

# HOUSE BILL REPORT

## SSB 5810

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### As Passed House - Amended:

March 2, 2022

**Title:** An act relating to exempting certain prepaid services from insurance regulation.

**Brief Description:** Exempting certain prepaid services from insurance regulation.

**Sponsors:** Senate Committee on Business, Financial Services & Trade (originally sponsored by Senators Mullet and Dozier).

### Brief History:

#### Committee Activity:

Consumer Protection & Business: 2/16/22, 2/21/22 [DPA].

#### Floor Activity:

Passed House: 3/2/22, 97-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Establishes that legal service contractors are not insurers and legal service plans are not insurance.

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## HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Kirby, Chair; Walen, Vice Chair; Vick, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Corry, Ryu and Santos.

**Staff:** Michelle Rusk (786-7153).

### Background:

[Insurance Regulations.](#)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

All insurance and insurance transactions in Washington are governed by the Insurance Code in Title 48 RCW (Code). Insurance is a contract in which one party undertakes to indemnify another, or pay a specified amount upon certain events occurring, and insurers are persons engaged in the business of making contracts of insurance.

The Insurance Commissioner (Commissioner) is responsible for regulating insurance including reviewing and approving insurance products, licensing and professional oversight, and investigating violations of the Code including enforcement action. Insurers must hold a certificate of authority issued by the Commissioner to engage in insurance transactions in Washington.

#### Prepaid Legal Services.

Prepaid legal service plans are, generally, membership plans that provide members access to lawyers for consultations, legal review and preparation of documents, certain dispute resolution, representation in court, and additional services depending on the scope of the membership.

#### **Summary of Amended Bill:**

Under Washington insurance laws, legal service contractors are not insurers and legal service plans are not insurance. Definitions for legal service contractors and legal service plans are established:

- "Legal service contractor" means any person, entity, or group of persons who does not engage in the practice of law or the business of insurance and who, for consideration, provides members with access to legal services through agreements with providing attorneys.
- "Legal service plan" means an arrangement between a legal service contractor and an individual or group of individuals, where specified legal services may be provided to, or provided at discounted rates to, members by providing attorneys in consideration of a periodic payment that does not constitute payment of attorney fees of any providing attorneys.

Neither the practice of law, nor the following arrangements, are affected by these new designations:

- representation agreements made between attorneys and persons or groups other than legal service contractors;
- individual client referrals to an attorney by nonprofit referral services or public entities such as bar associations;
- employee welfare benefit plans to the extent state law or regulation is preempted by federal law or regulation;
- legal assistance to low- or moderate-income persons by nonprofit legal aid organizations or programs affiliated with state or local bar associations, accredited law schools or programs operated in conjunction with approved paralegal education programs; and

- insurance policies, or coverage incidental to an insurance policy, that may include legal defense issued by an authorized insurer.

**Appropriation:** None.

**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:**

(In support) This Senate bill codifies what a court decision said last year: that prepaid legal plans are not insurance plans, they're paid membership plans. Lawyers are expensive, and it might make more sense for some people to sign up for a prepaid legal plan where they pay a certain amount per month or year and if something comes up, sticker shock can be avoided. These memberships are not about insurance, the focus is providing people access, through a membership or monthly contract, to Washington lawyers to provide everyday basic legal services. This bill definitively will improve access to justice and access to counsel in Washington State by leveling the playing field, allowing people to afford a monthly payment to access lawyers for certain services.

(Opposed) None.

(Other) There are some questions and concerns about this bill. It could be a good service for consumers and businesses but the bill appears to be open-ended and would allow for many activities that shouldn't be associated with legal representation, and doesn't contain some consumer protections that need to be there. Legal insurance plans are established in at least 47 other states and work well, but they're also very well regulated in those states. The bill is not clear about to whom attorneys owe their duty of care, it does not resolve potential conflicts of interest that could arise, and there could be privacy issues if the language isn't tightened up.

**Persons Testifying:** (In support) Senator Mark Mullet, prime sponsor; and Steve Buckner and Keri Norris, Legalshield.

(Other) Larry Shannon, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** None.