

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1653  
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### **DIGEST AND PURPOSE**

Currently, Texas insurance consumers are entitled to ethical representation if they find themselves sued in a civil case. In an effort to help ensure such ethical representation, the State Bar of Texas Professional Ethics Committee has recently published Ethics Opinions 532 and 533. While speaking to different issues, both opinions stress the fact that the lawyer's only client is the insured and the lawyer "must at all times protect the interests of the insured if those interests would be compromised by the insurer's instructions." Ethics Opinion 532 stated that a lawyer's invoice or fee statement describing legal services rendered by the lawyer constitutes "confidential information." Without first obtaining the informed consent of the insured, a lawyer cannot, at the request of the insurance company paying the fees for the representation, provide fee statements to a third party auditor describing legal services rendered by the lawyer for the insured. As proposed, S.B. 1653 codifies the provisions of Ethics Opinion 532.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2B, Insurance Code, by adding Chapter 103, as follows:

#### **CHAPTER 103. DISCLOSURE OF FEE STATEMENTS**

Sec. 103.001. DEFINITION. Defines "insurer."

Sec. 103.002. APPLICABILITY. Provides that this chapter applies only to an insurer that issues a liability insurance policy under certain conditions.

Sec. 103.003. DISCLOSURE PROHIBITED; EXCEPTION. (a) Prohibits an insurer, except as provided by Subsection (c), from disclosing defense counsel fee statements regarding services provided for an insured to any person, other than the insured, who is not an employee of the insurer.

(b) Prohibits an insurer from requiring defense counsel to disclose the defense counsel's fee statements to any person who is not an employee of the insurer.

(c) Authorizes an insurer, to the extent, if any, otherwise permitted by law, to disclose defense counsel's fee statements to a person who is not an employee of the insurer for the purpose of reviewing the fee statements in connection with a lawsuit over payment of the fees. Provides that disclosure under this subsection does not, in itself, waive any attorney-client privilege.

Sec. 103.004. CONTRACT PROVISIONS VOID; WAIVER PROHIBITED. (a) Provides

that a provision in a contract entered into between an insurer and defense counsel or between an insurer and an insured that requires or permits disclosure of the defense counsel's fee statements to a person who is not an employee of the insurer is against public policy and is void and unenforceable.

(b) Provides that a waiver by an insured of the requirements of Sections 103.003(a) or (b) is against public policy and is void and unenforceable.

Sec. 103.005. DAMAGES; INJUNCTIVE RELIEF. (a) Authorizes a person to bring an action against an insurer under certain conditions.

(b) Requires a court to award reasonable and necessary attorney's fees to a person who recovers damages or obtains injunctive relief under this section.

Sec. 103.006. CIVIL PENALTY. Provides that an insurer who violates Section 103.003(a) or (b) is liable for a civil penalty not to exceed \$10,000 for each act of violation. Requires the attorney general, at the request of the commissioner of insurance, to institute an action in a district court in Travis County to recover a civil penalty under this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2001.