

By: Miles

H.B. No. 3090

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of for-profit legal service contract companies, administrators, and sales representatives; providing an administrative penalty; authorizing a fee; requiring an occupational registration.

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

SECTION 1. Section 953.001, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Administrator" means the person, other than the company or an employee of the company, who is responsible for the third-party administration of a legal service contract. [~~The term includes a person responsible for any filing required by this chapter.~~]

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

SECTION 2. The heading to Section 953.005, Occupations Code, is amended to read as follows:

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR AND COMMISSION.

SECTION 3. Sections 953.005(b) and (d), Occupations Code, are amended to read as follows:

(b) On request of the executive director, a company, administrator, or sales representative shall make the records

1 relevant to the regulation of legal service contracts in this state  
2 available to the executive director as necessary to enable the  
3 executive director to reasonably determine compliance with this  
4 chapter.

5 (d) The commission [~~executive director~~] may adopt rules as  
6 necessary to implement this chapter.

7 SECTION 4. Section 953.051(a), Occupations Code, is amended  
8 to read as follows:

9 (a) A person may not operate as a company, administrator,  
10 or sales representative of legal service contracts sold in this  
11 state unless the person is registered with the department. A  
12 company's contract may only be sold by a sales representative who is  
13 registered with the department.

14 SECTION 5. Sections 953.052(a) and (b), Occupations Code,  
15 are amended to read as follows:

16 (a) An applicant for registration as a company,  
17 administrator, or sales representative must submit an application  
18 [~~to the department. The application must be~~] in the manner and on  
19 the form prescribed by the department [~~executive director~~].

20 (b) An application for registration as a company must  
21 include satisfactory evidence [~~satisfactory to the executive~~  
22 ~~director~~] of the company's compliance with the applicable financial  
23 security requirements prescribed by Subchapter C.

24 SECTION 6. Sections 953.053, 953.055, 953.056, and 953.057,  
25 Occupations Code, are amended to read as follows:

26 Sec. 953.053. FEES. (a) The commission by rule shall  
27 establish reasonable and necessary fees in amounts sufficient to

1 cover the costs of administering this chapter.

2       (a-1) The executive director shall develop a tiered fee  
3 schedule of annual registration fees under which a company's  
4 registration fee is based on the number of legal service contracts  
5 the company sold in this state during the preceding 12-month  
6 period. [~~The executive director shall set the amounts of the fees  
7 required by this subsection to cover the costs of administering  
8 this chapter.~~]

9       (b) In addition to the annual registration fee required by  
10 Subsection (a-1) [~~(a)~~], the department [~~executive director~~] shall  
11 annually collect from each company a fee equal to the difference  
12 between an amount equal to 1.7 percent of the amount a company  
13 collects for legal service contracts sold by the company in this  
14 state in the current year and the amount the company paid to the  
15 state in franchise taxes in the same year. The commission by rule  
16 [~~executive director~~] shall establish a schedule and procedure for  
17 collecting this fee.

18       (c) Each registered company, administrator, and sales  
19 representative shall pay the appropriate fees set by the commission  
20 by rule [~~To be registered, a company must pay the appropriate fees~~  
21 ~~required by this section~~].

22       Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
23 REPRESENTATIVES. [~~(a)~~] The commission or executive director may  
24 deny an application from a sales representative who:

25               (1) made a material misrepresentation or fraudulent  
26 statement in the application;

27               (2) has had a license revoked under the Insurance

1 Code; or

2 (3) has had a license suspended or revoked under  
3 Section 82.062, Government Code [~~;~~ ~~or~~

4 [~~(4) fails to pay the fee required under Subsection~~  
5 ~~(b).~~

6 [~~(b) Each registered sales representative shall pay an~~  
7 ~~annual registration fee in the amount set by the executive director~~  
8 ~~to cover the costs of administering this chapter].~~

9 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.

10 The commission [~~executive director~~] may adopt rules regarding the  
11 procedures and fees a company, administrator, or sales  
12 representative must follow and pay when requesting a modification  
13 to the company's, administrator's, or sales representative's  
14 registration information that is on file with the department.

15 Sec. 953.057. RENEWAL OF REGISTRATION. The commission  
16 [~~executive director~~] shall adopt rules for the renewal of a  
17 company's, administrator's, or sales representative's  
18 registration, including a rule that addresses late renewals.

19 SECTION 7. Section 953.101, Occupations Code, is amended by  
20 amending Subsections (a), (b), and (c) and adding Subsections  
21 (b-1), (c-1), (c-2), (c-3), and (c-4) to read as follows:

22 (a) To ensure the faithful performance of a company's  
23 obligations to its legal service contract holders under this  
24 chapter and under the terms of its legal service contracts, each  
25 company must deposit and maintain a form of financial security with  
26 the executive director. The financial security deposited with the  
27 director must maintain at all times the following market values:

1           (1) a company generating \$300,000 or less in annual  
2 gross revenue in this state from the sale of legal service contracts  
3 in the preceding year shall deposit [~~at least~~] \$50,000 with the  
4 executive director;

5           (2) a company generating more than \$300,000 but less  
6 than \$750,000 in annual gross revenue in this state from the sale of  
7 legal service contracts in the preceding year shall deposit [~~at  
8 least~~] \$75,000 with the executive director; and

9           (3) a company generating \$750,000 or more in annual  
10 gross revenue in this state from the sale of legal service contracts  
11 in the preceding year shall deposit [~~at least~~] \$100,000 with the  
12 executive director.

13           (b) For purposes of Subsection (a), if a company [~~that~~] had  
14 no gross revenue in this state from the sale of legal service  
15 contracts in the preceding year [~~previously generated revenue from  
16 the sale of prepaid legal service contracts under Article 5.13-1,  
17 Insurance Code~~], the company shall deposit \$50,000 with the  
18 executive director [~~an amount of financial security based on the  
19 revenue generated from the sale of prepaid legal service contracts  
20 under the Insurance Code in the preceding year~~].

21           (b-1) The acceptable forms of financial security under this  
22 section are:

- 23                   (1) a surety bond;  
24                   (2) a certificate of deposit;  
25                   (3) a cash deposit; or  
26                   (4) a letter of credit.

27           (c) The department is responsible for the safeguarding of

1 financial security deposited with the executive director under this  
2 section. Financial security is not subject to taxation [~~and is to~~  
3 ~~be used exclusively to guarantee the company's performance of its~~  
4 ~~obligations to its legal service contract holders~~].

5 (c-1) At initial registration and at each renewal, a company  
6 must submit for review by the department:

7 (1) the audited financial statements of a company; and

8 (2) if the company maintains reserves, a certified  
9 statement describing the company's reserves.

10 (c-2) The statement described by Subsection (c-1)(2) must  
11 be made by an actuary who is a member in good standing of the  
12 American Academy of Actuaries.

13 (c-3) An applicant for initial registration that has not had  
14 sufficient operating history to have audited financial statements  
15 based on at least 12 months of operations must provide the  
16 department with financial statements that have been reviewed by a  
17 certified public accountant in order to meet the requirements under  
18 Subsection (c-1)(1).

19 (c-4) The commission or the executive director may take  
20 disciplinary action against a company, including imposing  
21 administrative penalties and administrative sanctions, for failure  
22 of a company to meet and maintain the financial security  
23 requirements under this section or to submit the required financial  
24 security documentation under this section.

25 SECTION 8. Sections 953.102, 953.104, and 953.152,  
26 Occupations Code, are amended to read as follows:

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

1 (a) If a company's financial security under Section 953.101 is  
2 issued or written for a specified term, not later than the 60th  
3 ~~[90th]~~ day before the date the term expires, the company shall:

- 4 (1) replace the financial security; or  
5 (2) notify the executive director of the company's  
6 intention to renew the financial security.

7 (b) If, not later than the 30th ~~[60th]~~ day before the date  
8 the term of a company's financial security expires, the executive  
9 director does not receive satisfactory notification of a company's  
10 renewal or replacement of the financial security, the executive  
11 director may draw on the company's financial security to hold in  
12 trust an amount ~~[the extent]~~ necessary to ensure ~~[that]~~ the  
13 company's obligations to its legal service contract holders are met  
14 as provided by Section 953.101(a) ~~[in accordance with this~~  
15 ~~chapter]~~.

16 (c) Not later than the 30th day after the date the executive  
17 director is notified that the company's financial security has been  
18 renewed or replaced, the executive director shall return any  
19 financial security that was drawn on under Subsection (b).

20 Sec. 953.104. CLAIMS ON ~~[SUIT ON]~~ FINANCIAL SECURITY;  
21 DISTRIBUTION OF FINANCIAL SECURITY FUNDS. (a) The department  
22 ~~[state]~~, on behalf of a legal service contract holder ~~[injured~~  
23 ~~because of a company's violation of this chapter]~~, may file a claim  
24 against ~~[bring a suit for payment from]~~ the company's financial  
25 security deposit held by the executive director for failure of the  
26 company to meet its obligations as provided by Section 953.101(a).

27 (b) The department ~~[state]~~ is the only person ~~[party]~~ that

1 may file a claim against a [~~bring suit for payment from a~~] company's  
2 financial security deposit held by the executive director. This  
3 chapter does not create a private right of action.

4 (c) [~~The state may only seek damages for the cost of the~~  
5 ~~legal services the company failed to provide to a legal service~~  
6 ~~contract holder under the terms of the legal service contract.~~

7 [~~(d)~~] The executive director [~~court~~] shall determine the  
8 amount to be paid to the legal service contract holder [~~the~~  
9 ~~executive director shall pay the consumer~~] from the company's  
10 financial security deposit held by the executive director.

11 (d) In the event of a company's bankruptcy or a similar  
12 event affecting the company's ability to faithfully perform its  
13 obligations to its legal service contract holders, the executive  
14 director may distribute any funds held in trust as financial  
15 security for the company under this section to eligible legal  
16 service contract holders as payment for eligible claims. The  
17 executive director shall distribute the funds in an equitable and  
18 cost-effective manner as determined by the executive director.

19 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. (a) For  
20 purposes of this section, "group legal service contract" means a  
21 legal service contract that is entered into by an employer or  
22 association on behalf of its employees or association members that  
23 choose to purchase the service.

24 (b) A company may issue group legal service contracts.

25 (c) The company shall provide a legal service contract  
26 holder who obtains a group legal service contract with a document  
27 that describes the company's services and complies with the



1 requirements of this chapter.

2 (d) A company that issues group legal service contracts is  
3 subject to the requirements of this chapter for issuance of legal  
4 service contracts.

5 SECTION 9. Sections 953.155(a) and (b), Occupations Code,  
6 are amended to read as follows:

7 (a) A company shall maintain accurate accounts, books, and  
8 other records regarding transactions regulated under this chapter.  
9 The company's records must include:

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

12 (2) the name and address of each legal service  
13 contract holder;

14 (3) the name and address of each administrator, if  
15 applicable;

16 (4) the names and department registration numbers [~~a~~  
17 list] of the sales representatives authorized by the company to  
18 market, sell, or offer to sell the company's legal service  
19 contracts;

20 (5) [~~(4)~~] a copy of each contract entered into between  
21 the company and a contracting attorney; and

22 (6) [~~(5)~~] a list of complaints the company has  
23 received from legal service contract holders, including the name of  
24 the sales representative involved in the transaction leading to the  
25 complaint.

26 (b) The records required by this section may be maintained  
27 in an electronic medium or through other recordkeeping technology.

1 ~~[If a record is not in a hard copy, the company must be able to~~  
2 ~~reformat the record into a legible hard copy at the request of the~~  
3 ~~executive director.]~~

4 SECTION 10. Section 953.156, Occupations Code, is amended  
5 to read as follows:

6 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED  
7 DISCLOSURES. (a) A legal service contract must be filed with the  
8 department ~~[executive director]~~ before it is marketed, sold,  
9 offered for sale, administered, or issued in this state. Any  
10 subsequent endorsement or attachment to the contract must also be  
11 filed with the department ~~[executive director]~~ before the  
12 endorsement or attachment is delivered to legal service contract  
13 holders.

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

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

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

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

21 (4) include the terms and restrictions governing  
22 cancellation of the contract by the company or the legal service  
23 contract holder;

24 (5) identify:

25 (A) any administrator, if the administrator is  
26 not the company;

27 (B) the sales representative; and

1 (C) the name of the legal service contract  
2 holder;

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

4 (7) specify the legal services and other benefits to  
5 be provided under the contract, and any limitation, exception, or  
6 exclusion;

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

10 (9) specify any restriction governing the  
11 transferability of the contract or the assignment of benefits;

12 (10) include the duties of the legal service contract  
13 holder;

14 (11) include the contact information for the  
15 department, including the department's toll-free telephone number  
16 and electronic mail address, as well as a statement that the  
17 department regulates the company, the administrator, and the  
18 company's sales representatives;

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

21 (13) explain how legal services may be obtained under  
22 the legal service contract;

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

27 (15) include any eligibility and effective date

1 requirements, including a definition of eligible dependents and the  
2 effective date of their coverage;

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

5 (17) explain any subrogation arrangements;

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

8 (19) include conditions under which contract rates may  
9 be modified; and

10 (20) include any other items required by the  
11 commission [~~executive director as determined~~] by rule.

12 SECTION 11. Subchapter D, Chapter 953, Occupations Code, is  
13 amended by adding Section 953.1581 to read as follows:

14 Sec. 953.1581. CANCELING A LEGAL SERVICE CONTRACT BY A  
15 CONTRACT HOLDER. (a) A legal service contract holder may cancel the  
16 legal service contract if the legal service contract holder  
17 provides the company with written notice of the legal service  
18 contract holder's intent to cancel the contract not later than the  
19 seventh day after the date the legal service contract holder  
20 receives the contract.

21 (b) If a legal service contract holder cancels a legal  
22 service contract in accordance with Subsection (a) and the holder  
23 has not sought legal services under the contract before the date the  
24 contract is canceled, the company shall refund to the legal service  
25 contract holder or credit to the account of the legal service  
26 contract holder the full purchase price of the contract.

27 (c) A legal service contract holder may cancel the legal

1 service contract after the time prescribed by Subsection (a) as  
2 provided by the contract.

3 (d) A company must pay the refund or credit the legal  
4 service contract holder's account before the 46th day after the  
5 date the contract is canceled. If the company fails to make the  
6 refund or credit by that date, the company is liable to the legal  
7 service contract holder for a penalty each month an amount remains  
8 outstanding. The penalty shall be an amount equal to 10 percent of  
9 the amount outstanding. The penalty is in addition to the amount of  
10 the refund owed to the legal service contract holder.

11 (e) The right to cancel a legal service contract is not  
12 transferable.

13 SECTION 12. The heading to Section 953.159, Occupations  
14 Code, is amended to read as follows:

15 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT BY A  
16 COMPANY.

17 SECTION 13. Sections 953.161, 953.162, 953.201, and  
18 953.202, Occupations Code, are amended to read as follows:

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

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

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

27 Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF

1 ADMINISTRATOR. (a) A company may appoint an administrator  
2 registered under this chapter [~~or designate a person~~] to be  
3 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, except Section  
7 953.101.

8 (b) The appointment of an administrator under this section  
9 does not affect a company's responsibility to comply with this  
10 chapter. [~~The executive director may adopt rules regarding the~~  
11 ~~registration of an administrator with the department.~~]

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

17 Sec. 953.202. [~~EMERGENCY~~] CEASE AND DESIST ORDER. [~~(a)~~]  
18 The executive director may issue a a [~~an emergency~~] cease and desist  
19 order to enforce this chapter if the executive director determines  
20 that the action is necessary to prevent a violation of this chapter,  
21 a rule adopted under this chapter, or an order issued by the  
22 commission or executive director [~~an emergency exists requiring~~  
23 ~~immediate action to protect the public~~].

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

1           ~~[(c) The executive director shall set the time and place for~~  
2 ~~a hearing to affirm, modify, or set aside an emergency cease and~~  
3 ~~desist order that was issued without a hearing.]~~

4           SECTION 14. Section 953.203(a), Occupations Code, is  
5 amended to read as follows:

6           (a) The executive director may institute an action against a  
7 company, administrator, or sales representative for injunctive  
8 relief under Section 51.352 to restrain a violation or a threatened  
9 violation of this chapter or an order issued or rule adopted under  
10 this chapter.

11           SECTION 15. Section 953.204, Occupations Code, is amended  
12 to read as follows:

13           Sec. 953.204. ADMINISTRATIVE PROCEDURE. Subchapters F and  
14 G, Chapter 51, ~~[Sections 51.310, 51.353, and 51.354]~~ apply to a  
15 disciplinary action taken under this chapter.

16           SECTION 16. (a) The following provisions of the Occupations  
17 Code are repealed:

- 18                   (1) Section 953.001(6);
- 19                   (2) Section 953.004;
- 20                   (3) Sections 953.101(d), (e), and (f);
- 21                   (4) Section 953.105; and
- 22                   (5) Section 953.205.

23           (b) Effective January 1, 2016, the following provisions of  
24 the Occupations Code are repealed:

- 25                   (1) Section 953.157; and
- 26                   (2) Section 953.158.

27           SECTION 17. (a) The Texas Commission of Licensing and

1 Regulation shall adopt rules implementing the changes in law made  
2 by this Act to Chapter 953, Occupations Code, not later than January  
3 1, 2016.

4 (b) Section 953.1581, Occupations Code, as added by this  
5 Act, applies only to a legal service contract sold on or after  
6 January 1, 2016. A legal service contract sold before that date is  
7 governed by the law in effect on the date the contract was sold, and  
8 the former law is continued in effect for that purpose.

9 (c) Notwithstanding Subsection (b) of this section, a legal  
10 service contract sold before January 1, 2016, may not be extended or  
11 renewed at the end of the legal service contract term unless the  
12 contract complies with Section 953.1581, Occupations Code, as added  
13 by this Act.

14 SECTION 18. This Act takes effect September 1, 2015.