

SENATE BILL REPORT

SB 6043

As of January 30, 2020

Title: An act relating to subscription service legal defense funds.

Brief Description: Concerning subscription service legal defense funds.

Sponsors: Senators Wilson, L., Muzzall, Rivers, Fortunato, Sheldon, Schoesler, Short, Honeyford and Becker.

Brief History:

Committee Activity: Law & Justice: 1/30/20.

Brief Summary of Bill

- Revises the definition of insurer in the state's insurance law by excluding a subscription company, which has a legal assistance plan from the definition.
- Prohibits a subscription company's legal assistance plan benefit from paying civil damages and associated fines and penalties arising from a self-defense incident.
- Prohibits a subscription company member found not guilty by reason of self-defense from being reimbursed for legal costs except for lost time and other legal services.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Insurance Regulation. Under Washington law, insurance is a contract whereby one undertakes to indemnify another to pay a specified amount upon determinable contingencies. States regulate insurance to ensure that insurers fulfill the contracts they make with consumers. States require insurers and insurance-related businesses to obtain a certificate of authority prior to selling products or services. The certificate of authority authorizes an insurer to do business in a state. States also license insurance producers—the insurance agents and brokers—and regulate their services and products. In Washington, the Office of the Insurance Commissioner (OIC) also oversees insurance policy forms, and the

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rates or premiums charged for a policy, to ensure the terms are fair and the premiums are reasonable for the coverage purchased. The OIC requires insurers to file annual financial statements proving a company is in good financial standing and maintains sufficient financial assets and reserves to satisfy its policy obligations. The OIC conducts routine market conduct examinations and examinations in response to consumer complaints. Market conduct examinations review agent licensing issues, sales practices, claims handling, and other aspects related to insurance business operations.

Washington's insurance laws provide exceptions from regulation as an insurer for specific entities. For example, private air ambulance subscription services are exempt so long as the Department of Health licenses the entity, it maintains national accreditation, it has operated in Washington for at least two years, and the company provides the OIC with proof of compliance with all state and federal regulations. A second exemption example is a roadside assistance benefit such as those provided through an auto club membership. A company that provides members with auto-related assistance, towing, reimbursement for legal costs from traffic infractions, or emergency road service, in exchange for member dues, is not considered insurance. Other auto club member benefits such as coverage for trip cancellation, bail bond service, accident, sickness, or death insurance must have an OIC-issued certificate of authority or the membership company must purchase the service from a company having an OIC-issued certificate of authority.

Subscription Membership Companies Providing Self-Defense Legal Assistance Plans. In 2019, the OIC investigated two entities, the United States Concealed Carry Association (USCCA) and its Self-Defense SHIELD protection plan and the National Rifle Association (NRA)-affiliated Carry Guard program. Both entities provide a legal assistance plan as a membership benefit. The plan pays for criminal defense costs if a member is charged with a crime related to intentional use of a firearm or other weapon.

The OIC issued a consent order in the USCCA case fining USCCA as an unauthorized insurer and for providing up front criminal defense coverage when a member faces criminal charges from firearm use in self-defense. The USCCA case arose after an annual review of surplus lines filings identified a policy issued by a South Carolina captive insurer that appeared to provide coverage for intentional, illegal acts. Coverage under the plan is triggered when a member is arrested, charged, or questioned regarding use of a legally-possessed self-defense use of a firearm or other weapon. The plan pays for criminal defense costs until the policy limit is reached or the member is convicted. Two Washington cases ruled it is against public policy to insure against liability arising from the intentional infliction of injury on another person. One of the cases, *Brosseau v. Grange Insurance*, involved a self-defense shooting in a wrongful death case. USCCA voluntarily ceased selling memberships including the Self-Defense SHIELD plan in Washington.

In the other case, Illinois Union Insurance, the OIC issued a consent order and fine. Illinois Union was the underwriter for the NRA's Carry Guard insurance program benefit for NRA members. The OIC determined the NRA was acting as an unlicensed producer by soliciting the Carry Guard program in Washington. The Carry Guard program, like the Self-Defense SHIELD plan, pays for criminal defense costs up front until the policy limit is reached. If the member pleads guilty or is convicted, the insurer stated it would recoup its payment or pay under a reservation of rights, but the policy had no provision allowing Illinois Union to

recoup the up from costs paid or pay subject to a reservation of rights. A reservation of rights is a notice to an insured that it may deny coverage for a claim at a later date while beginning to treat the claim as if it is covered.

Reimbursement for a Person Found Not Guilty by Reason of Self-Defense. Washington law provides for reimbursement for all reasonable costs, including loss of time, legal fees incurred, and other defense expenses when the trier of fact finds the defendant's self-defense claim is sustained by a preponderance of evidence. The judge may reduce or deny the award if the trier of fact also determines the defendant was engaged in criminal conduct related to the events giving rise to the charges filed. The reimbursement requires a special verdict in the form provided in the statute.

Summary of Bill: A subscription company providing a self-defense incident legal assistance plan is excluded from the definition of an insurer. A subscription company's legal assistance plan may not pay civil damages or associated fines and penalties arising from a self-defense incident. A member of a self-defense legal assistance plan who is found not guilty by reason of self-defense is not eligible for reimbursement for legal costs, except for lost time and other legal services.

Appropriation: None.

Fiscal Note: Requested on January 27, 2020

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: Our company creates a fund for defense, attorney costs, investigation costs, and other costs associated with self-defense, but it does not pay out for liability, fines, or judgments. The Legal Defense Network assists those who do not have funds to pay for their defense. For example, if a person is assaulted and uses pepper spray in self-defense, they could be charged with assault and assault with a deadly weapon. The member is provided with an attorney to defend them. The OIC is investigating over six companies charging that we have no certificate of authority, and we are insuring against illegal acts. That is not correct. We have no written contracts, we do not indemnify anyone, there is no contingency in self-defense. Defending oneself is an intentional act. We make a determination whether the use of self-defense is legitimate. Innocent people are often charged with a crime after they act in self-defense. Without a funding mechanism, most people have a serious problem and cannot afford their legal defense to the charge. There is no right to appointed counsel unless the accused is indigent. Violent self-defense situations happen in seconds. There is a saying, "when seconds count, police are minutes away." Bad guys have the advantage, they know who they will attack; their victim does not know it is coming. We believe that educated, responsible armed citizens know that their use of force must be reasonable. A responsible armed citizen has already been victimized by having to defend themselves. They should not be victimized again by criminal or civil charges. As a medical provider, who has patients with labor and industries claims, I am at risk of being a victim of violence from a patient who is angered by an adverse labor and industries decision. It may be a rare event, but it is a risk for me and my family. We believe that voluntary

cooperation and pooling of self-defense funds is one of our rights under the constitution's freedom of association.

Persons Testifying: PRO: Senator Lynda Wilson, Prime Sponsor; Marty Hayes, President, Armed Citizens Legal Defense Network; Daniel Rybicki, citizen; Jonathan Clemens, Physician Assistant.

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