

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.

15 (a) An insurer who issues or renews prepaid legal service
16 contracts under Article 5.13-1, Insurance Code, shall notify the
17 commissioner of insurance in writing not later than the 60th day
18 before transferring regulation of the insurer's legal service
19 contracts from the Texas Department of Insurance to the Texas
20 Department of Licensing and Regulation. An insurer that complies
21 with this section is exempt from the 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.

3 (a) The executive director may investigate a company,
4 administrator, sales representative, or other person as necessary
5 to enforce this chapter and protect legal service contract holders
6 in this state.

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

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

16 (1) the State Bar of Texas;

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

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

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

23 [Sections 953.006-953.050 reserved for expansion]

24 SUBCHAPTER B. REGISTRATION REQUIREMENTS

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

1 the department. A company's contract may only be sold by a sales
2 representative who is registered with the department.

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

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

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

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

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

25 (b) In addition to the annual registration fee required by
26 Subsection (a), the executive director shall collect from each
27 company a fee equal to 1.7 percent of the annual price of each legal

1 service contract the company sells in this state. The executive
2 director shall establish a schedule and procedure for collecting
3 this fee.

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

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

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

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

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

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

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

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

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

1 requesting a modification to the company's or sales
2 representative's registration information that is on file with the
3 department.

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

8 [Sections 953.058-953.100 reserved for expansion]

9 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE

10 CONTRACT COMPANIES

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

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

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

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

1 executive director.

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

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

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

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

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

1 a hearing or the 30th day after the date the period for submitting a
2 request for a hearing expires constitutes a ground for revocation
3 of the company's registration.

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

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

8 (1) replace the financial security; or

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

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

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

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

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

1 on behalf of a legal service contract holder injured because of a
2 company's violation of this chapter, may bring a suit for payment
3 from the company's financial security deposit held by the executive
4 director.

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

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

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

15 [Sections 953.105-953.150 reserved for expansion]

16 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

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

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

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

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

25 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may
26 issue group legal service contracts. The company shall provide a
27 legal service contract holder who obtains a group contract with a

1 document that describes the company's services and complies with
2 the requirements of this chapter.

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

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

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

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

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

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

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

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

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

27 (4) a copy of each contract entered into between the

1 company and a contracting attorney; and

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

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

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

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

20 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED
21 DISCLOSURES. (a) A legal service contract must be filed with the
22 executive director before it is marketed, sold, offered for sale,
23 administered, or issued in this state. Any subsequent endorsement
24 or attachment to the contract must also be filed with the executive
25 director before the endorsement or attachment is delivered to legal
26 service contract holders.

27 (b) A legal service contract marketed, sold, offered for

1 sale, administered, or issued in this state must:

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

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

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

7 (4) include the terms and restrictions governing
8 cancellation of the contract by the company or the legal service
9 contract holder;

10 (5) identify:

11 (A) any administrator, if the administrator is
12 not the company;

13 (B) the sales representative; and

14 (C) the name of the legal service contract
15 holder;

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

17 (7) specify the legal services and other benefits to
18 be provided under the contract, and any limitation, exception, or
19 exclusion;

20 (8) specify the legal services, if any, for which the
21 company will provide reimbursement and the amount of that
22 reimbursement;

23 (9) specify any restriction governing the
24 transferability of the contract or the assignment of benefits;

25 (10) include the duties of the legal service contract
26 holder;

27 (11) include the contact information for the

1 department, including the department's toll-free number and
2 electronic mail address, as well as a statement that the department
3 regulates the company and the company's sales representatives;

4 (12) explain the method to be used in resolving the
5 legal service contract holder's complaints and grievances;

6 (13) explain how legal services may be obtained under
7 the legal service contract;

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

12 (15) include any eligibility and effective date
13 requirements, including a definition of eligible dependents and the
14 effective date of their coverage;

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

17 (17) explain any subrogation arrangements;

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

20 (19) include conditions under which contract rates may
21 be modified; and

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

24 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A
25 legal service contract holder may terminate the legal service
26 contract if the legal service contract holder provides the company
27 with written notice of the legal service contract holder's

1 intention of terminating the contract not later than the seventh
2 day after the date the legal service contract holder receives the
3 contract.

4 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a
5 legal service contract holder terminates a legal service contract
6 in accordance with Section 953.157 and the holder has not sought
7 legal services under the contract before the contract is
8 terminated, the contract is void.

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

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

20 (d) The right to void a legal service contract is not
21 transferable.

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

1 notice must state the effective date of the cancellation and the
2 reason for the cancellation.

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

5 (1) nonpayment of the consideration for the contract;

6 (2) a material misrepresentation by the legal service
7 contract holder to the company;

8 (3) a substantial breach of a duty by the legal service
9 contract holder; or

10 (4) cancellation of the contract by the legal service
11 contract holder.

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

14 (1) includes "insurance," "casualty," "surety," or
15 "mutual" or any other word descriptive of the insurance, casualty,
16 or surety business; or

17 (2) is deceptively similar to the name or description
18 of an insurance or surety corporation or to the name of any other
19 company.

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

25 Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,
26 a sales representative, or a representative of a sales
27 representative may not, in the company's contracts or marketing:

1 (1) make, permit, or cause to be made any false or
2 misleading statement; or

3 (2) deliberately omit a material statement if the
4 omission would be considered misleading.

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

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

10 (2) compliance with this chapter.

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

13 [Sections 953.163-953.200 reserved for expansion]

14 SUBCHAPTER E. DISCIPLINARY ACTION

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

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

23 (b) The executive director may issue the emergency cease and
24 desist order without notice and hearing if the executive director
25 determines that an immediate issuance is necessary under the
26 circumstances.

27 (c) The executive director shall set the time and place for

1 a hearing to affirm, modify, or set aside an emergency cease and
2 desist order that was issued without a hearing.

3 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
4 executive director may institute an action against a company or
5 sales representative for injunctive relief under Section 51.352 to
6 restrain a violation or a threatened violation of this chapter or an
7 order issued or rule adopted under this chapter.

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

11 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,
12 51.353, and 51.354 apply to a disciplinary action taken under this
13 chapter.

14 Sec. 953.205. APPEAL. A person affected by a ruling, order,
15 decision, or other action of the executive director or department
16 may appeal by filing a petition in a district court in Travis
17 County.

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

20 (h) An insurer may not issue or renew a prepaid legal
21 service contract under this article after March 1, 2004.

22 SECTION 3. Subsection (b), Section 951.003, Occupations
23 Code, is amended to read as follows:

24 (b) A law pertaining to legal service contracts under
25 Chapter 953 or insurance does not apply to a program under this
26 chapter.

27 SECTION 4. (a) Chapter 953, Occupations Code, as added by

1 this Act, applies only to:

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

4 (2) a legal service contract entered into before March
5 1, 2004, that meets the requirements of Subsection (c) of this
6 section.

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

18 (c) The Texas Department of Licensing and Regulation and the
19 Texas Department of Insurance may enter into a memorandum of
20 understanding for a transition plan to transfer the regulation of
21 legal service contracts from the Texas Department of Insurance to
22 the Texas Department of Licensing and Regulation. The transition
23 plan at a minimum shall:

24 (1) allow persons licensed under Chapter 21, Insurance
25 Code, who have not registered with the Texas Department of
26 Licensing and Regulation to continue to sell legal service
27 contracts regulated by the Texas Department of Licensing and

1 Regulation until March 1, 2004; and

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

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

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

12 (C) any addition or deletion to the contract made
13 by a legal service contract company registered with the Texas
14 Department of Licensing and Regulation is approved by the company
15 and the approval is endorsed or attached to the contract.

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