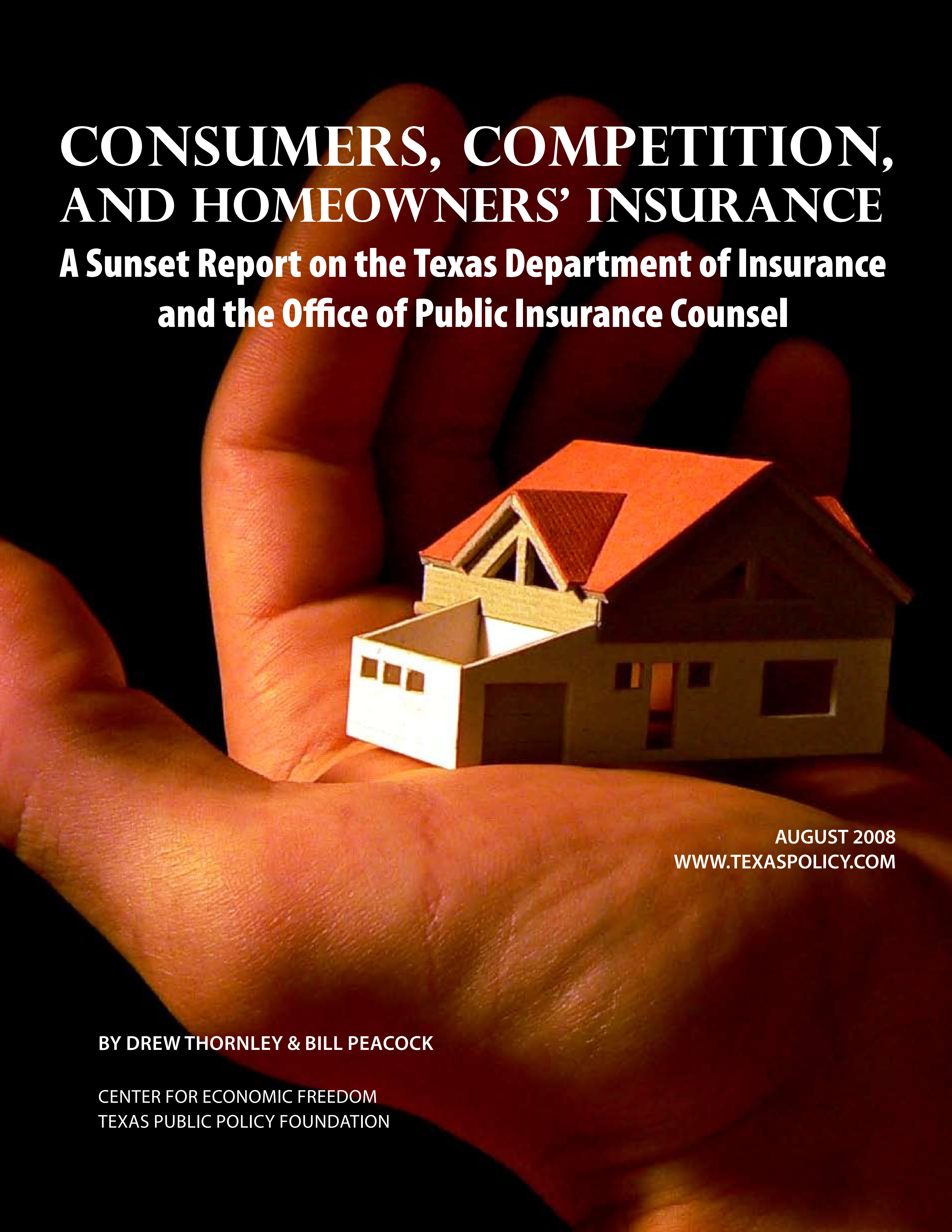

CONSUMERS, COMPETITION, AND HOMEOWNERS' INSURANCE

A Sunset Report on the Texas Department of Insurance and the Office of Public Insurance Counsel

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Executive Summary

Unprecedented product variety, choices in sellers, and consumer information have transformed the modern marketplace. Consumers are empowered to shop wisely and are protected from fraud through education and myriad choices. Consumer advocates, media scrutiny, government complaint resolution, and the civil and criminal justice systems are widely available to help consumers right wrongs. Consumers have never had it so good.

On the other hand, the good news of today's marketplace often gets lost in the political process. Too often when challenges arise for consumers, the first answer seems to be traditional "consumer protection" laws that dictate market behavior, reduce market efficiencies and curb consumer choice—all in the false hope of helping consumers. Ultimately, these laws hurt consumers more than they help them.

Texas lawmakers have made significant progress over the last decade or so in improving Texas law in several areas to better reflect modern market conditions. Civil justice, electricity, telecommunications, and homeowners' insurance reform are perhaps the best examples. Beginning in 1997, the Texas Legislature took several steps to move the homeowners' insurance provisions in the Texas Insurance Code (Code) in a consumer-friendly direction: this included the 2003 reforms calling for a file-and-use regulatory system.

However, five years into the 2003 reforms, the Sunset Review Commission's Staff Report (Staff Report) on the Texas Department of Insurance (TDI) rightly concludes that the "Legislature cannot judge the success of the shift to file-and-use rate regulation because the system has not been fully implemented."

One reason for the sluggish implementation is "TDI's use of both pre- and post-market regulatory tools." TDI has significant leeway in how it implements statute and, for the most part, it has chosen to implement legislative reforms with a finger on the regulatory side of the scale. But while the impact of TDI's implementation must be acknowledged, it is also true that "[s]tate law clearly establishes a regulatory system that features both pre-market and post-market regulatory tools." In other words, the statute itself is ultimately responsible for the ambivalent move toward reform.

This report focuses on identifying the underlying statutory provisions that, if amended or repealed, would eliminate many of the conflicts in homeowners' insurance law. The recommendations that follow are designed to do this and, ultimately, to bring a consumer-friendly regulatory system to the Texas homeowners' insurance marketplace.

ISSUE 1: The Governance of TDI and OPIC, as Reflected in Statute, Rules, Agency Policies, and the Appropriations Process Is Not Always Aligned with the Best Interests of Consumers.

Recommendations

- **1.1** Eliminate the Office of Public Insurance Counsel and its functions, along with several TDI functions that feature pre-market regulatory activities, so that consumer-protection efforts are dealt with through complaints and enforcement functions (Annual Savings: $1.58 million; 39 FTEs).

- **1.2** Change Goal A in TDI's appropriations bill pattern from "Encourage Fair Competition" to "Encourage Competition."

Key Findings

- TDI's and OPIC's efforts at consumer protection often divert resources away from—and at times conflict with—maintaining availability of affordable insurance through a competitive marketplace.

- TDI's first goal in its appropriations bill to "Encourage Fair Competition" conflicts with statutory guidance to promote competition and insurance availability and creates an overly broad mission for TDI.

ISSUE 2: Incomplete Implementation of File-and-Use Rate Regulation and Conflicting Statutory Guidance on Rate Regulation Create Regulatory Uncertainty, Disrupt Competition, and Lessen Insurance Availability in the Texas Homeowners' Insurance Market.

Recommendations

- **2.1** Shift the focus of homeowners' insurance rate regulation to guarding against rates that are inadequate or discriminatory.

- **2.2** Make the homeowners' insurance system a true file-and-use system.

- **2.3** Allow the commissioner to place under prior approval only those companies whose financial positions warrant increased supervision, for the purposes of maintaining solvency.

- **2.4** Allow Texans to purchase insurance policies offered by insurance companies not licensed in Texas yet licensed by other states' insurance regulators.

Key Findings

- Positive results are being realized in insurance markets embracing competition, including Texas.

- The regulation of homeowners' insurance in Texas produces poor results for consumers, such as swings in price and availability. Ultimately, a regulatory stance focused on affordability reduces investment and hinders competition in the Texas insurance marketplace and puts insurers at risk of insolvency.

- Allowing Texans to purchase out-of-state insurance policies would open up the Texas insurance market to more companies, increase consumer choice, and foster competition.

ISSUE 3: Regulation of Policy Forms Disrupts Innovation and Efficiency in the Homeowners' Insurance Market.

Recommendations

- **3.1** Implement a true file-and-use system for regulating policy forms.

- **3.2** Focus policy-form regulation on the wording and clarity of an insurance form (i.e. how an insurer informs possible policyholders of the coverage provided under a form) and not on the content of a form (i.e. what risks are covered/insured under a form).

Key Findings

- Form regulation harms consumers through higher insurance costs that result from increased compliance costs for insurers. TDI's belated implementation of a 1997 provision allowing insurers to use forms other than the standard state form cost consumers almost $900 million.

- As a result of TDI's belated implementation of a 1997 provision allowing insurers to use forms other than the standard state form, premiums rose dramatically. After TDI allowed insurers to use non-standard forms in 2002, mold claims plummeted, and rates stabilized. TDI acknowledged that, without the deregulation of forms, rates could have increased at least 20 percent more than they did.

- After Hurricane Rita in 2005, TDI sued Allstate, saying its form should cover alternative living expenses in cases where there is no damage to the home, even though the form did not actually say this. However, the courts rejected the reasoning by TDI, in deference to the plain language of the forms.

ISSUE 4: Overly Broad Authority to Require Information from Insurers and Examine Rating Practices Hinders Innovation and Creates Regulatory Uncertainty in the Homeowners' Insurance Market.

Recommendation

- **4.1** Limit the supplementary information insurers may be required to submit to TDI in a rate filing.

Key Findings

- The Code contains no safeguard(s) against TDI's requiring from insurers information that is proprietary or irrelevant to the rate filing at hand.

- The more information required by the commissioner from insurers—and the more often the requests for more information—the greater the time and expense to get rates to consumers.

ISSUE 5: The Texas Windstorm Insurance Association (TWIA) is Overexposed, Underfunded, and a Massive Potential Liability for Texas Taxpayers and Insurers.

Recommendations

- **5.1** Implement a file-and-use system for TWIA rates.

- **5.2** Make TWIA a true provider of last resort by specifying that TWIA coverage is available only if an applicant cannot obtain coverage in the private marketplace.

- **5.3** Eliminate many of the rate-setting requirements related to windstorm insurance, including those that specify the precise experience data that must be considered and the requirement that rates must be uniform throughout the first tier coastal counties.

Key Findings

- The number of TWIA policyholders increased from 68,756 in 2001 to 224,452 at the end of July 2008.

- As of the end of July 2008, TWIA's total exposure was $66.1 billion ($60.4 billion in direct exposure with an additional $5.7 billion in indirect exposure). TWIA member assessments and the Catastrophe Reserve Trust Fund can only cover about $2.3 billion of losses, much less than the potential losses from major hurricanes. Any additional losses would be paid from general state revenue funds.

"Many people want the government to protect the consumer. A much more urgent problem is to protect the consumer from the government." – Milton Friedman

The Texas Homeowners' Insurance Market Today

> *"Many people want the government to protect the consumer. A much more urgent problem is to protect the consumer from the government." – Milton Friedman*

Unprecedented product variety, choices in sellers, and consumer information have transformed the modern marketplace. Consumers are empowered to shop wisely and are protected from fraud, through education and myriad choices. Consumer advocates, media scrutiny, government complaint resolution, and the civil and criminal justice systems are widely available to help consumers right wrongs.

On the other hand, the good news of today's marketplace often gets lost in the political process. Too often when challenges arise for consumers, the first answer seems to be traditional "consumer protection" laws that dictate market behavior, reduce market efficiencies, and curb consumer choice—all in the false hope of helping consumers. Ultimately, these laws hurt consumers more than they help.

Competition is the best consumer-protection measure available, as it punishes companies that set prices too high or engage in unfriendly (and even illegal) practices. How? In a competitive market, consumers can simply switch to another producer/provider.

Over the past couple of years, the lack of consumers switching away from certain insurers with large market shares has been held up as a sign of the lack of competition in the Texas homeowners' insurance market. Similar arguments have colored the debate in the electricity market.

In both industries, these arguments have been used to justify significant and costly interventions in the marketplace, in the name of consumer protection.

While the interventions in the electricity market never materialized, there have been long-standing restrictions on the Texas homeowners' insurance market. The prior approval system put into place temporarily in 2003 has led to disputes between regulators and companies over rates, some of which remain ongoing.

Until very recently, over 40 percent of the market was subject to rate disputes at any given time since 2004. Additionally, "TDI's internal process for prioritizing rate filing reviews guarantees that rates affecting the majority of the homeowners market [84 percent] will be reviewed."[1] The result of this continued high level of regulatory intervention has been a lack of capital commitment to the Texas homeowners' market.

The Staff Report highlights the problem:

- In 2003, the Legislature established a system of rate regulation for homeowners' insurance that incorporated both pre-market and post-market regulatory tools.
- TDI uses statutory pre-market regulatory tools without defined practices, making aspects of rate regulation unpredictable.
- The processes for placing insurers under prior approval and releasing insurers from prior approval are not defined, creating uncertainty in the system.
- The Legislature cannot judge the success of the shift to file-and-use rate regulation because the system has not been fully implemented.[2]

While the reforms of 2003 have brought new entrants, only about half of the companies that have filed forms have offered rates through them. And of those that entered the market, they occupy only 3.7 percent of the market.

Perhaps this is most clearly seen from the following Staff Report finding: "Fifty-two new companies have had policy forms approved and approximately 29 companies have begun writing insurance. In 2006, these new companies combined to comprise 3.7 percent of the total homeowners market."

While the reforms of 2003 have brought new entrants, only about half of the companies that have filed forms have offered rates through them. And of those that entered the market, they occupy only 3.7 percent of the market.

A probable explanation for this is that potential or actual new entrants are still hesitant to commit capital to Texas, given the lack of full implementation of the file-and-use system they were promised.

Despite the lack of full implementation of file and use, there is no doubt that market concentration has dropped significantly since the beginning of reforms in 2002 (when policy-form regulation was relaxed). A standard measure of market concentration is the Herfindahl-Hirshman Index (Herfindahl Index). The Herfindahl Index is computed by summing the squared market shares (in percentage terms) of all business firms competing in a market for some defined product or service. The U.S. Department of Justice (DOJ) uses the Herfindahl Index to evaluate the competitive effects of mergers and acquisitions in a given industry or market. According to DOJ standards, values in excess of 1800 suggest an industry is highly concentrated; values between 1000 and 1800 show moderate concentration; and markets with values below 1000 are deemed unconcentrated.

The history of the Herfindahl Index for the Texas homeowners' insurance market shows two things. First, the Texas market is at the low end of the moderately concentrated range; competition is not hindered here in any meaningful way. Second, the trend clearly shows that reduced regulation is associated with less market concentration and, thus, more competition. From 1998 to 2005, Texas moved from a restrictive flex-band approach* with strict policy forms regulations to a file-and-use approach with less restrictive policy forms regulation. The first significant decrease in market concentration during that time occurred only after policy-form regulation was relaxed.

Year	Herfindahl Index	Regulatory Situation/Events
1998	1662	Heavy regulation: flexible-band rates and form regulation in place
1999	1661	Lawsuit filed claiming standard form covers mold damage
2000	1636	TDI fails to implement 1997 forms changes; mold crisis underway
2001	1611	TDI fails to implement 1997 forms changes; jury awards $32 million in mold lawsuit; mold crisis increasing
2002	1458	Form regulation relaxed: mold crisis peaks and begins to decline
2003	1388	Flex band replaced with prior approval; mold crises ends
2005	1258	File and use in operation

* In addition to the restrictive flex-band regulation, Texas also had what was known as the Lloyd's exemption until 2003. This allowed companies organized as a Lloyd's firm to offer rates outside of the flex-band system. As the rates set under the flex-band system became more and more unrealistic and mold claims continued to rise, more companies chose to offer rates under the Lloyd's exemption. However, it must be recognized that the Lloyd's exception was indeed that: the exception not the rule. Companies were not willing to commit long-term capital to the Texas market based on an exception to the rule, particularly in light of the heavy regulation of forms. At the time, Texas was the only major state that didn't allow some type of national form to be used.

Texas consumers have clearly benefitted from the reduced concentration (i.e., increased competition) and reduced prices brought about by the relaxing of regulations since 2002.

Texas consumers have clearly benefitted from the reduced concentration (i.e., increased competition) and reduced prices brought about by the relaxing of regulations since 2002. This makes it all the more apparent that consumers are the ones who would be most harmed if the file-and-use system is not completely implemented.

There are numerous ways consumers benefit from increased competition—it is not as if regulators are leaving consumers to the wolves, when they withdraw from the market. Here are just a few examples of consumer-oriented practices in a competitive marketplace:

- Businesses seek to maximize consumer satisfaction (high quality, low prices, etc.) in order to maximize profits and avoid losing customers.
- Intermediaries, including retailers, credit card companies, etc., work on consumers' behalf with producers and other participants in the market.
- Firms seek to build name brands by providing consumers high quality, low price, etc.
- Trade associations provide oversight of members in an effort to maintain the favorable opinions of consumers.
- Private organizations, such as Consumers Union and Underwriters Laboratory, provide independent product information to consumers.
- The internet provides a vast array of resources for consumers to share information on products and merchants.
- The civil justice system is available as a remedy for consumers who are harmed.

Consumer-protection laws, however, generally stand in stark contrast to the consumer-friendly workings of today's competitive insurance market, where the voluntary nature of markets forces attention to the needs and desires of consumers. They put the focus on the regulated industries, rather than on the consumer. Rate regulation, for instance, focuses almost exclusively on companies' profit levels. Measures to make competition "fair" focus on the impact of competitive activity on competitors. In neither case are consumers the focus of the regulators.

The result is that consumer-protection measures generally seek to replace consumer preferences with those of the regulators and other intervening parties. This can't be helped—regulation, by its very nature, is intended to change the outcome of what would have otherwise happened through competition (i.e., the voluntary actions of buyers and sellers in the market). This does not mean there is no place for government intervention, but it does mean intervention should be carefully targeted toward unethical, rather than competitive, behavior.

The current hybrid Texas regulatory scheme does not do this. The two main reasons for this are found in the Staff Report:

> State law clearly establishes a regulatory system that features both pre-market and post-market regulatory tools, with an overall intent to reduce oversight in the process for approving insurance rates. The current hybrid file-and-use system lessens regulation standards, and should facilitate rapid use of rates and competition among insurers, while maintaining some safeguards to protect insurance consumers. However, TDI's use of both pre- and post-

market regulatory tools prevented Sunset staff from drawing conclusions relating to the Legislature's shift to a market-based rate regulation system.[3]

One reason for the sluggish regulatory response is "TDI's use of both pre- and post-market regulatory tools." TDI staff has significant leeway in how it implements statute and, for the most part, it has chosen to implement legislative reforms with a finger on the regulatory side of the scale. But while the impact of TDI's implementation must be acknowledged, it is also true that "[s]tate law clearly establishes a regulatory system that features both pre-market and post-market regulatory tools." In other words, the statute itself is ultimately responsible for the ambivalent move toward reform.

One example of this is the statutory emphasis on "excessive" rates, which conflicts with other statutory provisions, such as those that 1) prohibit "inadequate" rates, 2) "promote the availability of insurance," and 3) "promote price competition among insurers."

This is where the Staff Report stops just short of the mark. For while it provides an insightful and accurate analysis of the problems, its recommendations on homeowners' insurance would simply modify TDI's implementation of the statute rather than change the conflicting provisions in the Code.

This paper focuses on identifying the underlying statutory provisions that, if amended or repealed, would eliminate many of the conflicts. The following recommendations are designed to do this and, ultimately, to bring a consumer-friendly regulatory system to the Texas homeowners' insurance marketplace:

ISSUE 1: The Governance of Both TDI and OPIC, as Reflected in Statute, Rules, Agency Policies, and the Appropriations Process, is Not Always Aligned with the Best Interests of Consumers.

TPPF Recommendations

- **1.1** Eliminate the Office of Public Insurance Counsel and its functions, along with several TDI functions that feature pre-market regulatory activities, so that consumer-protection efforts are dealt with through complaints and enforcement functions

- **1.2** Change Goal A in TDI's appropriations bill pattern from "Encourage Fair Competition" to "Encourage Competition."

Key Findings

- TDI's and OPIC's efforts at consumer protection often divert resources away from—and at times conflict with—maintaining availability of affordable insurance through a competitive marketplace

- TDI's first goal in its appropriations bill to "Encourage Fair Competition" conflicts with statutory guidance to promote competition and insurance availability and creates an overly broad mission for TDI

Analysis

The governance of both TDI and OPIC, as reflected in statute, rules, agency policies, and the appropriations process is too often targeted at competitive behavior between/among companies, rather than the behaviors of companies toward consumers. Its governance is also too heavily weighted toward pre-market regulation rather than post-market regulation. These aspects have two negative impacts.

First, competition is restricted, and consumer choice is restricted. Markets are less efficient, prices tend to rise, and innovations are stifled.

Second, valuable agency resources are redirected away from protecting consumers and helping those who have been harmed.

Rather than inject a consumer representative into the regulatory process, the goal should be to reform the regulatory process, so that it is entirely consumer-focused.

The recommendations in this section and throughout the rest of this paper are designed to shift the governance of TDI toward a more consumer-friendly regulatory approach. This approach also results in a reduction in the funds needed by TDI for regulation—funds paid for by consumers through assessments on insurance companies.

The Staff Report recommends—and rightly so—that OPIC be eliminated. However, this recommendation would not eliminate most of the functions of OPIC but would simply transfer OPIC's activities and budget to TDI. This recommendation is made to "enhance the consumer perspective in the Department's overall regulation of insurance by bringing consumer representation inside the Department's review processes and consumer protection activities."[4]

This idea is laudable, but it misses the point. Rather than inject a consumer representative into the regulatory process, the goal should be to reform the regulatory process, so that it is entirely consumer-focused.

In his paper examining the Texas electric market, Robert Michaels observed that the success of Texas' deregulation was based on the fact that "Texas did not 'design' a retail market in any meaningful sense—it instead set general rules for retail electric providers … and allowed them to compete as they wished within those rules. The details of what would be sold and how it would be priced were left to the ingenuity of buyers and sellers."[5]

The current governance structure of TDI (and OPIC) is geared too much toward designing the insurance market and restricting competition, rather than setting general rules that allow companies to compete within those rules. Moving most of the functions of OPIC to TDI does nothing to change this imbalance.

Fortunately, programs exist within TDI that can be used as the basis for shifting the governance of TDI. TDI's first goal is "Encourage Fair Competition in the Insurance Industry" (more about this later). The second objective under this goal is "Reduce Unfair and Illegal Insurer Practices."

It is generally the programs funded under this objective that provide the ability to shift TDI's governance structure away from excessive interference with competition. These programs include complaint resolution and investigating/prosecuting illegal and fraudulent activities. TDI devotes approximately $6.8 million and 125 FTEs to these efforts. Efficiencies in these programs over the recent years—in part due to technological advances—should allow these programs to handle this shift without any additional appropriations.

All of the recommendations made elsewhere in this paper are aligned with this shift in governance. Taking those into account, along with the concepts in this section, results in the following governance recommendations:

TPPF Recommendation 1.1.a: Eliminate the Office of Public Insurance Counsel and its functions so that consumer protection efforts are dealt with through complaints and enforcement functions (Annual Savings: $1.044 million; 16.5 FTEs).

The mission of OPIC "is to represent the interests of consumers in insurance matters. This means advocating fairness and stability in insurance rates and coverage; promoting public understanding of insurance matters; working to make the overall insurance market more responsive to consumers; and ensuring consumers receive the services they have purchased."[6]

The Staff Report on OPIC recommends that the Legislature "Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance."

As mentioned above, rather than inject a consumer representative into the regulatory process, the goal should be to reform the regulatory process so that it is entirely consumer-focused. The recommendations in this paper are designed with this end in mind and, thus, eliminate the need for OPIC or a "consumer representative" within TDI. To the extent there are any consumer-education functions of OPIC that TDI wishes to take up, they can be absorbed within TDI's existing programs.

TPPF Recommendation 1.1.b: Eliminate TDI's Consumer Protection – Advertising Unit (Annual Savings: $284,000; 6 FTEs).

The Advertising Unit "protects the public and promotes accuracy in advertising by reviewing insurance advertisements. … These reviews ensure that companies are not inappropriately using unfiled required ads on their websites and also help detect potentially false and misleading statements."[7]

This program is a perfect example of a pre-market function mentioned in the Staff Report. While it is designed to protect consumers, it hinders innovation and competition. In 2006, the average review of an advertisement was 23.8 days, so companies develop their products and advertisements and must wait (in the case of required ads) the better part of a month before they can actually use them.

A better approach is to move the review of advertisements to a complaint-and-enforcement-driven process. If customers complain or TDI employees have reason to suspect a problem with advertisements, TDI's complaint and enforcement programs can readily handle the process.

TPPF Recommendation 1.1.c: Reduce the size of TDI's Property and Casualty – Personal and Commercial Lines Division (Annual Savings: $800,000; 17 FTEs).

The Personal and Commercial Lines Division supports "the mission of the Property & Casualty Program through reviewing insurance products and assisting consumers." Specifically, it "reviews individual insurer filings of forms, endorsements, and rules for compliance with statutory and/or rule requirements and verifies that they do not contain provisions, titles, or headings which are unjust, encourage misrepresentation, are deceptive, or violate public policy."[8] It does this for both private insurers and statutorily-created entities, such as the Texas Windstorm Insurance Association (TWIA).

The recommendations in this paper would significantly reduce insurance-form regulation and, thus, the workload for the Personal and Commercial Lines Division, while this recommendation would reduce the budget and FTE count of the division by 50 percent.

TPPF Recommendation 1.1.d: Reduce the size of TDI's Property and Casualty – Actuarial Division (Annual Savings: $250,000; 4 FTEs).

The Property and Casualty Actuarial Division "provides actuarial review of rate and rating plan filings to ensure rates and premiums are just, fair, reasonable, adequate, not confiscatory, not excessive and not unfairly discriminatory for the risks to which they apply."[9]

Again, the recommendations in this paper would reduce the review of rate filings in the Property and Casualty Di-

The marketplace is more focused on consumer interests than are regulators. A healthy, competitive market will foster efficient pricing that, in the long run, will result in the lowest prices possible that still support the innovations needed to meet consumer demand.

vision, decreasing the need for actuarial support. Thus, we recommend that the budget and FTEs be reduced by 25 percent.

The recommendations in this paper may reduce the need for actuaries in the Property and Casualty Division by more than the 4 FTEs mentioned above. If this is the case, these actuaries could be transferred to the Actuarial Division in the Financial Program, to improve TDI's focus on company solvency.

The recommendations above represent annual savings of $1.58 million and a reduction of 39 FTEs. This is about 1.5 percent of TDI's total budget. Though this may have only a small (yet beneficial) direct impact on consumers' wallets, these recommendations will have a much larger long-term impact, as competition yields efficiency gains and innovations in the market, brings new capital to the Texas homeowners' insurance market, improves products, and lowers prices.

Some will object to this paper's recommendations, saying the state should devote more—not fewer—resources to pre-market regulatory activities. There are two responses to this objection.

First, as has been noted, the marketplace is more focused on consumer interests than are regulators. A healthy, competitive market will foster efficient pricing that, in the long run, will result in the lowest prices possible that still support the innovations needed to meet consumer demand. Even those who have called for heavier insurance regulation have acknowledged these and other benefits of a competitive market—they just (mistakenly) believe the insurance market is not competitive enough. The proposals made here do not reduce the amount of resources devoted to preventing undesirable behavior. In fact, they increase the amount. Reducing impediments to competitive behavior increases the oversight of market behavior by companies, quality assurance organizations, the media, consumer groups, and consumers themselves.

The second response is that pre-market efforts to prevent undesirable behavior disrupt competition and impose heavy costs on consumers and the economy. In most cases, it is difficult to determine what these costs are and what consumers have lost, due to the lack of innovation—this involves imagining proving what might have happened had the regulations not been imposed. But in the case of the Texas mold crisis, the costs of market-disrupting regulations can be quantified.

Table 1 (see below under Issue 3 for a fuller discussion of this issue) reveals that, from 2001 to 2005, the overregulation of forms—in an attempt to protect consumers—actually cost consumers more than $899 million dollars in increased premiums. No one knows what might have occurred in the absence of this pre-market regulation, but it is highly unlikely that form regulation protected consumers from actions by insurers that would have cost $899 million. Even if consumers had suffered harm, they would have been able to seek redress for damages through TDI and the courts for any illegal behavior by insurers. In the case of the damage caused by form regulation, the money is gone forever.

The recommendations in this section and the rest of the paper are designed to avoid the unintended but costly consequences of ill-advised pre-market regulations. Additionally, the freeing up of resources would provide TDI with more resources to assist consumers in addressing problems through post-market regulatory activity.

TPPF Recommendation 1.2: Change Goal 1 in TDI's budget structure, etc. from "Encourage Fair Competition" to "Encourage Competition."

Goal 1 under TDI's budget structure is "Encourage fair competition in the insurance industry." However, TDI is required by statute to "promote price competition," not to "encourage fair competition." While fairness is certainly contemplated in the statute, it is focused not on competition but on the prohibition of "unfairly discriminatory rates." A focus on fair competition undermines price competition and TDI's statutory mandates to focus on availability of insurance and solvency of rates.

This happens in two ways.

First, the operation of the marketplace is negatively impacted. Fair competition has been interpreted in Texas (though to a lesser extent than in many other jurisdictions) to mean that companies should not be able to price policies based on risk. Texas avoided overstepping its bounds here, when it came to credit scoring (also related to the prohibition on discriminatory rates), but it is very much in play regarding windstorm insurance, where TWIA is prohibited by statute from pricing based on proximity of the property to areas more subject to wind damage.

Fair competition standards also call into question company determinations of needed return on capital. Insurers have a responsibility to shareholders, policyholders, and taxpayers to earn returns that allow companies to attract the capital needed to stay in business, maintain profitability, and pay off future claims. Actuaries—whether at TDI or an insurer—are inappropriate determiners of what rate of return is acceptable to capital markets. Companies not allowed to price for risk or future capital needs will be unwilling and unable to be fully competitive on prices—at least without risking insolvency.

Second, a focus on fair competition undermines TDI's ability to carry out its functions properly. Under Goal 1, there are two objectives and seven strategies, as follows:

Objective 1.1 Encourage fair competition in the insurance industry by reducing impediments to competition and improving insurance availability.

- Strategy 1.1.1. Analyze market data and provide information to consumers and industry.
- Strategy 1.1.2. Process rates, forms and licenses.
- Strategy 1.1.3. Create incentives and requirements for coverage in underserved markets.

Objective 2.2 Encourage fair competition in the insurance industry by reducing unfair and illegal practices.

- Strategy 1.2.1. Respond promptly to complaints against insurers, agents, and other regulated entities.
- Strategy 1.2.2. Investigate apparent patterns of unlawful or questionable trade practices in the insurance industry; and bring enforcement actions as appropriate.
- Strategy 1.2.3. Investigate potential insurer fraud and initiate legal action when appropriate.
- Strategy 1.2.4. Texas On-line.

Funding for these objectives and strategies totals about $22 million per year—or about one-third of TDI's budget, minus workers' compensation—so the impact on the agency's operations is significant.

TDI's Self-Evaluation Report shows the extent of these objectives' impact on the agency. Objectives 1.1 and 1.2 impact all of the agency's functions:

- Licensing, certification, and registration
- Form, rate, and advertising review

Allowing consumers and capital markets to determine the appropriateness of a rate is the best approach. And this is a self-correcting mechanism, where companies will adjust their rates to meet market conditions.

- Examination, monitoring, and solvency review
- Research and analysis
- Education, outreach, and customer assistance
- Complaint and dispute resolution
- Enforcement, fraud, and investigations

For the most part, TDI's programs under Objective 2.2 put the emphasis on fairness in the right place: on unfair and illegal practices. It is the programs under Objective 1.1 that tend to impact competition most negatively.

This is interesting, because the Output Measures for Objective 1.1 shows an understanding that it is the regulatory structure that serves as the greatest impediment to competition. So the measures include: "Percent of company … licenses completed within 60 days," "Percent of statutory rate and form filings completed within 90 days," etc. Yet the operations of the programs are too often focused on the competitive behavior in the market, rather than on improving the efficiency and effectiveness of the programs themselves.

One example of this is the Outcome Measure under Objective 1.1, "Percent of statutory rate and form filings completed within 90 days." The agency is expected to complete 87 percent of the filings within this time. However, this performance measure does not reveal that two rate cases were, until last month, outstanding for several years, together accounting for approximately 45 percent of the market. One of these rate cases, against Allstate, was recently settled.

Of course, TDI is only one party in such litigation. At the least, TDI's Outcome Measure should be changed to reflect the market share of rate filings, instead of the percent of rate filings themselves, to give a better account of the regulatory impact on filings. But the fact that nearly fifty percent of the market was hampered by these rate cases provides strong evidence of TDI's overemphasis on fairness.

A better application of TDI's statutory mandates would change Goal 1 to read: "Encourage competition in the insurance industry." Allowing consumers and capital markets to determine the appropriateness of a rate is the best approach. And this is a self-correcting mechanism, where companies will adjust their rates to meet market conditions.

Sunset Advisory Commission Recommendations[10]

Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance.

Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.

Transfer the responsibility for OPIC's consumer publications to TDI.

Transfer the authority to assess insurers to pay for consumer representation from OPIC to TDI.

These recommendations are made to "enhance the consumer perspective in the Department's overall regulation of insurance by bringing consumer representation inside the Department's review processes and consumer protection activities."[11]

However, as noted above, this idea is laudable, but it misses the point. Rather than injecting a consumer representative into the regulatory process, the goal should be reforming the regulatory process so that it is entirely

Approaching insurance markets from a competitive perspective is not limited to economic theories and models. Deregulation of other Texas industries—namely electricity and telecommunications—has been a success in increasing consumer choice and competition.

consumer-focused. This paper's recommendations are designed with this goal in mind and, thus, eliminate the need for OPIC or a "consumer representative" within TDI.

TDI Self-Evaluation Recommendations

None applicable

ISSUE 2: Incomplete Implementation of File-and-Use Rate Regulation and Conflicting Statutory Guidance on Rate Regulation Create Regulatory Uncertainty, Disrupt Competition, and Lessen Insurance Availability in the Texas Homeowners' Insurance Market.

TPPF Recommendations

- **2.1** Shift the focus of homeowners' insurance rate regulation to rates that are inadequate or discriminatory by striking "excessive" from Section 2251.001(1), Insurance Code.

- **2.2** Make the insurance system a true file-and-use system by repealing Section 2251.103, Insurance Code, so the commissioner would be able to disapprove only those rates that are already in use.

- **2.3** Allow the commissioner to place under prior approval only those companies whose financial positions warrant increased supervision for the purposes of maintaining solvency by

  a. striking "or rating practices" from Section 2251.151(a)(1), Insurance Code, and

  b. repealing Section 2251.151(a)(2), Insurance Code.

- **2.4** Allow Texans to purchase insurance policies offered by insurance companies not licensed in Texas yet licensed by other states' insurance regulators.

Key Findings

- Positive results are being realized in insurance markets embracing competition, including Texas.

- The regulation of homeowners' insurance in Texas produces poor results for consumers, such as swings in price and availability. Ultimately, a regulatory stance focused on affordability reduces investment and hinders competition in the Texas insurance marketplace and puts insurers at risk of insolvency.

- Allowing Texans to purchase out-of-state insurance policies would open up the Texas insurance market to more companies, increase consumer choice, and foster competition.

Analysis

Approaching insurance markets from a competitive perspective is not limited to economic theories and models. Deregulation of other Texas industries—namely electricity and telecommunications—has been a success in increasing consumer choice and competition. Illinois, South Carolina, and Washington, D.C., have reduced regulations in insurance markets and, as a result, have seen more market participants, lower/more stable premiums, and shrinking residual markets.

For example, since 1971 Illinois has followed a competition-based insurance market for personal lines, such as auto and homeowners' insurance. Due to the size of the state and length of time it has operated without price controls, Illinois provides an excellent case to examine the benefits or problems with this approach. A study comparing Illinois' auto insurance market to comparable states found Illinois to have "less variable loss ratios and rate levels, lower consumer prices, the highest number of insurance carriers in the nation, and a low number of uninsured drivers."[12] The automobile residual market in Illinois also routinely ranks well below the national aver-

age. The Herfindahl Index for homeowner's insurance in Illinois has remained stable and low from 2000 through 2004. Illinois homeowners face weather similar in severity and variety to Texas yet have been able to sustain a healthy market without regulation. All signs from the Illinois insurance industry point to a healthy and thriving marketplace that benefits consumers.

In South Carolina, an auto-insurance-availability crisis erupted after years of rate suppression and regulation, whereby insurance companies chose to exit the market rather than deal with the state's heavy-handed oversight. The residual market reached 40 percent of insured drivers, while the pool of sellers shrank. In 1997, the South Carolina Legislature passed sweeping reforms that deregulated auto insurance and increased competition. South Carolina's reliance on competition to help the auto insurance industry resulted in the doubling of the number of insurers writing policies, a steadying of rates, and a residual market pool that decreased rapidly.

The District of Columbia experienced a similar auto insurance crisis. Following free-market reforms passed in 1996, D.C. also had insurance providers return to the market, while premiums declined, and the residual market decreased by 80 percent.

Positive results are being realized in insurance markets embracing competition. The same success could be achieved by reducing regulation in the Texas insurance marketplace.

TPPF recommends four courses of actions the Texas Legislature could take to clarify statutory guidance.

TPPF Recommendation 2.1: Shift the focus of homeowners' insurance rate regulation to rates that are inadequate or discriminatory by striking "excessive" from Section 2251.001(1), Insurance Code.

Historically, the primary basis for rate regulation for personal lines of insurance, such as auto and homeowners' insurance, was to ensure company solvency. Today, the focus in Texas and elsewhere seems to be on the concept of affordability, which is both relative and subjective. What is affordable for one consumer may not be affordable for another. There can be no actuarially-sound rate that is affordable for everyone. The subjectivity of pursuing affordability leads to regulatory uncertainty for insurers and shifts resources away from solvency and risk.

Rate regulation focused on affordability disrupts consumer choice and results in inefficient and anti-competitive pricing. The pursuit of affordability in Texas has led to a focus on preventing excessive rates. The Code says rates may not be "excessive." However, this statutory emphasis on excessive rates conflicts with other statutory provisions that 1) prohibit "inadequate" rates, 2) "promote the availability of insurance," and 3) "promote price competition among insurers." The overemphasis on low rates has been found to be "wasteful, produce higher industry costs, delay innovation, reduce competition, slow the introduction of new products to the market, and build operational inefficiencies into businesses that are regulated."[13]

The regulation of homeowners' insurance in Texas produces poor results for consumers, such as swings in price and availability. Ultimately, a regulatory stance focused on affordability reduces investment and hinders competition in the Texas insurance marketplace. Insurers assess risk years into the future, but today they can't even predict what their income will be next year.

TPPF Recommendation 2.2: Make the insurance system a true file-and-use system by repealing Section 2251.103, Insurance Code, so the commissioner would be able to disapprove only those rates that are already in use.

The commissioner's reviewing rates prior to their use—and the corresponding ability to accept or reject rates prior to their use—has kept the Texas insurance market from being a true file-and-use system.

Repealing Section 2251.103 would allow the commissioner to reject only rates already in use, per Section 2251.104. As a result, rates would reach the market sooner, and price competition and insurance availability would increase.

Thus, after repealing Section 2251.103, the only way a rate would be rejected is by an order from the commissioner issued no later than 15 days after an administrative hearing (of which the relevant insurer has 20 days' written notice from the commissioner) and specifying "in what respects the rate fails to meet the requirements" of Chapter 2251 of the Code.

The commissioner's reviewing rates prior to their use—and the corresponding ability to accept or reject rates prior to their use—has kept the Texas insurance market from being a true file-and-use system.

Eliminating the ability to disapprove rates prior to their being used would remove regulatory impediments to true competition in the insurance industry, and consumers and capital markets would determine the appropriateness of rates.

TPPF Recommendation 2.3: Allow the commissioner to place under prior approval only those companies whose financial positions warrant increased supervision for the purposes of maintaining solvency by striking "or rating practices" from Section 2251.151(a)(1), Insurance Code, and repeal Section 2251.151(a)(2), Insurance Code.

Until last month, because State Farm and Allstate—the state's largest and second-largest writers of property and casualty (P&C) insurance, respectively*—operated under a prior-approval regime, almost half of Texas' P&C market was adversely affected by the over-emphasis on excessive rates. Now that TDI and Allstate have ended their legal battles, State Farm is now the only insurer operating in Texas under prior approval. But this doesn't change the fact that the market has been hampered by this battle over rates for almost five years.

As noted above, the Staff Report states, "Fifty-two new companies have had policy forms approved and approximately 29 companies have begun writing insurance. In 2006, these new companies combined to comprise 3.7 percent of the total homeowners market."

While the reforms of 2003 have brought new entrants, only about half of the companies that have filed forms have actually offered rates through them. And of those that entered the market, they claimed only 3.7 percent of the market share in 2006.

One strong possibility for this is that these potential or actual new entrants are still hesitant to commit capital to Texas given the lack of full implementation of the file-and-use system they were promised.

The Foundation's recommendation would limit the reach of prior approval to those insurers at imminent risk of insolvency, thus protecting to the extent possible these companies' ratepayers, while restoring a capital-friendly regulatory certainty to the marketplace.

* Measured in terms of 2007 written premiums, State Farm occupied 29.8% of the market, while Allstate controlled 15%. Thus, until recently, roughly 45% of Texas' P&C insurance market operated under prior approval. In 2007, State Farm had $1,510,830,457 in written premiums, while Allstate had $757,204,117 in written premiums. The premiums used to compute these figures came from annual statements and include renters' and condominium owners' premiums, as well homeowners. These figures show market share at the group level (both of these insurers have several companies writing homeowners' insurance in Texas).

Allowing non-Texas-licensed (yet state-licensed) insurers to write policies in Texas increases insurance availability and insurance-industry competition. The rise in internet availability and proficiency allows consumers in search of insurance easy access to rate shopping across the country.

Quite distinct from attempting to protect consumers whose insurers are at great risk of insolvency, placing an insurer under prior approval for how that insurer calculates rates—what factors the insurer considers and does not consider, how those factors are weighted, etc.—is the type of subjective pre-market response identified by Sunset Commission staff.

Additionally, it is difficult to see how "a statewide insurance emergency" justifies placing a company (or companies) under prior approval. Without a clear definition of what constitutes "a statewide insurance emergency," this section of the Code provides the commissioner a catch-all provision to justify placing any insurer(s) under prior approval. This vague statutory language does not provide the commissioner or insurers with clear guidance on the implementation of prior approval and has the potential to be the exception that swallows the rule.

This recommendation will end the Code's subjective justifications for placing an insurer under prior approval, leaving imminent risk of insolvency as the only reason a company may be placed under prior approval by the commissioner. The results for TDI will be more time and money available for other responsibilities. The results for the market will be timelier rates, lower regulatory costs for insurers, and cost savings to consumers.

TPPF Recommendation 2.4: Allow Texans to purchase insurance policies offered by insurance companies not licensed in Texas yet licensed by other states' insurance regulators.

Allowing Texans to purchase out-of-state insurance policies would open up the Texas insurance market to more companies, increase consumer choice, and foster competition. The Legislature could accomplish this by amending Sections 801.052 and/or 841.101 of the Code allowing an insurer not licensed to sell insurance in Texas yet licensed by another state's insurance regulatory body to engage in the selling of insurance policies in Texas.

As under the *Health Care Choice Act*,[14] states where insurers are licensed to sell their policies would retain primary authority to regulate the insurers, and Texas consumers purchasing out-of-state insurance policies would be afforded protection, as prescribed by the licensing state. As long as these companies are licensed in their respective states of domicile and, thus, regulated by that state's insurance department, TDI would not be burdened by having to regulate these insurers. Texas would, however, reap the competitive benefits of having more insurance companies operating in the state, as selling policies in a new state without having to adapt to a new regulatory regime will entice companies to participate.

Allowing non-Texas-licensed (yet state-licensed) insurers to write policies in Texas increases insurance availability and insurance-industry competition. The rise in internet availability and proficiency allows consumers in search of insurance easy access to rate shopping across the country. Forcing competition beyond just the local and state markets will increase consumer choices, while decreasing consumer prices and many of the expenses that come with licensing and regulating at the state level.

This approach is not without its challenges, but they are the same challenges Texas faces in reducing barriers to entry in the homeowners' market regardless of whether this provision is enacted: namely, the mandate that homeowners' insurers must participate in the windstorm pool. If this problem is properly addressed (see Issue 5), then this recommendation can easily provide more consumer choice and competition in the Texas market.

Instead of focusing on the possible reasons for placing an insurer under prior approval, a course of action more beneficial to the insurance market as a whole is to limit such assignment to only those insurers whose financial positions place them in imminent danger of insolvency.

Sunset Advisory Commission Recommendations
Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.

If implemented, this recommendation will not remedy the main problem facing the Texas P&C insurance market: the commissioner would still have the statutory authority to disapprove filed rates before they are used, and a true file-and-use system would not exist.

Setting a time limit for the commissioner to review and approve/disapprove rate filings would put the commissioner on a review-and-decision timetable, but companies would still face the regulatory uncertainty that comes with a system whereby the commissioner has the authority to reject a filed rate before its use.

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

Quite distinct from attempting to protect consumers whose insurers are at great risk of insolvency, placing an insurer under prior approval for how that insurer calculates rates—what factors the insurer considers and does not consider, how those factors are weighted, etc.—is the type of subjective pre-market response identified by Sunset Commission staff.

Additionally, it is difficult to see how "a statewide insurance emergency" justifies placing a company (or companies) under prior approval. Without a clear definition of what constitutes "a statewide insurance emergency," this section of the Code provides the commissioner a catch-all provision to justify placing any insurer(s) under prior approval. This vague statutory language does not provide the commissioner or insurers with clear guidance on the implementation of prior approval and has the potential to be the exception that swallows the rule (see TPPF Recommendation 2.3).

Instead of focusing on the possible reasons for placing an insurer under prior approval, a course of action more beneficial to the insurance market as a whole is to limit such assignment to only those insurers whose financial positions place them in imminent danger of insolvency.

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.

As with the two previous Sunset Commission staff recommendations, this starts with the correct diagnosis (partially implemented file-and-use system) but fails to reach the desired end of a true file-and-use system if companies can still be placed under prior approval for rating practices or a statewide insurance emergency. However, if implemented in conjunction with the Foundation's recommendations, this would be helpful in determining which companies no longer need to be under prior approval in cases where solvency is an issue.

TDI Self-Evaluation Recommendation(s)
None applicable

ISSUE 3: Form Regulation Disrupts Innovation and Efficiency in the Homeowners' Insurance Market.

TPPF Recommendations
- **3.1** Implement a true file-and-use system for regulating policy forms by
- a. striking "and approved" in Section 2301.006 (a), Insurance Code,

As a result of TDI's belated implementation of a 1997 provision allowing insurers to use forms other than the standard state form, premiums rose dramatically. After TDI allowed insurers to use non-standard forms in 2002, mold claims plummeted, and rates stabilized.

b. repealing Subsections 2301.006(b), (c), (d), and (e), Insurance Code,

c. striking "disapprove a form filed under Section 2301.006 or" in Section 2301.007(a), Insurance Code,

d. striking "disapproves the form or" in Sec. 2301.007(e), and

e. repealing Section 2301.008, Insurance Code.

- **3.2** Focus policy-form regulation on the wording and clarity of an insurance form (i.e. how an insurer informs possible policyholders of the coverage provided under a form) and not on the content of a form (i.e. what risks are covered/insured under a form) by

  a. deleting subsection Sec. 2301.007(a)(2), Insurance Code, and

  b. adding a new Sec. 2301.007(f) that reads, "Notwithstanding any other provision of this code, the commissioner may not withdraw approval of a form filed under Section 2301.006 because of the coverages offered under the form, except for those coverages for personal automobile insurance listed in Subchapters C and D, Chapter 1952."

Key Findings

- Form regulation harms consumers through higher insurance costs that result from increased compliance costs for insurers. TDI's belated implementation of a 1997 provision allowing insurers to use forms other than the standard state form cost consumers almost $900 million.

- As a result of TDI's belated implementation of a 1997 provision allowing insurers to use forms other than the standard state form, premiums rose dramatically. After TDI allowed insurers to use non-standard forms in 2002, mold claims plummeted, and rates stabilized. TDI acknowledged that, without the deregulation of forms, rates could have increased at least 20 percent more than they did.

- After Hurricane Rita in 2005, TDI sued Allstate, saying its form should cover alternative living expenses in cases where there is no damage to the home, even though the form did not actually say this. However, the courts rejected the reasoning by TDI in deference to the plain language of the forms.

Analysis

It is generally assumed that any costs imposed by regulations are more than offset by the benefits they confer upon consumers. But this ignores the unintended consequences that these attempts to modify economic behavior have on the economy. As economist Arthur Laffer explains:

> Just like with the laws of physics, economic laws are simply descriptions of reality. Scarcity can no more be ignored than gravity. Policymakers who think they can determine the proper price of a good better than the market will create no less a disaster than the captain of an ocean liner who believes his engines will allow him to pay no heed to momentum.
>
> Economic laws cannot be broken—only ignored. Attempts to do so leave a convoluted trail of unintended consequences harming people who don't understand what went wrong or who caused the problem.[15]

A perfect example of the unintended consequences of governmental economic intervention is the regulation of policy forms in Texas.

In 1997, the Texas Legislature passed SB 1449, which allowed the commissioner to "adopt policy forms and endorsements of national insurers or policy forms and endorsements adopted by a national organization of insurance companies or similar organization on policy forms and endorsements" in place of state-promulgated forms and endorsements. However, TDI did not adopt any national policy forms under this provision until 2002.

In the meantime, the Texas mold crisis began to unfold following a 1999 lawsuit that resulted in a court finding that TDI's standard form required insurers to cover mold claims. With companies unable to use national forms, mold claims under the state-mandated form grew from 1,050 in the first quarter of 2000 to 14,706 in the fourth quarter of 2001. The average cost of mold claims per policyholder per year increased from $24.32 in 1999 to $300.50 at the end of 2001, having peaked in the third quarter at $444.35. From 2000 to 2003, companies writing homeowners' policies in the state shrank from 137 to 101.

Consequently, premiums rapidly increased, though not nearly as fast as claims. In 2001-02, premiums increased over 40 percent. All Texas homeowners had to pay higher rates, and many were forced into the residual market because of a lack of availability.

All of this was due to three things: 1) incorrect judicial interpretation of the standard homeowners' form, 2) a feeding frenzy of lawsuit abuse following the first lawsuit, and, ultimately, 3) TDI's belated implementation of SB 1449.

Conventional wisdom has the "mold crisis" coming to an end after the Legislature rewrote insurance laws in 2003, but the facts show the mold crisis began to come to an end in 2002, when TDI belatedly allowed companies to begin using national forms.

An August 2002 article in *The Dallas Morning News* featured the headline, "Home insurance up, but not much. Rates have stabilized since May, stay above state standard in area." TDI also reported to the Legislature in March 2003 that "[r]ates in 2003 appear to be leveling off. Barring any further destabilization of the market, the Department anticipates this trend to continue on a broad scale, if not improve." [16]

In fact, mold claims plummeted in 2003, well before the effective date of SB 7, and for the first time in four years, premiums collected exceeded losses and costs, if only slightly. Premiums for individual policies also began to stabilize. TDI estimated that the 2002 changes in mandated coverage saved consumers an average of 13.5 percent on a theoretical policy with a premium of $1,000.

Though it is clear that abuse of the legal system was the mechanism that drove the skyrocketing costs during the mold crisis, the damage done by this would have been lessened or perhaps even avoided if TDI had implemented SB 1449 in a timely manner.

To isolate the effect that insurance-form regulation had on Texas premium increases during the mold crisis, Table 1 compares premium increases in Texas to U.S. premium increases and then determines what the premium levels in Texas would have been if Texas had simply matched the rate of increase in national premiums. This is a conservative approach to estimating the cost of form regulation, because prior to the mold crisis, Texas premiums had actually been increasing at a substantially lower rate than national premiums.

Repealing the 60-day filing requirement would allow insurers to get forms and, thus, rates to consumers more quickly, resulting in more efficient operations and lower administrative costs for insurers.

Table 1 reveals that the overregulation of forms from 2001 to 2005—in an attempt to protect consumers—actually cost consumers more than $899 million dollars in increased premiums. No one knows what might have occurred in the absence of regulation, but it is highly unlikely that form regulation protected consumers from actions by insurers that would have cost $899 million. Even if consumers had suffered such harm in the absence of regulations, they would have been able to seek redress for the damages through TDI and the courts. In the case of the damages caused by form regulation, the money is gone forever.

TPPF Recommendation 3.1: Implement a true file-and-use system for regulating policy forms by striking "and approved" in Section 2301.006 (a), Insurance Code, repealing Subsections 2301.006(b), (c), (d), and (e), Insurance Code, striking "disapprove a form filed under Section 2301.006 or" in Section 2301.007(a), Insurance Code, striking "disapproves the form or" in Sec. 2301.007(e), and repealing Section 2301.008, Insurance Code.

Since Texas has moved to a file-and-use system for rates on homeowners' insurance, it make sense that the forms through which that insurance is offered should also be regulated through file and use.

This is particularly true, given the problems identified in the Staff Report with pre-market regulatory activities, along with the heavy costs imposed on consumers through forms regulation in the past.

Repealing the 60-day filing requirement would allow insurers to get forms and, thus, rates to consumers more quickly, resulting in more efficient operations and lower administrative costs for insurers.

Table 1: Monetary Impact of Forms Regulation on Texas Homeowners' Premiums, 2001-2005[17]

Year	Texas Avg. Premium	Increase	US Avg. Premium	Increase	Texas to US ratio	Texas Total Premiums	$ Increase	% Increase	$ Revised Increase	Texas Adjusted Base	Form-Regulation Cost
1997	$855		$455		1.88	$2,468,086,626				$2,468,086,626	N/A
1998	$879	2.81%	$481	5.71%	1.83	$2,633,703,160	$165,616,534	6.71%	$337,147,944	$2,805,234,570	N/A
1999	$861	-2.05%	$487	1.25%	1.77	$2,804,336,380	$170,633,220	6.48%	-$103,940,818	$2,701,293,752	N/A
2000	$880	2.21%	$508	4.31%	1.73	$2,907,168,495	$102,832,115	3.67%	$200,941,043	$2,907,258,321	N/A
2001	$955	8.52%	$536	5.51%	1.78	$3,121,726,707	$214,558,212	7.38%	$138,758,907	$3,046,017,228	$75,709,479
2002	$1,238	29.63%	$593	10.63%	2.09	$3,802,852,983	$681,126,276	21.82%	$436,696,204	$3,483,150,128	$319,702,855
2003	$1,328	7.27%	$668	12.65%	1.99	$4,324,626,880	$521,773,897	13.72%	$646,322,788	$4,123,009,688	$201,617,192
2004	$1,363	2.60%	$729	9.13%	1.87	$4,361,635,314	$37,008,434	0.86%	$38,120,762	$4,161,549,779	$200,085,535
2005	$1,372	0.70%	$764	4.80%	1.80	$4,610,859,573	$249,224,259	5.71%	$347,574,525	$4,508,776,729	$102,082,844
Total											$899,197,905

Sources: National Association of Insurance Commissioners; TDI Insight, Texas Department of Insurance.

Competition yields continual quality improvement, efficiency gains, and lower costs/prices; and, in a free market, the consumers are the best regulators.

If the goal is to deliver to ratepayers insurance forms—and rates, for that matter—that are the most timely and appropriate for the current marketplace, then a requirement to file a form at least 60 days prior to using that form is antithetical to the goal. As such, file and use is the proper method of regulating forms in Texas.

TPPF Recommendation 3.2: Focus policy-form regulation on the wording and clarity of an insurance form (i.e. how an insurer informs possible policyholders of the coverage provided under a form) and not on the content of a form (i.e. what risks are covered/insured under a form) by deleting subsection Sec. 2301.007(a)(2), Insurance Code, and by adding a new Sec. 2301.007(f) that reads, "Notwithstanding any other provision of this code, the commissioner may not withdraw approval of a form filed under Section 2301.006 because of the coverages offered under the form, except for those coverages for personal automobile insurance listed in Subchapters C and D, Chapter 1952."

The lesson of the Texas mold crisis is that reducing pre-market regulation leads to efficiency gains, lower costs, and consumer satisfaction.

Future unintended consequences, such as the $899 million cost to consumers from the mold crisis, can be avoided if TDI does not regulate the content of a form, thus allowing an insurer to cover or not cover whatever risks it sees fit. Instead, TDI should focus on ensuring that whatever is or is not covered under an insurance form is stated with such clarity and specificity that there is no potential confusion on the part of the consumer as to what is and what is not covered under the respective policy form.

While the regulation of the content of forms may be intended to reduce behavior that is "unjust or deceptive, encourages misrepresentation, or violates public policy," the main consequence of this very broad language is that it injects regulatory uncertainty into the homeowners' insurance market.

Consumers are still protected under this recommendation.

First, the Insurance Code will still require that "[e]ach form filed in accordance with this subchapter must comply with applicable state and federal law."

Second, consumers do not lose protection as regulations on insurers are relaxed, because consumers have the freedom to shop around for better rates, to walk away from insurers who do not operate in good faith, and to cease being a customer of any insurer for any reason. As such, insurers are forced to offer quality insurance products and competitive rates, if they want to maintain or gain market share. Otherwise, they might lose goodwill and find themselves priced out of the market.

Competition yields continual quality improvement, efficiency gains, and lower costs/prices; and, in a free market, the consumers are the best regulators.

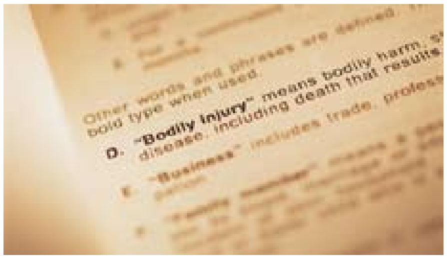
Sunset Review Commission Recommendations

None applicable

TDI Self-Evaluation Recommendations

None applicable

ISSUE 4: Overly Broad Authority to Require Information from Insurers and Examine Rating Practices Hinders Innovation and Creates Regulatory Uncertainty in the Homeowners' Insurance Market.



TPPF Recommendation

- **4.1** Strike Section 2251.002(8)(d) of the Code, which includes in the reach of the supplementary information insurers may be required to submit to TDI "any other information the department requires to be filed."

Key Findings

- The Code contains no safeguard(s) against TDI's requiring from insurers information that is proprietary or irrelevant to the rate filing at hand.

- The more information required by the commissioner from insurers—and the more often the requests for more information—the greater the time and expense to get rates to consumers.

Analysis

TPPF Recommendation 4.1: Strike Section 2251.002(8)(d) of the Code, which includes in the reach of the supplementary information insurers may be required to submit to TDI "any other information the department requires to be filed."

The Staff Report points out that "[s]ome homeowners filing reviews can trigger multiple requests for information from TDI, leading to extensive dialogue and negotiations between TDI and insurers, and possibly resulting in delays in getting products to market." [18]

The Staff Report goes on to recommend improvements to the process of requesting supplemental information from insurers. The Foundation supports this recommendation (see below) but would build upon it.

Section 2251.002(8) of the Code defines "supplementary information," which is the information TDI may require an insurer to submit with a rate filing:

(a) the experience and judgment of the filer and the experience or information of other insurers or advisory organizations on which the filer relied;

(b) the interpretation of any other information on which the filer relied;

(c) a description of methods used in making a rate; and

(d) any other information the department requires to be filed.

Striking subsection (d) would remove the open-ended authority of the commissioner to require from insurers any information TDI would like. The Code contains no safeguard(s) against TDI's requiring from insurers information that is proprietary or irrelevant to the rate filing at hand.

Additionally, subsections (a), (b), and (c) provide ample information for the commissioner to review a company's rate calculation(s). As such, a catch-all provision like subsection (d) serves no purpose, other than to grant the commissioner the authority to require from insurers more information than is necessary for the commissioner to review rating practices.

Moreover, the more information required by the commissioner—and the more often the requests for more information—the greater the time and expense to get rates to consumers. As such, the Code should clearly indicate what information is required from insurers, when filing rates, so insurers can plan accordingly and carry out their operations as effectively and efficiently as possible.

A clearer understanding of supplementary information standards will reduce regulatory uncertainty, reduce insurers' compliance costs, and put insurers in a better position to get rates to the market in a timelier manner.

Sunset Advisory Commission Recommendations
Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.

A clearer understanding of supplementary information standards will reduce regulatory uncertainty, reduce insurers' compliance costs, and put insurers in a better position to get rates to the market in a timelier manner.

Particularly, the Code should clearly define what information is, or may be, required from insurers, when filing rates. If any information beyond what is listed in subsections (a), (b), and (c) might be required to be submitted to TDI by insurers, then such information should be listed in the Code.

An open-ended provision, such as that of subsection (d), has the potential to require insurers to submit to TDI information not relevant to the rate filing at hand, while adding time and expenses to insurers' operations.

The Foundation fully supports this recommendation.

TDI Self-Evaluation Recommendation(s)
Engage the agency in greater policymaking authority to address technological advances that impact the type of products offered, the classifying of individual risks, and the rating of insurance products. TDI offers the following proposed solutions to more fairly and firmly regulate the insurance market. Provide the agency and Commissioner of Insurance with authority to address the use of technological advances and pattern recognition methods that impact the type of available products, the classifying of individual risks, and the rating of insurance products. Specifically, the Legislature should consider: amending rate and underwriting provisions in the Texas Insurance Code to allow the Commissioner of Insurance the authority to define and require disclosure to TDI of all rating and underwriting variables derived from data mining and pattern recognition processes prior to their use in rating, tiering or underwriting; and granting the Commissioner the authority to require moderation in the application of such variables over two or more renewal cycles.

This recommendation is an example of regulatory overreach cautioned against above. Companies should be free to consider or not consider any and all variables/factors, when calculating rates.

Information relating to internal calculations should not be required to be turned over to TDI, and the turning over of such materials wastes time and resources, both of which are most appropriately spent on business operations and, thus, getting products to consumers. Any time spent complying with information requests from TDI is time not spent on performing the core functions of the business and time ultimately not spent on providing insurance products to consumers.

Furthermore, consumers are not harmed by an insurer's not having to submit to TDI internal rate-calculation information. The reason is because, regardless of how an insurer computes a rate, consumers are able to compare that rate against other insurers' rates for the same or similar risk.

Thus, rate shopping and the freedom not to enter into an insurance agreement with an insurer—due to that insurer's rate(s) or any other reason(s)—are not affected by the Legislature's mandating that TDI does not have the authority to require from insurers internal rate-calculation information.

Implementing a file-and-use regime for TWIA rates would allow TWIA members to get rates to the windstorm insurance market more quickly, due to their not having to haggle over rates with the commissioner, prior to using the rates.

ISSUE 5: The Texas Windstorm Insurance Association (TWIA) is Overexposed, Underfunded, and a Massive Potential Liability for Texas Taxpayers and Insurers.

TPPF Recommendations

- **5.1** Implement a file-and-use system for TWIA rates by amending Subsections 2210.351(c) and (d), Insurance Code.

- **5.2** Make TWIA a true provider of last resort by adding clear language to Subchapter E, Chapter 2210, Insurance Code, specifying that TWIA coverage is available only if an applicant cannot obtain coverage in the private marketplace.

- **5.3** Eliminate many of the rate-setting requirements found in Subchapter H, Chapter 2210, Insurance Code, including those specifying the precise experience data that must be considered and the requirement that rates must be uniform throughout the first tier coastal counties

Key Findings

- The number of TWIA policyholders increased from 68,756 in 2001 to 224,452 at the end of July 2008.

- As of the end of July 2008, TWIA's total exposure was $66.1 billion ($60.4 billion in direct exposure with an additional $5.7 billion in indirect exposure).

- TWIA member assessments and the Catastrophe Reserve Trust Fund can only cover about $2.3 billion of losses, much less than the potential losses from major hurricanes. Any additional losses would be paid from general state revenue funds.

Analysis

TPPF Recommendation 5.1: Implement a file-and-use system for TWIA rates by amending Subsections 2210.351(c) & (d), Insurance Code.

Implementing a file-and-use regime for TWIA rates would allow TWIA members to get rates to the windstorm insurance market more quickly, due to their not having to haggle over rates with the commissioner, prior to using the rates. The commissioner would, thus, be able to reject only rates already in use.

The result would be increased price competition and insurance availability. By reducing regulatory impediments to true competition in the insurance industry, consumers and capital markets would determine the appropriateness of rates.

Additionally, a file-and-use regime provides a greater opportunity for the use of actuarially-sound rates for windstorm coverage. At a time when inadequate rates have fueled a dramatic rise in the number of TWIA policyholders and, as a result, TWIA's exposure (see TPPF Recommendation 4.2), any measure that has the potential to bring to the windstorm market rates more closely priced according to the risk covered is a measure worth implementing, for the sake of insurers, Texas' general revenue funds, and Texas' taxpayers.

TPPF Recommendation 5.2: Make TWIA a true provider of last resort by adding clear language to Subchapter E, Chapter 2210, Insurance Code, specifying that TWIA coverage is available only if an applicant cannot obtain coverage in the private marketplace.

Although TWIA was intended to provide windstorm insurance coverage only to those who could not purchase insurance in the voluntary market, it is no longer an in-

surer of last resort. Fueled by the fact that TWIA does not operate as an insurer of last resort and by below-market rates, TWIA's residual market has seen a tremendous surge in its number of policies.

The number of TWIA policyholders increased from 68,756 in 2001 to 224,452 at the end of July 2008, and, as of the end of July 2008, TWIA's total exposure to potential claims was $66.1 billion ($60.4 billion direct exposure, $5.7 billion indirect exposure). In a recent five-month span, TWIA experienced an increase of nearly 30,000 business and residential policyholders.

Because TWIA is not designed to replace the private insurance market, this has created a scenario whereby rates do not adequately fund risk exposure. TWIA's purpose is "to provide Texas citizens adequate wind and hail coverage when it is not available in the insurance marketplace." While TWIA may have been intended to serve this residual market, i.e., be an insurer of last resort, it has become anything but that. Further, its unrealistically low rates have made TWIA an unbeatable competitor and have harmed the private market. Therefore, the first step toward offering realistic rates for wind insurance is to define TWIA as an "insurer of last resort."

According to TDI Rule 28 TAC Section 5.4606, "The purpose of TWIA is to provide windstorm and hail insurance coverage to residents and businesses in the designated catastrophe areas along the Texas coast that are unable to obtain such coverage in the voluntary market." However, the Code defines TWIA's purpose differently:

> An adequate market for windstorm, hail, and fire insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of this state.

The Code does not state TWIA is, or is meant to be, the state's provider of last resort. As such, the Code should be amended to reflect the language in the TDI Rule stating TWIA's purpose is to be the state's windstorm-insurance provider of last resort.

By clarifying its purpose, TWIA will be better able to offer more realistic and actuarially-sound rates, reduce exposure, and encourage customers to explore the voluntary market. In addition to defining its purpose, TWIA should take an approach to insurance similar to the FAIR Plan. In Texas, FAIR is a homeowners' insurance provider of last resort. Not only does FAIR charge higher rates than the voluntary market, but consumers are also not eligible for FAIR until they have been declined by at least two insurers in the private market. Establishing similar guidelines for TWIA would be a big step toward solidifying it as a true insurer of last resort.

Not only are TWIA's rates unreasonably low, but they also place policyholders at risk, in the event of a storm. By offering rates that reflect sound insurance principles, TWIA will slow its growth, decrease its exposure, and create an opportunity for more competition to enter the wind insurance market. The first step is to reiterate the purpose of TWIA as an "insurer of last resort" and not as a competitor in the marketplace.

TPPF Recommendation 5.3: Eliminate many of the rate-setting requirements found in Subchapter H, Chapter 2210, Insurance Code, including those specifying the precise experience data that must be considered and the requirement that rates must be uniform throughout the first tier coastal counties.

For more than a decade, TWIA rates have been dangerously inadequate. In the event of a major storm, TWIA would be unable to cover its losses, and even without a storm, inadequate rates serve as an unnecessary impediment to a competitive marketplace.

Chapter 2210 of the Code imposes rate-setting requirements on insurers, including a requirement that a certain number of years of experience be used to develop rates, as well as an instruction that certain combinations of TWIA and non-TWIA data be used to determine the catastrophe and non-catastrophe elements of rates.

Such burdensome regulations keep insurers from setting actuarially-sound rates most efficiently. Heavy-handed statutory requirements add time and expense to the rate-setting process, both of which ultimately harm ratepayers.

For more than a decade, TWIA rates have been dangerously inadequate. In the event of a major storm, TWIA would be unable to cover its losses, and even without a storm, inadequate rates serve as an unnecessary impediment to a competitive marketplace. In order to offer more realistic rates, TWIA rate reform should take the following courses of action:

First, change Texas law to require TWIA to use updated catastrophe modeling methods to calculate rates.

According to a recent report on Texas windstorm insurance, "hurricane loss modeling is widely accepted in worldwide insurance markets to determine the adequacy of rates for hurricane exposures in coastal areas. Unfortunately, these models have not been generally accepted by the TDI in TWIA and individual rate filings."[19] While hurricane models have proven to be reliable tools for rate setting, Texas insists on using 30 years of historical data to project future storms. This system may please some constituents who receive lower rates, but it is an unsound way to set rates.

Texas is fortunate that it has not been struck by a major hurricane in the past 30 years. However, the past is no guarantee for the future. According to TDI, "Weather forecasters predict an increase in hurricane activity this year and an above-average likelihood of a major hurricane striking along the Texas Gulf Coast."[20]

By relying on past experiences, TWIA will likely offer inadequate rates that leave consumers at risk in the event of the next big storm. Texas should, thus, update the methods by which TWIA calculates its rates to include catastrophe modeling.

Secondly, allow a larger benchmark within which TWIA can change its rates without commissioner approval.

Under the current system, TWIA must file for rate changes annually. However, per 2210.359(a) of the Code, TWIA rate changes cannot exceed 10 percent, unless they are approved by the commissioner. This statutory 10-percent cap should be eliminated.

Over the years, there has been a disconnect between what the commissioner approves and the rates needed to support an actuarially-sound system. In order to allow TWIA more flexibility to adapt to changing weather conditions and insurance issues, any reform should increase the current benchmark whereby TWIA can raise rates without seeking approval.

Such reforms would allow TWIA to operate more like a private insurer, free to respond to market and weather conditions. Increased rate flexibility will create a more solvent and financially responsible organization better benefiting consumers in the event of a major storm.

Thirdly, allow TWIA to differentiate rates based upon actual risk, rather than offering uniform rates in all first-tier coastal counties, as required by Section 2210.356(a) of the Code ("Each rate approved by the commissioner

In addition to being fairer, allowing rate variation within coastal areas to reflect actual risk for the specific area within a geographic area (i.e. territorial rating) will create a system whereby rates reflect sound insurance principles, rather than uniform pricing.

in accordance with this subchapter must be uniform throughout the first tier coastal counties"). This reform will allow TWIA to charge higher rates in higher-risk locations, while charging lower rates in lower-risk locations. Currently, many policyholders are being overcharged, while others are being subsidized.

In addition to being fairer, allowing rate variation within coastal areas to reflect actual risk for the specific area within a geographic area (i.e. territorial rating) will create a system whereby rates reflect sound insurance principles, rather than uniform pricing. Therefore, if TWIA will offer more adequate rates, it will reduce its exposure and create an incentive for companies to enter the market.

Finally, it is worth noting that Section 2210.355(c) of the Code requires rates to be "adequate." The potential multi-billion losses that TWIA's current funding mechanism cannot cover—and, thus, for which Texas' taxpayers are on the hook—due to the drastic rise in the number of TWIA policyholders and the resulting skyrocketing of TWIA exposure prove that TDI has neglected its statutory duty to ensure TWIA's rates are adequate.

Allowing insurers to calculate windstorm rates as they see fit, free from regulatory interference by TDI, is an easy way to improve the health of Texas' windstorm insurance market: TWIA's rates will move closer to actuarial soundness and, as a result, the skyrocketing of TWIA's exposure will be curbed. Ultimately, Texas' taxpayers stand to gain the most from this policy shift.

Sunset Review Commission Recommendations

Increase the number of public members on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.

This recommendation has the potential to further exacerbate the problem of inadequate rates for TWIA windstorm insurance, as public members and those appointed by the commissioner might be more willing to propose TWIA rates that are not based on risk but instead lower costs for coastal residents below the market rate. Inadequacy is the primary problem with TWIA rates today and the reason for the "crowding out" of private companies from the windstorm insurance market. The Foundation opposes this recommendation.

Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.

Assuming "a more traditional administrative approval process" means greater regulatory transparency and decreased unitary authority, then such a move may prove beneficial to the marketplace, if implemented with the Foundation's recommendation to move TWIA rates to a file-and-use system.

Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.

Engineer inspections are a layer of TDI's responsibilities that can afford to be removed, freeing up TDI resources for duties for which they are more appropriately suited.

Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.

Insurers should be able to consider all factors that will contribute to more actuarially-sound rate setting (see Issue 3, TPPF Recommendation 4.3).

In order to be the insurer of last resort it was created to be, and in order to implement rates adequate to ensure solvency, TWIA insurers must be given the flexibility to consider as many factors as possible, in order to charge actuarially-sound rates.

Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

As long as consumers are able to obtain windstorm insurance from TWIA as a first resort, TWIA will never be the insurer of last resort it is intended to be. Requiring proof of two windstorm insurance declinations is a positive step toward turning TWIA into an insurer of last resort.

The Code should be amended to reflect the language in the TDI Rule stating TWIA's purpose is to be the state's windstorm-insurance provider of last resort (see Issue 3, Analysis, TPPF Recommendation 4.2).

TDI Self-Evaluation Recommendations

Moderate insurance coverage costs through greater rating flexibility for the Texas Windstorm Insurance Association.

In order to be the insurer of last resort it was created to be, and in order to implement rates adequate to ensure solvency, TWIA insurers must be given the flexibility to consider as many factors as possible, in order to charge actuarially-sound rates (see Issue 3, TPPF Recommendation 4.3).

Increase the availability and affordability of … wind and hail insurance coverage.

TDI makes several recommendations under this heading, including;

- amending the provisions that allow the commissioner to designate additional catastrophe areas to provide flexibility for the commissioner to expand TWIA eligibility by classification or type of risk;
- establishing a windstorm reinsurance facility similar to the Florida Hurricane Catastrophe Fund to provide a stable and ongoing source of reinsurance to insurers, TWIA, and the Texas FAIR Plan Association (TFPA) for a portion of the hurricane losses incurred by those entities;
- providing for the phase-in of potential TWIA assessments over several years for new property insurance writers; and
- creating a rate-filing "safe harbor" that provides that a coastal rate change not exceeding 5 percent in a 12-month period following a storm is presumed reasonable.

While the last two recommendations propose minor tweaks to remedy the major over-exposure of TWIA and Texas taxpayers in the case of a storm along the Texas coast, the first two recommendations would greatly exacerbate the problem. The Foundation opposes these recommendations (see comments on TPPF Issue 5).

Endnotes

[1] Sunset Advisory Commission Staff Report on the Texas Department of Insurance and the Office of Public Insurance Counsel, (May 2008) 12.

[2] Sunset Staff Report, 9.

[3] Ibid., 11.

[4] Office of Public Insurance Counsel Self Evaluation Report (2007) 124, http://www.sunset.state.tx.us/81streports/opic/ser.pdf.

[5] Robert Michaels, "Competition in Texas Electric Markets: What Texas Did Right & What's Left to Do," Texas Public Policy Foundation (Mar. 2007) http://www.texaspolicy.com/pdf/2007-03-RR07-electric3-rm.pdf.

[6] OPIC Self Evaluation Report.

[7] Texas Department of Insurance Self Evaluation Report (2007) http://www.tdi.state.tx.us/reports/sunset/index.html.

[8] TDI Self Evaluation Report.

[9] Ibid.

[10] http://www.sunset.state.tx.us/81streports/tdi/tdi_opic.pdf.

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[12] Stephen P. D'Arcy, "Insurance Price Deregulation: The Illinois Experience," Deregulating Property-Liability Insurance, American Enterprise Institute-Brookings Institution Joint Center for Regulatory Studies (2002).

[13] Stephen B. Pociask, Joseph P. Fuhr, and Larry F. Darby, "Insurance Regulation: Market or Government Failure?," American Consumer Institute (2007) 8.

[14] http://www.govtrack.us/congress/bill.xpd?bill=h108-4662.

[15] Arthur B. Laffer, "Violate at Your Own Risk: The Immutability of Economic Laws," *Thinking Economically Lesson 1*, Texas Public Policy Foundation (Jan. 2008) http://www.texaspolicy.com/pdf/2008-ThinkingEconomically-Lesson1.pdf.

[16] http://www.tdi.state.tx.us/pubs/insight/200305.pdf.

[17] The findings of Table 1 are adjusted using the difference between gross nation product ant Texas' gross state product to account for differences in national versus state economic growth.

[18] Sunset Staff Report, 12.

[19] Jay A. Thompson, "The 2007 Texas Legislature: Legal Storm Clouds on the Horizon? What's Next for Property/Casualty Insurers in Texas," Thompson Coe Cousins & Irons, LLP (2006) 8.

[20] http://www.tdi.state.tx.us/consumer/storms/index.html.

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