

House Bill 729

In The House

February 12, 1981

Introduced and referred
to Committee on Judiciary.

February 24, 1981

Committee recommend bill
do not pass.

1 *House* BILL NO. *729*
 2 INTRODUCED BY *Harrington Keedy Kemmis Dan Brown*
 3 *Daily Healy [unclear] Jackson Haffey*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE FORMATION
 5 OF NONPROFIT CORPORATIONS TO PROVIDE PREPAID LEGAL SERVICES
 6 AND TO REGULATE THE ACTIVITIES OF SUCH CORPORATIONS."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. [This act] may be cited as the
10 "Prepaid Legal Services Act".

11 Section 2. Purpose. The purpose of [this act] is to
12 permit and encourage the formation of nonprofit prepaid
13 legal services plans in order to make legal services more
14 available to the public.

15 Section 3. Definitions. As used in [this act], the
16 following definitions apply:

- 17 (1) "Attorney" means a person who is currently an
18 active member of the state bar of Montana.
- 19 (2) "Applicant" means a person applying for a contract
20 for performance of legal services through a corporation
21 organized or operating under [this act].
- 22 (3) "Commissioner" means the commissioner of insurance
23 of the state of Montana.
- 24 (4) "Contracting attorney" means an attorney who has
25 entered into a contract with a legal services corporation as

1 provided in [section 9].

2 (5) "Legal services corporation" means a nonprofit
3 corporation organized for the purposes of establishing and
4 operating a nonprofit plan or plans under which prepaid
5 legal services or reimbursement therefor is furnished to
6 members.

7 (6) "Member" means a person entitled to the
8 performance of legal services under a contract with a legal
9 services corporation.

10 (7) "Membership contract" means any agreement,
11 contract, or certificate by which a legal services
12 corporation describes the legal services to which its
13 members are entitled.

14 Section 4. Purposes of legal services corporation. (1)
15 A legal services corporation may be organized for the
16 purposes of:

- 17 (a) establishing and operating a voluntary, nonprofit
18 plan or plans under which legal services or reimbursement
19 therefor is furnished to persons who become members or
20 beneficiaries;
- 21 (b) acting as agent or intermediary for other legal
22 services corporations, for governmental bodies or agencies,
23 or for other corporations, associations, partnerships, or
24 individuals in the field of legal services; and
- 25 (c) the promotion of social welfare through research

1 and through charitable, educational, and related activities.

2 (2) No profit organization may be a legal services
3 corporation. No group, association, or organization created
4 for or engaged in business or activity for profit, provision
5 for the incorporation of which is made by any of the
6 corporation laws of this state, may be organized or
7 operated, directly or indirectly, as a legal services
8 corporation.

9 Section 5. Application of other laws. (1) A legal
10 services corporation is subject to the provisions of the
11 Montana Nonprofit Corporation Act to the extent that such
12 provisions are not in conflict with the provisions of [this
13 act].

14 (2) A legal services corporation which complies with
15 [this act] is not considered as being engaged in the
16 business of insurance or transacting insurance business and
17 is not subject to the laws regarding insurers.

18 Section 6. Application of Montana Administrative
19 Procedure Act. All final administrative actions or decisions
20 of the commissioner under [this act] are subject to judicial
21 review in accordance with the Montana Administrative
22 Procedure Act.

23 Section 7. Participation contracts -- agreements with
24 insurers. (1) A legal services corporation may contract with
25 other legal services corporations and insurers licensed to

1 do business in Montana for joint participation through
2 mutualization contract agreements or guaranty treaties and
3 may otherwise cede or accept legal services obligations from
4 such organizations. Prior to their effectiveness, the
5 contract forms, documents, treaties, or agreement forms must
6 be filed with and approved by the commissioner as being in
7 accordance with the plan of operation of the corporation.

8 (2) The commissioner may issue such rules concerning
9 participation contracts and agreements with insurers as he
10 considers necessary to carry out the purposes of [this act].

11 Section 8. Management and exclusive agency contracts.
12 (1) No legal services corporation may enter into an
13 exclusive agency or management contract unless the contract
14 is first filed with and approved by the commissioner.

15 (2) The commissioner shall disapprove a contract
16 submitted under subsection (1) if he finds that:

17 (a) it subjects the corporation to excessive charges;
18 (b) it extends for an unreasonable period of time;
19 (c) it does not contain fair and adequate standards of
20 performance;

21 (d) the persons empowered under the contract to manage
22 the corporation are not sufficiently trustworthy, competent,
23 and free from conflict of interest to give reasonable
24 assurance that the interests of the corporation's
25 participants and creditors and the interests of the public

1 will be protected; or

2 (e) the contract contains provisions which are likely
3 to impair the interests of the corporation's participants or
4 creditors or the interests of the public.

5 Section 9. Agreements with contracting attorneys. A
6 legal services corporation may contract with attorneys in
7 such a manner as to assure to each participant holding a
8 membership contract of the corporation the furnishing of
9 such legal services by a contracting attorney as agreed upon
10 in the membership contract. The corporation may limit in the
11 membership contract the types and extent of benefits and the
12 circumstances in which legal services will be furnished.

13 Section 10. Corporation to have a sufficient number of
14 contracting attorneys. Before issuing any membership
15 contracts, a legal services corporation shall have contracts
16 with a sufficient number of contracting attorneys to enable
17 it to fulfill its contractual obligations to its members. As
18 long as the corporation has obligations under membership
19 contracts, it shall maintain contracts with a sufficient
20 number of contracting attorneys. Ten percent of the
21 currently active members of the state bar of Montana is
22 always sufficient. The commissioner may allow a legal
23 services corporation to operate with less than 10% of the
24 active members of the state bar of Montana under contract if
25 the commissioner determines that the number of attorneys

1 under contract is sufficient under the circumstances.

2 Section 11. Noninterference with attorney-client
3 relationships. (1) A legal services corporation may not
4 itself practice law in any manner nor may it control or
5 attempt to control the relations between a member and the
6 member's attorney. It shall confine its activities to
7 contracting as an agent on behalf of its members for legal
8 services to be rendered by contracting attorneys who may
9 never be employees of the corporation but must always be
10 independent contractors maintaining direct attorney-client
11 relationships with the members.

12 (2) A legal services corporation must offer the same
13 contract terms to all attorneys who desire to become
14 contracting attorneys.

15 Section 12. Membership contracts. A legal services
16 corporation shall issue a membership contract to each
17 applicant it accepts as a member. A membership contract may
18 be on an individual, group, or franchise basis and may
19 provide for payments to help defray the costs of legal
20 services provided by noncontracting attorneys.

21 Section 13. Definition of enrollment representative.
22 (1) A person who, for compensation, solicits membership in a
23 prepaid legal services plan offered by a legal services
24 corporation is an enrollment representative of that
25 corporation.

1 (2) For the purposes of [this act], an enrollment
2 representative does not include an individual:

3 (a) employed by enrollment representatives for the
4 performance of clerical, stenographic, and similar office
5 duties;

6 (b) employed for taking applications for coverage on a
7 nonregular basis in the office of an enrollment
8 representative;

9 (c) who secures and forwards information for an
10 existing group contractor for the purpose of enrolling
11 individuals under an existing group contract.

12 Section 14. Licensing of enrollment representatives.

13 (1) Each legal services corporation shall notify the
14 commissioner through its proper officer or agent of the
15 name, title, and address of each person it desires appointed
16 as an enrollment representative. The notice must be
17 accompanied by a written application upon a form furnished
18 by the commissioner from the appointee.

19 (2) The commissioner shall issue an appointee a
20 license to act as an enrollment representative of the
21 corporation if, upon receipt of the written application
22 provided for in subsection (1) accompanied by the proper
23 fee, it appears that the appointee:

24 (a) is a competent and suitable person who intends to
25 hold himself out in good faith as the corporation's

1 enrollment representative; and

2 (b) qualifies under the provisions of this section.

3 (3) If the commissioner considers it desirable, he may
4 require an appointee to submit to an examination to
5 determine the qualifications of the appointee to act as an
6 enrollment representative. The examination shall inquire
7 into an applicant's knowledge of the provisions of [this
8 act] and of the forms submitted and used by the employing
9 corporation.

10 (4) Upon receipt by the commissioner of notification
11 from a legal services corporation that the corporation
12 desires a particular individual to be appointed as its
13 enrollment representative, that person has a temporary
14 enrollment representative's license until the commissioner
15 notifies the corporation of action taken on the application.
16 If the commissioner rejects the application, the prospective
17 appointee's eligibility to act as an enrollment
18 representative ceases on the day the corporation is notified
19 of a final rejection.

20 (5) The commissioner shall notify both the appointee
21 and the corporation in writing of any refusal to grant a
22 license. No application may be finally rejected without a
23 hearing or examination.

24 Section 15. License renewal. Unless revoked by the
25 commissioner or unless the corporation by written

1 notification to the commissioner cancels the authority of an
 2 enrollment representative to act for it, a license issued or
 3 a renewal thereof expires on January 1 after its issuance. A
 4 license may be renewed annually upon payment of the annual
 5 license renewal fee as provided in [section 21].

6 Section 16. Suspension or revocation of license. (1)
 7 The commissioner may suspend for not more than 12 months or
 8 revoke or refuse to continue any license issued under [this
 9 act] if he finds that as to the licensee any one or more of
 10 the following causes exist:

11 (a) any cause for which issuance of the license could
 12 have been refused had it then existed and been known to the
 13 commissioner;

14 (b) obtaining or attempting to obtain a license
 15 through misrepresentation or fraud;

16 (c) violation of or noncompliance with applicable
 17 provisions of [this act] or willful violation of any lawful
 18 rule or order of the commissioner;

19 (d) misappropriation or conversion to his own use or
 20 illegal withholding of money or property belonging to the
 21 legal services corporation, its members, beneficiaries, or
 22 others and received in the conduct of business under the
 23 license;

24 (e) conviction of a felony involving moral turpitude;

25 (f) fraudulent or dishonest practices in the conduct

1 of his affairs under the license; or

2 (g) incompetence, untrustworthiness, or injury and
 3 loss to the public while acting under the license.

4 (2) No action may be taken under subsection (1) unless
 5 a hearing has been granted the licensee with 20 days'
 6 notice. The notice and the reasons for the commissioner's
 7 action must be sent by certified mail to the licensee and
 8 the corporation.

9 Section 17. Forms -- filing, disapproval by
 10 commissioner. (1) A copy of any forms of the membership
 11 contract or any type of endorsement or rider must be filed
 12 with the commissioner within 30 days after that form is
 13 first used. If a form does not comply with the requirements
 14 of [this act], the commissioner shall notify the corporation
 15 in writing of that failure and include the reasons for his
 16 opinion. Unless the corporation requests a hearing within 10
 17 days, notice by the commissioner disallows use of the form
 18 by the corporation. If the corporation challenges the
 19 commissioner's disallowance of a form, the corporation shall
 20 request a hearing on the issue. The commissioner shall
 21 schedule a hearing as soon as practicable but not less than
 22 15 days from the date of the request. If the commissioner
 23 finds, after the hearing, that the form is not in compliance
 24 with [this act], he may disapprove the form and issue a
 25 final order to that effect. Notice of disapproval, including

1 the grounds for disapproval, must be presented to the
2 corporation within 30 days after the hearing. The final
3 order is effective 30 days after presentation of the notice
4 of disapproval.

5 (2) A corporation whose forms have been ordered
6 discontinued by the commissioner may appeal, within 15 days
7 after an order, to a district court. The court, upon filing
8 of the proper petition, shall cause the forms and orders of
9 the commissioner to be brought before it, and upon hearing
10 the case, the court shall either affirm or reverse and
11 vacate the order of the commissioner.

12 (3) The court may suspend or stay a final order of the
13 commissioner under this section pending trial of the issues
14 or an appeal.

15 Section 18. Financial security. (1) The corporation
16 shall maintain at all times unobligated funds adequate to
17 meet:

- 18 (a) its obligations under membership contracts; and
- 19 (b) all costs and expenses.

20 (2) In addition, reserves of a legal services
21 corporation in cash, certificates of deposit, obligations
22 issued or guaranteed by the government of the United States,
23 or other assets approved by the commissioner must be
24 maintained in an amount not less than the lesser of:

- 25 (a) \$500,000; or

1 (b) an amount equal to 1 month's average income from
2 dues or fees paid to the corporation by its members or
3 beneficiaries.

4 (3) The determination of minimum reserves is subject,
5 as to amounts payable to contracting attorneys, to any right
6 of the corporation to prorate amounts under the terms of its
7 contracts with contracting attorneys. The commissioner may
8 decrease or suspend the requirements of this section if he
9 finds that the action is in the best interest of the members
10 of the corporation.

11 Section 19. Annual report. Each legal services
12 corporation shall make and file annually with the
13 commissioner before March 1 a report under oath setting
14 forth:

- 15 (1) the name of the corporation;
- 16 (2) the address of its registered office in this state
17 and the name of its registered agent at that address;
- 18 (3) the names and addresses of its directors and
19 officers;
- 20 (4) a brief statement of the character of the affairs
21 that the corporation is actually conducting;
- 22 (5) the amount of all dues or fees collected from its
23 members in the last fiscal year, the amounts actually paid
24 during that year for legal services for the benefit of its
25 members or beneficiaries, and the amounts placed in

1 reserves;

2 (6) a balance sheet and statement of income and
3 expenditures for the most recent fiscal year of the
4 corporation, prepared and verified by two officers of the
5 corporation and certified by a certified public accountant;
6 and

7 (7) a statement of any other facts or information
8 concerning the financial affairs of the legal services
9 corporation that may reasonably be required by the
10 commissioner.

11 Section 20. Examination of a legal services
12 corporation. (1) If the commissioner believes a legal
13 services corporation is unable or potentially unable to
14 fulfill its contractual obligations to its members, the
15 commissioner may conduct an examination of that corporation.

16 (2) Each officer, employee, or agent of a legal
17 services corporation examined shall produce and make
18 available to the commissioner or his examiner the accounts,
19 records, documents, files, information, assets, and matters
20 in his possession or control relating to the subject of the
21 examination.

22 (3) The commissioner or his examiner shall make a
23 verified report of the examination.

24 (4) The report shall comprise only facts appearing
25 from the books, papers, records, and documents of the

1 corporation examined; facts ascertained from the testimony,
2 under oath, of individuals concerning its affairs; and
3 conclusions and recommendations as warranted by those facts.

4 (5) The commissioner shall furnish a copy of the
5 proposed report to the corporation examined not less than 20
6 days prior to filing of the report in his office. If the
7 corporation requests a hearing, in writing, within the
8 20-day period, the commissioner shall grant one with respect
9 to the report and may not file the report until after the
10 hearing and after modifications, if any, that the
11 commissioner considers proper.

12 Section 21. Fees. (1) Each legal services corporation
13 must pay the following fees to the commissioner for
14 enforcement of the provisions of [this act]:

- 15 (a) for an enrollment representative's license:
 - 16 (i) application for an original license including
17 examination and issuance of license.....\$10;
 - 18 (ii) annual renewal.....\$ 5;
- 19 (b) for filing any other statement or report.....\$ 1;
- 20 (c) for a certified copy of any document or other
21 paper filed in the office of the commissioner.....
2250 cents a page;
- 23 (d) for the certificate and for affixing the seal
24 thereto.....\$ 1;
- 25 (e) for filing of a membership contract.....\$10;

1 (f) for filing of a membership contract package...\$25;
 2 (g) for filing the annual report.....20 cents
 3 for each individual or family unit the corporation covered
 4 at the close of the year to which the annual report is
 5 applicable, with a minimum of \$100.

6 (2) The commissioner shall deposit with the state
 7 treasurer to the credit of the earmarked revenue fund, state
 8 insurance commissioner account, all fees received by him
 9 under this section. The fees collected shall be used to pay
 10 the cost of the duties imposed upon the commissioner by
 11 [this act].

12 Section 22. Premium tax exemption. A legal services
 13 corporation is exempt from all premium taxes.

14 Section 23. Grievance procedure -- complaints against
 15 the corporation. A member of a legal services corporation
 16 who believes himself to be aggrieved by any act or omission
 17 of the corporation or its officers, directors, or employees
 18 may file a statement in writing of his grievance in the
 19 office of the commissioner, and the commissioner shall
 20 investigate the grievance. No investigation by the
 21 commissioner may act as a bar to any suit in a court of
 22 competent jurisdiction instituted by the aggrieved member or
 23 as a bar to any defense by the involved corporation.

24 Section 24. Grievance procedures -- complaints against
 25 attorneys. The commissioner shall refer any complaints

1 received by him concerning the conduct of contracting
 2 attorneys to the commission on practice of the Montana
 3 supreme court.

4 Section 25. Malpractice insurance. Contracting
 5 attorneys shall maintain such malpractice insurance as the
 6 corporation considers proper. The commissioner may establish
 7 a rule setting a minimum amount of malpractice coverage to
 8 be maintained by each contracting attorney.

9 Section 26. Nonliability for attorney's malpractice.
 10 A legal services corporation and its officers and directors
 11 are not liable for damages resulting from neglect,
 12 misfeasance, malfeasance, or malpractice on the part of any
 13 contracting attorney.

14 Section 27. Trade practices prohibited. In order to
 15 regulate trade practices of legal services corporations, the
 16 following prohibitions are imposed:

17 (1) No person may make, issue, circulate, or cause to
 18 be made, issued, or circulated any estimate, circular, or
 19 statement misrepresenting the terms of any legal services
 20 corporation membership contract issued or to be issued or
 21 the benefits or advantages promised thereby.

22 (2) No person may make, publish, disseminate,
 23 circulate, or place before the public or cause, directly or
 24 indirectly, to be made, published, disseminated, circulated,
 25 or placed before the public, in any way, an advertisement,

1 announcement, or statement, whether written or oral,
2 containing any representation with respect to the business
3 of a legal services corporation that is false or misleading.

4 (3) No person may make or issue or cause to be made or
5 issued any written or oral statement misrepresenting or
6 making incomplete comparisons as to the terms, conditions,
7 or benefits contained in any legal services corporation
8 membership contract tending to induce a member to cancel or
9 convert any membership contract.

10 (4) No person may file with any public official; make,
11 publish, disseminate, circulate, or deliver to any person;
12 place before the public; or cause, directly or indirectly,
13 to be made, published, disseminated, circulated, delivered
14 to any person, or placed before the public any false or
15 misleading statement concerning the financial condition of a
16 legal services corporation with intent to deceive.

17 (5) No person may make any false entry in any book,
18 report, or statement of any legal services corporation with
19 intent to deceive any agent or examiner lawfully appointed
20 to examine its condition or any of its affairs or any public
21 official to whom the legal services corporation is required
22 by law to report or who has authority by law to examine its
23 condition or any of its affairs. No person may, with like
24 intent, willfully omit to make a true entry of any material
25 fact pertaining to the business of the legal services

1 corporation in any book, report, or statement of the legal
2 services corporation.

3 (6) No person may make, publish, disseminate, or
4 circulate, directly or indirectly, or aid, abet, or
5 encourage the making, publishing, disseminating, or
6 circulating of any oral or written statement or any
7 pamphlet, circular, article, or literature that is false or
8 maliciously critical of or derogatory to the financial
9 condition of a legal services corporation or of an
10 organization proposing to become a legal services
11 corporation and that is calculated to injure any person
12 engaged or proposing to engage in the business of operating
13 a legal services corporation.

14 (7) No person may enter into an agreement to commit
15 or, by any concerted action, commit any act of boycott,
16 coercion, or intimidation resulting in or tending to result
17 in unreasonable restraint of the operation of legal services
18 corporations.

19 (8) No person may knowingly make or permit any
20 unreasonable discrimination between individuals in any
21 classification established by a legal services corporation
22 as to the amount of dues or rates charged for any membership
23 contract, the benefits payable thereunder, any of the terms
24 and conditions of the contract, or any other matter.
25 However, a legal services corporation may, within the

1 discretion of its board of directors, limit or define the
 2 classes of persons who are eligible to become members, limit
 3 and specify the benefits that it will furnish, and specify
 4 such benefits as it undertakes to furnish into classes or
 5 kinds. A legal services corporation may make available to
 6 its members legal services or reimbursement therefor as the
 7 board of directors of that corporation may approve.

8 Section 28. Certain exclusions. (1) Nothing contained
 9 in [subsection (8) of section 27] includes within the
 10 definition of discrimination any of the following practices:

11 (a) readjustment of the rate of payment for membership
 12 in a legal services corporation under a group contract based
 13 on the loss or expense experience thereunder at the end of
 14 the first or any subsequent contract year thereunder which
 15 may be made retroactive only for that contract year;

16 (b) in the case of membership contracts issued on the
 17 preauthorized bank draft or a similar plan, making allowance
 18 to members in an amount that fairly represents the saving in
 19 collection expense;

20 (c) reduction of the rate of payment for group
 21 contracts covering a large number of members not exceeding
 22 savings in administrative expenses reasonably attributable
 23 to these contracts as compared with contracts offering
 24 similar benefits to smaller numbers of members;

25 (d) issuing individual membership contracts on a

1 "salary savings" or payroll deduction plan reasonably
 2 commensurate with the savings made by use of such plan.

3 (2) Nothing in [this act] gives the commissioner power
 4 to fix and determine a rate level by classification or
 5 otherwise.

6 Section 29. Notice of violation -- conference. If the
 7 commissioner for any reason has cause to believe that a
 8 violation of [this act] has occurred or is threatened, the
 9 commissioner may give written notice to the legal services
 10 corporation and to the representatives or other persons who
 11 appear to be involved in the suspected violation to arrange
 12 a conference with the alleged violators or their authorized
 13 representative for the purpose of attempting to ascertain
 14 the facts relating to the suspected violation and, if it
 15 appears that a violation has occurred or is threatened, to
 16 arrive at an adequate and effective means of correcting or
 17 preventing the violation.

18 Section 30. Cease and desist order -- hearing. (1) The
 19 commissioner acting in the name of the state may issue an
 20 order directing a legal services corporation or a
 21 representative of a legal services corporation to cease and
 22 desist from engaging in any act or practice in violation of
 23 the provisions of [this act].

24 (2) Within 15 days after service of the order, the
 25 respondent may request a hearing on the question of whether

1 acts or practices in violation of [this act] have occurred.
 2 The hearing must be conducted under the Montana
 3 Administrative Procedure Act.

4 Section 31. Injunctive relief. If there has been a
 5 violation of the provisions of [this act] and the
 6 commissioner elects not to issue a cease and desist order or
 7 if there is noncompliance with a cease and desist order
 8 issued under [this act], the commissioner may institute a
 9 proceeding to obtain injunctive relief, receivership, or
 10 other appropriate relief in the district court of the county
 11 in which the violation occurred or in which the principal
 12 place of business of the legal services corporation is
 13 located. Any proceeding under this section must conform to
 14 the requirements of Title 27, except that the commissioner
 15 is not required to allege facts tending to show the lack of
 16 an adequate remedy at law or tending to show irreparable
 17 damage or loss.

18 Section 32. Dissolution. A dissolution or liquidation
 19 of a legal services corporation must be under the
 20 supervision of the commissioner, and members' claims must be
 21 given priority over all other claims except cost of
 22 liquidation.

23 Section 33. Method of dissolution. A legal services
 24 corporation may be dissolved at any time by a vote of its
 25 board of directors after such action has been approved by

1 the commissioner. In the case of voluntary dissolution, the
 2 disposition of the affairs of the corporation must be made
 3 by the officers, and when the liquidation has been completed
 4 and a final statement has been filed with and approved by
 5 the commissioner, the provisions for voluntary dissolution
 6 under the Montana Nonprofit Corporation Act must be followed
 7 to dissolve the corporation. In all other cases in which a
 8 legal services corporation is found to be insolvent or to
 9 have violated the provisions of [this act], on a
 10 determination of that condition and after due notice and
 11 hearing, the affairs of the corporation must be disposed of
 12 by a liquidator appointed by and under the supervision of
 13 the commissioner.

-End-

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