

**SENATE**  
**STATE OF MINNESOTA**  
**NINETY-FOURTH SESSION**

**S.F. No. 2929**

**(SENATE AUTHORS: SEEBERGER, Utke and Howe)**

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### 3 Introduction and first reading Referred to Commerce and C

## OFFICIAL STATUS

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## Introduction and first reading Referred to Commerce and Consumer Protection

1.1 A bill for an act  
1.2 relating to insurance; adopting the Consumers in Crisis Protection Act; providing  
1.3 civil penalties; requiring reports; proposing coding for new law as Minnesota  
1.4 Statutes, chapters 45B; 48B.

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

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

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

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

1.9        Subdivision 1. Scope. For the purposes of this chapter, the terms defined in this section  
1.10      have the meanings given.

1.11        Subd. 2. **Advertise.** "Advertise" means publishing or disseminating written, oral,  
1.12 electronic, or printed communication, or communication by means of recorded telephone  
1.13 messages or transmitted or broadcast on radio, television, the Internet, or similar  
1.14 communications media, including audio recordings, film strips, motion pictures, and videos,  
1.15 that are directly or indirectly published, disseminated, circulated or placed before the public  
1.16 to induce a consumer to enter into a consumer litigation funding.

1.17        Subd. 3. **Charges.** "Charges" means the amount of money to be paid to the consumer  
1.18        litigation funding company by or on behalf of the consumer that is above the funded amount  
1.19        provided by or on behalf of the company to a consumer under this chapter. Charges includes  
1.20        administrative, origination, underwriting, or other fees, including interest, no matter how  
1.21        denominated.

2.1        **Subd. 4. Commercial litigation financier.** "Commercial litigation financier" means a  
2.2        person that enters into or offers to enter into a commercial litigation financing agreement  
2.3        with a plaintiff or with lawyers or law firms asserting legal claims on behalf of the plaintiff  
2.4        in a civil proceeding. Commercial litigation financier does not include a nonprofit  
2.5        organization exempt from federal income tax under section 501(c)(3) of the United States  
2.6        Internal Revenue Code.

2.7        **Subd. 5. Commercial litigation financing agreement.** (a) "Commercial litigation  
2.8        financing agreement" means, with respect to a civil action or group of civil actions, a written  
2.9        agreement:

2.10        (1) in which a third party agrees to provide money to one of the named parties or a law  
2.11        firm affiliated with the action or group of civil actions; and

2.12        (2) that creates a direct or collateralized interest in the proceeds of a civil action or group  
2.13        of civil actions by settlement, verdict, judgment, or otherwise, and whose interest is based  
2.14        in whole or part on a funding-based obligation to the action or group of actions the appearing  
2.15        counsel, any contractual co-counsel, or the counsel or co-counsel's law firm, executed with:

2.16        (i) an attorney representing a party;

2.17        (ii) co-counsel in the litigation, with a contingent fee interest in the party's representation;

2.18        or

2.19        (iii) a third party who has a collateral-based interest in the counsel or co-counsel's firm's  
2.20        contingency fees, related in whole or part to the fees derived from the party's representation.

2.21        (b) Consumer litigation financing agreement includes a contract, including an option,  
2.22        forward contract, futures contract, short position, swap, or similar contract, or other agreement  
2.23        that is substantially similar to a consumer litigation financing agreement.

2.24        (c) Commercial litigation financing agreement does not include a consumer litigation  
2.25        funding transaction; an agreement between an attorney and a client for the attorney to provide  
2.26        legal services on a contingency fee basis or to advance the client's legal costs; a health  
2.27        insurance plan or agreement; a repayment agreement of a financial institution if repayment  
2.28        is not contingent upon the outcome of the civil proceeding; a funding agreement to a nonprofit  
2.29        organization that represents a client on a pro bono basis; or an agreement of an assigned  
2.30        claim to prosecute an environmental contamination matter seeking remediation of, or to  
2.31        recover the cost of remediating, a site that is or has been on the U.S. Environmental Protection  
2.32        Agency's Superfund National Priorities List.

3.1        Subd. 6. **Consumer.** "Consumer" means a natural person who resides or is domiciled  
3.2        in Minnesota or is a plaintiff in a civil action in Minnesota. Consumer includes estate for a  
3.3        decedent related to a wrongful death claim.

3.4        Subd. 7. **Consumer litigation funding.** "Consumer litigation funding" means a  
3.5        nonrecourse transaction in which a consumer litigation funding company purchases, with  
3.6        money paid directly to the consumer, and a consumer assigns to the company a contingent  
3.7        right to receive an amount of the potential proceeds resulting from a settlement, judgment,  
3.8        award, or verdict obtained in the consumer's legal claim.

3.9        Subd. 8. **Consumer litigation funding company.** (a) "Consumer litigation funding  
3.10        company" or "company" means a person or entity that enters into a consumer litigation  
3.11        funding contract with a value that does not exceed \$..... with a consumer.

3.12        (b) Consumer litigation funding company or company does not include:

3.13        (1) the consumer's immediate family members;

3.14        (2) a bank, lender, financing entity, or other special purpose entity:

3.15        (i) that provides financing to a consumer litigation funding company; or

3.16        (ii) to which a consumer litigation funding company grants a security interest or transfers  
3.17        rights or interest in a consumer litigation funding; or

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

3.19        Subd. 9. **Department.** "Department" means the Department of Commerce.

3.20        Subd. 10. **Foreign country or person of concern.** "Foreign country" or "person of  
3.21        concern" means:

3.22        (1) a foreign government or person listed under Code of Federal Regulations, title 15,  
3.23        part 7.4; or

3.24        (2) a country the governor designates as a threat to critical infrastructure.

3.25        Subd. 11. **Foreign entity of concern.** (a) "Foreign entity of concern" means a partnership,  
3.26        association corporation, organization, or other combination of persons:

3.27        (1) organized or incorporated in a foreign country of concern;

3.28        (2) owned or controlled by the government, a political subdivision, or a political party  
3.29        of a foreign country of concern;

3.30        (3) that has a principal place of business in a foreign country of concern; or

4.1 (4) that is owned, organized, or controlled by or affiliated with a foreign organization

4.2 that has been:

4.3 (i) placed on the federal Office of Foreign Assets Control's specially designated nationals

4.4 and blocked persons list; or

4.5 (ii) designated by the United States Secretary of State as a foreign terrorist organization.

4.6 (b) Foreign entity of concern includes an individual that owns, has a controlling interest

4.7 in, or is a director or senior officer of an entity identified in paragraph (a).

4.8 **Subd. 12. Funded amount.** "Funded amount" means the amount of money provided to

4.9 or on behalf of the consumer in the consumer litigation funding contract. Funded amount

4.10 does not include charges.

4.11 **Subd. 13. Funding date.** "Funding date" means the date on which the funded amount

4.12 is transferred to the consumer by the consumer litigation funding company by (1) personal

4.13 delivery; (2) wire, automated clearing house, or other electronic means; or (3) mail via

4.14 insured, certified, or registered United States mail.

4.15 **Subd. 14. Immediate family member.** "Immediate family member" means a (1) parent;

4.16 (2) sibling; (3) child by blood, adoption, or marriage; (4) spouse; (5) grandparent; or (6)

4.17 grandchild.

4.18 **Subd. 15. Legal claim.** "Legal claim" means a civil claim or cause of action.

4.19 **Subd. 16. Resolution date.** "Resolution date" means the date the funded amount, plus

4.20 the agreed-upon charges, are delivered to the consumer litigation funding company by the

4.21 consumer, the consumer's attorney, or other means.

4.22 **Sec. 3. [45B.03] CONTRACT REQUIREMENTS; RIGHT OF RESCISSION.**

4.23 **Subdivision 1. Contract requirements.** A consumer litigation funding contract must:

4.24 (1) be written in a clear and coherent manner using words with common, everyday

4.25 meanings that enable an average consumer who makes a reasonable effort under ordinary

4.26 circumstances to read and understand the contract's terms without having to obtain

4.27 professional assistance;

4.28 (2) be completely filled in when presented to a consumer for signature;

4.29 (3) contain, in twelve-point bold type font, a right of rescission that allows the consumer

4.30 to cancel the contract without penalty or further obligation if, within ten business days after

5.1 the funding date, the consumer returns to the consumer litigation funding company the full  
5.2 amount of disbursed money;

5.3 (4) contain the consumer's initials on each page;

5.4 (5) include a statement that indicates the consumer is not required to pay a fee or charge  
5.5 other than a fee or charge disclosed on the disclosure form;

5.6 (6) if the consumer seeks more than one litigation funding contract from the same  
5.7 company, include a disclosure that provides the cumulative amount due from the consumer  
5.8 for all transactions, including the charges under all contracts, if repayment is made after the  
5.9 contracts are executed;

5.10 (7) include a statement that indicates the maximum amount the consumer is obligated  
5.11 to pay under the contract other than in a case of material breach, fraud, or misrepresentation  
5.12 by or on behalf of the consumer; and

5.13 (8) clearly and conspicuously detail how charges, including applicable fees, are incurred  
5.14 or accrued.

5.15 Subd. 2. **Written acknowledgment.** The contract must contain a written acknowledgment  
5.16 signed by the attorney retained by the consumer in the legal claim that attests to the following:

5.17 (1) the attorney has reviewed the mandatory disclosures under section 45B.06 with the  
5.18 consumer;

5.19 (2) the attorney is being paid on a contingency basis pursuant to a written fee agreement;

5.20 (3) all proceeds of the legal claim must be disbursed via either the attorney's trust account  
5.21 or a settlement fund established to receive the proceeds of the legal claim on behalf of the  
5.22 consumer;

5.23 (4) the attorney is obligated to disburse money from the legal claim and take other steps  
5.24 to ensure that the terms of the litigation funding contract are fulfilled;

5.25 (5) the attorney is prohibited from receiving a referral fee or other consideration from  
5.26 the consumer litigation funding company in connection with the consumer litigation funding;  
5.27 and

5.28 (6) the attorney in the legal claim must not provide tax, public or private benefit planning,  
5.29 or financial advice regarding the consumer litigation funding transaction.

5.30 Subd. 3. **Termination.** If the attorney or firm retained by the consumer in the legal claim  
5.31 does not provide the consumer with the acknowledgment under subdivision 2, the contract

6.1 is null and void. The contract remains valid and enforceable if the consumer terminates the  
6.2 initial attorney or retains a new attorney with respect to the legal claim.

6.3 **Subd. 4. Prepayment penalty prohibited.** Notwithstanding any law to the contrary, a  
6.4 prepayment penalty or fee charged or collected on consumer litigation funding is prohibited.  
6.5 A prepayment penalty on consumer litigation funding is unenforceable.

6.6 **Sec. 4. [45B.04] PROHIBITIONS; CHARGE LIMITATIONS.**

6.7 Subdivision 1. Prohibitions; generally. A consumer litigation funding company is  
6.8 prohibited from:

6.9 (1) paying or offering to pay a commission, referral fee, or other form of consideration  
6.10 to: (i) an attorney, law firm, health care provider, chiropractor, or physical therapist; or (ii)  
6.11 an employee of a person or entity listed under item (i) for referring a consumer to the  
6.12 company;

6.13 (2) accepting a commission, referral fee, rebate, or other form of consideration from: (i)  
6.14 an attorney, law firm, health care provider, chiropractor, or physical therapist; or (ii) an  
6.15 employee of a person or entity listed under item (i);

6.16 (3) intentionally advertising materially false or misleading information regarding the  
6.17 consumer litigation funding company's products or services;

6.18 (4) referring, in an attempt to secure an initial legal funding, a customer or potential  
6.19 customer to: (i) a specific attorney, law firm, health care provider, chiropractor, or physical  
6.20 therapist; or (ii) an employee of a person or entity listed under item (i), except that if a  
6.21 customer needs legal representation, the company may refer the customer to a local or state  
6.22 bar association referral service;

6.23 (5) knowingly providing funding to a consumer who has previously assigned or sold a  
6.24 portion of the consumer's right to proceeds from the consumer's legal claim without first  
6.25 making payment to or purchasing a prior unsatisfied consumer litigation funding company's  
6.26 entire funded amount and contracted charges, unless a lesser amount is otherwise agreed  
6.27 to in writing by the consumer litigation funding companies. Multiple companies may agree  
6.28 to contemporaneously provide funding to a consumer if the consumer and the consumer's  
6.29 attorney consent to the arrangement in writing;

6.30 (6) having influence, receiving any right to, or making a decision with respect to the  
6.31 conduct of the underlying legal claim or any settlement or resolution of the underlying legal  
6.32 claim. The right to make decisions regarding an underlying legal claim remains solely with  
6.33 the consumer and the attorney involved in the legal claim;

7.1        (7) attempting to obtain a waiver of any remedy or right by the consumer, including but  
7.2        not limited to the right to trial by jury; or

7.3        (8) during or after the resolution of the legal claim, knowingly paying or offering to pay  
7.4        for court costs, filing fees, or attorney fees using money from the consumer litigation funding  
7.5        transaction.

7.6        **Subd. 2. Other financial prohibitions.** (a) An attorney or law firm retained by the  
7.7        consumer in the legal claim must not have a financial interest in the consumer litigation  
7.8        funding company offering consumer litigation funding to that consumer. An attorney who  
7.9        has referred the consumer to the attorney's retained attorney must not have a financial interest  
7.10        in the consumer litigation funding company offering consumer litigation funding to that  
7.11        consumer.

7.12        (b) A consumer litigation funding company must not provide funding to a consumer  
7.13        litigation funding transaction that is directly or indirectly financed by a person or entity  
7.14        identified under section 45B.02, subdivision 10 or 11.

7.15        **Subd. 3. Information disclosure.** The attorney may disclose privileged information to  
7.16        the consumer litigation funding company only with the consumer's written consent.

## 7.17        **Sec. 5. [45B.05] CONTRACTED AMOUNTS.**

7.18        The contracted amount paid to the consumer litigation funding company (1) must be a  
7.19        predetermined amount based on intervals of time from the funding date through the resolution  
7.20        date, and (2) must not be determined as a percentage of the recovery from the legal claim.

## 7.21        **Sec. 6. [45B.06] DISCLOSURES.**

7.22        **Subdivision 1. Consumer litigation financing agreement.** (a) Except as otherwise  
7.23        stipulated or ordered by the court, a claimant or the claimant's attorney must, without waiting  
7.24        for a request, provide to all participants and parties a consumer litigation financing agreement  
7.25        (1) at the time a legal claim is asserted or commenced, and (2) any time after a legal claim  
7.26        is asserted or amend that a consumer litigation financing agreement is executed or amended.  
7.27        An insurer that has or may have a duty to defend or indemnify a party to a legal claim must  
7.28        be provided the consumer litigation financing agreement or any modifications or amendments  
7.29        to the agreement.

7.30        (b) Consumer litigation financing agreements and all participants or parties to consumer  
7.31        litigation financing agreements are permissible subjects of discovery in a legal claim.

8.1        Subd. 2. **Discovery.** Notwithstanding any agreement or provision with respect to  
8.2        confidentiality, a consumer litigation funding contract, and all participants or parties to the  
8.3        consumer litigation funding contract, are presumed to be discoverable in a civil proceeding.  
8.4        A consumer may seek to rebut the presumption under this subdivision.

8.5        Subd. 3. **Certain evidence inadmissible.** A consumer litigation funding transaction  
8.6        disclosed under subdivision 1 and a consumer litigation funding contract discovered under  
8.7        subdivision 2 are presumed to be inadmissible as evidence. A party may seek to rebut the  
8.8        presumption under this subdivision.

8.9        **Sec. 7. [45B.07] VIOLATIONS.**

8.10        Subdivision 1. **Generally.** A consumer litigation funding company that willfully violates  
8.11        this chapter in a specific funding case:

8.12        (1) waives the consumer litigation funding company's right to recover the funded amount  
8.13        and all charges in the particular case; and

8.14        (2) is liable for a civil penalty of not more than \$..... for each violation, which accrues  
8.15        to the state and may be recovered in a civil action brought by the attorney general.

8.16        Subd. 2. **Attorney general; authority.** Nothing in this chapter limits or restricts the  
8.17        attorney general's authority to exercise powers and duties otherwise granted by law.

8.18        **Sec. 8. [48B.08] ASSIGNABILITY; LIENS.**

8.19        (a) The contingent right to receive an amount of a legal claim's potential proceeds is  
8.20        assignable by a consumer to a consumer litigation funding company.

8.21        (b) Only an attorney's lien related to the legal claim that is the subject of the consumer  
8.22        litigation funding, or Medicare or other statutory liens related to the legal claim, take priority  
8.23        over a consumer litigation funding company's lien.

8.24        **Sec. 9. [48B.09] COMMUNICATION; EFFECT ON PRIVILEGES.**

8.25        Communication between a consumer's attorney and a consumer legal funding company  
8.26        to allow the consumer legal funding company to ascertain the status of a legal claim or a  
8.27        legal claim's expected value is not discoverable by a person against whom the legal claim  
8.28        is asserted or filed.

9.1 **Sec. 10. 48B.10] REGISTRATION.**

9.2 Subdivision 1. **Registration required.** (a) A consumer litigation funding company or  
9.3 commercial litigation financier is prohibited from engaging in consumer litigation funding  
9.4 or commercial litigation financing agreements in Minnesota unless the consumer litigation  
9.5 funding company or commercial litigation financier registers under this section.

9.6 (b) A person or entity is prohibited from filing a form of consumer litigation funding  
9.7 contract or commercial litigation financing agreement in Minnesota unless the contract or  
9.8 agreement has been filed with the department in accordance with procedures required by  
9.9 the department. The procedures must include a reasonable time frame for the state to object  
9.10 to a filed form.

9.11 Subd. 2. **Filing.** An applicant's registration must be filed in the manner required by the  
9.12 department and must contain the information the department requires to evaluate the character  
9.13 and fitness of the applicant company or financier, including but not limited to beneficial  
9.14 ownership exceeding 20 percent. The initial application must be accompanied by a \$.....  
9.15 fee. A renewal registration must include a \$..... fee. A registration must be renewed every  
9.16 two years and expires December 31 of the second year the registration is valid.

9.17 Subd. 3. **Registration issuance.** The department is prohibited from issuing a registration  
9.18 certificate unless the department, upon investigation, determines the applicant company's  
9.19 or financier's, including the applicant company's or financier's officers and directors, character  
9.20 and fitness warrants the belief that the business is operated honestly, fairly, and consistent  
9.21 with this chapter's purposes and requirements.

9.22 Subd. 4. **Bond.** If the department requires, a registrant must, at the time an application  
9.23 is filed under this section, file with the department a bond satisfactory to the department in  
9.24 an amount not to exceed \$..... In lieu of the bond, the registrant may opt to post an  
9.25 irrevocable letter of credit. The terms of the bond must run concurrent with the period of  
9.26 time during which the registration is effective. The bond must provide that the registrant  
9.27 must (1) faithfully conform to and abide by this chapter and administrative rules adopted  
9.28 by the department under section 48B.14, and (2) pay to a person or persons all amounts of  
9.29 money due or owed to the state or due or owed to the person or persons under this chapter  
9.30 during the period for which the bond is given.

9.31 Subd. 5. **Hearing.** (a) Upon written request, the applicant is entitled to a hearing regarding  
9.32 the applicant's qualifications for registration if:

9.33 (1) the department notifies the applicant in writing that the application has been denied;  
9.34 or

10.1 (2) the department does not issue a registration within 60 days of the date the registration  
10.2 application is filed.

10.3 (b) A hearing request must be made within 15 days after the date the department mails  
10.4 a written notice to the applicant indicating that the application has been denied and stating,  
10.5 in substance, the department's findings that support denying the application.

10.6 **Subd. 6. Applications pending approval; permitted activities.** Notwithstanding  
10.7 subdivision 1, a consumer litigation funding company or commercial litigation financier  
10.8 that registered with the department between the effective date of this chapter or the date  
10.9 when the department makes applications available to the public, whichever is later, and 180  
10.10 days after the later of the two dates may engage in consumer litigation funding or commercial  
10.11 litigation financing agreements while the company's registration is pending approval with  
10.12 the department.

10.13 Sec. 11. **[48B.11] REPORTING.**

10.14 **Subdivision 1. Report required.** A consumer litigation funding company and commercial  
10.15 litigation financier that engages in business in Minnesota must submit a report to the  
10.16 department on or before December 31 each year regarding activities under this chapter. At  
10.17 a minimum, the report must:

10.18 (1) specify the number of lawsuits funded by the company or financier during the year;  
10.19 (2) summarizes the funded amounts, in dollars, during the year; and  
10.20 (3) identify the annual percentage charged to each consumer or commercial litigation  
10.21 funding recipient to whom repayment was made during the year.

10.22 **Subd. 2. Certain information public.** The department must make the information  
10.23 submitted under subdivision 1 available to the public in a manner that ensures the name of  
10.24 each company and consumer is confidential. The information must be made available no  
10.25 later than 30 days after the date the reports are submitted.

10.26 Sec. 12. **[48B.12] COMMERCIAL LITIGATION FUNDING; PROHIBITIONS.**

10.27 **Subdivision 1. Agreements.** A commercial litigation financier is prohibited from directly  
10.28 or indirectly entering into a commercial litigation financing agreement with a foreign entity  
10.29 of concern or a foreign country or person of concern.

10.30 **Subd. 2. Disclosure.** A claimant, attorney or law firm representing a claimant, or affiliated  
10.31 attorney or law firm is prohibited from disclosing or sharing documents or information with

11.1 a commercial litigation financier if the information is subject to a protective or sealing order  
11.2 from a court.

11.3 Subd. 3. **Decision making.** A commercial litigation financier is prohibited from making  
11.4 a decision, having influence, or directing a decision with respect to the course of a legal  
11.5 claim, including but not limited to a decision to appoint or change counsel, choose or use  
11.6 an expert witness, determine litigation strategy, or settle the claim or agree to another  
11.7 resolution. The right to make all decisions regarding a legal claim remains solely with the  
11.8 claimant and the claimant's attorney or law firm.

11.9 Sec. 13. **[48B.13] COMMERCIAL LITIGATION FINANCING AGREEMENT;**  
11.10 **DISCLOSURE; DISCOVERY.**

11.11 Subdivision 1. **Certain disclosure authorized.** Except as otherwise stipulated or ordered  
11.12 by the court, a claimant or the claimant's attorney must, without waiting for a discovery  
11.13 request, provide to all parties a commercial litigation financing agreement (1) at the time a  
11.14 legal claim is asserted or commenced, and (2) any time after a legal claim is asserted or  
11.15 commenced that a commercial litigation financing agreement is executed or amended. An  
11.16 insurer that has or may have a duty to defend or indemnify a party to a legal claim must be  
11.17 provided with the commercial litigation financing agreement or a modification or amendment  
11.18 to the agreement.

11.19 Subd. 2. **Discovery.** A commercial litigation financing agreement and all participants  
11.20 or parties to commercial litigation financing agreements are permissible subjects of discovery  
11.21 in a legal claim.

11.22 Sec. 14. **[48B.14] RULEMAKING.**

11.23 The department may adopt rules necessary to implement and enforce this chapter.