

# SENATE BILL REPORT

## SB 6146

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As of January 30, 2020

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

**Brief Description:** Regulating legal service contractors.

**Sponsors:** Senators Mullet, Wilson, L., Hobbs and Ericksen.

**Brief History:**

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

### Brief Summary of Bill

- Gives the Office of the Insurance Commissioner (OIC) specified oversight authority regarding legal service contractors and legal service plans and rulemaking authority.
- Requires a legal service contractor to obtain an OIC-issued registration certificate and comply with enumerated standards, regulations, and duties to do business in Washington.
- Sets standards for legal services plans, including written providing attorney agreements, while authorizing the OIC to review all versions of the legal service plan, and requires plan marketers to be licensed as insurance producers.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** The OIC regulates insurance and insurance businesses in Washington. 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. Washington does not currently regulate legal services plans, sometimes called prepaid legal plans, but the OIC considers legal service plans an insurance product.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

Washington's Supreme Court has plenary authority to regulate the practice of law including adopting regulatory rules, rules of professional conduct, and overseeing the Practice of Law Board. The Supreme Court has exclusive authority to establish the qualifications to practice law, to admit and license attorneys to practice in Washington State, and to discipline attorneys, including disbarring attorneys when necessary. General Court Rule 24 (GR 24) describes the practice of law, in part, as being the application of legal principles and judgment with regard to the circumstances or objectives of another entity or persons, which require the knowledge and skill of a person trained in the law. This includes, but is not limited to:

- giving advice or counsel to others as to their legal rights or or the legal rights or responsibilities of others for fees or other consideration;
- selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or persons;
- representation of another entity or persons in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review; and
- negotiation of legal rights or responsibilities on behalf of another entity or persons.

The Practice of Law Board has prepared an amended version of GR 24 to address changing ways consumers access legal services including online legal services providers. The new proposed GR 24 addresses the border between the practice of law and the unlicensed practice when consumers seek legal information, generate legal documents, and seek assistance from unlicensed entities, including online self-representation legal service providers. Legal services plans provide a similar array of law-related services, including those within in the general definition of the practice of law. The current practice of law rules, and the State Bar Act, are built on a traditional law practice model that may not fully address the consumer protection needs of persons accessing legal services online or through new attorney-client service arrangements.

Legal services plans are not regulated under insurance regulations in approximately 34 states. The states regulating legal services plans are split, with some states regulating the plans as insurance products and other states requiring registration of legal service plans through the state's bar association. In Texas, for-profit legal service contracts have been regulated under the occupational licensing laws since 2005. In 2017, the Texas legislature ended licensing requirements for the for-profit legal service salespersons and companies.

**Summary of Bill:** A new chapter is created in Washington's insurance law, authorizing regulating legal service contractors and legal service plans. This requires legal service contractors to obtain an OIC-issued certificate of registration and comply with specific requirements. The OIC has rulemaking authority for rules needed to implement and administer its regulation of legal services contractors. Minimum standards are set for the plan terms and written contracts between legal services contractors and providing attorneys who provide services to consumers. Persons or organizations marketing legal services plan must be licensed as insurance producers.

**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 is primarily a bill for guaranteed access to legal services. OIC and LegalShield are working to get agreed upon language for a proposed substitute bill. We do not have it yet, but we expect it shortly. We have been trying for several years to create a legal platform for legal services plans and create a level playing field. Our intent is to get services to individuals who cannot afford a lawyer. Legal services contracts provide a discounted rate and a solid framework for legal services plans. It does not regulate the practice of law. The American Bar Association has a formal opinion supporting individual and group legal plans. The National Association of Attorneys General has a formal resolution supporting group and individual legal plans. From the providing attorney point of view, LegalShield does not tell providing attorneys how to conduct their practices; each is an independent law firm. Our firm has between 300 to 500 calls each day from persons seeking legal assistance—it may be because they do not understand their cell phone contract or the documents for refinancing a mortgage. These clients are not indigent and they are not wealthy, they are in the middle. We believe preventive law is the most important aspect of this plan by providing access to an attorney. If you have access, you do not procrastinate. The sooner someone seeks legal help, the more options you as an attorney have to give them. The initial call is answered by customer service staff who verify the membership number and address. We ask about the type of legal matter they have and run a conflict of interest check for opposing parties. If there is a conflict, we refer the caller out. If not, the call is routed to an attorney. We are paid by LegalShield, not the member and we do not know what the member's arrangement is with the LegalShield company. If a member needs representation in litigation, we make a separate arrangement. LegalShield is not owned entirely by lawyers. The providing attorneys are paid on a capitation basis. There is no attorney-client relationship created from the telephone consult only. They are not the providing attorney's client from the initial consult. They become a client after the person signs a fee agreement with the providing attorney. Under the fee agreement with the providing attorney the members the attorney. We have consulted with the Washington State Bar Association. The bar association tells us the arrangement is not fee splitting.

**Persons Testifying:** PRO: Senator Mark Mullet, Prime Sponsor; Steve Buckner, LegalShield; Brian Kreger, Legalshield; Joe Lambino, Lambino and Martino.

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