

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 4967

(SENATE AUTHORS: SEEBERGER)

DATE
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OFFICIAL STATUS
Introduction and first reading
Referred to Commerce and Consumer Protection

1.1

A bill for an act

1.2

relating to consumer protection; enacting the Consumers in Crisis Protection Act;

1.3

providing civil penalties; authorizing administrative rulemaking; proposing coding

1.4

for new law as Minnesota Statutes, chapter 45B.

1.5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. [45B.01] SHORT TITLE.

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

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Sec. 2. [45B.02] DEFINITIONS.

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Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section

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have the meanings given.

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Subd. 2. **Affiliate.** "Affiliate" means a company that controls, is controlled by, or is

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under common control with another company, as set forth in the Bank Holding Company

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Act of 1956, United States Code, title 12, section 1841, et seq., as amended.

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Subd. 3. **Charges.** "Charges" means a fee permitted by this chapter that is charged to a

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consumer by a consumer legal funding company, regardless of how denominated. Charges

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includes fees denominated as interest or rate.

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Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

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Subd. 5. **Consumer.** "Consumer" means an individual residing in Minnesota.

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Subd. 6. **Consumer legal funding company.** "Consumer legal funding company" means

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a person that enters into a consumer legal funding transaction with a consumer, whether or

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not the person is registered under this chapter.

2.1 Subd. 7. **Consumer legal funding contract.** "Consumer legal funding contract" means
2.2 a contract for a consumer legal funding transaction.

2.3 Subd. 8. **Consumer legal funding transaction.** "Consumer legal funding transaction"
2.4 means a nonrecourse transaction in which a consumer sells an unvested, contingent future
2.5 interest in the potential net proceeds of a settlement or judgment obtained from a legal claim
2.6 in exchange for no more than \$400,000, provided:

2.7 (1) the consumer is required to use the funds to address personal needs or household
2.8 expenses;

2.9 (2) the consumer is prohibited from using the funds to pay for attorney fees, legal filings,
2.10 legal marketing, legal document preparation or drafting, appeals, expert testimony, or other
2.11 litigation-related expenses; and

2.12 (3) the consumer is not required to use the funds in a particular manner, including to
2.13 make specific payments or secure specific services.

2.14 Subd. 9. **Funded amount.** "Funded amount" means the amount of money provided to
2.15 or on behalf of a consumer pursuant to a consumer legal funding contract. Funded amount
2.16 does not include charges.

2.17 Subd. 10. **Gross proceeds.** "Gross proceeds" means the total amount of proceeds
2.18 recovered by a consumer as a result of a legal claim.

2.19 Subd. 11. **Health care provider.** "Health care provider" has the meaning given in section
2.20 62A.63, subdivision 2.

2.21 Subd. 12. **Legal claim.** "Legal claim" means a civil claim or cause of action.

2.22 Subd. 13. **Net proceeds.** "Net proceeds" means the amount recovered by a consumer as
2.23 a result of a legal claim, less:

2.24 (1) attorney fees and litigation costs associated with the legal claim;

2.25 (2) attorney, health care provider, or subrogation liens; and

2.26 (3) child support, Medicare, tax, or other statutory or governmental liens.

2.27 Sec. 3. **[45B.03] RELATIONSHIP WITH OTHER LAW.**

2.28 A consumer legal funding transaction that complies with this chapter is not a loan and
2.29 is not subject to any law governing loans or investment contracts. To the extent this chapter
2.30 conflicts with any other law, this chapter prevails with respect to regulating consumer legal
2.31 funding transactions in Minnesota.

3.1 Sec. 4. **[45B.04] EXEMPTIONS.**

3.2 This chapter does not apply to:

3.3 (1) an immediate family member of the consumer;

3.4 (2) a bank, lender, financing entity, or other special purpose entity that (i) provides
3.5 financing to a consumer legal funding company, or (ii) receives an interest in consumer
3.6 legal funding from a consumer legal funding company; or

3.7 (3) an attorney or accountant who provides services to a consumer.

3.8 Sec. 5. **[45B.05] CONSUMER LEGAL FUNDING COMPANY; REGISTRATION;**
3.9 **FEE; FINANCIAL STABILITY.**

3.10 Subdivision 1. **Registration generally.** (a) A person is prohibited from entering into a
3.11 consumer legal funding transaction with a consumer without first:

3.12 (1) registering as a consumer legal funding company with the commissioner, in a format
3.13 prescribed by the commissioner;

3.14 (2) submitting the registration fee under subdivision 2; and

3.15 (3) submitting proof of financial stability, as required under this chapter.

3.16 (b) A consumer legal funding contract between a consumer and a consumer legal funding
3.17 company that has not registered under this chapter is void and unenforceable.

3.18 Subd. 2. **Fee amount; renewals.** (a) A consumer legal funding company must pay a
3.19 nonrefundable fee of \$1,000 at the time of registration and at the time of each registration
3.20 renewal. Registrations shall be renewed every three years.

3.21 (b) A consumer legal funding company registration under this chapter must be renewed
3.22 every three years.

3.23 Subd. 3. **Registration denial.** The commissioner may deny a consumer legal funding
3.24 company's registration or registration renewal if the consumer legal funding company fails
3.25 to comply with this chapter.

3.26 Sec. 6. **[45B.06] REGISTRATION APPLICATION.**

3.27 Subdivision 1. **Application.** (a) An application to register under this chapter must be
3.28 filed in a form determined by the commissioner. To be considered complete, the applicant
3.29 or the applicant's designee must verify the application by attestation. An application must
3.30 include:

(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 is organized, if applicable;

(4) a certificate of authority from the secretary of state to conduct business in Minnesota or other evidence that the applicant is registered or qualified to do business in Minnesota;

(5) the qualifications and business history of 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 for the past ten years;

(6) a record of any criminal convictions for the applicant or, in the case of an applicant that is an entity, every officer of the applicant, for a ten-year period prior to the application date, including the applicant's consent to (i) submit to a federal and state criminal background check, and (ii) provide a set of the applicant's fingerprints, in a form acceptable to the commissioner;

(7) evidence of the applicant's financial stability, submitted in the form of certified financial statements by the applicant's chief financial officer or equivalent, that includes proof of a surety bond or irrevocable letter of credit for \$50,000, issued and confirmed by a financial institution authorized by law to transact business in Minnesota; and

(8) any other information the commissioner deems relevant.

Subd. 2. **Abandoned application.** The commissioner may deem an application abandoned if the applicant fails to respond to a written request for information by the commissioner within 30 days of the date the commissioner makes the request.

Sec. 7. **[45B.07] CONSUMER LEGAL FUNDING CONTRACT; CONTENTS.**

Subdivision 1. **Contract template.** Before entering into a consumer legal funding transaction in Minnesota, a consumer legal funding company must file with the commissioner a consumer legal funding template contract.

Subd. 2. **Plain language requirement.** A consumer legal funding contract must be (1) written using plain language, and (2) understandable to the average consumer who makes a reasonable effort under ordinary circumstances to read and comprehend the terms of the contract without obtaining professional assistance.

5.1 Subd. 3. **Required provisions.** A consumer legal funding contract must include:

5.2 (1) the definitions for the terms "consumer," "consumer legal funding company," and
5.3 "consumer legal funding transaction," as established under section 45B.02, subdivisions 5,
5.4 6, and 8;

5.5 (2) an acknowledgment that the consumer is represented by an attorney for the legal
5.6 claim and has had an opportunity to discuss the contract with the consumer's attorney;

5.7 (3) a right of rescission, allowing the consumer to cancel the contract without penalty
5.8 or further obligation if, within ten business days of the date the contract is executed or the
5.9 date the consumer initially receives any portion of the funded amount, the consumer gives
5.10 notice of the rescission to the company and returns all money the company provided to the
5.11 consumer;

5.12 (4) the following disclaimer, in 12-point bold font and located immediately above the
5.13 location on the contract where the consumer's signature is required:

5.14 "Do not sign this contract before you have read the contract completely or if the contract
5.15 contains any blank spaces. You are entitled to a completely filled-in copy of the contract.
5.16 Before you sign this contract, you should obtain the advice of an attorney. Depending on
5.17 the circumstances, you may want to consult a tax, public or private benefits planning, or
5.18 financial professional. You acknowledge that your attorney in the legal claim has provided
5.19 no tax, public or private benefit planning, or financial advice regarding this transaction.

5.20 You are prohibited from using money from this transaction to pay attorney fees or costs
5.21 related to the litigation of your claim."; and

5.22 (5) a requirement that a copy of the executed consumer legal funding contract must be
5.23 promptly delivered to the consumer's attorney upon request.

5.24 Subd. 4. **Consumer disclosures.** Each contract must include consumer disclosures on
5.25 the first two pages, to the extent possible. The consumer disclosures must be in a form
5.26 prescribed by the commissioner. The consumer disclosures must include:

5.27 (1) a notification that some or all of the funded amount may be taxable;

5.28 (2) a description of the consumer's right of rescission;

5.29 (3) the total funded amount provided to the consumer under the contract;

5.30 (4) an itemization of charges under the contract;

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

6.1 (6) a statement that no additional charges may accrue 36 months after the date the
6.2 consumer legal funding contract is executed;

6.3 (7) a statement that the consumer does not owe payments other than the payments that
6.4 are disclosed on the disclosure form;

6.5 (8) in the event the consumer seeks more than one consumer legal funding contract, a
6.6 disclosure providing the cumulative amount the consumer owes for all transactions, including
6.7 charges under all contracts, if repayment is made any time after the contracts are executed;

6.8 (9) a statement that the company has no influence over any aspect of the consumer's
6.9 legal claim or any settlement or resolution of the consumer's legal claim, and that all decisions
6.10 related to the consumer's legal claim remain solely with the consumer and the consumer's
6.11 attorney;

6.12 (10) a statement that if there is no recovery of any money from the consumer's legal
6.13 claim, the consumer has no additional financial obligation to the company unless the
6.14 consumer committed fraud against the consumer legal funding company; and

6.15 (11) a statement that, if the net proceeds of the claim are insufficient to repay the
6.16 consumer's financial obligation to the company, which consists of the complete funded
6.17 amount and charges, the consumer is not responsible to the company for any amount in
6.18 excess of the net proceeds.

6.19 Subd. 5. **Written acknowledgement.** (a) The consumer legal funding contract must
6.20 contain a written acknowledgment by the attorney the consumer retained for the legal claim.
6.21 The written acknowledgment must attest to the following:

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

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

6.27 (3) gross proceeds of the legal claim must be deposited into the attorney's client trust
6.28 account or a settlement fund established to receive the gross proceeds of the legal claim on
6.29 behalf of the consumer;

6.30 (4) the attorney must comply with the consumer's written, irrevocable instructions with
6.31 regard to the consumer legal funding transaction;

(5) the attorney is obligated to (i) disburse proceeds from the legal claim, and (ii) pay the funded amount and charges due under the consumer legal funding contract terms;

(6) only liens related to the legal claim, including attorney liens, Medicare, or other statutory liens, take priority over the consumer legal funding company's lien. All other liens take priority by operation of law; and

(7) the attorney for the legal claim has not provided tax, public or private benefit planning, or financial advice regarding the consumer legal funding transaction.

(b) If the attorney retained by the consumer for the legal claim fails to provide written attestation required under this subdivision, the consumer legal funding transaction contract is null and void.

Subd. 6. **Substitution of counsel.** 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.

Sec. 8. [45B.08] NONRECOURSE OBLIGATION; AUTHORIZED CHARGES.

Subdivision 1. **Generally.** If a consumer does not obtain 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, which consists of the complete funded amount plus charges authorized under subdivision 2, to the consumer legal funding company, the consumer is not responsible to the consumer legal funding company for any amount in excess of the net proceeds.

Subd. 2. **Authorized charges.** A consumer legal funding company may charge a consumer only:

(1) upon funding: (i) a charge that does not exceed 18 percent of the funded amount; and (ii) a servicing charge that does not exceed 3.5 percent of the funded amount;

(2) upon every subsequent six-month anniversary: (i) a charge that does not exceed 18 percent of the funded amount; and (ii) a servicing charge that does not exceed 3.5 percent of the funded amount. If, within five days after the date a new six-month interval begins, the consumer legal funding company receives payment of the full amount the consumer owes for the immediately preceding six-month interval, the consumer legal funding company is prohibited from making additional charges for the new six-month interval; and

(3) a document preparation charge that does not exceed \$250, which may be deducted from the funded amount, to defray the cost to open, fund, administer, and terminate a consumer legal funding transaction.

Subd. 3. **No accrual.** (a) Charges do not accrue on a consumer legal funding transaction beginning 36 months after the date the consumer legal funding contract is executed.

(b) Notwithstanding paragraph (a), a consumer legal funding company 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 date additional funding is provided.

Sec. 9. [45B.09] CONSUMER LEGAL FUNDING COMPANY; PROHIBITED ACTS.

A consumer legal funding company is prohibited from:

(1) paying or offering to pay commissions, referral fees, or any other form of consideration to any attorney, law firm, health care provider, or law firm or health care provider employee for referring a consumer to the company;

(2) accepting any commissions, referral fees, or any other form of consideration from any attorney, law firm, health care provider, or law firm or health care provider employee;

(3) referring, in furtherance of the initial legal funding, a consumer or potential consumer to an attorney, law firm, health care provider, or law firm or health care provider employee, except that 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) advertising false or misleading information regarding the consumer legal funding company's products or services;

(5) receiving any right to make any decisions with respect to or attempting to influence a decision relating to the conduct, settlement, or resolution of the consumer's legal claim. The right to make decisions relating to the conduct, settlement, or resolution of the consumer's legal claim remains solely with the consumer and the consumer's attorney;

(6) knowingly paying or offering to pay for case expenses, including court costs, filing fees, or attorney fees, either during or after the legal claim's resolution;

(7) failing to promptly provide copies of contract documents to the consumer or the consumer's attorney upon request;

9.1 (8) providing legal advice to the consumer regarding the consumer legal funding
9.2 transaction or the underlying legal claim;

9.3 (9) reporting a consumer to a credit reporting agency if insufficient money remains from
9.4 the net proceeds to repay the company, unless the consumer has committed fraud against
9.5 the consumer legal funding company;

9.6 (10) knowingly providing funding to a consumer who has previously assigned or sold
9.7 a portion of the consumer's right to proceeds from the consumer's legal claim without first
9.8 purchasing a prior unsatisfied consumer legal funding company's entire funded amount and
9.9 contracted charges, unless a lesser amount is otherwise expressly agreed to in writing by
9.10 the consumer legal funding companies. Multiple consumer legal funding companies may
9.11 agree to contemporaneously provide funding to a consumer, provided the consumer and the
9.12 consumer's attorney consent to the agreement in writing;

9.13 (11) collecting from a consumer any fees or charges that are not authorized under this
9.14 chapter; or

9.15 (12) selling a contract in whole or in part to a third party, except that if the consumer
9.16 legal funding company retains responsibility to collect payment, administer, and otherwise
9.17 enforce the consumer legal funding contract, the prohibition under this clause does not apply
9.18 to:

9.19 (i) an assignment to the consumer legal funding company's wholly owned subsidiary;

9.20 (ii) an assignment to the consumer legal funding company's affiliate that is under common
9.21 control; or

9.22 (iii) granting a security interest under chapter 336, article 9, or as otherwise permitted
9.23 by law.

9.24 **Sec. 10. [45B.10] ATTORNEY PROHIBITIONS.**

9.25 (a) An attorney retained by a consumer for a legal claim is prohibited from having a
9.26 financial interest in the consumer legal funding company that is offering consumer legal
9.27 funding to the consumer.

9.28 (b) An attorney who has referred the consumer to the consumer's retained attorney is
9.29 prohibited from having a financial interest in the consumer legal funding company that is
9.30 offering consumer legal funding to the consumer.

(c) 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.

Sec. 11. **[45B.11] PRIVILEGES; EFFECT OF COMMUNICATION.**

(a) A communication between a consumer's attorney and a consumer legal funding company that is necessary to ascertain the status of a legal claim or a legal claim's expected value is not discoverable by a party with whom the claim is filed or against whom the claim is asserted.

(b) This section does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including but not limited to work-product doctrine and attorney-client privilege.

Sec. 12. **[45B.12] CONSUMER LEGAL FUNDING TRANSACTIONS; DISCLOSURE.**

(a) Within 30 calendar days of the date a written request is received, a consumer must 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 made under paragraph (a), the consumer must disclose that the consumer has entered into a consumer legal funding transaction to the requesting person within 30 calendar days of the date the consumer entered into the consumer legal funding transaction.

Sec. 13. **[45B.13] CONSUMER LEGAL FUNDING CONTRACTS; DISCOVERY AND ADMISSION.**

Subdivision 1. **Discovery.** Notwithstanding any agreement or provision with respect to confidentiality, consumer legal funding contracts are presumed to be discoverable in a civil action. A consumer may seek to rebut the presumption under this subdivision.

Subd. 2. **Admission.** Consumer legal funding transactions disclosed under section 45B.12 and consumer legal funding contracts discovered pursuant to subdivision 1 are presumed to be inadmissible as evidence. A party may seek to rebut the presumption under this subdivision.

11.1 Sec. 14. [45B.14] EXAMINATIONS; CHARGES.

11.2 (a) The commissioner may conduct an examination of a consumer legal funding company
11.3 to: (1) protect consumer interests; (2) determine a consumer legal funding company's financial
11.4 stability; and (3) determine a consumer legal funding company's compliance with this
11.5 chapter.

11.6 (b) The consumer legal funding company must reimburse the commissioner for all
11.7 reasonable costs and expenses incurred to conduct the examination. The commissioner may
11.8 waive reimbursement for the costs and expenses incurred to conduct an examination under
11.9 this section if doing so is in the public interest.

11.10 Sec. 15. [45B.15] RULES.

11.11 The commissioner may adopt rules necessary to enforce this chapter. Before proposing
11.12 a rule, the commissioner must notify all companies registered or pending registration under
11.13 this chapter.

11.14 Sec. 16. [45B.16] PENALTIES; ENFORCEMENT.

11.15 Subdivision 1. Commissioner enforcement. (a) If the commissioner determines that a
11.16 consumer legal funding company intentionally violated any provision of this chapter, the
11.17 commissioner may, after notice and an opportunity for hearing:

11.18 (1) revoke, suspend, or refuse to renew a consumer legal funding company's registration;

11.19 (2) order a consumer legal funding company to cease and desist from entering into
11.20 additional consumer legal funding transactions;

11.21 (3) assess a civil penalty of not more than \$10,000 for each violation; or

11.22 (4) order the consumer legal funding company to make restitution to an injured consumer.

11.23 (b) The clear proceeds of any penalty assessed under paragraph (a), clause (3), must be
11.24 remitted to the general fund.

11.25 Subd. 2. No limitation. The powers vested in the commissioner under this section are
11.26 in addition to and do not limit the commissioner's or any other officer, employee, or agent
11.27 of the state's ability to take enforcement action.