

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 14, 2013

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1339 by Duncan (Relating to contractual subrogation rights of certain insurers and benefit plan issuers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1339, As Introduced: a negative impact of (\$3,077,660) through the biennium ending August 31, 2015.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$1,538,830)
2015	(\$1,538,830)
2016	(\$1,538,830)
2017	(\$1,538,830)
2018	(\$1,538,830)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>GR Dedicated Accounts</i> 994	Probable Revenue Gain/(Loss) from <i>Federal Funds</i> 555	Probable Revenue Gain/(Loss) from <i>Other Special State Funds</i> 998
2014	(\$1,538,830)	(\$89,973)	(\$479,553)	(\$9,741)
2015	(\$1,538,830)	(\$89,973)	(\$479,553)	(\$9,741)
2016	(\$1,538,830)	(\$89,973)	(\$479,553)	(\$9,741)
2017	(\$1,538,830)	(\$89,973)	(\$479,553)	(\$9,741)
2018	(\$1,538,830)	(\$89,973)	(\$479,553)	(\$9,741)

Fiscal Year	Probable Revenue Gain/(Loss) from State Highway Fund 6
2014	(\$381,903)
2015	(\$381,903)
2016	(\$381,903)
2017	(\$381,903)
2018	(\$381,903)

Fiscal Analysis

The bill would amend the Civil Practice and Remedies Code relating to contractual subrogation rights of certain insurers and benefit plan issuers. The bill would allow for contractual subrogation rights to certain benefit plan issuers and limit the amounts that can be recovered under those subrogation rights. The injured covered individual against whom subrogation rights are sought from could bring a declaratory judgment action to limit the amount recoverable under the subrogation rights, resulting in a recovery of one-third of the covered individual's total recovery or the total cost of benefits paid by the payor as a direct result of the tortious conduct of the third party. If the covered individual proves, by a preponderance of evidence, that the covered individual's total recovery is less than 50 percent of the value of the claim for damages, then the payor's total allowable recovery would be limited to an amount that is no less than 15 percent, but no more than one-third of the covered individual's total recovery. If the covered individual proves, by clear and convincing evidence, that the payor's recovery would result in a recognized injustice, the payor's total recovery would be limited to an amount that is less than 15 percent or greater than 5 percent of the covered individual's total recovery. The bill would exclude a common law doctrine that requires an injured party to be made whole before a subrogee makes a recovery.

The bill would prohibit a court from awarding costs or attorney's fees. In an action where the insurer's interests are not actively represented by an attorney in a third-party action, the payor of benefits shall pay to the attorney representing the covered individual, a fee in an amount previously determined plus a pro rata share of expenses. However, in the absence of an agreement, the court shall award to the attorney a reasonable fee for recovery of the payor's share. The bill would also prohibit a payor of benefits from pursuing a recovery against a covered individual's first party recovery.

The bill would take effect January 1, 2014.

Methodology

Based on information provided by the Employees Retirement System (ERS), this analysis assumes an average annual recovery of \$7,500,000 from subrogation activities. Under the provisions of the bill, ERS estimates that annual recoveries from subrogation activities would decrease by \$2,500,000 to \$5,000,000 each year. This total amount is reflected in the table above across all applicable methods of financing.

Based on information provided by the Texas Department of Insurance (TDI), it is assumed that any costs associated with the implementation of this bill would be absorbed within existing staff and resources. Also, based on information provided by TDI, this analysis assumes that

implementation of the bill would result in an increase in form filings due to companies updating subrogation provisions and a one-time revenue gain (\$70,500 in fiscal year 2014) in General Revenue-Dedicated Texas Department of Insurance Fund 36 from filing fees. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in account fund balances and that the department would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the information provided by the Health and Human Services Commission (HHSC), experience rebates collected by HHSC could significantly decline. HHSC collects experience rebates from managed care organizations (MCO) when profits are above a certain percentage. MCOs report third-party recoveries to HHSC in their financial statistical reports, which are used to set rates for subsequent years and calculate experience rebates. The bill would limit the collections of subrogations by the MCOs, which would in turn, reduce collections by the state. As a point of reference, for fiscal year 2012, CHIP collected \$8,959,043 in experience rebates. While the exact cost impact of the bill is difficult to project, significant changes in recoveries could severely limit the amount insurance carriers would be able to get through subrogation and would lower the amount of experience rebates collected by the state.

Based on information provided by the Teacher Retirement System, the University of Texas System Administration, and the Texas A&M University System Administration, it is assumed that the bill would have no significant fiscal impact and that all duties and responsibilities could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 454 Department of Insurance, 529 Health and Human Services Commission

LBB Staff: UP, AG, EP, EMO, CL, MW, ER, KKR, ES