



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

# SENATE BILL 176: Consum. in Crisis Protect. Act/ESOPs Min. Bus.

2023-2024 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 23, 2023
<b>Introduced by:</b>	Sens. Johnson, Britt, Craven	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Third Edition		Committee Co-Counsel

**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 bill would also amend the definition of "minority business" and "historically underutilized business" as used in Article 8 of Chapter 143 of the General Statutes, to include an Employee Stock Ownership Plan (ESOP) company in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals.

The bill would also allow salesmen of securities to be registered with more than one dealer if each dealer is under common ownership or control.

## CURRENT LAW AND BILL OVERVIEW:

### Part I

**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 a contingent future interest in the potential net proceeds of any recovery the consumer obtains through the legal claim.

**Bill Overview:** Section 1 of 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 and to pay a nonrefundable \$1,000 fee at the time of registration and upon each renewal, with renewal due every three years.
- 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 health care providers, 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 or the consumer's initial receipt of any portion of the funded amount, by giving notice to the company and returning all funds provided to the consumer by the company.
- 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.

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## Part II

**Current Law:** Under Article 8 (Public Contracts) of Chapter 143 (State Departments, Institutions, and Commission) of the General Statutes, the term "minority business" means a business in which at least 51% is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals, and the term "historically underutilized business" means a business that meets all of the following conditions:

- At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the following groups, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the following groups: Black, Hispanic, Asian-American, American Indian, Female, Disabled, or Disadvantaged.
- The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the aforementioned groups.

**Bill Analysis:** Part II of Senate Bill 176 would amend the definition of the terms "minority business" and "historically underutilized business" as used in Article 8 of Chapter 143 to include an Employee Stock Ownership Plan (ESOP) company in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals.

## Part III

**Current Law:** Under the North Carolina Securities Act, Chapter 78 of the General Statutes, a securities salesman currently is not permitted to be registered with more than one securities dealer.

**Bill Analysis:** Part III of Senate Bill 176 would permit a securities salesman to be registered with more than one dealer if each of the dealers that employ or associate the salesman is under common ownership and control.

**EFFECTIVE DATE:** Part I of the act becomes effective October 1, 2023. The remainder of the act is effective when it becomes law.

*Nicholas Giddings, Staff Attorney with the Legislative Analysis Division, substantially contributed to this summary.*