
SUBSTITUTE HOUSE BILL 2306

State of Washington

66th Legislature

2020 Regular Session

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

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

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

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

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

1 NEW SECTION. **Sec. 2.** SCOPE AND APPLICABILITY OF CHAPTER. (1)

2 Legal service contractors and legal service plans are subject to the
3 commissioner's oversight and authority as specified in this chapter,
4 and are not otherwise subject to the requirements of this title.

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this

35 section apply throughout this chapter unless the context clearly
36 requires otherwise.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 4.** CERTIFICATE OF REGISTRATION. (1) A person
37 or entity may not transact business in this state as a legal service
38 contractor unless the person or entity holds a valid certificate of

1 registration as a legal service contractor issued by the
2 commissioner.

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

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

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

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

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

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

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

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

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

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

19 (6) The commissioner may conduct investigations of the legal
20 service contractor, its producers, administrators, and other persons
21 as is necessary to enforce this chapter and protect enrolled
22 participants in this state. Upon request of the commissioner, the
23 legal service contractor or producer must make all accounts, books,
24 and records available to the commissioner which are necessary to
25 enable the commissioner to determine compliance or noncompliance with
26 this chapter. The commissioner may take action under RCW 48.02.080 or
27 48.04.050 as necessary to enforce this chapter and the commissioner's
28 rules and orders under this chapter, and to protect enrolled
29 participants in this state. The commissioner may impose a penalty of
30 not more than five hundred dollars for any violation of the
31 provisions of this chapter. A legal service contractor is entitled to
32 all rights, actions, and remedies under chapter 48.04 RCW available
33 to licensees and persons aggrieved or affected by any act, failure to
34 act, or proposed act by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (9) A registration issued under this section is valid, unless
13 surrendered, suspended, or revoked by the commissioner, or not
14 renewed, for so long as the legal service contractor continues in
15 business in this state and remains in compliance with this chapter. A
16 registration is subject to renewal annually on the first day of
17 January upon application of the legal service contractor and payment
18 of a renewal fee of two hundred fifty dollars. If not so renewed, the
19 registration expires on December 31st of the preceding year. The
20 commissioner must receive and approve the registration application
21 from a person or entity meeting the definition of legal service
22 contractor in this chapter that offers legal service plans prior to
23 the effective date of this section but not later than January 1,
24 2021, or the person or entity must cease offering legal service plans
25 in this state until such person or entity is registered with the
26 commissioner.

27 NEW SECTION. **Sec. 5.** PROVIDING ATTORNEY AGREEMENT. (1) A legal
28 service contractor may not offer, market, or operate a legal service
29 plan in this state unless the legal service contractor has written
30 providing attorney agreements with one or more attorneys licensed to
31 practice law in the state of Washington.

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

38 (b) For the term of each providing attorney agreement and each
39 plan, a legal service contractor must maintain at its principal place

1 of business adequate books and records of all transactions between
2 the legal service contractor and the providing attorney and between
3 the legal service contractor and the enrolled participants of a plan.
4 The commissioner must have reasonable access to such books and
5 records.

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

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

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

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

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

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

33 NEW SECTION. **Sec. 6.** RULES. The commissioner may adopt rules to
34 implement and administer this chapter.

35 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act
36 constitute a new chapter in Title 48 RCW.

1 **Sec. 8.** RCW 48.17.170 and 2012 c 154 s 5 are each amended to
2 read as follows:

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

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

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

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

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

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

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

26 (g) Limited lines:

27 (i) Surety;

28 (ii) Limited line credit insurance;

29 (iii) Travel;

30 (iv) Legal services;

31 (h) Specialty lines:

32 (i) Portable electronics;

33 (ii) Rental car;

34 (iii) Self-service storage; or

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

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

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

5 (4) Subject to the right of the commissioner to suspend, revoke,
6 or refuse to renew any insurance producer's, title insurance agent's,
7 or adjuster's license as provided in this title, the license may be
8 renewed into another like period by filing with the commissioner by
9 any means acceptable to the commissioner on or before the expiration
10 date a request, by or on behalf of the licensee, for such renewal
11 accompanied by payment of the renewal fee as specified in RCW
12 48.14.010.

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

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

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

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

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

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

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

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

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

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

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