
- Authorize the Commissioner of Insurance to adopt rules for proper enforcement of the Article.
- Grant disciplinary authority to the Commissioner of Insurance, including imposition of a civil penalty of \$10,000 per violation.

EFFECTIVE DATE: This act becomes effective October 1, 2023.