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**SUBSTITUTE HOUSE BILL 2306**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Kirby, Vick, Walen, Hoff, Ryu, and Volz)

AN ACT Relating to the regulation of legal service contractors; amending RCW 48.17.170; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  PUBLIC POLICY REGARDING ACCESS TO LEGAL SERVICES. (1) It is the public policy of the state of Washington to promote ready access to legal assistance for all citizens of the state and to encourage programs and plans that promote arrangements between members of the public as consumers of legal services and lawyers and other trained professionals who provide legal assistance to the general public for legal needs.

(2) To facilitate this public policy, the legislature finds that it is desirable to create a regulatory environment to ensure that the citizens of this state have ready and uncomplicated access to legal services, to ensure consistent standards for prepaid legal service agreements for legal services, and also to assure the public that a legal service contractor providing access to legal services will be able to fulfill its contractual obligations to participating consumers.

NEW SECTION. **Sec.**  SCOPE AND APPLICABILITY OF CHAPTER. (1) Legal service contractors and legal service plans are subject to the commissioner's oversight and authority as specified in this chapter, and are not otherwise subject to the requirements of this title.

(2) This chapter does not apply to any of the following arrangements:

(a) Retainer, fee, engagement, or representation agreements made by an attorney or firm of attorneys with any person or group other than a legal service contractor;

(b) Referral of individual clients to an attorney by a nonprofit lawyer referral service or public corporation or entity such as a state or local bar association, provided there is no fee or charge for such referral;

(c) Employee welfare benefit plans to the extent that state law or regulation is preempted by federal law or regulation;

(d) The provision of legal assistance to low-income or moderate-income persons by nonprofit legal aid organizations or legal aid programs affiliated with the Washington state bar association, a local bar association, a law school accredited by the American bar association, or a program operated in conjunction with a paralegal education program approved by the American bar association;

(e) Policies of insurance issued by an insurer holding a valid certificate of authority in this state and issued under applicable laws in this title pertaining to such insurance unless the policy is a stand-alone legal services plan.

(3) This chapter does not in any way affect the practice of law in this state. The practice of law in this state is governed exclusively by the Washington state supreme court, is regulated in accordance with applicable rules adopted by the Washington state supreme court, and is administered by the Washington state supreme court or by the Washington state bar association or by any other association or board as approved and directed by the Washington state supreme court.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commissioner" means the insurance commissioner of the state of Washington.

(2) "Enrolled participant" means an individual, person, or group of individuals or persons eligible to receive specified legal services under a legal service plan.

(3) "Legal service contractor" means any person or entity who is registered with the commissioner as a legal service contractor, and who, for consideration, provides enrolled participants with access to legal services through agreements with providing attorneys. An insurer or issuer licensed by the commissioner to transact the business of insurance in the state must register with the commissioner as a legal service contractor if they offer a product that meets the definition of a legal service plan as a stand-alone product, but the insurer is neither required to pay the application or renewal fees nor to separately establish its financial responsibility under this chapter.

(4) "Legal service plan" or "plan" means an arrangement between a legal service contractor and an individual or person or group of individuals or persons, whereby specified legal services are to be provided to enrolled participants in consideration of a specified payment for a specified period of time.

(5) "Producer" means a person who promotes, markets, solicits or sells a legal service plan, and for an individual or entity that sells, solicits, or negotiates a legal service plan, and is a licensed producer with a limited line of authority for prepaid legal service plans as provided in chapter 48.17 RCW, and is appointed by a legal service contractor offering such products in order to sell, solicit, or negotiate a legal service plan.

(6) "Providing attorney" means an attorney licensed in good standing with the Washington state bar association and eligible to practice law in this state who provides legal services under a providing attorney agreement in accordance with the terms of a legal service plan.

(7) "Providing attorney agreement" means a written contract or agreement between a legal service contractor and a providing attorney under which the providing attorney renders and provides legal services to an enrolled participant of a legal service plan.

NEW SECTION. **Sec.**  CERTIFICATE OF REGISTRATION. (1) A person or entity may not transact business in this state as a legal service contractor unless the person or entity holds a valid certificate of registration as a legal service contractor issued by the commissioner.

(2) A person or entity applying for registration as a legal service contractor must comply with the following requirements as set forth in this section:

(a) Apply for registration on the forms prescribed by the commissioner and pay all applicable associated fees under this chapter;

(b) Appoint the commissioner as its attorney-in-fact for service of process, upon whom must be served all legal process issued against the person or entity in regard to all causes of action arising within this state. Service of process against a person or entity doing business as a legal service contractor must be available only by service upon the commissioner, and valid service of legal process against the commissioner as attorney-in-fact constitutes service upon the legal service contractor; and

(c) Designate by name and address the individual or person who must serve as the legal service contractor's registered agent to whom the commissioner must forward legal process issued against the legal service contractor and received by the commissioner.

(3) A person or entity applying for registration as a legal service contractor must meet the following qualifications:

(a) The applicant must provide such information as the commissioner may establish by rule regarding the legal service contractor and its directors, officers, and managers to satisfy the commissioner of their competency, trustworthiness, and management and business experience to conduct the business and affairs of the legal service contractor in a reasonable and prudent manner. The information must include the most recent audited annual financial statements of the legal service contractor, or the most recent audited financial statements that demonstrate the applicant has and maintains a minimum net worth of two hundred thousand dollars or more, calculated according to generally accepted accounting principles;

(b) The applicant must deposit with the commissioner's office a two hundred fifty dollar filing fee to be paid for filing the application for the certificate of registration and any necessary accompanying documents to be filed with the application; and

(c) Any other information as the commissioner may, by rule, require as reasonable and necessary.

(4) A legal service contractor must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs, and by June 1st each year file its financial statement for the prior year ending December 31st.

(5) A legal service contractor may not issue, sell, or offer for sale in this state a legal service plan providing for access to legal services under the plan unless the legal service contractor offering the plan posts a bond or provides evidence of a security deposit pursuant to this section equivalent to two hundred thousand dollars initially, and subsequently adjustable to be equivalent to the unearned fees collected by the legal service contractor. The bond or security deposit must be held in trust to the commissioner for the protection of enrolled participants in the plan and other affected persons in the state of Washington. The bond or other security deposit must be held in a bank authorized to transact business in this state and insured by the federal deposit insurance corporation.

(6) The commissioner may conduct investigations of the legal service contractor, its producers, administrators, and other persons as is necessary to enforce this chapter and protect enrolled participants in this state. Upon request of the commissioner, the legal service contractor or producer must make all accounts, books, and records available to the commissioner which are necessary to enable the commissioner to determine compliance or noncompliance with this chapter. The commissioner may take action under RCW 48.02.080 or 48.04.050 as necessary to enforce this chapter and the commissioner's rules and orders under this chapter, and to protect enrolled participants in this state. The commissioner may impose a penalty of not more than five hundred dollars for any violation of the provisions of this chapter. A legal service contractor is entitled to all rights, actions, and remedies under chapter 48.04 RCW available to licensees and persons aggrieved or affected by any act, failure to act, or proposed act by the commissioner.

(7) The commissioner may, subject to chapter 48.04 RCW, refuse to issue a registration, or may suspend, revoke, or refuse to issue or renew a certificate of registration, if the commissioner finds:

(a) That the legal service contractor, or any individual responsible for the conduct of the affairs of the legal service contractor is not competent or trustworthy;

(b) That the legal service contractor cannot demonstrate a minimum net worth or stockholders' equity or the ability to pay its debts when debts become due;

(c) That the legal service contractor has had a license as a legal service contractor or similar license denied or revoked for cause by any state;

(d) That the legal service contractor has refused to be investigated or to produce its accounts, records, and files for investigation, or if its officers have refused to give information with respect to its affairs or refused to perform any legal obligation as to an investigation, when reasonably required by the commissioner;

(e) That the legal service contractor is affiliated with and under the same general management or interlocking directorate or ownership as another legal service contractor which unlawfully transacts business in this state without having a registration;

(f) That the legal service contractor at any time fails to meet the qualifications for which issuance of registration could have been refused had such failure then existed and been known by the commissioner;

(g) That the legal service contractor is under suspension or revocation in any other state with respect to its business;

(h) That the legal service contractor has made a material misstatement in its application for registration;

(i) That the legal service contractor has obtained or attempted to obtain a registration through material misrepresentation or fraud;

(j) That the legal service contractor has, in the transaction of its business under its registration, used fraudulent, coercive, or dishonest practices;

(k) That the legal service contractor has failed to pay a judgment by a court of competent jurisdiction regarding a legal service plan issued to an enrolled participant within sixty days after the judgment has become final;

(l) That the legal service contractor has failed to respond promptly to an inquiry from the commissioner regarding its business in this state. A response is generally considered to be prompt if provided within fifteen days of receipt of the inquiry and must be in writing unless otherwise indicated in the inquiry or as agreed to by the commissioner and the legal service contractor;

(m) That the legal service contractor does not maintain the minimum net worth required by this chapter or cannot pay its valid debts when due; or

(n) That the business practices of the legal service contractor in this state pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(8) The commissioner may suspend, revoke, or refuse to issue or renew a certificate of registration only after giving written notice of the specific reasons for such action and after giving the legal service contractor an opportunity for appeal and hearing pursuant to the provisions of chapters 48.04 and 34.05 RCW.

(9) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed, for so long as the legal service contractor continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of January upon application of the legal service contractor and payment of a renewal fee of two hundred fifty dollars. If not so renewed, the registration expires on December 31st of the preceding year. The commissioner must receive and approve the registration application from a person or entity meeting the definition of legal service contractor in this chapter that offers legal service plans prior to the effective date of this section but not later than January 1, 2021, or the person or entity must cease offering legal service plans in this state until such person or entity is registered with the commissioner.

NEW SECTION. **Sec.**  PROVIDING ATTORNEY AGREEMENT. (1) A legal service contractor may not offer, market, or operate a legal service plan in this state unless the legal service contractor has written providing attorney agreements with one or more attorneys licensed to practice law in the state of Washington.

(a) No providing attorney agreement or legal service plan may contain any provisions that are unfair, discriminatory, or misleading, or that encourage misrepresentation or misunderstanding of the terms of the agreement, or that endanger the solvency of the legal service contractor or the plan, or that are intentionally contrary to law.

(b) For the term of each providing attorney agreement and each plan, a legal service contractor must maintain at its principal place of business adequate books and records of all transactions between the legal service contractor and the providing attorney and between the legal service contractor and the enrolled participants of a plan. The commissioner must have reasonable access to such books and records.

(2) A legal service contractor must provide each enrolled participant with a copy of the enrolled participant's legal service plan. Each legal service plan must contain the following basic provisions:

(a) A listing and clear description of the legal services to be provided under the plan, how to access the services, any fees or costs for which the enrolled member is responsible, and a clear explanation of the limits of such legal services; and

(b) The legal name, telephone number, and address of the principal place of business of the legal service contractor offering the plan, and a contact name, address, and telephone number in the state of Washington.

(3) A legal service contractor may market its products directly to consumers or contract with third-party marketers who are licensed as a legal services limited lines producer for the distribution of its legal service plans.

(a) The legal service contractor must have an executed written agreement with a third-party marketer licensed as a legal services limited lines producer prior to the marketer's marketing, promotion, selling, or distribution of the legal service contractor's plans. The agreement must include a requirement that the legal service contractor has provided prior written approval of the advertising, marketing materials, brochures, and other materials distributed to consumers or enrolled members.

(b) The legal service contractor is bound by and responsible for the activities of a marketer that are within the scope of the marketer's agency relationships with the contractor.

NEW SECTION. **Sec.**  RULES. The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 48 RCW.

**Sec.**  RCW 48.17.170 and 2012 c 154 s 5 are each amended to read as follows:

(1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(iv) Legal services;

(h) Specialty lines:

(i) Portable electronics;

(ii) Rental car;

(iii) Self-service storage; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of such refusal to the licensee. If the request and fee for the license renewal are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(6) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal shall pay to the commissioner, in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee;

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(7) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and fee for the renewal are received by the commissioner after sixty days but prior to twelve months after the expiration date, the application is for reinstatement of the license and the applicant for reinstatement must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(8) Subsections (6) and (7) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment.

(9) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(10) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(11) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(12) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both.

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