SENATE DOCKET, NO. 1144 FILED ON: 1/20/2011

SENATE . . . . . No. 420

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to limited line legal insurance products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	
Timothy J. Toomey, Jr.	*26th Middlesex*
Susan C. Fargo	

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By Mr. Eldridge, petition (accompanied by bill, Senate, No. 420) of Eldridge, Fargo and Toomey for legislation relative to limited line legal insurance products [Joint Committee on Financial Services].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to limited line legal insurance products.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws is hereby amended by inserting after chapter 176H the following new chapter: -

Chapter 176H1/2 INDEPENDENT PREPAID LEGAL SERVICES COMPANIES; LICENSING STANDARDS

Section 1. Definitions

The following words, as used in this chapter, shall have the following meanings:--

"Attorney", an attorney at law who is a member of the bar of the Commonwealth or any other state

“Commissioner”, the commissioner of insurance

“Company”, a business entity organized to administer prepaid legal services plans

11 "Covered dependents", dependents of member for whom covered legal services are
12 provided under a prepaid legal services plan

13 "Covered legal services", legal services for which benefits are provided under a prepaid
14 legal services plan

15 “Division”, the Division of Insurance

16 "License", a written certificate issued by the Commissioner of Insurance, authorizing a
17 person or entity to provide prepaid legal services in the Commonwealth

18 “Licensee”, an individual prepaid legal services plan sales representative or prepaid legal
19 services Plan Company duly licensed by the Commissioner of Professional Licensure

20 "Member", a person to whom a membership certificate has been issued

21 "Membership certificate", a contract entered into between a prepaid legal services plan
22 company and a member under a prepaid legal services plan.

23 "Person" means an individual or a partnership, company, corporation, association, or
24 other private group

25 "Prepaid legal company" means a person or entity offering prepaid legal services to the
26 general public or a segment of the general public

27 "Prepaid legal services" means legal services or reimbursement for legal services
28 provided by an individual licensed or admitted to practice law in the jurisdiction in which the
29 services are to be rendered, and which are provided in return for a predetermined, specified,
30 periodic fee

31 "Prepaid legal services plan", a plan whereby legal services are provided to members and
32 their covered dependents in accordance with the provisions of this chapter

33 “Provider Attorney”, the designated attorney or law firm providing the legal services
34 offered in a prepaid legal services plan

35 "Sales representative" means a person who sells or solicits prepaid legal services
36 contracts to a person on behalf of a company

37 Section 2. Exemptions

38 For purposes of this chapter, independent prepaid legal services plan companies and their
39 representatives, exclusively selling prepaid legal services plans as defined by this chapter, shall
40 obtain a limited line insurance producers license pursuant to section 162M of chapter 175; except
41 for section 162M of Chapter 175 as defined in this act, prepaid legal companies and their
42 representatives exclusively selling prepaid legal services plans shall not be subject to the
43 provisions of chapters 175, 175A and 176H of the General Laws. The provisions of this chapter
44 shall apply to all companies and their representatives that are exclusively selling, soliciting or
45 negotiating prepaid legal plan memberships as defined by this chapter to the citizens of the
46 Commonwealth.

47 Section 3. Prepaid legal services plan company registration

48 No person or entity shall engage in the sale of prepaid legal services plan contracts with
49 any individual residing within the boundaries of this Commonwealth nor shall they advertise
50 prepaid legal services within the boundaries of this Commonwealth without first obtaining a
51 license from the commissioner. The application for a license shall be in writing, shall be in a

52 form prescribed by the commissioner and shall contain the name, residential address and the
53 address where the business of the applicant is to be conducted, and if the applicant is a
54 partnership, association, corporation or other form of business organization, the names and
55 addresses of each member, commissioner and principal officer thereof, together with such further
56 information as the commissioner may require including, but not limited to, a description of the
57 nature of the business to be conducted, the proposed hours of operation on a daily basis and the
58 area intended to be served. The application shall also contain the criminal history, if any, of each
59 member, department, partner and principal officer, and a disclosure of any pending lawsuits,
60 settled lawsuits, and judgments related to fraud of each member, department, partner and
61 principal officer. The application must be accompanied by an application fee of five thousand
62 dollars. The application must also be accompanied by a bond or letter of credit acceptable to the
63 commissioner in the amount of fifty thousand dollars, which must remain in force so long as the
64 prepaid legal services company does business in Commonwealth. The amount of fee or bond or
65 letter of credit may only be increased by regulation.

66 Section 4. Updated registration statements

67 No later than March first of each year, commencing immediately after registration
68 required in section three of this chapter, a independent prepaid legal services company registered
69 with the commissioner under this chapter must file on a form prescribed by the commissioner an
70 updated registration statement to include a sworn affirmation as to continuation of the bond or
71 letter of credit and updated list of its representatives transacting business in the Commonwealth
72 as required in section three of this chapter. Contracts offering prepaid legal services must be
73 filed with the commissioner for approval prior to being offered to the general public or a segment

74 of the general public. Approval will only be withheld if the contract is false, misleading, unfair,
75 or deceptive or is in violation of this chapter or other applicable law.

76 Section 5. Solicitation of prepaid legal plans, appointment of sales person as company
77 representative; filing of name, address, and telephone number; renewal; fees; refusal or
78 revocation of appointment.

79 Before any sales or solicitation activity commences, a person exclusively seeking to be
80 involved in direct selling or direct in-person or electronic solicitation of the general public or
81 segments of the general public, on behalf of a prepaid legal services company, must be appointed
82 a representative of that prepaid legal services company by filing with the commissioner, on a
83 form prescribed by the commissioner, the appointee's name, address, and telephone number. The
84 appointment must be renewed each year no later than October first. The commissioner may
85 collect a fee of fifty dollars with each initial or renewal filing and may use the proceeds to offset
86 the costs of administering and enforcing this chapter. Appointment may be refused or revoked
87 upon a finding that a prospective representative or representative has been convicted of a crime
88 of deceit or dishonesty within the previous ten years. The commissioner may from time to time
89 establish such regulations pertaining to the conduct of the business as he may deem necessary.

90 Section 6. Sales representative; product knowledge testing; grandfathering

91 A prepaid legal services company shall administer a product knowledge test, approved by
92 the Division, to all of its representatives that will be directly involved in the selling, soliciting,
93 and negotiating of prepaid legal services plans in the Commonwealth. The test shall be based
94 specifically on the respective Company's plans being offered to the public and designed to
95 ensure the Company's sales representatives are knowledgeable about the products for which they

96 will be selling. The Company shall be responsible for developing and administering the
97 examination and shall certify on a form prescribed by the Division and filed with the Division
98 that said Company has administered the examination in compliance with this chapter and section
99 and that the representative has sufficient knowledge about the Company's products and
100 consumer protection laws regarding legal services plans. The Company shall maintain records
101 containing copies of exams and scores of product knowledge tests administered to prospective
102 sales representatives for a period of three years after a sales representative's employment is
103 terminated and shall provide individual or group test results upon the request of the Division.

104 Duly licensed sales representatives directly involved in the selling, soliciting, and
105 negotiating of prepaid legal services plans in the Commonwealth prior to the enactment of this
106 act shall be grandfathered into this act and shall comply with the renewal requirement as set out
107 in section 5 of this act.

108 Section 7. Prepaid legal services contract requirements

109 A legal services contract must be filed with the commissioner before it is marketed, sold,
110 offered for sale, administered, or issued in the Commonwealth. Any subsequent endorsement or
111 attachment to the contract must also be filed with the commissioner before the endorsement or
112 attachment is delivered to legal services contract holders.

113 A legal services contract marketed, sold, offered for sale, administered, or issued in this
114 state must:

115 (a) be written, printed, or typed in clear, understandable language that is easy to read;

116 (b) include the name and full address of the company;

117 (c) include the purchase price of the contract and the terms under which the contract is
118 sold;

119 (d) include the terms and restrictions governing cancellation of the contract by the
120 company or the legal services contract holder;

121 Additionally, a legal services contract marketed, sold, offered for sale, administered, or
122 issued in this state must identify:

123 (a) any administrator, if the administrator is not the company;

124 (b) the name of the legal services contract holder;

125 (c) include the amount of any deductible or copayment;

126 (d) specify the legal services and other benefits to be provided under the contract, and any
127 limitation, exception, or exclusion;

128 (e) specify the legal services, if any, for which the company will provide reimbursement
129 and the amount of that reimbursement;

130 (f) specify any restriction governing the transferability of the contract or the assignment
131 of benefits;

132 (g) include the duties of the legal services contract holder;

133 (h) include the contact information for the commissioner, including the commissioner's
134 toll-free number and electronic mail address, as well as a statement that the commissioner
135 regulates the company and the company's sales representatives;

136 (i) explain the method to be used in resolving the legal services contract holder's
137 complaints and grievances;

138 (j) explain how legal services may be obtained under the legal services contract;

139 (k) include a provision stating that no change in the contract is valid until the change has
140 been approved by an executive officer of the company and unless the approval is endorsed or
141 attached to the contract;

142 (l) include any eligibility and effective date requirements, including a definition of
143 eligible dependents and the effective date of their coverage;

144 (m) include the conditions under which coverage will terminate;

145 (n) explain any subrogation arrangements if any are included;

146 (o) contain a payment provision that provides for a grace period of at least 31 days;

147 (p) include conditions under which contract rates may be modified; and

148 (q) include any other items required by the commissioner as determined by regulation

149 Section 8. Provider attorney requirements

150 A provider attorney must:

151 (a) be licensed in the jurisdiction in which the legal services are performed;

152 (b) be in good standing with the entity that licenses attorneys in that jurisdiction;
153 and

154 (c) maintain professional liability and errors and omissions insurance with
155 minimum annual limits of $100,000 for each occurrence and $300,000 in the aggregate.

156 Section 9. Company interference with attorney's duties prohibited

157 A prepaid legal services company may not interfere with the attorney-client relationship
158 or with the provider attorney's independent exercise of professional judgment.

159 Section 10. Company records

160 A company shall maintain accurate accounts, books, and other records regarding
161 transactions regulated under this chapter. The company's records must include:

162 (a) a copy of each unique form of legal services contract to be filed with the
163 commissioner

164 (b) the name and address of each legal services contract holder;

165 (c) a list of the sales representatives authorized by the company to market, sells, or offer
166 to sell the company's legal services contracts;

167 (d) a copy of each contract entered into between the company and a provider attorney;
168 and

169 (e) a list of complaints the company has received from legal services contract holders,
170 including the name of the sales representative involved in the transaction leading to the
171 complaint.

172 The records required by this section may be maintained in an electronic medium or
173 through other recordkeeping technology. If a record is not in a hard copy, the company must be

174 able to reformat the record into a legible hard copy at the request of the commissioner. Except as
175 provided, a company shall retain the records required by this section until at least the second
176 anniversary of the termination date of the specified period of coverage under the legal services
177 contract. A company that discontinues business in the Commonwealth shall retain its records
178 until the company furnishes the commissioner with proof satisfactory to the commissioner that
179 the company has discharged all obligations to legal services contract holders in the
180 Commonwealth.

181 Section 11. Terminating a prepaid legal services contract

182 A legal services contract holder may terminate the legal services contract if the legal
183 services contract holder provides the company with written notice of the legal services contract
184 holder's intention of terminating the contract not later than the seventh day after the date the legal
185 services contract holder receives the contract.

186 Section 12. Voiding a prepaid legal services contract

187 If a legal services contract holder terminates a legal services contract in accordance with
188 Section 12 of this chapter and the holder has not sought legal services under the contract before
189 the contract is terminated, the contract is void. A legal services contract holder may void the
190 legal services contract at a later time as provided by the contract. If a legal services contract is
191 voided, the company shall refund to the legal services contract holder or credit to the account of
192 the legal services contract holder the full purchase price of the contract. If the company does not
193 pay the refund or credit the legal services contract holder's account before the 60th day after the
194 date the contract is voided, the company is liable to the legal services contract holder for a

195 penalty each month an amount remains outstanding. The monthly penalty may not exceed 10
196 percent of the amount outstanding. The right to void a legal services contract is not transferable.

197 Section 13. Canceling a prepaid legal services contract

198 A company may cancel a legal services contract by mailing a written notice of
199 cancellation to the legal services contract holder at the legal services contract holder's last known
200 address according to the records of the company. The company must mail the notice before the
201 fifth day preceding the effective date of the cancellation. The notice must state the effective date
202 of the cancellation and the reason for the cancellation. The company is not required to provide
203 prior notice of cancellation if the legal services contract is canceled because of:

204 (a) nonpayment of the consideration for the contract;

205 (b) a material misrepresentation by the legal services contract holder to the company;

206 (c) a substantial breach of a duty by the legal services contract holder; or

207 (d) cancellation of the contract by the legal services contract holder.

208 Section 14. Complaints

209 A subscriber aggrieved by a prepaid legal company or its representative may file a
210 complaint with the Consumer Complaint Information Section under the Public Protection Bureau
211 in the Office of the Massachusetts Attorney General.

212 SECTION 2. The commissioner shall approve a legal services product knowledge test to
213 be developed by respective prepaid legal plan companies to be administered to their prospective

214 prepaid legal services plan representatives, as required by section 6 not later than 90 days after

215 the effective date of this act.