By:  Zaffirini S.B. No. 1623

(In the Senate - Filed March 6, 2019; March 14, 2019, read first time and referred to Committee on Business & Commerce; May 7, 2019, reported favorably by the following vote: Yeas 8, Nays 0; May 7, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire                       X

Zaffirini            X

A BILL TO BE ENTITLED

AN ACT

relating to nonprofit legal services corporations.

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

SECTION 1.  Section 501.204(a), Insurance Code, is amended to read as follows:

(a)  This section applies to each insurer authorized to engage in business in this state under:

(1)  Chapter 841;

(2)  Chapter 842;

(3)  Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843, Chapter 1271, or Chapter 1272;

(4)  Chapter 882;

(5)  Chapter 884;

(6)  Chapter 885;

(7)  Chapter 887;

(8)  Chapter 888;

(9)  [~~Chapter 961;~~

[~~(10)~~] Chapter 962;

(10) [~~(11)~~]  Chapter 982;

(11) [~~(12)~~]  Subchapter B, Chapter 1103;

(12) [~~(13)~~]  Subchapter A, Chapter 1104;

(13) [~~(14)~~]  Chapter 1201, or a provision listed in Section 1201.005;

(14) [~~(15)~~]  Chapter 1551;

(15) [~~(16)~~]  Chapter 1578; or

(16) [~~(17)~~]  Chapter 1601.

SECTION 2.  Section 961.002(a), Insurance Code, is amended to read as follows:

(a)  The Texas Nonprofit Corporation Law as described by Section 1.008, Business Organizations Code, applies [~~Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes) and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) apply~~] to a nonprofit legal services corporation to the extent provided by [~~not in conflict with~~] this chapter.

SECTION 3.  Section 961.003, Insurance Code, is amended to read as follows:

Sec. 961.003.  CORPORATION NOT SUBJECT TO DEPARTMENT REGULATION. A [~~Each~~] nonprofit legal services corporation is not subject to [~~this chapter and to direct~~] regulation by the department.

SECTION 4.  Section 961.004, Insurance Code, is amended to read as follows:

Sec. 961.004.  CORPORATION NOT ENGAGED IN BUSINESS OF INSURANCE. A nonprofit legal services corporation [~~that complies with this chapter~~] is not engaged in the business of insurance and[~~, except as provided by Section 961.002(b),~~] is not subject to laws relating to insurers.

SECTION 5.  The heading to Section 961.051, Insurance Code, is amended to read as follows:

Sec. 961.051.  FILING OF CERTIFICATE OF FORMATION [~~APPLICATION FOR CORPORATE CHARTER~~]; NONPROFIT STATUS REQUIRED.

SECTION 6.  Section 961.051, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Seven or more persons may file with [~~apply to~~] the secretary of state a certificate of formation in accordance with Title 1, Business Organizations Code, to form a nonprofit legal services corporation.

(a-1)  Notwithstanding Subsection (a), a nonprofit legal services corporation that on or before September 1, 2019, was organized [~~for a corporate charter~~] under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or was formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, is [~~for~~] a nonprofit legal services corporation for purposes of this chapter.

SECTION 7.  The heading to Subchapter D, Chapter 961, Insurance Code, is amended to read as follows:

SUBCHAPTER D.  OFFICERS [~~BOARD OF DIRECTORS; PERSONNEL~~]

SECTION 8.  Section 961.152, Insurance Code, is amended to read as follows:

Sec. 961.152.  FINANCIAL OFFICER[~~; BOND~~]. [~~(a)~~]  A nonprofit legal services corporation, by resolution entered in its minutes, shall designate one or more officers to be responsible for handling the corporation's funds. [~~The president, secretary, or general manager of the corporation must certify a copy of the resolution, and the corporation shall file the copy with the department.~~

[~~(b)  Except as provided by Subsection (c), the corporation shall make and file a separate or blanket surety bond covering each officer designated under Subsection (a). The bond must:~~

[~~(1)  be issued by a corporate surety company authorized to issue surety bonds in this state;~~

[~~(2)  be satisfactory to the department and payable to the department for the use and benefit of the corporation;~~

[~~(3)  obligate the principal and surety to pay any monetary loss to the corporation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and~~

[~~(4)  be in an amount of at least $25,000 for each officer covered.~~

[~~(c)  Instead of the bond required by Subsection (b), an officer designated under Subsection (a) may deposit with the department cash or securities approved by the department in the amount and subject to the conditions applicable to the bond.~~

[~~(d)  Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted.~~]

SECTION 9.  The heading to Subchapter E, Chapter 961, Insurance Code, is amended to read as follows:

SUBCHAPTER E.  OPERATION [~~REGULATION~~] OF NONPROFIT LEGAL SERVICES CORPORATIONS

SECTION 10.  Section 961.206, Insurance Code, is amended to read as follows:

Sec. 961.206.  ADVANCE TO CORPORATION. Any person may advance to a nonprofit legal services corporation, on a contingent liability basis, money necessary for the purposes of the corporation's business or to comply with this chapter[~~, except that the advance may be repaid only on prior approval of the department~~]. The advance may be made in an amount and at a rate of interest agreed to by the person and the corporation.

SECTION 11.  Section 961.207, Insurance Code, is amended to read as follows:

Sec. 961.207.  PARTICIPATION AGREEMENTS. A [~~(a) Subject to Subsection (b), a~~] nonprofit legal services corporation may:

(1)  contract with another nonprofit legal services corporation or an insurer authorized to engage in business in this state for joint participation through:

(A)  a mutualization contract agreement; or

(B)  a guaranty treaty; and

(2)  cede or accept a legal services obligation from such a corporation or insurer on all or part of a legal services obligation.

[~~(b)  Each document used for a purpose described by Subsection (a) must be filed with the department and approved by the department to be in accordance with the corporation's plan of operation before the document takes effect.~~

[~~(c)  To carry out the purposes of this section, the commissioner may adopt rules governing an agreement with an insurer under Subsection (a).~~]

SECTION 12.  Section 961.254(a), Insurance Code, is amended to read as follows:

(a)  A nonprofit legal services corporation may issue a contract for legal services[~~, as provided by rules adopted by the commissioner,~~] providing for indemnity for costs of services of an attorney who is not a contracting attorney [~~if the department is satisfied that the corporation's plan of operation, experience, and financial standing, including a proper amount of unencumbered surplus, are adequate to ensure performance of the contract~~].

SECTION 13.  Section 961.301, Insurance Code, is amended to read as follows:

Sec. 961.301.  CONTRACTS WITH ATTORNEYS. [~~(a)~~]  A nonprofit legal services corporation may contract with qualified attorneys [~~as provided by this chapter~~] to ensure to each participant legal services performed by the attorneys under the contract for legal services between the corporation and the participant. A contracting attorney must be licensed to practice law in the jurisdiction in which legal services are to be provided.

[~~(b)  Before issuing a contract for legal services and while the corporation continues to issue those contracts, the corporation must maintain the number of contracting attorneys that the department determines is necessary to service the participant contracts contemplated by the corporation's plan of operation.~~]

SECTION 14.  Section 961.307, Insurance Code, is amended to read as follows:

Sec. 961.307.  COMPLAINT REGARDING ATTORNEY. If a nonprofit legal services corporation [~~the department~~] receives a complaint concerning the performance of an attorney connected with the [~~a nonprofit legal services~~] corporation, the corporation [~~department~~] shall refer the complaint to:

(1)  the supreme court of this state or a person that the supreme court designates to receive attorney grievances from the public, if the attorney is licensed by this state; or

(2)  the appropriate licensing agency of another jurisdiction where the attorney is licensed, if the attorney is not licensed by this state.

SECTION 15.  Section 961.402, Insurance Code, is amended to read as follows:

Sec. 961.402.  VOLUNTARY DISSOLUTION. (a)  The board of directors of a nonprofit legal services corporation may vote to dissolve the corporation at any time[~~, but the corporation may not be dissolved without the department's approval~~].

(b)  In a dissolution under this section, the officers of the corporation shall settle all outstanding obligations to participants and otherwise dispose of the corporation's affairs. After the officers have completed the corporation's liquidation [~~and a final settlement has been filed with and approved by the department~~], the corporation shall be dissolved as provided by:

(1)  the provisions relating to winding up and termination under Subchapter G, Chapter 22, Business Organizations Code; or

(2)  if the corporation was organized [~~to voluntary dissolution~~] under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the provisions relating to voluntary dissolution under that former law.

SECTION 16.  Section 4001.002(a), Insurance Code, is amended to read as follows:

(a)  Except as otherwise provided by this code, this title applies to each person licensed under:

(1)  Subchapter H, Chapter 885;

(2)  Subchapter F, Chapter 911;

(3)  Section 912.251;

(4)  [~~Section 961.005;~~

[~~(5)~~] Subchapter E, Chapter 981;

(5) [~~(6)~~]  Subchapter D, Chapter 1152;

(6) [~~(7)~~]  Subchapter C or D of this chapter;

(7) [~~(8)~~]  Subtitle B, C, or D of this title; or

(8) [~~(9)~~]  Subsection (c), Article 5.13-1.

SECTION 17.  The following provisions of the Insurance Code are repealed:

(1)  Chapter 260;

(2)  Sections 961.002(b) and 961.005;

(3)  Section 961.052;

(4)  Subchapter C, Chapter 961;

(5)  Sections 961.151 and 961.153;

(6)  Sections 961.201, 961.202, 961.203, 961.204, 961.205, 961.208, 961.209, 961.210, 961.211(b), and 961.212;

(7)  Section 961.252;

(8)  Sections 961.304 and 961.305(b); and

(9)  Sections 961.401, 961.403, and 961.404.

SECTION 18.  This Act takes effect September 1, 2019.

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