

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 357
Commerce and Insurance Committee Substitute Adopted 9/21/21

Short Title: Helping Consumers in Crisis Act.

(Public)

Sponsors:

Referred to:

March 29, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE HELPING CONSUMERS IN CRISIS 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 "Helping Consumers in Crisis Act.

8 "§ 58-94-1. Short title.

9 This Article may be cited as the "Helping Consumers in Crisis 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 charges 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, whether or not the person is registered under this
20 Article.
- 21 (6) Consumer legal funding transaction. – A nonrecourse transaction in which a
22 consumer assigns to a person the consumer's contingent right to receive an
23 amount of potential net proceeds of a settlement or judgment obtained from
24 the consumer's legal claim. This term does not include a transaction between
25 a consumer and the consumer's immediate family member, as defined in
26 G.S. 53-244.030.
- 27 (6a) Control. – As defined in G.S. 53-244.030.
- 28 (7) Funded amount. – The amount of money provided to, or on behalf of, the
29 consumer pursuant to a legal funding contract. The term excludes charges.
- 30 (8) Gross proceeds. – The total amount of proceeds recovered by a consumer as
31 a result of a legal claim.
- 32 (9) Health care provider. – As defined in G.S. 90-21.50.
- 33 (10) Legal claim. – A civil claim or cause of action.
- 34 (11) Legal funding contract. – A contract for a consumer legal funding transaction.
- 35 (12) Nationwide Multistate Licensing System and Registry. – The mortgage
36 licensing system developed and maintained by the Conference of State Bank



Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(13) Net proceeds. – The amount recovered by a consumer as a result of a legal claim less the following costs and liens associated with the legal claim:

a. Attorneys' fees and litigation costs associated with the legal claim.

b. Liens described in G.S. 58-94-25(c)(6)a. and b.

This definition of "net proceeds" does not affect the priority of claims or liens.

(14) Person. – As defined in G.S. 53-244.030.

"§ 58-94-10. Consumer legal funding transactions allowed.

(a) A person registered as a consumer legal funding company under this Article may enter into a consumer legal funding transaction for an amount not to exceed five hundred thousand dollars (\$500,000). If the consumer obtains no net proceeds from the consumer's legal claim, the consumer is not required to repay the consumer legal funding company.

(b) 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. Registration; fee; financial stability.

(a) A person shall not enter into a consumer legal funding transaction 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 legal funding contract entered into by a consumer legal funding company that has not first registered under this Article is void and unenforceable. A consumer legal funding company shall comply with all provisions of this Article.

(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.

"§ 58-94-20. Registration application.

(a) Application. – Applications for registration under this Article shall be filed through the Nationwide Multistate Licensing System and Registry in a form acceptable to the Commissioner. To be considered complete, the application shall be verified by attestation of the applicant or a designee of the applicant and shall include all of the following:

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

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

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

(4) A certificate of authority from the North Carolina Secretary of State to conduct business in this State, if required by Article 15 of Chapter 55 of the General Statutes, or other evidence of the applicant's registration or qualification to do business in this State.

(5) The qualifications and business history of the applicant and, if applicable, the business history of any person controlling the applicant, including a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject.

(6) A record of any criminal convictions for the applicant, or in the case of an applicant that is an entity, each individual who has control of the applicant,

1 for a 10-year period prior to the date of the application, including the
2 applicant's consent to a federal and State criminal background check and a set
3 of the applicant's fingerprints in a form acceptable to the Commissioner. In
4 the case of an applicant that is an entity, each individual who has control over
5 the applicant shall consent to a federal and State criminal background check
6 and shall submit a set of the individual's fingerprints.

7 (7) Evidence of its financial stability in the form of audited financial statements
8 that include proof of a surety bond or irrevocable letter of credit issued and
9 confirmed by a financial institution authorized by law to transact business in
10 this State for fifty thousand dollars (\$50,000).

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

12 (b) Abandoned Application. – The Commissioner may deem an application abandoned if
13 the applicant fails to respond to a written request for information by the Commissioner within 30
14 days of the date of the request. The written request may be given to the applicant through the
15 Nationwide Multistate Licensing System and Registry or by other electronic means.

16 **"§ 58-94-25. Contracts; disclosures and requirements.**

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

20 (b) All terms of the contract shall be completed when presented to the consumer for
21 signature.

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

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

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

30 (3) Gross proceeds of the legal claim will be deposited into the client trust account
31 of the attorney or a settlement fund established to receive the gross proceeds
32 of the legal claim on behalf of the consumer.

33 (4) The attorney will comply with the written irrevocable instructions of the
34 consumer with regard to the consumer legal funding transaction.

35 (5) The attorney is obligated to disburse proceeds from the legal claim and pay
36 the complete funded amount and charges due per the terms of the legal funding
37 contract.

38 (6) The lien of a consumer legal funding company on a consumer's legal claim
39 has priority over liens that attach subsequent to its attachment, except for all
40 of the following:

41 a. Attorney's liens, insurance carrier liens, health care provider liens, or
42 liens based upon subrogation interest or right of reimbursement related
43 to the consumer's legal claim.

44 b. Child support, Medicare, tax, or any other statutory or governmental
45 lien.

46 (7) The attorney in the legal claim has provided no tax, public or private benefit
47 planning, or financial advice regarding the consumer legal funding
48 transaction.

49 (d) The failure of the attorney or the law firm retained by the consumer in the legal claim
50 to provide the written attestation required in subsection (c) of this section renders the contract
51 null and void.

1 (e) The contract remains valid and enforceable in the event the consumer terminates the
2 consumer's attorney and proceeds pro se or retains a new attorney for the legal claim.

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

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

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

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

9 (4) An itemization of charges.

10 (5) The total amount due from the consumer, in 180-day intervals for 1,080 days,
11 including all charges.

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

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

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

22 (9) A statement that if there is no recovery of any money from the consumer's
23 legal claim, the consumer shall owe nothing to the company.

24 (10) A statement that, if the net proceeds of the claim are insufficient to repay the
25 consumer's indebtedness to the company, defined as the complete funded
26 amount and charges, the company shall accept the amount that can be repaid
27 from the net proceeds as full payment of its funded amount and charges.

28 (g) Each contract shall include all of 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) A right of rescission, allowing the consumer to cancel the contract without
32 penalty or further obligation if, within five business days following the
33 execution of the contract or the consumer's initial receipt of any portion of the
34 funded amount, the consumer gives notice of the rescission to the company
35 and returns all funds provided to the consumer by the company.

36 (3) An acknowledgement that the consumer is represented by an attorney in the
37 legal claim and has had an opportunity to discuss the contract with the
38 consumer's attorney.

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 read it completely. Do not sign this
42 contract if it contains any blank spaces. You are entitled to a contract with
43 complete terms filled in before you sign this contract. You should obtain the
44 advice of an attorney, depending on your circumstances. You may want to
45 consult a tax, public or private benefits planning, or financial advisor
46 regarding this transaction. You further acknowledge that your attorney has
47 explained the terms and conditions of this consumer legal funding contract.
48 Consumer legal funding shall not be used to pay for attorneys' fees or litigation
49 costs related to the underlying legal claim."

50 (h) A copy of the executed contract shall promptly be delivered to the consumer's
51 attorney.

"§ 58-94-27. Authorized charges.

The consumer legal funding company may charge the consumer only the following fees:

- (1) Upon funding, a fee not to exceed eighteen percent (18%) of the funded amount and a servicing fee not to exceed three and one-half percent (3.5%) of the funded amount.
- (2) Upon every subsequent 180-day anniversary, a fee not to exceed eighteen percent (18%) of the funded amount and a servicing fee not to exceed three and one-half percent (3.5%) of the funded amount; provided, however, that if within five days of the start of a new 180-day interval, the consumer legal funding company receives payment of the full amount owed by the consumer for the immediately preceding 180-day interval, no additional fees shall be charged for the new 180-day interval.
- (3) A document preparation fee, not to exceed seventy-five dollars (\$75.00), which may be deducted from the funded amount, to be used to defray the ordinary cost of opening, funding, administering, and terminating a consumer legal funding transaction.

"§ 58-94-30. Prohibited acts.

(a) A consumer legal funding company shall not engage in any of the following practices:

- (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) Advertise false or misleading information regarding its products or services.
- (4) Receive any right to, nor make any decisions with respect 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.
- (5) Knowingly pay or offer to pay for court costs, filing fees, or attorneys' fees, either during or after the resolution of the legal claim.
- (6) Fail to promptly provide copies of contract documents to the consumer or the consumer's attorney.
- (7) Provide legal advice to the consumer regarding the consumer legal funding transaction or the underlying legal claim.
- (8) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company.
- (9) 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 making payment to or 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.
- (10) Knowingly provide funding to a consumer for a claim in a pending class action lawsuit.
- (11) Collecting from the consumer any fee that is not authorized under G.S. 58-94-27.

(b) If an attorney, practicing in this State, represents a consumer who has engaged in a consumer legal funding transaction, neither that attorney nor the attorney's law firm shall have a

1 financial interest in a consumer legal funding company or shall receive a referral fee or other
2 consideration from the company, its employees, or affiliates.

3 **"§ 58-94-35. Effect of communication on privileges.**

4 All communications between a consumer's attorney and a consumer legal funding company
5 are not discoverable and do not limit, waive, or abrogate the scope or nature of any statutory or
6 common-law privilege, including the work-product doctrine and the attorney-client privilege.

7 **"§ 58-94-40. Examinations; charges.**

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

14 **"§ 58-94-45. Commissioner's participation in nationwide registry.**

15 (a) The Commissioner shall require consumer legal funding companies to be registered
16 through the Nationwide Multistate Licensing System and Registry (NMLS). In order to carry out
17 this requirement, the Commissioner may participate in the NMLS. For this purpose, the
18 Commissioner may establish by rule any requirements as necessary, including any of the
19 following:

20 (1) Background checks for any of the following:

21 a. Criminal history through fingerprint or other databases.

22 b. Civil or administrative records.

23 c. Credit history.

24 d. Any other information as deemed necessary by the NMLS.

25 (2) The payment of fees to register or renew a registration through the NMLS.

26 (3) The setting or resetting as necessary of renewal or reporting dates.

27 (4) Requirements for cancelling a registration or any other activity as the
28 Commissioner deems necessary for participation in the NMLS.

29 (b) The Commissioner may establish relationships or contracts with the NMLS or other
30 entities designated by the NMLS to collect and maintain records and process transaction fees or
31 other fees related to consumer legal funding companies.

32 (c) For the purpose of participating in the NMLS, the Commissioner may waive or
33 modify, in whole or in part, any of the requirements of this Article and may establish new
34 requirements as necessary to participate in the NMLS.

35 (d) The Commissioner may enter into agreements to license the use of the proprietary
36 software owned by the Department of Insurance to banking, mortgage, or financial services
37 supervisory agencies of other states.

38 **"§ 58-94-50. Confidentiality of information.**

39 (a) Notwithstanding any State law to the contrary, the Commissioner shall report
40 enforcement actions under this Article and may report other relevant information to the
41 Nationwide Multistate Licensing System and Registry (NMLS).

42 (b) The Commissioner may enter into agreements or sharing arrangements with other
43 governmental agencies, the Conference of State Bank Supervisors, the American Association of
44 Residential Mortgage Regulators, or other associations representing governmental agencies and
45 may share otherwise confidential information pursuant to these written agreements.

46 (c) As a condition of reporting or sharing information as provided in subsections (a) and
47 (b) of this section, the Commission shall require as part of the agreement that any confidential
48 record or information shared with the entity be treated as confidential under the applicable laws
49 and regulations governing the recipient entity. Any privilege arising under any other federal or
50 State law with respect to the shared reports or information applies to that information after it has
51 been disclosed to an entity described in subsection (a) or (b) of this section. Information held by

1 the entity is not subject to disclosure under any State law governing the disclosure to the public
2 of information held by an officer or agency of the State. The entities described in subsections (a)
3 and (b) of this section may share information with all State and federal agencies with banking,
4 mortgage, or financial services supervisory authority without the loss of privilege or the loss of
5 confidentiality protections provided by State or federal law.

6 (d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of
7 confidential supervisory information or of any information described in subsection (a) of this
8 section that is inconsistent with this section is superseded by this section.

9 (e) The confidentiality provisions contained in subsection (c) of this section do not apply
10 to information relating to the employment history of and publicly adjudicated disciplinary and
11 enforcement actions against consumer legal funding companies that are included in the NMLS
12 for access by the public.

13 **"§ 58-94-55. Rules.**

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

17 **"§ 58-94-60. Penalties; enforcement.**

18 (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter
19 150B of the General Statutes, the Commissioner may do any of the following:

- 20 (1) Revoke, suspend, or refuse to renew a consumer legal funding company's
21 registration.
- 22 (2) Order a consumer legal funding company to cease and desist from entering
23 into additional consumer legal funding transactions.
- 24 (3) Assess a civil penalty of not more than one thousand dollars (\$1,000) for each
25 violation or ten thousand dollars (\$10,000) for each violation that the
26 Commissioner finds to be willful.
- 27 (4) Order the consumer legal funding company to make restitution to the injured
28 consumer.

29 (b) The powers vested in the Commissioner by this Article are in addition to any other
30 enforcement powers of the Commissioner.

31 (c) A consumer legal funding company's failure to comply with the requirements of this
32 Article is an unfair or deceptive trade practice under Chapter 75 of the General Statutes."

33 **SECTION 2.** If any provision of this act or its application to any person or
34 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
35 act which can be given effect without the invalid provision or application, and, to this end, the
36 provisions of this act are severable.

37 **SECTION 3.** This act becomes effective October 1, 2021.