

## **BILL ANALYSIS**

Senate Research Center

H.B. 1338  
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Engrossed

### **DIGEST**

In 1972, the General Appropriations Act included a provision that prohibited the expenditure of appropriated funds for the purchase of liability insurance to cover tort claims arising under the Tort Claims Act of 1969. In 1993, Section 53 of the General Appropriations Act was amended to allow state agencies to purchase directors' and officers' liability insurance, however, the attorney general opined that this section was limited to policies designed to cover suits arising under the Tort Claims Act. In 1995, the legislature attempted to broaden the scope of Section 53 by renaming it "Purchase of Insurance." Some ambiguity remained and although the comptroller has agreed to allow the renewal of existing directors' and officers' insurance policies, the attorney general has limited this authority until the legislature has had an opportunity to enact a general law authorizing state agencies to purchase the policies covering claims other than those arising under the Tort Claims Act. This bill would allow a state agency to purchase directors' and officers' liability insurance policies covering commission or board members and executive staff for claims arising outside of the Tort Claims Act.

### **PURPOSE**

As proposed, H.B. 1338 authorizes a state agency to purchase directors' and officers' liability insurance policies covering commission or board members and executive staff for claims arising outside of the Tort Claims Act.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 104, Civil Practice and Remedies Code, by adding Section 104.009, as follows:

Sec. 104.009. DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. Authorizes a state agency, institution, or department to purchase a directors' and officers' liability insurance policy applicable to damages for conduct described under Section 104.002 and other conduct customarily covered under directors' and officers' liability insurance policies for the benefit of certain individuals. Requires an insurance agency purchased under this section to have a deductible applicable to the liability of the state agency, institution, or department in an amount equal to the amount of the limits of liability established under Section 104.003. Authorizes the deductible applicable to an individual's liability to be set at a lower amount. Provides that the purchase of an insurance policy under this section does not waive a defense, immunity, or jurisdictional bar available to the state agency, institution, or department purchasing the insurance or to the insured.

SECTION 2. Amends Section 104.003(b), Civil Practice and Remedies Code, to provide that the state is not liable under this chapter to the extent that damages are recoverable under and are in excess of the deductible limits of a contract of insurance or a plan of self-insurance authorized by statute.

SECTION 3. Emergency clause.  
Effective date: upon passage.