

SENATE BILL REPORT

SHB 2306

As of February 25, 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: Passed House: 2/16/20, 96-0.

Committee Activity: Law & Justice: 2/25/20.

Brief Summary of Bill

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

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Insurance Regulation. The Office of the Insurance Commissioner (OIC) regulates insurance and insurance businesses in Washington under Title 48 RCW, the insurance code. Under Washington law, insurance is a contract whereby one undertakes to indemnify another to pay a specified amount upon determinable contingencies. There are many types of insurance, and new insurance products are regularly developed, but the purpose of insurance regulation remains unchanged. States regulate insurance to ensure insurers fulfill the contracts they make with consumers.

Insurers include every person engaged in the business of making contracts of insurance subject to specific exceptions. Insurers must have a certificate of authority from the OIC to transact insurance unless exempted in the code. Insurance transaction includes any solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matters subsequent to execution of the contract and arising out of it, and insuring. The insurance code authorizes the OIC to examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurance as often as the

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insurance commissioner deems advisable. Insurance producers must be licensed under the insurance code 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.

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. Of the states currently regulating legal services plans, regulatory authority is split. Some states regulate legal service plans as insurance products under their insurance regulations, others regulate legal service plans through the state's bar association.

Summary of Bill: Legal service plans are regulated by the OIC only as provided under this act. A "legal services contractor" is a person, entity, or group of persons who provide enrolled participants with legal services through agreements with 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 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.

OIC Registration. A legal services contractor must have a valid certificate of registration with the OIC 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 OIC 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 OIC;
- 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 OIC 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 OIC.

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 1st 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 OIC, and renewed certificates are valid for one calendar year.

The OIC 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 OIC 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 and Legal Services Plans. 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 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. A providing attorney agreement or legal services plan may not contain provisions that are unfair, discriminatory, misleading, or that endanger the solvency of the plan's legal services contractor or are intentionally contrary to law.

Marketing Legal Services Plans. A legal services contractor may market its products either directly to consumers or by contracting with a third-party marketer licensed by the OIC 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. Legal services are added to the list of limited lines of authority for which an insurance producer obtains a license.

OIC Authority and Exclusions. 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill requires legal services contractors to register with the OIC. It is not insurance, but it is similar to insurance. The bill places safety and soundness requirements on legal services contractors that is similar to those required of insurers. This type of law practice is done all over the United States. The OIC and the legal services contractors agree that the current regulatory structure could be improved. The OIC and legal services contractors have come to agreement on the terms in this bill. The bill expressly provides that regulation of legal service contractors does not affect the practice of law. The OIC wants a stronger framework to regulate this type of business. The bill does not regulate the practice of law. This type of arrangement between legal services contractors and the providing attorneys is not a scheme where the lawyers share fees with others. It complies with the RPCs which allow attorneys to practice under prepaid legal services contracts. It is

consistent with an ABA opinion. This is a business with approximately 40,000 members representing persons of moderate income who do not have the hundreds of dollars needed to consult an attorney. If a person does not have the money to pay a lawyer, they do not have access to justice. For example, a mother who has issues around child custody, visitation, and the like may have a consultation with a lawyer a few times a year under the plan. A small business owner may consult with a tax attorney who is able to review their business and increase the number of tax deductions available to the business. A young person stopped by police late at night for a broken tail light whose name comes up with an out-of-state warrant was able to use the emergency access to talk to a lawyer. The lawyer talked to the arresting officer and determined the arrest warrant was a case of identity theft. The young person was able to go home that night.

Persons Testifying: PRO: Representative Steve Kirby, Prime Sponsor; Brian Kreger, Legalshield; Kevin Dunn, Citizen; Steve Buckner, Legalshield.

Persons Signed In To Testify But Not Testifying: No one.