

BILL ANALYSIS

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S.B. 1623
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legal Protection Plan, also known as Texas Legal, was established by the Texas Legislature as a nonprofit legal services corporation that provides comprehensive and affordable coverage for various legal issues. Functioning like a preferred-provider healthcare network, Texas Legal offers assistance with services such as adoptions, divorces, estate planning, and many other family and individual issues. For a monthly fee, the corporation's members gain access to a network of attorneys throughout the state. It is the only nonprofit legal service provider in the state.

Historically, both for-profit and nonprofit legal services corporations were treated as insurance products and regulated by the Texas Department of Insurance (TDI). In 2003 the legislature transferred administrative responsibility for for-profit legal services corporations to the Texas Department of Licensing and Regulation (TDLR). What's more, H.B. 2113 (2017) deregulated them altogether. Neither piece of legislation affected nonprofit legal services corporations, creating the rather unusual situation in which the state-created nonprofit Texas Legal is the only regulated entity in the entire industry.

S.B. 1623 would deregulate nonprofit legal services corporations, just as H.B. 2113 deregulated their for-profit counterparts. The bill leaves the statutes governing such entities in the Insurance Code but makes clear that they are not in the business of insurance.

As proposed, S.B. 1623 amends current law relating to nonprofit legal services corporations.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 11 (Section 961.207, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Insurance is rescinded in SECTION 17 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 501.204(a), Insurance Code, as follows:

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

(1)–(8) makes no changes to these subdivisions;

(9) deletes existing text relating to Chapter 961 (Nonprofit Legal Services Corporations);

(10) deletes this subdivision designation; and

(11)–(17) redesignates these subdivisions as Subdivisions (10)–(16).

SECTION 2. Amends Section 961.002(a), Insurance Code, as follows:

(a) Provides that the Texas Nonprofit Corporation Law as described by Section 1.008 (Short Titles), Business Organizations Code, applies, rather than providing that the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., V.T.C.S.) and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.) apply, to a nonprofit legal services corporation to the extent provided by, rather than the extent not in conflict with, this chapter.

SECTION 3. Amends Section 961.003, Insurance Code, as follows:

Sec. 961.003. New heading: CORPORATION NOT SUBJECT TO DEPARTMENT REGULATION. Provides that a, rather than each, nonprofit legal services corporation is not subject to regulation by the Texas Department of Insurance (TDI), rather than is subject to this chapter and to direct regulation by TDI.

SECTION 4. Amends Section 961.004, Insurance Code, as follows:

Sec. 961.004. CORPORATION NOT ENGAGED IN BUSINESS OF INSURANCE. Provides that a nonprofit legal services corporation is not engaged in the business of insurance and is not subject to laws relating to insurers, rather than 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) (relating to providing that certain provisions of this code apply to a nonprofit legal services corporation in the same manner that they apply to an insurer or a person engaged in the business of insurance), is not subject to laws relating to insurers.

SECTION 5. Amends the heading to Section 961.051, Insurance Code, to read as follows:

Sec. 961.051. New heading: FILING OF CERTIFICATE OF FORMATION; NONPROFIT STATUS REQUIRED.

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

(a) Authorizes seven or more persons to file with the secretary of state (SOS) a certificate of formation in accordance with Title 1 (General Provisions), Business Organizations Code, to form a nonprofit legal services corporation, rather than authorizing seven or more people to apply to SOS for a corporate charter for a nonprofit legal services corporation.

(a-1) Provides that notwithstanding Subsection (a), a nonprofit legal services corporation that on or before September 1, 2019, was organized 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 a nonprofit legal services corporation for purposes of this chapter.

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

SUBCHAPTER D. OFFICERS.

SECTION 8. Amends Section 961.152, Insurance Code, as follows:

Sec. 961.152. New heading: FINANCIAL OFFICER. Deletes designation of Subsection (a) and deletes existing text relating to requiring the president, secretary, or general manager of the corporation to certify a copy of the resolution and requiring the corporation to file the copy with TDI. Deletes existing text of Subsections (b), (c), and (d) relating to bonds and bond proficiencies.

SECTION 9. Amends the heading to Subchapter E, Chapter 961, Insurance Code, to read as follows:

SUBCHAPTER E. OPERATION OF NONPROFIT LEGAL SERVICES CORPORATIONS

SECTION 10. Amends Section 961.206, Insurance Code, as follows:

Sec. 961.206. ADVANCE TO CORPORATION. Deletes existing text referring to authorizing a certain advance to be repaid only on prior approval of TDI.

SECTION 11. Amends Section 961.207, Insurance Code, as follows:

Sec. 961.207. PARTICIPATION AGREEMENTS. Deletes designation of Subsection (a) and deletes a reference to Subsection (b). Deletes text requiring all documents to be filed and approved by TDI. Deletes text authorizing the commissioner of insurance to adopt rules governing an agreement with an insurer under Subsection (a).

SECTION 12. Amends Section 961.254(a), Insurance Code, as follows:

(a) Authorizes a nonprofit legal services corporation to issue a contract for legal services providing for indemnity for costs of services of an attorney who is not a contracting attorney, rather than authorizing a nonprofit legal services corporation to 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 TDI 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. Amends Section 961.301, Insurance Code, as follows:

Sec. 961.301. CONTRACTS WITH ATTORNEYS. Deletes this designation of Subsection (a). Authorizes a nonprofit legal services corporation to contract with qualified attorneys to ensure to each participant legal services performed by the attorneys under the contract for legal services between the corporation and the participant. Deletes text relating to requiring the corporation, before issuing a contract for legal services and while the corporation continues to issue those contracts, to maintain the number of contracting attorneys that TDI determines is necessary to service the participant contracts contemplated by the corporation's plan of operation.

SECTION 14. Amends Section 961.307, Insurance Code, as follows:

Sec. 961.307. COMPLAINT REGARDING ATTORNEY. Requires the corporation, if a nonprofit legal services corporation receives a complaint concerning the performance of an attorney connected with the corporation, rather than requiring TDI, if TDI receives a complaint concerning the performance of an attorney connected with a nonprofit legal services corporation, to refer the complaint to:

(1)–(2) makes no changes to these subdivisions.

SECTION 15. Amends Section 961.402, Insurance Code, as follows:

Sec. 961.402. VOLUNTARY DISSOLUTION. (a) Deletes existing text prohibiting the corporation from being dissolved without TDI's approval.

(b) Deletes existing text relating to the final settlement being filed with and approved by TDI. Requires the corporation, after the officers have completed the corporation's liquidation, to be dissolved as provided by:

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

(2) if the corporation was organized under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.), the provisions relating to voluntary dissolution under that former law.

SECTION 16. Amends Section 4001.002(a), Insurance Code, as follows:

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

- (1)–(3) makes no changes to these subdivisions;
- (4) deletes existing text referring to Section 961.005 (Agents);
- (5) deletes this subdivision designation; and
- (6)–(9) redesignates these subdivisions as Subdivisions (5)–(8).

SECTION 17. Repealer: Chapter 260 (Nonprofit Legal Services Corporations), Insurance Code.

Repealer: Section 961.002(b) (relating to certain provisions that apply to a nonprofit legal services corporation in the same manner as they apply to certain insurance personnel), Insurance Code.

Repealer: Section 961.005 (Agents), Insurance Code.

Repealer: Section 961.052 (Minimum Participation Requirements), Insurance Code.

Repealer: Subchapter C (Authority to Engage in Business), Chapter 961, Insurance Code.

Repealer: Section 961.151 (Compensation of Directors), Insurance Code.

Repealer: Section 961.153 (Bond Requirements For Certain Persons), Insurance Code.

Repealer: Section 961.201 (Plan of Operation; Expense Fund Balance), Insurance Code.

Repealer: Section 961.202 (Annual Statement), Insurance Code.

Repealer: Section 961.203 (Claim Fund; Expense Fund), Insurance Code.

Repealer: Section 961.204 (Deposit Requirements), Insurance Code.

Repealer: Section 961.205 (Solvency of Funds), Insurance Code.

Repealer: Section 961.208 (Exclusive Agency Contract or Management Contract), Insurance Code.

Repealer: Section 961.209 (Remedies for Corporation in Hazardous Financial Condition), Insurance Code.

Repealer: Section 961.210 (Rules Relating to Hazardous Financial Condition), Insurance Code.

Repealer: Section 961.211(b) (relating to authorizing TDI to examine books and records at the corporation's expense), Insurance Code.

Repealer: Section 961.212 (Fees), Insurance Code.

Repealer: Section 961.252 (Approval of Forms), Insurance Code.

Repealer: Section 961.304 (Contract With Any Attorney Required). Insurance Code.

Repealer: Section 961.305(b) (relating to establishing minimum amounts for coverage), Insurance Code.

Repealer: Section 961.401 (Supervision by Department), Insurance Code.

Repealer: Section 961.403 (Involuntary Dissolution), Insurance Code.

Repealer: Section 461.404 (Priority of Claims), Insurance Code.

SECTION 18. Effective date: September 1, 2019.