

SENATE BILL REPORT

SHB 2691

As of February 27, 2014

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

Brief Description: Regulating legal service contractors.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Kirby).

Brief History: Passed House: 2/17/14, 97-0.

Committee Activity: Law & Justice: 2/26/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: A legal service plan is a contract that allows a person to prepay, on a monthly or yearly basis, for legal services that they may need in the future. A variety of legal service plans are offered to meet the different needs of participants. The provider of the legal service plan contracts with private attorneys or law firms to provide covered legal services to the persons paying for the plan. Basic legal services provided include legal consultation, advice, and other assistance for a variety of legal matters such as wills, trusts, review of contracts, and simple divorces. Some plans offer more comprehensive or complex legal services at an extra charge for matters such as trials, bankruptcy, and real estate matters.

While other states have enacted express regulations for legal service providers, no Washington state law expressly regulates providers of legal service plans. State law does not restrict who may offer or provide legal service plans, and state law does not restrict how a plan may be offered or structured. The actual practice of law is subject to oversight by courts and lawyers are subject to disciplinary rules. Businesses that contract with consumers are subject to the state Consumer Protection Act. Employee welfare benefit plans are regulated under the federal Employee Retirement Income Security Act of 1974 (ERISA). Insurers and insurance plans are regulated by the Office of Insurance Commissioner.

Summary of Bill: 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.

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

The state insurance code is amended to provide that legal service contractors are not insurers, and legal service plans are not insurance, as those terms are defined under the code. A legal service contractor is a person, entity, or group of persons who are not engaged in the practice of law or the business of insurance and who provide enrolled participants with legal services through agreements with providing attorneys. Legal service plan means an arrangement between a legal service contractor and a person or group of persons where specified legal services are provided to enrolled participants in consideration of a specified payment for a specified time period.

The act does not in any way affect the practice of law in Washington or apply to the following arrangements: certain retainer, fee, or representation agreements made by an attorney or firm of attorneys with any person or group other than a legal service 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 plans financed primarily by public funds or public service funds; and policies of insurance or coverage incidental to such insurance.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill will bring stability to businesses providing legal service contracts. Every three or four years providers of legal service contracts will be contacted by the Office of Insurance Commissioner (OIC). OIC will question whether the legal service contract is an insurance policy or product. In each case OIC has eventually determined that we do not sell insurance and are not insurers. This bill clarifies OIC's opinion that providers of legal service contracts are not insurers, and legal service contracts are not insurance.

Persons Testifying: PRO: Representative Kirby, prime sponsor; Brian Kreger, citizen.