

HOMEOWNERS & AUTO INSURANCE

Reforms to improve the market for consumers



The insurance crisis continues for Texans, who are paying more for less. Texas homeowners pay \$1,460 per policy, the highest premiums in the nation and approximately double the national average of \$791.¹ For over seven years, State Farm has tied up the refund of hundreds of millions of dollars in overcharges in court.² In 2004 alone, Texas drivers were overcharged to the tune of \$1.8 billion.³ Every extra dollar that is taken from Texans' pockets in the form of insurance overcharges is a dollar that families could spend putting food on the table, making mortgage payments, and helping to create jobs by contributing to our local economies. Our system of oversight is badly broken and a host of reforms are needed to protect policyholders.

PRIOR APPROVAL OF RATES

In a prior approval system, the Texas Department of Insurance (TDI) would be required to review and approve all rates before they are passed along to policyholders. A system requiring prior approval for rate increases would protect Texas consumers.

Prior approval would guarantee fair and reasonable rates. Under a prior approval system, rate increases would not be enter the market until insurers justified them and received approval from the insurance commissioner.

The burden of proof that rates are fair should rest on insurance companies. Prior approval would force insurance companies to justify their rates. Currently, an insurer need not even give the commissioner time to object to an excessive rate filing before it increases its rates. Under prior approval, an insurer could not increase its rate until *after* it had justified the proposed increase to the commissioner.

TDI needs leverage over insurance companies. Insurance is not like other products in the marketplace as consumers are required by law to carry it under certain circumstances. Because of this, consumers need more protection in the insurance arena than in other areas. To this end, TDI – not the insurers who profit – should determine fair, justified, and profitable rates. Prior approval would prevent insurers from immediately enacting unfair rates that TDI must then spend years in court battling before policyholders ever see their rates returned to fair levels.

Legislation: HB 1842 by Coleman, SB 111 by Davis, SB 147 by Hinojosa, SB 740 by Ellis

Related legislation concerning refunds: HB 2922 by Smithee, HB 3683 by Martinez Fischer, SB 1062 by Davis

STANDARDIZED HOMEOWNERS POLICIES

After the insurance reform of 2003, insurers were allowed to deviate from standard policies and to offer an unlimited number of policies with different levels of coverage. The result, however, is that

¹ See <http://www.texaswatch.org/2010/11/texans-paying-highest-home-insurance-rates-nationwide/> and <http://www.texaswatch.org/2010/11/editorial-legislature-must-cut-homeowners-insurance-costs/>

² See <http://www.texaswatch.org/2011/02/state-farm-insurance-refund-case-delayed-again/>

³ See <http://www.texaswatch.org/wordpress/wp-content/uploads/2009/12/InsurersPriceGouge2004.pdf>

consumers can no longer shop on price alone as coverage varies widely from policy to policy. In order to return power to the hands of consumers to pick the best policy, TDI must require insurers to offer standard forms that offer uniform coverage.

Consumers need to be empowered to generate real competition. In 2003, three insurers comprised a majority of the market; the top 5 made up 67%. That stranglehold on the market by the largest carriers continues today. By giving consumers a meaningful choice available by all carriers, we make it possible for consumers to make informed choices based on tangible factors like price, claims handling practices, financial ratings, and complaint data. This will likely generate competition among the carriers, driving prices down and improving customer service.

Standardized forms allow the consumer to know what he/she is buying. Insurance contracts are written in such convoluted legalese that the average policyholder does not know what they are buying. Because policies vary from company to company, consumers are not sure of the coverage they are carrying.

Legislation: SB 95 by Lucio, SB 1805 by Lucio

STOP UNFAIR UNDERWRITING & RATING PRACTICES

Insurance companies have long used credit scoring and rating territories to decide whom to cover and how much to charge. Now, insurers are increasingly relying on data mining and pattern recognition software to make these decisions. None of these methods are directly related to a person's likelihood to file a claim

Data mining is black box methodology using personal consumer data. Insurers are using consumer spending patterns to make assumptions about policyholders. Insurers use intimate personal consumer information, such as details about one's buying habits and purchases, to choose whether to sell someone a policy and at which price. Captive consumers must be protected from the use of such overly-invasive practices by insurers.

Legislation: HB 2018 by McClendon, SB 1064 by Davis

Credit scoring has nothing to do with a person's insurance risk. Having a low credit score doesn't make it any more likely that you will make an insurance claim. Moreover, study after study has shown that credit scoring has the greatest impact on those who can least afford rate increases and that it discriminates against and has a disproportionately negative impact on African Americans, Latinos, and people with lower incomes. Finally, insurance is not an extension of credit; it is a fee for service. So, if a policyholder does not pay his premium, he will not receive coverage.

Legislation: HB 194 by Walle, HB 2297 by Walle, SB 739 by Ellis

Rating territories without limits allow insurers to slice and dice customers too thinly. Under current law, insurance companies are able to vary rates within a county by any amount that is actuarially sound. This has led to a large disparity in the amount that people within a single county – even people on the same block – must pay for insurance. The result is that insurers are carving up counties and charging rates that vary by ZIP code. To prevent this, there should be a maximum 15% rating variance allowed per county.

Legislation: SB 97 by Lucio

ELECT THE INSURANCE COMMISSIONER

The commissioner's duty is to ensure fair treatment for homeowners, drivers, patients and small business owners. Even though the commissioner's decisions touch every Texan, he is held accountable by only one person: the governor who appointed him.

There are already other elected department commissioners in Texas. Many more Texans are affected by the actions of the insurance commissioner than by the actions of the agriculture or railroad commissioner, yet those are elected positions. Texas citizens should have the power to decide who will ensure they have a fair marketplace in which to buy insurance.

Eleven other states have elected insurance commissioners. California, which has a wide array of risks much like Texas does, has benefited from having an elected insurance commissioner since 1991. While auto liability insurance rates nationwide have increased by nearly 50% in that period, Californians have seen their rates fall. Texas should join California and the ten other states that elect their insurance commissioners in order to protect our consumers.

Legislation: HB 813 by Gutierrez, SB 1063 by Davis

PENALIZE STATE-WIDE PULLOUTS BY INSURANCE COMPANIES

Insurers carry an enormous amount of power in our state. If TDI threatens to disapprove a rate or a form, insurers can pull out of the state entirely with no penalty, only to re-enter it within months.

Insurers in Texas benefit by gaming the system. Insurers can (and do) threaten to pull out of Texas if the commissioner threatens to challenge a rate increase. In this game of cat-and-mouse, TDI is often forced to cave in to the threat for fear of losing an insurer in the state.

Requiring this penalty would give TDI the power to refuse unfair rate increases without fear of an insurer pulling its business out of Texas. Texas has one of the largest insurance markets in the country, and few insurers choose to leave our market for any extended length of time. If insurers who pulled out of the entire state were prevented from re-entering the state market for a period of five years, insurers would no longer use this bully tactic to escape the use of fair rates and forms, and the commissioner would thus be free to challenge unfair proposals without fear of reprisal.

Legislation: SB 96 by Lucio

OTHER IMPORTANT ISSUES AND LEGISLATION

Empowering Consumers with Information: In order to effectively shop the market and generate true competition in a marketplace that is currently dominated by a handful of giant companies, consumers need clear, easy-to-understand, and readily available information. Coverage varies from company to company so consumers cannot make comparisons based on price alone. Consumers who merely ask their company for information about the coverage provided by their policy should not be treated as though they have filed a claim.

Legislation: HB 2724 by Walle, HB 3117 by Vo, HB 3118 by Vo, SB 1655 by Watson, SB 1656 by Watson, SB 1804 by Lucio

Office of Public Insurance Counsel: In our regulatory system, the Insurance Commissioner acts as the referee, balancing the interests of insurers with those of consumers. Insurers are well-represented, armed with legions of lawyers and experts, and consumers must have adequate representation to be given a fighting chance within the system. OPIC, the state-funded consumer advocate, gives policyholders that voice within our regulatory process by reviewing rate and policy form filings. We must not allow this small agency to Sunset or have its funded reduced, and it must be given additional authority to make the market work on behalf of consumers.

Legislation: HB 1310 by Smithee, SB 591 by Carona

ADDITIONAL RESOURCES:

Texas Watch Poll: The reforms listed above are favored by the vast majority of Texans. For details on this support, see <http://www.texaswatch.org/2010/09/poll2010/>

Insurance Reform Now: For more information on the ongoing need for reforms in the Texas insurance marketplace, see www.InsuranceReformNow.org