

HOUSE BILL REPORT

SHB 2306

As Passed House:
February 16, 2020

Title: An act relating to the regulation of legal service contractors.

Brief Description: Concerning the regulation of legal service contractors.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kirby, Vick, Walen, Hoff, Ryu and Volz).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/22/20, 1/31/20 [DPS];
Appropriations: 2/8/20 [DPS(CRJ)].

Floor Activity:

Passed House: 2/16/20, 96-0.

Brief Summary of Substitute Bill

- Creates a new chapter and regulatory scheme for legal services contractors.
- Adds legal services as a limited line of insurance.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Civil Rights & Judiciary be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking

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Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Meghan Morris (786-7119).

Background:

Legal Services Plans.

A legal service plan, sometimes referred to as a prepaid legal plan, is an arrangement in which a member prepays for legal services that the member may need in the future.

Typically, the member pays a monthly or annual fee which entitles the member to certain basic legal services as they are needed. Basic legal services that may be provided under a prepaid legal plan include legal advice and consultation by telephone, office consultations, review of simple legal documents, and correspondence or communication made by a lawyer to an adverse party. Some plans may offer more comprehensive services at an extra charge for more complex legal services. The provider of the legal service plan contracts with private attorneys or law firms to provide covered legal services to the members of the plan.

Providers of legal service plans are not currently regulated in Washington. Many other states have established regulations requiring legal service plan providers to register, provide certain information for disclosure, and comply with minimum standards regarding the conduct of their businesses.

Office of the Insurance Commissioner and Insurance Producers.

The Office of the Insurance Commissioner licenses and regulates insurance transactions and producers in Washington. "Insurance producer" is defined as a person required to be licensed under the laws of Washington to sell, solicit, or negotiate insurance. An insurance producer may obtain a license in one or more of the following lines of authority: life, disability, property, casualty, variable life and variable annuity, personal lines, limited lines, specialty lines, or any other line permitted under state law.

Summary of Substitute Bill:

Public Policy.

A public policy is stated that ready access to legal assistance and counsel for all citizens of the state must be promoted, and that plans that promote arrangements between the public as consumers of legal services and lawyers who provide legal services to the public should be encouraged and regulated.

Definitions.

A "legal services contractor" is a person, entity, or group of persons who provide enrolled participants with legal services through agreements with providing attorneys. "Legal services plan" means an arrangement between a legal services contractor and a person or group of persons, called enrolled participants, where specified legal services are provided in consideration of a specified payment for a specified period.

Certificate of Registration.

A legal services contractor must have a valid certificate of registration with the Office of the Insurance Commissioner (Commissioner) to transact business in the state. An insurer who offers a legal services plan as a stand-alone product must register as a legal services contractor with the Commissioner but is not required to pay the legal services contractor application or renewal fees. The legal services contractor must post a bond or provide evidence of a security deposit in the initial amount of \$200,000 to be subsequently adjusted to unearned fees collected by the contractor. The bond or security deposit must be held in trust for the protection of enrolled participants in the plan and must be held in a bank authorized to transact business in Washington and insured by the Federal Deposit Insurance Corporation.

To apply for registration a legal services contractor must:

- use forms specified by the Commissioner;
- pay all applicable registration fees, including a \$250 filing fee;
- appoint the Insurance Commissioner as attorney-in-fact for service of process;
- designate the person who will serve as the legal service contractor's registered agent to whom the Commissioner must forward legal process issued against the contractor;
- provide information showing that the directors, officers, and managers of the legal services contractor are competent and trustworthy, have sufficient management and business experience to conduct business in a reasonable and prudent manner, and must include the most recent audited financial statements of the legal services contract that demonstrate the applicant has and maintains a minimum net worth of \$200,000 or more; and
- provide other information required by the Commissioner.

Any material change in the information required to be disclosed must be reported within 30 days of the event. The legal services contractor must file an annual financial statement for the preceding year by June 1 of each year.

A legal services contractor conducting business in Washington on the effective date of the act is permitted to continue operations but must apply for and receive a certificate of registration no later than January 1, 2021. Registration is valid through the end of the year in which it is issued. A legal services contractor may renew a registration by paying a renewal fee established by the Commissioner, and renewed certificates are valid for one calendar year.

The Commissioner may suspend, revoke, or refuse to issue or renew a registration for a variety of reasons, provided that the legal services contractor is given written notice and an opportunity for administrative appeal and hearing. These reasons include that the legal services contractor:

- is not competent or trustworthy;
- cannot demonstrate a minimum net worth or stockholders' equity or the ability to pay its debts when debts become due;
- had a license as a legal services contractor or similar license denied or revoked for cause by any state;
- has refused to be investigated, provide information in an investigation, or perform any legal obligation as to an investigation;

- is affiliated with and under the same general management or ownership as another legal services contractor which transacts business in Washington without a registration;
- fails to meet the qualifications;
- made a material misstatement in its application for registration or has obtained or attempted to obtain a registration through material misrepresentation or fraud;
- used fraudulent, coercive, or dishonest practices;
- failed to pay a judgement regarding an enrolled participant's legal services plan within 60 days of final judgement;
- failed to respond to an inquiry from the Commissioner regarding its business within 15 days of receipt of the inquiry; or
- poses an imminent threat to the public health, safety, or welfare of Washington residents.

Providing Attorney Agreements.

A legal services contractor may not transact business or operate a legal services plan until the legal services contractor enters into a providing attorney agreement with one or more providing attorneys. A "providing attorney" is an attorney eligible to practice law in Washington and licensed in good standing with the Washington State Bar Association, who provides legal services under a providing attorney agreement.

Legal Services Plans.

A legal services contractor must provide a copy of the legal services plan to each enrolled participant. In addition to providing contact information for the legal services contractor's principal place of business and contact information in Washington, the plan must include a clear description of the legal services provided under the plan, how to access the services, any fees or costs for which the enrolled participant is responsible, and a clear explanation of the limits of the legal services.

Unfair and Discriminatory Provisions Prohibited.

A providing attorney agreement or legal services plan may not contain provisions that are unfair, discriminatory, misleading, or that endanger the solvency of the legal services contractor of the plan or are intentionally contrary to law.

Third-Party Marketer.

A legal services contractor may market its products either directly to consumers or by contracting with a third-party marketer licensed as a legal services limited lines producer. If utilizing a third-party marketer, the legal services contractor must have a written agreement prior to the marketer's marketing, promotion, selling, or distribution of the legal services contractor's plans. The agreement must include a requirement that the legal services contractor provide prior written approval of any marketing materials used by the marketer. The legal services contractor is bound by and responsible for the activities of the marketer that are within the scope of the marketer-legal services contractor relationship.

Office of the Insurance Commissioner.

Legal services contractors and legal services plans are subject to the oversight and authority of the Commissioner. The Commissioner has the authority to adopt rules to implement and administer the provisions of the act.

The Commissioner may conduct investigations of the legal services contractor, its sales representatives, administrators, and other persons to protect enrolled participants and enforce the chapter. All accounts, books, and records must be made available to the Commissioner upon request. A penalty of not more than \$500 for any violation of the provisions of the chapter may be imposed by the Commissioner.

Scope and Applicability.

The act does not affect the practice of law in Washington.

The act does not apply to the following arrangements: retainer, fee, engagement, or representation agreements made by an attorney or firm of attorneys with any person or group other than a legal services contractor; free referral of individual clients to an attorney by a nonprofit lawyer referral service; employee welfare benefit plans if state law is preempted by federal law; legal assistance to low or moderate income clients by a nonprofit legal aid program affiliated, accredited, or operated by a bar association; and policies of insurance or coverage incidental to such insurance.

Limited Lines of Authority.

Legal services are added to the list of limited lines of authority for which an insurance producer may obtain a license.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) A company does business as a service contract company in Washington to register with and be approved by the Office of the Insurance Commissioner (Commissioner). Service contracts are regulated by the Commissioner.

Legal service contractors have been transacting business in the state for many years. Legal services contractors provide access to lawyers to people of modest and low incomes and is a way to get people who are underserved, access to lawyers. There are disagreements between the Commissioner and the legal service contract companies because there is not a regulatory framework for regulating legal service contractors.

The American Bar Association (ABA) has passed a formal opinion in support of legal service plans and the lawyers participating in them. The ABA also has a standing committee on group and prepaid legal services. In addition, the National Association of Attorneys General has adopted a resolution in support of prepaid legal service plans.

The bill does not regulate the practice of law or regulate law firms. Law firms that have a contract with a legal services contractor may be independent law firms that serve clients who

are not enrolled participants of a legal services plan. These law firms are governed by the Washington State Bar Association and the rules regulating the practice of law and professional responsibility. Some firms take between 300–500 hundred calls a day from people who have legal questions. Enrolled participants may want to refinance a house or purchase a home; some have been charged with a crime. These individuals want to know information about their rights and their options. These services provide access to justice to a tremendous amount of people. There is also an option to call after hours for emergency lawyers.

(Opposed) None.

(Other) This bill is not a bill focused on legal assistance for low-income people. It is a bill designed to provide services through legal contracting for people who have the capacity to purchase some level of legal assistance and availability. This is not a matter that falls within the jurisdiction of the Office of Civil Legal Aid.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill moves legal service entities within the regulatory framework of the Office of the Insurance Commissioner (Commissioner). Many stakeholders worked on this bill for several months to reach an agreement. This legislation uses the framework of the Service Contract Provider Act, so the Commissioner does not have to create a new regulatory framework. This is a good bill that brings everybody in the business into one playing field. This also helps with access to legal services at a reasonable rate for the underserved.

All implementation costs for the bill are from the Insurance Commissioner's Regulatory Account.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Kirby, prime sponsor; Steve Buckner and Brian Kreger, Legalshield; and Joe Lambino, Lambino and Martino.

(Other) Lonnie Johns-Brown, Office of the Insurance Commissioner; and Jim Bamberger, Office of Civil Legal Aid.

Persons Testifying (Appropriations): Lonnie Johns-Brown, Office of the Insurance Commissioner; and Steve Buckner and Brian Kreger, Legalshield.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.