

By: Pitts

H.B. No. 1285

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT

COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

1 (4) "Department" means the Texas Department of
2 Licensing and Regulation.

3 (5) "Executive director" means the executive director
4 of the Texas Department of Licensing and Regulation or the
5 executive director's designee.

6 (6) "Financial security" means a surety bond, a
7 certificate of deposit, or any other item approved by the executive
8 director.

9 (7) "Legal service contract" means an agreement:

10 (A) that is entered into for a separately stated
11 consideration; and

12 (B) under which the company obtains legal
13 services for a legal service contract holder through a contracting
14 attorney.

15 (8) "Legal service contract holder" means the person
16 who purchases or otherwise holds a legal service contract or who is
17 covered under a group legal service contract.

18 (9) "Person" means an individual or a partnership,
19 company, corporation, association, or other private group.

20 (10) "Sales representative" means a person who sells
21 or solicits legal service contracts to a person on behalf of a
22 company.

23 Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24 (1) a nonprofit legal services corporation under
25 Chapter 961, Insurance Code;

26 (2) an automobile club supplying services under
27 Chapter 722, Transportation Code;

1 (3) a prepaid legal services program under Chapter
2 951;

3 (4) a lawyer referral service under Chapter 952;

4 (5) a retainer contract between an attorney and a
5 client, and similar contracts made with a group of clients involved
6 in the same or closely related legal matters; or

7 (6) a contingency fee contract between an attorney and
8 a client.

9 Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts
10 of marketing, selling, offering for sale, issuing, making,
11 proposing to make, and administering a legal service contract that
12 is regulated by this chapter are exempt from the Insurance Code and
13 other laws of this state regulating the business of insurance.

14 Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a)
15 If an insurer who issues prepaid legal service contracts under
16 Article 5.13-1, Insurance Code, decides to transfer the regulation
17 of the contracts to the department under this chapter, the insurer
18 shall notify the commissioner of insurance in writing not later
19 than the 60th day before the effective date of the transfer. An
20 insurer that complies with this section is exempt from the
21 requirements of:

22 (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,
23 and 21.49-2E, Insurance Code; and

24 (2) Chapter 827, Insurance Code.

25 (b) The exemptions described by Subsection (a) begin on the
26 date the commissioner receives the notice under Subsection (a) and
27 apply until the insurer registers with the department as required

1 by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a)
3 The executive director may investigate a company, administrator,
4 sales representative, or other person as necessary to enforce this
5 chapter and protect legal service contract holders in this state.

6 (b) On request of the executive director, a company or sales
7 representative shall make the records relevant to the regulation of
8 legal service contracts in this state available to the executive
9 director as necessary to enable the executive director to
10 reasonably determine compliance with this chapter.

11 (c) After contacting the company that has contracted with
12 the contracting attorney, the executive director may refer a
13 complaint received by the department concerning the performance of
14 a contracting attorney to:

15 (1) the State Bar of Texas;

16 (2) the appropriate licensing agency of another
17 jurisdiction, if applicable; or

18 (3) any person designated by law to receive complaints
19 from the public concerning the performance of an attorney.

20 (d) The executive director may adopt rules as necessary to
21 implement this chapter.

22 [Sections 953.006-953.050 reserved for expansion]

23 SUBCHAPTER B. REGISTRATION REQUIREMENTS

24 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not
25 operate as a company or sales representative of legal service
26 contracts sold in this state unless the person is registered with
27 the department. A company's contract may only be sold by a sales

1 representative who is registered with the department.

2 (b) A person who collects commissions for the sale of legal
3 service contracts but who does not actively sell or solicit legal
4 service contracts is not required to register under this
5 subchapter.

6 Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An
7 applicant for registration must submit an application to the
8 department. The application must be in the form prescribed by the
9 executive director.

10 (b) An application for registration as a company must
11 include evidence satisfactory to the executive director of
12 compliance with the applicable financial security requirements
13 prescribed by Subchapter C.

14 (c) An application for registration as a sales
15 representative must include a list of the companies for which the
16 sales representative will sell or solicit legal service contracts.

17 Sec. 953.053. FEES. (a) The executive director shall
18 develop a tiered fee schedule of annual registration fees under
19 which a company's registration fee is based on the number of legal
20 service contracts the company sold in this state during the
21 preceding 12-month period. The executive director shall set the
22 amounts of the fees required by this subsection to cover the costs
23 of administering this chapter.

24 (b) In addition to the annual registration fee required by
25 Subsection (a), the executive director shall collect from each
26 company a fee equal to 1.7 percent of the annual price of each legal
27 service contract the company sells in this state. The executive

1 director shall establish a schedule and procedure for collecting
2 this fee.

3 (c) To be registered, a company must pay the appropriate
4 fees required by this section.

5 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL
6 SERVICE CONTRACTS SOLD. Information concerning the number of legal
7 service contracts sold by a company that is submitted under Section
8 953.053 is a trade secret to which Section 552.110, Government
9 Code, applies.

10 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES
11 REPRESENTATIVES. (a) The executive director may deny an
12 application from a sales representative who:

13 (1) made a material misrepresentation or fraudulent
14 statement in the application;

15 (2) has had a license revoked under the Insurance
16 Code;

17 (3) has had a license suspended or revoked under
18 Section 82.062, Government Code; or

19 (4) fails to pay the fee required under Subsection
20 (b).

21 (b) Each registered sales representative shall pay an
22 annual registration fee in the amount set by the executive director
23 to cover the costs of administering this chapter.

24 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.
25 The executive director may adopt rules regarding the procedures and
26 fees a company or sales representative must follow and pay when
27 requesting a modification to the company's or sales

1 representative's registration information that is on file with the
2 department.

3 Sec. 953.057. RENEWAL OF REGISTRATION. The executive
4 director shall adopt rules for the renewal of a company's or sales
5 representative's registration, including a rule that addresses
6 late renewals.

7 [Sections 953.058-953.100 reserved for expansion]

8 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE
9 CONTRACT COMPANIES

10 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To
11 ensure the faithful performance of a company's obligations to its
12 legal service contract holders, each company must deposit and
13 maintain a form of financial security with the executive director.
14 The financial security deposited with the director must maintain at
15 all times the following market values:

16 (1) a company generating \$300,000 or less in annual
17 gross revenue in this state from the sale of legal service contracts
18 in the preceding year shall deposit at least \$50,000 with the
19 executive director;

20 (2) a company generating more than \$300,000 but less
21 than \$750,000 in annual gross revenue in this state from the sale of
22 legal service contracts in the preceding year shall deposit at
23 least \$75,000 with the executive director; and

24 (3) a company generating \$750,000 or more in annual
25 gross revenue in this state from the sale of legal service contracts
26 in the preceding year shall deposit at least \$100,000 with the
27 executive director.

1 (b) For purposes of Subsection (a), if a company that had no
2 gross revenue in this state from the sale of legal service contracts
3 in the preceding year previously generated revenue from the sale of
4 prepaid legal service contracts under Article 5.13-1, Insurance
5 Code, the company shall deposit an amount of financial security
6 based on the revenue generated from the sale of prepaid legal
7 service contracts under the Insurance Code in the preceding year.

8 (c) The department is responsible for the safeguarding of
9 financial security deposited with the executive director under this
10 section. Financial security is not subject to taxation and is to be
11 used exclusively to guarantee the company's performance of its
12 obligations to its legal service contract holders.

13 (d) The executive director may order an increase in the
14 amount of financial security required of a company under this
15 section if the executive director finds that there has been a
16 substantial change in the company, including an increase in the
17 amount of fees the company is charging consumers or an increase in
18 the company's annual gross revenue.

19 (e) Not later than the 30th day after the date the executive
20 director orders a financial security increase under Subsection (d),
21 the company may request a hearing on the issue. The executive
22 director shall hold a hearing not later than the 30th day after the
23 date a company requests a hearing.

24 (f) Failure of a company to meet the financial security
25 requirements in this section not later than the 30th day after the
26 date the executive director issues a final decision in the event of
27 a hearing or the 30th day after the date the period for submitting a

1 request for a hearing expires constitutes a ground for revocation
2 of the company's registration.

3 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

4 (a) If a company's financial security under Section 953.101 is
5 issued or written for a specified term, not later than the 90th day
6 before the date the term expires, the company shall:

7 (1) replace the financial security; or

8 (2) notify the executive director of the company's
9 intention to renew the financial security.

10 (b) If, not later than the 60th day before the date the term
11 of a company's financial security expires, the executive director
12 does not receive satisfactory notification of a company's renewal
13 or replacement of the financial security, the executive director
14 may draw on the company's financial security to the extent
15 necessary to ensure that the company's obligations to its legal
16 service contract holders are met in accordance with this chapter.

17 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

18 The executive director shall maintain a company's financial
19 security deposit so long as the company continues to do business in
20 this state. When a company ceases to do business in this state and
21 furnishes the executive director with satisfactory proof that the
22 company has discharged or otherwise adequately met all obligations
23 to its legal service contract holders in this state, the executive
24 director shall release the deposited financial security to the
25 company.

26 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,

27 on behalf of a legal service contract holder injured because of a

1 company's violation of this chapter, may bring a suit for payment
2 from the company's financial security deposit held by the executive
3 director.

4 (b) The state is the only party that may bring suit for
5 payment from a company's financial security deposit held by the
6 executive director. This chapter does not create a private right of
7 action.

8 (c) The state may only seek damages for the cost of the legal
9 services the company failed to provide to a legal service contract
10 holder under the terms of the legal service contract.

11 (d) The court shall determine the amount the executive
12 director shall pay the consumer from the company's financial
13 security deposit held by the executive director.

14 [Sections 953.105-953.150 reserved for expansion]

15 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

16 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not
17 sell, offer for sale, or issue a legal service contract in this
18 state unless the company gives the legal service contract holder:

19 (1) a receipt for, or other written evidence of, the
20 purchase of the contract; and

21 (2) a copy of the legal service contract.

22 (b) A company shall perform the services as stated in the
23 legal service contract.

24 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may
25 issue group legal service contracts. The company shall provide a
26 legal service contract holder who obtains a group contract with a
27 document that describes the company's services and complies with

1 the requirements of this chapter.

2 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A
3 contracting attorney must:

4 (1) be licensed in the jurisdiction in which the legal
5 services are performed;

6 (2) be in good standing with the entity that licenses
7 attorneys in that jurisdiction; and

8 (3) maintain professional liability and errors and
9 omissions insurance with minimum annual limits of \$100,000 for each
10 occurrence and \$300,000 in the aggregate.

11 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES
12 PROHIBITED. A company may not interfere with the attorney-client
13 relationship or with the contracting attorney's independent
14 exercise of professional judgment.

15 Sec. 953.155. COMPANY RECORDS. (a) A company shall
16 maintain accurate accounts, books, and other records regarding
17 transactions regulated under this chapter. The company's records
18 must include:

19 (1) a copy of each unique form of legal service
20 contract filed with the executive director under Section 953.156;

21 (2) the name and address of each legal service
22 contract holder;

23 (3) a list of the sales representatives authorized by
24 the company to market, sell, or offer to sell the company's legal
25 service contracts;

26 (4) a copy of each contract entered into between the
27 company and a contracting attorney; and

1 (5) a list of complaints the company has received from
2 legal service contract holders, including the name of the sales
3 representative involved in the transaction leading to the
4 complaint.

5 (b) The records required by this section may be maintained
6 in an electronic medium or through other recordkeeping technology.
7 If a record is not in a hard copy, the company must be able to
8 reformat the record into a legible hard copy at the request of the
9 executive director.

10 (c) Except as provided by Subsection (d), a company shall
11 retain the records required by this section until at least the
12 second anniversary of the termination date of the specified period
13 of coverage under the legal service contract.

14 (d) A company that discontinues business in this state shall
15 retain its records until the company furnishes the executive
16 director with proof satisfactory to the executive director that the
17 provider has discharged all obligations to legal service contract
18 holders in this state.

19 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED
20 DISCLOSURES. (a) A legal service contract must be filed with the
21 executive director before it is marketed, sold, offered for sale,
22 administered, or issued in this state.

23 (b) A legal service contract marketed, sold, offered for
24 sale, administered, or issued in this state must:

25 (1) be written, printed, or typed in clear,
26 understandable language that is easy to read;

27 (2) include the name and full address of the company;

1 (3) include the purchase price of the contract and the
2 terms under which the contract is sold;

3 (4) include the terms and restrictions governing
4 cancellation of the contract by the company or the legal service
5 contract holder;

6 (5) identify:

7 (A) any administrator, if the administrator is
8 not the company;

9 (B) the sales representative; and

10 (C) the name of the legal service contract
11 holder;

12 (6) include the amount of any deductible or copayment;

13 (7) specify the legal services and other benefits to
14 be provided under the contract, and any limitation, exception, or
15 exclusion;

16 (8) specify the legal services, if any, for which the
17 company will provide reimbursement and the amount of that
18 reimbursement;

19 (9) specify any restriction governing the
20 transferability of the contract or the assignment of benefits;

21 (10) include the duties of the legal service contract
22 holder;

23 (11) include the contact information for the
24 department, including the department's toll-free number and
25 electronic mail address, as well as a statement that the department
26 regulates the company and the company's sales representatives;

27 (12) explain the method to be used in resolving the

1 legal service contract holder's complaints and grievances;

2 (13) explain how legal services may be obtained under
3 the legal service contract;

4 (14) include a provision stating that no change in the
5 contract is valid until the change has been approved by an executive
6 officer of the company and unless the approval is endorsed or
7 attached to the contract;

8 (15) include any eligibility and effective date
9 requirements, including a definition of eligible dependents and the
10 effective date of their coverage;

11 (16) include the conditions under which coverage will
12 terminate;

13 (17) explain any subrogation arrangements;

14 (18) contain a payment provision that provides for a
15 grace period of at least 31 days;

16 (19) include conditions under which contract rates may
17 be modified; and

18 (20) include any other items required by the executive
19 director as determined by rule.

20 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A
21 legal service contract holder may terminate the legal service
22 contract if the legal service contract holder provides the company
23 with written notice of the legal service contract holder's
24 intention of terminating the contract not later than the third day
25 after the date the legal service contract holder receives the
26 contract.

27 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a

1 legal service contract holder terminates a legal service contract
2 in accordance with Section 953.157 and the holder has not sought
3 legal services under the contract before the contract is
4 terminated, the contract is void.

5 (b) A legal service contract holder may void the legal
6 service contract at a later time as provided by the contract.

7 (c) If a legal service contract is voided, the company shall
8 refund to the legal service contract holder or credit to the account
9 of the legal service contract holder the full purchase price of the
10 contract. If the company does not pay the refund or credit the
11 legal service contract holder's account before the 46th day after
12 the date the contract is voided, the company is liable to the legal
13 service contract holder for a penalty each month an amount remains
14 outstanding. The monthly penalty may not exceed 10 percent of the
15 amount outstanding.

16 (d) The right to void a legal service contract is not
17 transferable.

18 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A
19 company may cancel a legal service contract by mailing a written
20 notice of cancellation to the legal service contract holder at the
21 legal service contract holder's last known address according to the
22 records of the company. The company must mail the notice before the
23 fifth day preceding the effective date of the cancellation. The
24 notice must state the effective date of the cancellation and the
25 reason for the cancellation.

26 (b) The company is not required to provide prior notice of
27 cancellation if the legal service contract is canceled because of:

- 1 (1) nonpayment of the consideration for the contract;
- 2 (2) a material misrepresentation by the legal service
3 contract holder to the company;
- 4 (3) a substantial breach of a duty by the legal service
5 contract holder; or
- 6 (4) cancellation of the contract by the legal service
7 contract holder.

8 Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company
9 may not use a name that:

- 10 (1) includes "insurance," "casualty," "surety," or
11 "mutual" or any other word descriptive of the insurance, casualty,
12 or surety business; or
- 13 (2) is deceptively similar to the name or description
14 of an insurance or surety corporation or to the name of any other
15 company.

16 (b) This section does not apply to a company that, before
17 September 1, 2003, included a word prohibited under this section in
18 its name. A company described by this subsection must include in
19 each legal service contract a statement substantially similar to
20 the following: "This agreement is not an insurance contract."

21 Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,
22 a sales representative, or a representative of a sales
23 representative may not, in the company's contracts or marketing:

- 24 (1) make, permit, or cause to be made any false or
25 misleading statement; or
- 26 (2) deliberately omit a material statement if the
27 omission would be considered misleading.

1 Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF
2 ADMINISTRATOR. (a) A company may appoint an administrator or
3 designate a person to be responsible for:

4 (1) all or any part of the administration or sale of
5 legal service contracts; and

6 (2) compliance with this chapter.

7 (b) The executive director may adopt rules regarding the
8 registration of an administrator with the department.

9 [Sections 953.163-953.200 reserved for expansion]

10 SUBCHAPTER E. DISCIPLINARY ACTION

11 Sec. 953.201. DISCIPLINARY ACTION. On a finding that a
12 ground for disciplinary action exists under this chapter, the
13 executive director may impose an administrative sanction,
14 including any administrative penalty, as provided by Chapter 51.

15 Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The
16 executive director may issue an emergency cease and desist order to
17 enforce this chapter if the executive director determines that an
18 emergency exists requiring immediate action to protect the public.

19 (b) The executive director may issue the emergency cease and
20 desist order without notice and hearing if the executive director
21 determines that an immediate issuance is necessary under the
22 circumstances.

23 (c) The executive director shall set the time and place for
24 a hearing to affirm, modify, or set aside an emergency cease and
25 desist order that was issued without a hearing.

26 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
27 executive director may institute an action against a company or

1 sales representative for injunctive relief under Section 51.352 to
2 restrain a violation or a threatened violation of this chapter or an
3 order issued or rule adopted under this chapter.

4 (b) In addition to the injunctive relief provided by
5 Subsection (a), the executive director may institute an action for
6 a civil penalty as provided by Section 51.352.

7 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,
8 51.353, and 51.354 apply to a disciplinary action taken under this
9 chapter.

10 Sec. 953.205. APPEAL. A person affected by a ruling, order,
11 decision, or other action of the executive director or department
12 may appeal by filing a petition in a district court in Travis
13 County.

14 SECTION 2. Article 5.13-1, Insurance Code, is amended by
15 adding Subsection (h) to read as follows:

16 (h) An insurer may not issue a prepaid legal service
17 contract under this article after March 1, 2004.

18 SECTION 3. Section 951.003(b), Occupations Code, is amended
19 to read as follows:

20 (b) A law pertaining to legal service contracts under
21 Chapter 953 or insurance does not apply to a program under this
22 chapter.

23 SECTION 4. (a) Chapter 953, Occupations Code, as added by
24 this Act, applies only to:

25 (1) a legal service contract entered into on or after
26 March 1, 2004; or

27 (2) a legal service contract entered into before March

1 1, 2004, that meets the requirements of Subsection (c) of this
2 section.

3 (b) A person regulated under Chapter 953, Occupations Code,
4 as added by this Act, is not required to comply with that chapter
5 until March 1, 2004, but may implement the requirements of that
6 chapter before March 1, 2004. The failure of a legal service
7 contract company or other person to comply with Chapter 953,
8 Occupations Code, as added by this Act, or otherwise to administer a
9 legal service contract plan in the manner required by that chapter
10 before March 1, 2004, is not admissible in any court, arbitration,
11 or alternative dispute resolution proceeding and may not otherwise
12 be used to prove that the action of any person or the affected legal
13 service contract was unlawful or otherwise improper.

14 (c) The Texas Department of Licensing and Regulation and the
15 Texas Department of Insurance shall enter into a memorandum of
16 understanding for a transition plan to transfer the regulation of
17 legal service contracts from the Texas Department of Insurance to
18 the Texas Department of Licensing and Regulation. The transition
19 plan at a minimum shall:

20 (1) allow persons licensed under Chapter 21, Insurance
21 Code, who have not registered with the Texas Department of
22 Licensing and Regulation to continue to sell legal service
23 contracts regulated by the Texas Department of Licensing and
24 Regulation until March 1, 2004; and

25 (2) allow a prepaid legal service contract issued
26 subject to Article 5.13-1, Insurance Code, to be maintained by the
27 legal service contract holder if:

1 (A) the insurer that issued the contract or a
2 related entity is registered with the Texas Department of Licensing
3 and Regulation under Chapter 953, Occupations Code, as added by
4 this Act, not later than March 1, 2004;

5 (B) the legal service contract complies with the
6 requirements established by Chapter 953, Occupations Code, as added
7 by this Act, for a legal service contract; and

8 (C) any addition or deletion to the insurance
9 contract made by a legal service contract company registered with
10 the Texas Department of Licensing and Regulation is approved by the
11 company and the approval is endorsed or attached to the contract.

12 SECTION 5. This Act takes effect September 1, 2003.