

COMMONWEALTH OF VIRGINIA

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January 7, 2020

The Honorable Terry G. Kilgore, Chairman
Committee on Commerce and Labor
Virginia House of Delegates
Pocahontas Building
900 East Main Street
Richmond, Virginia 23219

The Honorable Tony O. Wilt
Committee on Commerce and Labor
Virginia House of Delegates
Pocahontas Building
900 East Main Street
Richmond, Virginia 23219

Re: House Bill 2444 (2019 Regular Session)

Dear Delegates Kilgore and Wilt:

This Report has been prepared in response to your letters requesting an analysis and recommendations regarding issues raised by House Bill 2444 (HB 2444) introduced in the 2019 Virginia General Assembly. The bill repeals provisions under which the State Corporation Commission regulates legal services plans and under which the Department of Agriculture and Consumer Services regulates sellers of legal services plans. The measure also eliminates the premium tax assessed on legal services plans.

Based on both of your letter requests, this Report provides analysis of HB 2444, including seven specific areas of interest or impact related to HB 2444 outlined by Delegate Wilt, and provides the collective input of the Bureau of Insurance, the Department of Agriculture and Consumer Services and the Virginia Department of Taxation concerning the issues raised by HB 2444.

In summary, based on our investigation, the Bureau of Insurance recommends either a delay in enactment of the provisions of HB 2444 until the two major legal services plan organizations agree on any changes to the current regulatory

framework, or a determination is made to repeal the legal services plan provisions in such a way as to avoid a potential negative impact on general fund and non-general fund revenues.

Background

Broadly speaking, the Virginia State Corporation Commission, through its Bureau of Insurance (BOI) regulates matters pertaining to insurance, insurers, and insurance agents. However, the Virginia Department of Agriculture and Consumer Services (VDACS) is responsible for registering legal services plan sellers. The reason for this difference is discussed in Part 1 of the Analysis section of this Report.

Another distinction to keep in mind when reviewing this Report is the difference between legal services insurance and a legal services plan. With the former, defined in Code § 38.2-127, an individual purchases insurance that reimburses the insured, or pays directly on the insured's behalf, all or part of the insured's costs, fees, and expenses related to legal services. By contrast, under the legal services plan model, a subscriber pays a prepaid or periodic charge (such as a set monthly amount). In return, the subscriber receives legal services specified in the contract that may arise during the insurance term. For example, a subscriber may be able to call an attorney that works for the legal services plan to receive help defending against a speeding ticket, reviewing a lease agreement, or writing a will.

The following chart highlights some of the differences between legal services insurance and legal services plans.

Topic	Legal Services Insurance	Legal Services Plans
Regulated under	§ 38.2-2300	§ 38.2-4400
Seller regulation	Agents, regulated by BOI	Sellers, registered with VDACS
Financial regulation	More heavily regulated, subject to risk-based capital requirements and own risk/solvency assessments	BOI can review to see if company is in hazardous financial condition
Description	Reimburses insured or pays legal costs on behalf of insured	Insured pays a periodic fee and in return receives legal help from the plan's legal network of attorneys for events arising during the term of the insurance
No. of cos with authority to write this insurance	119	5
No. of cos. actively writing this insurance	3	5
2018 combined company premiums	\$4,494,671	\$18,217,299
2018 combined taxes paid	\$104,547	\$317,278
Effect of HB 2444	Slight change to definition under § 38.2-127	Would repeal all regulation of these plans and VDACS registration of sellers

Effect of HB 2444

If HB 2444 were to become law, it would impact legal services plans but would have minimal to no effect on legal services insurance. The passage of HB 2444 with its current wording, and the subsequent repeal of Chapter 44 of Title 38.2, would have the following results:

- Subscribers would lose the current protection they have whereby participating providers are jointly and severally liable on all contracts.
- No one would oversee the financial condition of legal services plans or legal services plan sellers.
- According to the Virginia Department of Taxation, legal services plans would no longer have to pay premium taxes, resulting in a total negative revenue impact of \$200,809 in Fiscal Year 2020; \$413,622 in Fiscal Year 2021; \$438,349 in Fiscal Year 2022; \$464,553 in Fiscal Year 2023; \$492,324 in Fiscal Year 2024; and \$521,756 in Fiscal Year 2025. However, the negative revenue impact may be partially offset to the extent that exempting legal service plans from the premium tax makes them subject to the state corporate income tax.
- With the lack of licensing requirements for legal services plans, there would be an increased potential for harmful entities to operate in Virginia.
- The BOI would no longer approve forms for legal services plans' use.
- Consumers would lose two avenues for complaint, as BOI would no longer accept complaints regarding legal services plans, and VDACS would not accept complaints against legal services plan sellers.
- Legal services plan subscribers would likely face restricted options for obtaining legal services because Code § 38.2-4411 would be repealed. This Code provision assures plan subscribers of freedom to choose to take service from any provider that is available and participates in the legal services plan.
- Legal services plans would no longer have to pay premium taxes, resulting in an estimated loss of \$317,278 in premium tax payments. However, legal services plans would be subject to state income taxes.
- The public would lose the protections of both Chapter 5 (Unfair Trade Practices) and Chapter 6 (Insurance Information and Privacy Protection) of Title 38.2 regarding legal services plans.

According to VDACS, the repeal of Chapter 34.1 of Title 59.1 would effectively eliminate the requirement for legal services plan sellers to register with VDACS, which, in turn, would have the following results:

- One full-time equivalent (FTE) position would be eliminated.
- Administrative costs associated with the registration of legal services plans, such as credit card transaction fees and information technology expenses for the online registration system, would be reduced and/or eliminated.
- Associated non-general fund revenue collected from legal services plans' registration fees would cease. Based on registration fees collected in Fiscal Year 2018 from 3,133 sellers of legal services plans, the amount of revenue that would not be collected is over \$159,000.

- The elimination of one FTE would result in VDACS incurring costs associated with Workforce Transition Act benefits, which VDACS is unable to calculate.
- The expenditure impact in Fiscal Year 2020 would reflect reduced savings (increased costs).

Analysis

1. The history of legal services plan regulation in the Commonwealth

The following timeline provides the history of legal services plan regulation in the Commonwealth.

- **1976:** Chapter 636 added to the Code a definition of "legal services insurance" (§ 38.2-221) and added provisions describing the circumstances under which legal services insurance may be offered in Virginia (Title 38.2, Chapter 8, Article 4.1).
- **1978:** Chapter 658 amended the definition of "legal services insurance" in § 38.1-22.1 and added to Title 38.1 new Chapter 22 (Contracts and Plans for Future Legal Services), which set forth requirements for establishing and operating legal services plans. Chapter 658 also applied the premium tax requirement to companies regulated by Title 38.1, Chapter 22. With the enactment of Chapter 658, Virginia law began to distinguish "legal services insurance" from "legal services plans."
- **1986:** Chapter 562 recodified the insurance code from Title 38.1 to Title 38.2. For purposes of this Report, it should be noted that § 38.1-22.1 became § 38.2-127 and Chapter 22 (Contracts and Plans for Future Legal Services) of Title 38.1 became Chapter 44 (Legal Services Plans) of Title 38.2.
- **1994:** Chapter 224 amended Title 38.2, Chapter 44. Changes included amending or adding definitions and adding a new section on corporate organization requirements for legal services plans.
- **2004:** Chapter 784 amended Title 38.2, Chapter 18. The need for these amendments lay in BOI's compliance with the federal Gramm-Leach-Bliley Act (GLBA), which generally requires financial institutions, including insurance companies, to safeguard certain data and explain their information-sharing practices to customers. As part of its compliance with the GLBA, BOI combined several licenses for limited lines of insurance into one "limited lines Life & Health" license. Among other insurance lines, this license covered "prepaid legal services" (legal services plans).

Though the new combined license aided compliance with the GLBA, it created a reciprocity issue between the Commonwealth of Virginia and several states whose insurance departments do not license individuals selling legal services plans. As a result, BOI could not issue limited lines Life & Health insurance licenses to non-resident agents from those states seeking to engage in insurance business in Virginia. Rather than try to force other states to create a new insurance agent license to match Virginia's, it was suggested that another state agency take over the licensing of individuals selling legal services plans, which addressed the issue.

Accordingly, Chapter 784 transferred the responsibility for regulating legal services plan sellers from BOI to VDACS and established requirements for legal services plan sellers to register with VDACS. Additionally, the amendments provided the Board of Agriculture and Consumer Services with authority to prescribe regulations relating to legal services plan sellers and for VDACS to investigate violations.

2. A description and comparison of the five legal services insurance plans regulated pursuant to § 38.2-2300.

Virginia currently has five legal services plan organizations that are licensed to transact business in Virginia pursuant to Chapter 44 (specifically § 38.2-4413). The five Plans licensed pursuant to Chapter 44, and their covered services, are as follows:

Legal Service Plan of Virginia (LSPOV)

LSPOV writes 52% of all legal services plan premiums in Virginia (based on \$9,504,609 in Virginia premiums written in 2018). Covered services provided under the contract include, within limits specified in the contract, the following:

- Legal Consultation and Assistance Services. Includes telephone consultations, drafting of letters, review of legal documents, preparation of Last Will and Testament and review of and changes to existing Last Will and Testament.
- Motor Vehicle Related Services. Includes defense of moving traffic violations, legal assistance in maintaining or retaining a driver's license and the filing of lawsuits to collect personal injury or property damage claims.
- Trial Defense Services. Includes pre-trial and trial services for members named as defendants in covered civil or criminal actions.
- IRS Audit Protection Services. Includes services for tax return audits or appearances before the IRS concerning tax issues.
- Other Legal Services. All other legal services may be obtained for a 25% discount from the participating law firm's standard hourly rate.

Legal Resources of Virginia, Inc. (LROV)

LROV writes 44% of all legal services plan premiums in Virginia (based on \$7,998,769 in Virginia premiums written in 2018). Covered services provided under the contract include, but are not limited to, the following:

- General Consultation Advice
- Civil Actions
- Uncontested Divorces
- Civil Administration Proceedings
- Landlord-Tenant Matters
- Will Preparation
- Consumer/Seller Issues
- Traffic Violations
- Family Law
- Misdemeanor Criminal Violations
- Defense of Juveniles
- Real Estate Transactions
- Credit Protection
- Preventive Law

U.S Law Shield of Virginia, Inc. (USLSOV)

USLSOV writes 3% of all legal services plan premiums in Virginia (based on \$690,347 in Virginia premiums written in 2018). Legal services are provided by the program attorney, including legal representation in any criminal or civil procedure arising from an incident involving the plan member and the use of a firearm if the member is in a place within the Commonwealth of Virginia.

U.S. Legal Plans, Inc. (USLP)

USPL writes less than 1% of all legal services plan premiums in Virginia (based on \$15,325 in Virginia premiums written in 2018). USLP offers two types of plans:

- CDL Defender Plan: This plan is designed for commercial truckers and trucking companies. It provides attorneys for legal matters concerning the commercial driver's license for moving and non-moving violations and major accident representation. It also includes a free initial consultation and discounted attorney fees for various legal matters including, but not limited to divorce benefits and simple and living wills.
- Family Defender Plan: Covered services provided under this plan, within limits specified in the contract, include but are not limited to:
 - Legal Advice
 - Hearings
 - Family Law
 - IRS Collection Defense
 - Juvenile Court
 - Wills, Trusts, and Estates
 - Traffic/Driving Privilege Protection
 - Legal Review/Consult Services
 - Civil Matters
 - IRS Audit Protection
 - Immigration
 - Defense of Criminal Charges
 - Real Estate Transactions

United Legal Benefit of Virginia, Inc. (ULBOV)

ULBOV writes less than 1% of all legal services plan premiums in Virginia (based on \$8,249 in Virginia premiums written in 2018). Covered services provided under the contract include, but are not limited to, the following (which are the same services offered under LROV's legal services plans):

- General Consultation Advice
- Civil Actions
- Uncontested Divorces
- Civil Administration Proceedings
- Landlord-Tenant Matters
- Will Preparation
- Consumer/Seller Issues
- Traffic Violations
- Family Law
- Misdemeanor Criminal Violations
- Defense of Juveniles
- Real Estate Transactions
- Credit Protection
- Preventive Law

3. A comparison of the structure of regulated legal services plans with automobile clubs

Prior to 2016, Virginia Code Title 13.1 (Corporations) required automobile clubs and their agents to be licensed by the Commission. Under this law, automobile clubs were not defined as insurance and were not subject to insurance laws generally. After changes to the law passed in 2016, automobile clubs and agents are no longer licensed by the Commission through its BOI.

Currently, the only reference to automobile clubs in Title 38.2 (Insurance) of the Code of Virginia is § 38.2-514.1. This provision requires producers to make certain disclosures when selling, soliciting, or negotiating a contract of insurance in conjunction with any automobile club service agreement. An example of this scenario would be an insurance agent selling an auto insurance policy who also wishes to sell an automobile club membership. In such a case, the insurance agent must disclose, among other things, that the auto insurance policy price has increased with the additional automobile club service.

Today, auto club services, except for reimbursement for attorney fees, are supplied directly by the automobile club; the club member does not select the entity that provides the service. Automobile clubs do, on an indemnity basis, provide very limited reimbursement in traffic cases only to members for certain attorney fees. In those cases, the member selects the attorney and is not limited in that selection to attorneys who have an agreement with the automobile club.

In contrast, legal services plans do not indemnify subscribers, and the subscriber's selection of legal representation is limited to the pool of attorneys that participate with the particular legal services plan to which that individual subscribes. Those attorneys, unlike the attorneys retained by automobile club members, have agreed to accept payment from the legal services organization at reduced or discounted fees.

Participating attorneys in legal services plans are authorized by Title 38.2, Chapter 44 of the Code to agree with other participating attorneys on a fee schedule. There is no statutory authority for attorneys selected by automobile club members to agree on a fee schedule.

4. A listing of those states that do not regulate legal services plans and a brief description of the regulatory schemes in those states that do regulate such plans.

The legal services plan representatives were unable to supply this information.

5. The number, types and disposition of complaints received by the BOI regarding any of the five legal services plans within the past five years.

The BOI and VDACS have no record of receiving any complaints regarding legal service plans operating in Virginia, or legal service plan sellers offering such plans in Virginia.

6. An analysis of insurance tax collections versus corporate income tax collections should BOI regulation of legal services plans end but VDACS regulation of legal services plan sellers continues.

According to the Virginia Department of Taxation, House Bill 2444 would have a revenue impact because it would exempt legal service plans from the Premiums License Tax. Based upon data regarding the legal service plans currently operating in Virginia and assuming a January 1, 2020 effective date, the Department of Taxation estimates that exempting such plans from Premium License Tax would have a total negative revenue impact of \$200,809 in Fiscal Year 2020; \$413,622 in Fiscal Year 2021; \$438,349 in Fiscal Year 2022; \$464,553 in Fiscal Year 2023; \$492,324 in Fiscal Year 2024; and \$521,756 in Fiscal Year 2025. Such negative revenue impact may be partially offset to the extent that exempting legal service plans from the Premium License Tax makes them subject to the state corporate income tax. However, whether this would be the case and the extent of any offset is unknown, and may be minimal.

For the purposes of its revenue estimates, the Virginia Department of Taxation assumed that the tax provisions of this bill would be effective for taxable years beginning on and after January 1, 2020. However, as currently drafted, 2019 House Bill 2444 did not specify when its tax provisions would become effective and, by default, they would become effective on July 1 of the year in which the legislation is enacted. That would make this proposed change effective in the middle of the taxable year for many taxpayers, including those that file on a calendar year basis. Therefore, taxpayers would be subject to the Premium License Tax for part of their taxable year and subject to the corporate income tax for the remaining portion. That would be difficult for taxpayers to comply with and for the Department of Taxation to administer. As a result, it may be helpful to clarify this issue in any bill introduced during the 2020 General Assembly Session.

A chart outlining the impact of exempting legal services plans from the Premium License Tax is summarized below:

Total Revenue Impact of Exempting Legal Service Plans from PLT			
	General Fund	Priority Transportation Fund	Total Revenue Impact
FY 2020	(\$200,809)	--	(\$200,809)
FY 2021	(\$346,686)	(\$66,936)	(\$413,622)
FY 2022	(\$300,475)	(\$137,874)	(\$438,349)
FY 2023	(\$318,437)	(\$146,116)	(\$464,553)
FY 2024	(\$337,473)	(\$154,851)	(\$492,324)
FY 2025	(\$357,647)	(\$164,108)	(\$521,756)

7. A summary of the position of each of the five stakeholders including their explanation supporting their position.

Legal Resources of Virginia, Inc. (LROV) will be proposing changes that differ from those proposed in HB 2444. The BOI has not yet received these changes.

United Legal Benefit of Virginia, Inc. (ULBOV) supports HB 2444, noting that the current financial reporting requirements are costly and a burden.

Legal Service Plan of Virginia (LSPOV), U.S. Law Shield of Virginia, Inc. (USLSOV), and U.S. Legal Plans, Inc. (USLP) have not provided any comments.

Recommendations

The Bureau of Insurance has the following recommendations for consideration:

Two of the five legal services plan organizations licensed to transact business in Virginia pursuant to Chapter 44 of the Code of Virginia write 96% of all legal service plan premiums. The two entities, Legal Service Plan of Virginia and Legal Resources of Virginia, Inc., do not agree as to the repeal of the provisions contained in HB 2444. In the absence of an agreement between the two primary legal services plans, the General Assembly could consider maintaining the current regulatory framework; or

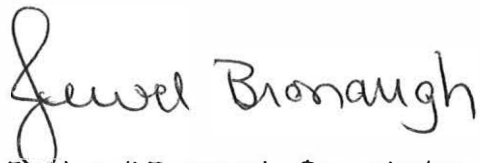
Given the lack of complaints received regarding legal service plans, the General Assembly could consider repeal of the provisions by which the SCC regulates legal services plans and the VDACS regulates the sellers of legal service plans, and ways to address the fiscal implications of HB 2444 to remove any potential impact on both the general fund with the loss of premium license tax revenues and the loss of non-general fund revenues generated by registration fees, which were over \$159,000 in FY 2018.

If you have any questions about this or any other matter, please feel free to contact me (804-371-9398).

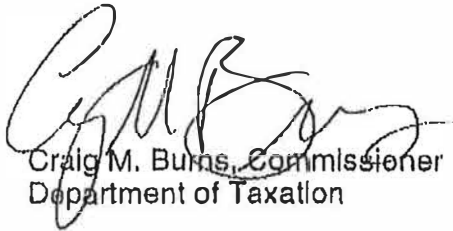
Cordially,



Scott White, Commissioner of Insurance
Bureau of Insurance
State Corporation Commission



Dr. Jewell Bronaugh, Commissioner
Department of Agriculture and Consumer Services



Craig M. Burns, Commissioner
Department of Taxation

cc: Barbara Teague, House Committee Operations
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