

By: Smithee

H.B. No. 3308

A BILL TO BE ENTITLED

1 AN ACT

2 relating to nonprofit legal services corporations.

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

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

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

8 (1) Chapter 841;

9 (2) Chapter 842;

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

14 (4) Chapter 882;

15 (5) Chapter 884;

16 (6) Chapter 885;

17 (7) Chapter 887;

18 (8) Chapter 888;

19 (9) ~~Chapter 961,~~

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

21 (10) ~~[(11)]~~ Chapter 982;

22 (11) ~~[(12)]~~ Subchapter B, Chapter 1103;

23 (12) ~~[(13)]~~ Subchapter A, Chapter 1104;

24 (13) ~~[(14)]~~ Chapter 1201, or a provision listed in

1 Section 1201.005;

2 (14) [~~(15)~~] Chapter 1551;

3 (15) [~~(16)~~] Chapter 1578; or

4 (16) [~~(17)~~] Chapter 1601.

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

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

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

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

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

22 Sec. 961.004. CORPORATION NOT ENGAGED IN BUSINESS OF
23 INSURANCE. A nonprofit legal services corporation [~~that complies~~
24 ~~with this chapter~~] is not engaged in the business of insurance and[~~7~~
25 ~~except as provided by Section 961.002(b),~~] is not subject to laws
26 relating to insurers.

27 SECTION 5. The heading to Section 961.051, Insurance Code,

1 is amended to read as follows:

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

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

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

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

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

21 SUBCHAPTER D. OFFICERS ~~[BOARD OF DIRECTORS, PERSONNEL]~~

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

24 Sec. 961.152. FINANCIAL OFFICER~~[, BOND]~~. ~~[(a)]~~ A nonprofit
25 legal services corporation, by resolution entered in its minutes,
26 shall designate one or more officers to be responsible for handling
27 the corporation's funds. ~~[The president, secretary, or general~~

1 ~~manager of the corporation must certify a copy of the resolution,~~
2 ~~and the corporation shall file the copy with the department.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (A) a mutualization contract agreement; or

18 (B) a guaranty treaty; and

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

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

26 [~~(c) To carry out the purposes of this section, the~~
27 ~~commissioner may adopt rules governing an agreement with an insurer~~

1 ~~under Subsection (a).]~~

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

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

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

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

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

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

27 Sec. 961.307. COMPLAINT REGARDING ATTORNEY. If a nonprofit

1 legal services corporation [~~the department~~] receives a complaint
2 concerning the performance of an attorney connected with the [~~a~~
3 ~~nonprofit legal services~~] corporation, the corporation
4 [~~department~~] shall refer the complaint to:

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

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

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

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

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

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

26 (2) if the corporation was organized [~~to voluntary~~
27 ~~dissolution~~] under the former Texas Non-Profit Corporation Act

1 (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the
2 provisions relating to voluntary dissolution under that former law.

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

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

- 7 (1) Subchapter H, Chapter 885;
- 8 (2) Subchapter F, Chapter 911;
- 9 (3) Section 912.251;
- 10 (4) [~~Section 961.005;~~
- 11 [~~(5)~~] Subchapter E, Chapter 981;
- 12 (5) [~~(6)~~] Subchapter D, Chapter 1152;
- 13 (6) [~~(7)~~] Subchapter C or D of this chapter;
- 14 (7) [~~(8)~~] Subtitle B, C, or D of this title; or
- 15 (8) [~~(9)~~] Subsection (c), Article 5.13-1.

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

- 18 (1) Chapter 260;
- 19 (2) Sections 961.002(b) and 961.005;
- 20 (3) Section 961.052;
- 21 (4) Subchapter C, Chapter 961;
- 22 (5) Sections 961.151 and 961.153;
- 23 (6) Sections 961.201, 961.202, 961.203, 961.204,
24 961.205, 961.208, 961.209, 961.210, 961.211(b), and 961.212;
- 25 (7) Section 961.252;
- 26 (8) Sections 961.304 and 961.305(b); and
- 27 (9) Sections 961.401, 961.403, and 961.404.

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