

## **BILL ANALYSIS**

H.B. 3090  
By: Miles  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note that the Texas Department of Licensing and Regulation is responsible for implementing the licensing and regulation of for-profit legal service contract companies but that the applicable law has not been updated in some time. The parties cite a recently completed agency review of current law relating to the regulation of for-profit legal service contract companies that identified outdated terms and concepts in the law and that the parties contend should be a basis for an update of the applicable law. H.B. 3090 seeks to address this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority previously granted to the executive director of the Texas Department of Licensing and Regulation is transferred to the Texas Commission of Licensing and Regulation in SECTIONS 3 and 6 of this bill and that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 6 of this bill.

### **ANALYSIS**

H.B. 3090 amends the Occupations Code to redefine "administrator," for purposes of statutory provisions regulating for-profit legal service contract companies, as the person, other than the for-profit legal service contract company or a company employee, who is responsible for the third-party administration of a legal service contract. The bill includes an administrator among the individuals required, on request of the executive director of the Texas Department of Licensing and Regulation, to make the records relevant to the regulation of legal service contracts in Texas available to the executive director as necessary to enable the executive director to reasonably determine compliance with applicable statutory provisions. The bill transfers rulemaking authority relating to the regulation of for-profit legal service contract companies from the executive director to the Texas Commission of Licensing and Regulation and requires the commission to adopt rules implementing the changes in law made by the bill's provisions not later than January 1, 2016.

H.B. 3090 prohibits a person from operating as an administrator of legal service contracts sold in Texas unless the person is registered with the Texas Department of Licensing and Regulation (TDLR) and revises certain registration requirements for a company or sales representative of for-profit legal service contracts sold in Texas to make them applicable also to the registration of an administrator.

H.B. 3090 removes the requirement for the executive director of TDLR to set the amounts of the

required fees to cover the administrative costs of regulating for-profit legal service contract companies and to collect and establish a schedule and procedure for the collection of an additional annual fee as prescribed by statute. The bill instead requires the commission, by rule, to establish reasonable and necessary fees in amounts sufficient to cover such administrative costs and to establish a schedule and procedure for collecting the additional annual fee and requires TDLR to collect the fee. The bill requires each registered company, administrator, and sales representative to pay the appropriate fees set by commission rule. The bill extends to the commission the TDLR executive director's authority to deny an application from a sales representative under certain conditions.

H.B. 3090 changes the amounts a company is required to deposit and maintain at all times with the executive director of TDLR as financial security to ensure the faithful performance of the company's obligations to its legal service contract holders, setting those amounts as fixed dollar amounts instead of as the minimum amounts required to be deposited by companies at different levels of annual gross revenues. The bill removes the requirement for a company that had no gross revenue in Texas from the sale of legal service contracts in the preceding year but previously generated revenue from the sale of prepaid legal service contracts under the Insurance Code to deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts in the preceding year and instead requires a company that had no gross revenue in Texas from the sale of legal service contracts in the preceding year to deposit \$50,000 with the executive director. The bill establishes the acceptable forms of financial security as a surety bond, a certificate of deposit, a cash deposit, or a letter of credit.

H.B. 3090 requires a company, at initial registration and at each renewal, to submit for review by TDLR the company's audited financial statements and, if the company maintains reserves, a certified statement describing the company's reserves made by an actuary who is a member in good standing of the American Academy of Actuaries. The bill requires an applicant for initial registration that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations to provide TDLR with financial statements that have been reviewed by a certified public accountant. The bill authorizes the commission or the executive director of TDLR to take disciplinary action against a company, including imposing administrative penalties and sanctions, for the company's failure to meet and maintain the financial security requirements or to submit the required financial security documentation.

H.B. 3090 repeals statutory provisions authorizing the executive director of TDLR to order an increase in the amount of financial security required of a company under certain conditions, authorizing a company to request a hearing on the grounds for the increase, and making a company's failure to meet the financial security requirements after a specified period a ground for revocation of the company's registration.

H.B. 3090 changes the deadline for a company whose financial security is issued or written for a specified term to replace the financial security or notify the executive director of TDLR of the company's intention to renew the financial security, requiring such action not later than the 60th day rather than not later than the 90th day before the date the term expires. The bill changes from not later than the 60th day to not later than the 30th day before the date a company's financial security expires the deadline by which the executive director must receive satisfactory notification of a company's renewal or replacement of the financial security before the executive director may draw on the company's financial security to ensure the company's obligations to its legal service contract holders are met. The bill requires the executive director, not later than the 30th day after the date the executive director is notified that the company's financial security has been renewed or replaced, to return any financial security drawn.

H.B. 3090 removes the authority of the state to bring a suit on behalf of a legal service contract holder injured by a company's violation of applicable statutory provisions for payment from a company's financial security deposit held by the executive director of TDLR. The bill instead

authorizes TDLR to file a claim on a contract holder's behalf against the company's financial security deposit held by the executive director for the failure of the company to meet its obligations, requires the executive director to determine the amount to be paid to the contract holder, and establishes that TDLR is the only person authorized to file such a claim. The bill authorizes the executive director, in the event of a company's bankruptcy or a similar event affecting the company's ability to faithfully perform its obligations to its contract holders, to distribute any funds held in trust as financial security for the company, in an equitable and cost-effective manner as determined by the executive director, to eligible legal service contract holders as payment for eligible claims.

H.B. 3090 establishes that a company that issues group legal service contracts is subject to the requirements of statutory provisions regulating for-profit legal service contract companies. The bill defines a "group legal services contract" as a legal service contract entered into by an employer or association on behalf of its employees or association members that choose to purchase the service.

H.B. 3090 revises company recordkeeping requirements to require a company's records regarding regulated transactions to include the name and address of each administrator, if applicable, and the names and TDLR registration numbers of the company's authorized sales representatives and requires a legal service contract and any subsequent endorsement or attachment to be filed with TDLR rather than with the executive director of TDLR before the contract is marketed, sold, offered for sale, administered, or issued in Texas or the endorsement or attachment is delivered to contract holders.

H.B. 3090, effective January 1, 2016, repeals statutory provisions relating to terminating and voiding a legal service contract and instead authorizes a legal service contract holder to cancel such a contract if the contract holder provides the company with written notice of the contract holder's intent to cancel the contract not later than the seventh day after the date the contract holder receives the contract. The bill requires the company to refund to the contract holder or credit to the contract holder's account the full purchase price of the contract if the contract holder cancels the contract in the prescribed manner and the holder has not sought legal services under the contract before the date the contract is canceled. The bill authorizes a legal service contract holder to cancel the contract after the prescribed deadline as provided by the contract. The bill requires a company to pay the refund or credit the contract holder's account before the 46th day after the date the contract is canceled and, if the company fails to make the refund or credit the account by that deadline, makes the company liable to the contract holder for a penalty in an amount equal to 10 percent of the amount outstanding for each month an amount remains outstanding. The bill establishes that the penalty is in addition to the amount of the refund owed and establishes that the right to cancel a legal service contract is not transferable. The bill makes its provisions applicably only to a legal service contract sold on or after January 1, 2016, and prohibits a legal service contract sold before that date from being extended or renewed at the end of the contract term unless the contract complies with these provisions.

H.B. 3090 removes the authority of a company to designate a person to be responsible for all or part of the administration or sale of legal service contracts and compliance with regulatory provisions other than the company financial security requirements and instead authorizes the appointment of a registered administrator to assume those responsibilities and establishes that the appointment of such an administrator does not affect the company's responsibility to comply with statutory provisions regulating for-profit legal service contract companies. The bill extends to the commission the authority of the executive director of TDLR to impose an administrative sanction on a finding that a ground for disciplinary action exists under statutory provisions regulating for-profit legal service contract companies.

H.B. 3090 removes statutory provisions relating to the issuance of an emergency cease and desist order to enforce statutory provisions regulating for-profit legal service contract companies and instead authorizes the executive director of TDLR to issue a cease and desist order to enforce

such provisions if the executive director determines that the action is necessary to prevent a violation of the provisions, a rule adopted under the provisions, or an order issued by the commission or executive director. The bill authorizes the executive director to institute an action against an administrator for injunctive relief to restrain a violation or a threatened violation of statutory provisions regulating for-profit legal service contract companies or an order or rule adopted under those provisions.

H.B. 3090 expands the range of specified statutory provisions relating to administrative penalties and other penalties and enforcement provisions by TDLR that are applicable to a disciplinary action taken under statutory provisions relating to the regulation of for-profit legal service contract companies.

H.B. 3090 repeals statutory provisions relating to prepaid legal service contract programs, additional financial security deposit requirements, and an appeal by a person affected by a ruling, order, decision, or other action of the executive director of TDLR or TDLR by filing a petition in a district court in Travis County.

H.B. 3090 repeals the following sections of the Occupations Code:

- Section 953.001(6)
- Section 953.004
- Sections 953.101(d), (e), and (f)
- Section 953.105
- Section 953.205

H.B. 3090, effective January 1, 2016, repeals the following provisions of the Occupations Code:

- Section 953.157
- Section 953.158

**EFFECTIVE DATE**

September 1, 2015.