

# Texas Department of Insurance

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## Agency at a Glance

The Texas Department of Insurance (TDI) regulates the insurance industry in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI's major functions include:

- regulating insurance companies' solvency, rates, forms, and market conduct;
- licensing individuals and entities involved in selling insurance policies;
- providing consumer education on insurance and helping consumers resolve complaints;
- investigating and taking enforcement action against those who violate insurance laws or rules; and
- providing fire prevention services across the state through the State Fire Marshal's Office.

The Department also regulates workers' compensation in Texas through the Division of Workers' Compensation. Information about the Division can be found in a separate section of this report.

## Summary

The Sunset Commission considered TDI through a special purpose review, as a follow-up on the full Sunset review of the agency conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on TDI, but the agency's Sunset bill did not pass. Instead, the Legislature continued TDI for two years in separate legislation, and focused the 2010 Sunset review on the appropriateness of the recommendations voted on and adopted by the Commission in 2008.

Based on this re-examination, the Sunset Commission concluded the majority of Sunset's previous recommendations remain appropriate, and that TDI continues to need statutory authority and direction to implement them. The following material summarizes the Sunset Commission's recommendations on TDI that continue to be appropriate for consideration by the 82nd Legislature.

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*The majority of the Sunset Commission's 2008 recommendations on TDI remain appropriate.*

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# Issue 1

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## ***Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.***

### **Recommendations**

#### ***Change in Statute***

##### **1.1 Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.**

This recommendation would establish deemer dates for the Department's review of all property and casualty rate filings. The Department would have 30 days to request information from insurers, conclude rate review, and disapprove rates as necessary. The Commissioner would be authorized to extend the review period for one additional 30 day period only, and only for good cause. If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests would not count against the Department's review period.

Insurers would continue to be permitted to use rates as soon as they are filed, if they choose. This recommendation would only affect filings not immediately used, and is not intended to change the Department's ability to disapprove rates under current law, nor to give the Department the authority to approve rates under this regulatory system.

TDI would be permitted to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wanted to disallow a rate following the review period, the Department would have to disapprove the rate following its implementation, using the contested case process, as currently laid out in state law.

While the problems identified in this Issue pertain primarily to residential property insurance filings, state law requires similar regulation of all property and casualty rates, and these changes would affect all lines.

##### **1.2 Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.**

This recommendation would require TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process would require, at a minimum, that TDI:

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;
- reduce the number of separate requests;
- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

This recommendation would also require the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI would track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI would make information about the Department's general process for rate review, and factors that contribute to disapprovals, available to the public on a yearly basis. All information provided to the public would be general, so as not to infringe upon any individual company's proprietary rate development data or techniques.

**1.3 Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.**

Under this recommendation TDI would further define, through rulemaking, guidelines that constitute rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This recommendation would not require the agency to enumerate specific practices or circumstances. Recognizing that determining if certain practices or conditions exist requires flexibility and depends on the specific circumstances of a filing, this recommendation aims only to more generally define conditions that might contribute to a company being placed under prior approval. The Commissioner would maintain the authority to determine if individual company's practices or statewide situations warranted additional scrutiny through prior approval.

**1.4 Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.**

Under this recommendation, TDI would periodically assess whether insurers need to remain under prior approval for rate filings. Similar to other probationary measures, prior approval review can be used as a method to more closely monitor insurer ratings practices or financial conditions. To clarify expectations, the recommendation would require TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this recommendation would require the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

**1.5 Require the Department to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.**

This recommendation is intended to give TDI additional information about the timeliness of claims payment, including if they are paid promptly and in full. The recommendation would require TDI to collect aggregate claims data including the number of claims:

- filed during the reporting period;
- pending on the last day of the reporting period, including pending litigation;
- closed with payment during the reporting period;
- closed without payment during the reporting period;
- carrying over from the previous reporting period; and
- any other relevant information relating to the processing of claims.

This information would be collected on an annual basis, with the information broken down by quarter. In addition to collecting the data, TDI would be required to publish or disseminate the collected information to the general public via the agency's website. TDI would be authorized to adopt rules as necessary to implement a plan for collecting and publishing claims data.

## Issue 2

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### ***Without Additional Tools, TDI Cannot Effectively Regulate Title Insurance.***

#### **Recommendation**

##### ***Change in Statute***

#### **2.1 Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.**

This recommendation would require the Commissioner of Insurance to assess, every five years, the expense data collected for purposes of promulgating rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary.

## Issue 3

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### ***Most of TDI's Advisory Committees No Longer Need to Be in Law.***

#### **Recommendations**

##### ***Change in Statute***

#### **3.1 Eliminate 15 TDI advisory committees from statute.**

This recommendation would eliminate 15 committees currently in statute. Specifically, this recommendation would eliminate the following committees:

- Agents Study Proposal/Vendor Committee;
- Consumer Assistance Program for Health Maintenance Organizations Advisory Board;
- Examination of License Applicants Advisory Board;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;
- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Insurance Adjusters Advisory Board;

- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program (MAP) Executive Committee; and
- Utilization Review Advisory Committee.

This change would eliminate several advisory committees, adjust statute as needed, and remove other unnecessary statutory language related to these advisory committees. The Commissioner of Insurance would be allowed to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department.

### **3.2 Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.**

The Commissioner of Insurance should adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees, including:

- the purpose, role, responsibility, and goals of the committees;
- size and quorum requirements of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service;
- training requirements;
- process to regularly evaluate the need for each committee;
- duration of the committee; and
- a requirement that the committees comply with the Open Meetings Act.

This recommendation would require TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI would be allowed to retain or develop committees to meet its changing needs. All committees would be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not be responsible for rulemaking or policymaking. Committee meetings would also be open to the public.

## Issue 4

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### ***To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.***

#### **Recommendations**

##### ***Change in Statute***

#### **4.1 Require the SFMO to periodically inspect state-leased buildings.**

As state law already requires of state-owned buildings, this recommendation would require the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The recommendation would also require the SFMO to share and coordinate state-leased building inspection information with affected agencies, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. This recommendation would allow agencies to make informed decisions regarding lease agreements, but is not intended to pre-empt compliance with locally adopted fire safety codes.

#### **4.2 Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.**

As part of this change, SFMO would need to develop guidelines for assigning potential fire safety risks to state buildings. As a part of TDI, the Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. To ensure that even all low-risk buildings are inspected at some point, the rules would address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change would not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO should also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

#### **4.3 Authorize the SFMO to charge a fee for inspections of privately owned buildings.**

This recommendation would statutorily authorize the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO should consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses.

## Issue 5

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### ***The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.***

#### **Recommendation**

##### ***Change in Statute***

##### **5.1 Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and delegate administration of these penalties to the SFMO.**

Under this recommendation, the Commissioner would create, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the Commissioner would delegate the administration of these penalties to the SFMO, which would give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function.

In developing the matrix, the Commissioner would take into account factors, including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts would reflect the severity of the violation and serve as a deterrent to violations. The Commissioner should also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The recommendation would also provide for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO would refer the case to TDI's enforcement division.

## Issue 6

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### ***The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.***

#### **Recommendation**

##### ***Change in Statute***

##### **6.1 Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.**

This recommendation would clarify the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The recommendation would supplement existing laws by removing barriers to electronic commerce transactions. The Department would provide businesses and consumers with standards for electronically delivering documents. The recommendation would not require parties to conduct business electronically, but would facilitate transactions in which the parties agree to conduct business electronically.

## Issue 7

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### ***Qualifications for Reduced Rate Filing Requirements for Certain Insurers Writing Residential Property Insurance in Underserved Areas May Need Adjustment.***

#### **Recommendation**

##### ***Change in Statute***

- 7.1 Require the Commissioner of Insurance to study the qualifications for reduced rate filings for insurers writing residential property insurance in underserved areas.**

This recommendation would require the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and to include the study results in the Department's biennial report. This recommendation would also expand the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. Finally, the Commissioner would be required to study areas of the state designated as underserved and to determine which areas to designate as underserved every six years.

## Issue 8

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### ***The State Has a Continuing Need for the Texas Department of Insurance.***

#### **Recommendations**

##### ***Change in Statute***

- 8.1 Continue the Texas Department of Insurance for 12 years.**

This recommendation would continue TDI as an independent agency for 12 years.

- 8.2 Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.**

This recommendation would better define the agency's overall duties in statute by updating existing language to charge the agency with:

- protecting and ensuring the fair treatment of consumers; and
- ensuring fair competition in the insurance industry, thus fostering a competitive market.

- 8.3 Apply the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation would ensure that TDI develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. This requirement for alternative

dispute resolution would not affect the administrative dispute resolution process in statute elsewhere for the Division of Workers' Compensation.

The agency would also provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

## Fiscal Implication Summary

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None of the recommendations would have a net fiscal impact to the State's General Revenue Fund, since TDI is funded through taxes and assessments on insurers. Two issues could result in revenue gains but, as described below, the gains could not be estimated as the amounts would depend on unknown levels of future activities.

- **Issue 4** – Authorizing the State Fire Marshal's Office to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.
- **Issue 5** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

