


Summary

Texans use insurance everyday, whether to get a bumper fixed after a fender bender, get a yearly physical, or replace a roof on a house after a hail storm. Today, to help pay for unknown risks, consumers are often required by law or practice to purchase at least some of the many different types of insurance in the market: personal or commercial property or automobile, title, health, life, or annuity insurance. States primarily regulate insurance to protect consumers from financial harm by ensuring that companies offering insurance products are solvent, can pay for claims, and make good on coverage promised for the policy sold. In Texas, insurance regulation is especially critical due to the size of the state's market: companies collect about \$90 billion in insurance premiums each year.

The Sunset reviews of the Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) began among growing concerns about the availability and affordability of insurance of all types in Texas. Questions relating to what the State's role should be in ensuring both that consumers have access to affordable insurance and that insurance markets are competitive in Texas arose during the review. The Legislature has charged TDI with aspects of these functions. For example, the agency's role in overseeing statutorily created residual markets, which provide policies for Texans who have difficulty obtaining insurance, and in regulating the rates and forms that insurers offer consumers, indicate that the Legislature contemplated TDI having some role in these issues. However, the extent to which the State, and TDI, as the agency that regulates insurance, should be involved in ensuring that companies offer fair, competitive, and affordable insurance products to all Texans remains unclear.



TDI works well, but discussion is needed about the State's overall approach to insurance regulation.

Although these concerns were ever-present during the TDI review, Sunset staff determined that many of the long-standing questions regarding the State's role were outside the scope of a review aimed at evaluating the continuing need for TDI, and the effectiveness and efficiency of the agency's implementation of statutory programs. However, many of these questions directly relate to the agency's current functions, and staff was unable to completely sever the contemplation of these larger concerns from the review. To this end, the review focused on evaluating the agency's programs and recommending changes to improve the transparency and accountability of these programs. Many of the issues contained in this report, while focusing on the agency's current statutory responsibilities, set the stage for a more comprehensive discussion about the state of insurance in Texas by the Legislature.

In evaluating TDI's programs, Sunset staff found that the agency works well. For example, its financial regulation of insurance companies is effective, proactively identifying solvency concerns and working with companies to

address financial problems before consumers are adversely impacted. The review also found that TDI is effective in its efforts to help consumers resolve complaints against insurance companies relating to coverage and claims paid, assisting consumers in receiving an additional \$34 million in claims payments in fiscal year 2007.

In its assessment of TDI's regulation of property and casualty insurance rates, staff found that the agency's implementation of statutory changes to the rate regulatory system lacks transparency and can cause unpredictability in regulation. However, staff's analysis was confined to evaluating the system that is currently in place in statute; the recommendations contained in this report do not make judgments about the regulatory system itself, believing that the larger decision of whether to increase or decrease rate regulation is an issue to be considered by the Sunset Commission and the full Legislature, as necessary.

Similarly, staff's analysis of the continuing need for OPIC concluded that while consumer representation is important, the way that Texas regulates insurance no longer justifies a separate agency to advocate for consumers as a class in insurance matters. Because most insurance rates and forms are now developed by companies and submitted to TDI for review or approval, rather than promulgated through a hearings process at TDI, staff concluded that consumer representation functions would be more effective within TDI's regulatory regime than outside it. If the Legislature decides to regulate insurance rates in a different way, the independent advocacy role of OPIC may need to be preserved.

Staff also found that the current separation of duties between TDI and the Texas Windstorm Insurance Association (TWIA) limits the State's ability to oversee the Association's role as a market of last resort for windstorm insurance in Texas. Staff recognized that many of the issues related to TWIA's accountability link to its overall funding structure, which was outside the staff's scope of evaluating TDI. Instead, the recommendations contained in this report are confined to more clearly delineating the roles of, and relationship between, TDI and TWIA.

Sunset staff also chose not to make recommendations about what TDI's role should be in the broader issue of making health insurance available and affordable to the estimated 25 percent of Texans that do not currently have health insurance. However, Sunset staff found that while most insured Texans receive their health care through Preferred Provider Organizations (PPO) networks, the State does not have any regulatory authority over this key component of the health insurance market. With the potential for consumer harm, TDI would benefit from certifying PPOs to better understand how these organizations operate in Texas.

The Sunset review examined additional issues related to TDI's financial monitoring of title insurance agents, the equity of the maintenance tax system that funds TDI, the flexibility with which the Department can create and terminate advisory committees to assist it, and the need for additional regulatory tools at the State Fire Marshal's Office to protect Texans from fire hazards. These issues are described more fully within the report.

Finally, although TDI administers Texas' workers' compensation system, the Legislature postponed the Sunset review of TDI's Division of Workers' Compensation until 2011. Because of this, the staff review did not contemplate changes to the structure or administration of workers' compensation insurance, and these issues are not discussed in the report.

A summary follows of the Sunset staff recommendations on the Texas Department of Insurance and the Office of Public Insurance Counsel.

Issues and Recommendations

Texas Department of Insurance

Issue 1

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

Key Recommendations

- ◆ Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.
- ◆ Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.
- ◆ Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.
- ◆ 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.

Issue 2

TDI's Involvement in TWIA's Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.

Key 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.
- ◆ Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.
- ◆ Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.
- ◆ Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.
- ◆ Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Issue 3

The State's Lack of Regulation of Preferred Provider Organizations Does Not Correspond With Changes in the Texas Healthcare Market.

Key Recommendation

- ◆ Require all Preferred Provider Organizations to obtain a certificate of authority from the Texas Department of Insurance to operate in Texas.

Issue 4

TDI Cannot Effectively Regulate Title Insurance Without Independent Financial Examinations and More Comprehensive Reporting.

Key Recommendations

- ◆ Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.
- ◆ Require title agents to annually submit audited financial statements of operating accounts to TDI.
- ◆ Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Issue 5

The Statutory Cap on the Maintenance Tax of One Insurance Line Forces TDI to Inequitably Spread Costs Across Other Insurance Lines.

Key Recommendation

- ◆ Increase the life, accident, and health insurance maintenance tax cap to allow TDI to equitably cover the cost of this regulation.

Issue 6

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

Key Recommendations

- ◆ Eliminate all but two TDI advisory committees from statute.
- ◆ Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.
- ◆ Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Issue 7

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

Key Recommendations

- ◆ Require the SFMO to periodically inspect state-leased buildings.
- ◆ Require the SFMO to create a risk-based approach to conducting routine inspections of state buildings.
- ◆ Authorize the SFMO to charge a fee for inspections of privately owned buildings.
- ◆ Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

Issue 8

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

Key Recommendation

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

Issue 9

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

Key Recommendations

- ◆ Continue the Texas Department of Insurance for 12 years.
- ◆ Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

Office of Public Insurance Counsel

Issue 1

Texas Needs Consumer Representation in Insurance Regulation, But No Longer Needs a Separate State Agency to Advocate on Behalf of Consumers.

Key Recommendations

- ◆ 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.

Fiscal Implication Summary

None of the recommendations in this report would have a net fiscal impact to the State’s General Revenue Fund, since both TDI and OPIC are funded through taxes and assessments on insurers. However, one of the recommendations would cut 28 full-time equivalent positions from TDI, and others would have fiscal impact to the agencies’ appropriations patterns, as described below.

Texas Department of Insurance

- ◆ **Issue 2** – Transferring windstorm inspection responsibilities from TDI to TWIA would result in a reduction of \$1,545,559 in appropriations and staffing reductions of 28 full-time equivalents (FTEs). This reduction would be reflected in TDI’s appropriations but, due to the self-regulating nature of the Department’s funding, any savings would result in a reduction in maintenance taxes on insurers, and the costs insurers pass on to policyholders, but would not create a positive fiscal impact for the State.
- ◆ **Issue 3** – Registering PPOs would result in additional administrative costs to TDI, and may increase appropriation levels. However, the Department would be authorized to charge certification fees, to the level necessary to regulate PPOs, to offset the costs.
- ◆ **Issue 7** – Authorizing the State Fire Marshal’s Office (SFMO) to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office’s costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.
- ◆ **Issue 8** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

Texas Department of Insurance

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund, Account 36</i>	<i>Loss to the General Revenue Fund, Account 36</i>	<i>Net Effect to the General Revenue Fund, Account 36</i>	<i>Change in the Number of FTE's From FY 2009</i>
2010	\$1,545,559	(\$1,545,559)	0	-28
2011	\$1,545,559	(\$1,545,559)	0	-28
2012	\$1,545,559	(\$1,545,559)	0	-28
2013	\$1,545,559	(\$1,545,559)	0	-28
2014	\$1,545,559	(\$1,545,559)	0	-28

Office of Public Insurance Counsel

- ◆ **Issue 1** – Transferring OPIC’s functions to TDI would not have an overall net fiscal impact to the State. OPIC’s annual budget of \$1 million and its authorized 16.5 FTE positions would be transferred to TDI, and funded by the assessment authority also transferred from OPIC to TDI.

Summary of Legislative Action
S.B. 1007 Hegar (Isett)

Texas Department of Insurance

Senate Bill 1007 contained the Sunset Commission's recommendations on the Texas Department of Insurance (TDI), as well as additional statutory modifications made by the Legislature. However, the Legislature did not pass S.B. 1007. The Department was continued in separate legislation in the 1st Called Session, 81st Legislature. Senate Bill 2 continues the agency until 2011, and requires the Sunset Commission to focus its next review of the Department on the appropriateness of its previous recommendations to the 81st Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine the Department and make recommendations to the 82nd Legislature.

Summary of Legislative Action
S.B. 1001 Deuell (Isett)

Office of Public Insurance Counsel

Senate Bill 1001 contained the Sunset Commission's recommendations on the Office of Public Insurance Counsel (OPIC), as well as additional statutory modifications made by the Legislature. However, the Legislature did not pass S.B. 1001. The Office was continued in separate legislation in the 1st Called Session, 81st Legislature. Senate Bill 2 continues the agency until 2011, and requires the Sunset Commission to focus its next review of the Office on the appropriateness of its previous recommendations to the 81st Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine the Office and make recommendations to the 82nd Legislature.

