SENATE COMMITTEE
ON
BUSINESS AND COMMERCE

PROPERTY AND CASUALTY
AND AUTOMOBILE INSURANCE

INTERIM REPORT TO THE
79TH TEXAS LEGISLATURE

Senator Troy Fraser
Chairman
Senator Kip Averitt
Vice Chairman
Senator Ken Armbrister
Senator Kim Brimer

Senator John Carona
Senator Craig Estes
Senator Mike Jackson
Senator Eddie Lucio
Senator Leticia Van de Putte

The Texas Senate
Business and Commerce Committee

December 1, 2004

The Honorable David Dewhurst
Lieutenant Governor of Texas
The Capitol, Second Floor East
Austin, Texas

Dear Governor Dewhurst:

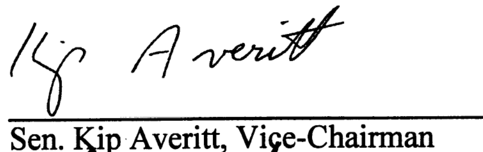
On behalf of the Senate Committee on Business and Commerce, I hereby submit the interim report on property and casualty and automobile insurance for consideration by the 79th Texas Legislature.

This report was prepared pursuant to interim committee charges numbers seven and eight. Interim charge number seven charged the Committee to study the implementation of SB 14, 78th Legislature, as it relates to the automobile insurance market to ensure that the legislation meets the Legislature's goals of ensuring a stable market. Make recommendations for improving consumer satisfaction and expanding the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

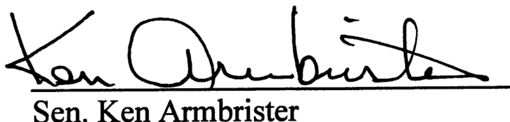
Interim charge number eight charged the Committee to study the implementation of SB 14, SB 127, and HB329, the property and casualty insurance reform and mold remediation measures passed by the 78th Legislature, to determine whether the legislation meets the Legislature's goals of reducing homeowners' insurance costs and stabilizing the market. If not, make recommendations for reducing homeowners' insurance costs. Examine implementation of new policies relating to the use of credit scoring and its impact on consumers and the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

Respectfully Submitted,

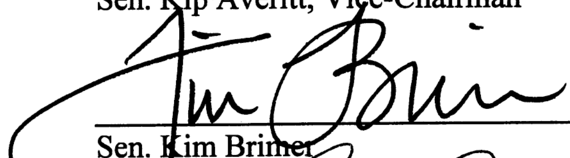
Sen. Troy Fraser, Chairman



Sen. Kip Averitt, Vice-Chairman

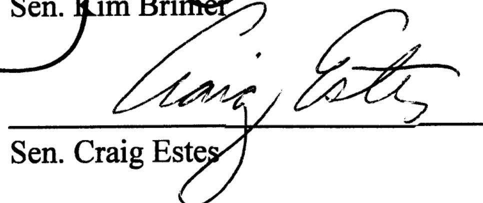


Sen. Ken Armbrister



Sen. Kim Brimer

Sen. John Carona



Sen. Craig Estes

Post Office Box 12068, Austin, Texas 78711
512/463-0365 FAX 512/463-1613 Dial 711 For Relay Calls

Sen. Mike Jackson

Sen. Eddie Lucio

Sen. Leticia Van de Putte

Interim Charges Numbers Seven and Eight

Executive Summary

During the interim of the 78th Legislature, the Lieutenant Governor issued the following charges to the Senate Business & Commerce Committee (the Committee):

- Interim charge number seven charged the Committee to study the implementation of SB 14, 78th Legislature, as it relates to the automobile insurance market to ensure that the legislation meets the Legislature's goals of ensuring a stable market. Make recommendations for improving consumer satisfaction and expanding the market. Coordinate activities with the Joint Property and Casualty Insurance Legislative Oversight Committee.

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On October 25, 2004, the Committee met jointly with the House Committee on Insurance and the Property and Casualty Insurance Legislative Oversight Committee and heard testimony from Jose Montemayor, the Commissioner of Insurance, and Rod Bordelon, the Public Insurance Counsel.

Public testimony was given by Beaman Floyd representing Texas Coalition for Affordable Insurance Solutions, Ware Wendell representing Texas Watch, Bonnie Shelley and George Kelemen representing AARP, and Hugh Higgins representing himself.

Growth in Non-rate Regulated Markets (Pre-78th Legislative Session)

Prior to the 78th Legislative Session, insurance premiums for homeowners' insurance policies increased from 14 percent to 200 percent for many homeowners. This increase caused both distress and outrage among Texas homeowners who unexpectedly received notice of significant rate hikes on their policies. Complaints to the Texas Department of Insurance (TDI) regarding rate increases for residential property insurance increased from 283 in 2001 to more than 2,400 through the end of 2002.

A combination of elements led to the increasing rates. Those elements included such factors as a weakened economy, investment losses by insurers, large legal settlements, lack of policy and coverage options for consumers, certain underwriting practices, allegations of fraud in remediation, and the emergence of unexpected claims, such as mold.

Additionally, Texas has had more catastrophic events than any other state over the past 50 years. Hurricanes, hail storms, floods, tornadoes, and high winds all cause significant damage -- and all occur regularly in Texas. In 2001, insurers paid more for claims than they collected in premiums plus investment earnings.

Because of a loophole in state law that allowed insurance companies to move business from a regulated company to an unregulated company, the commissioner of insurance did not have control over the vast majority of insurance rates. By Fall 2002, 95 percent of Texas homeowners' policies were sold under these non rate-regulated companies, therefore, allowing the insurers to charge rates higher than those approved by TDI.

As for the private passenger auto insurance market, TDI indicated that since 1985, the percent of the private passenger auto business written in the non-rate regulated market had almost doubled, rising from 18 percent in 1985 to 37 percent in 2002. Complaints to TDI regarding automobile insurance excessive rates increased from 307 in 2001 to 473 through the end of 2002.

Homeowners' Insurance Regulation

The movement toward deregulation of homeowners' insurance rates was in process for many years. In the four years (1987-1991) preceding the enactment of the flex rating system in 1991, the percent of the Texas homeowners' market in non-rate-regulated companies jumped from 20 percent to 54 percent, an increase of 34 percentage points. In the four years following the enactment of the benchmark system (from 1991 to 1995), the percent of the Texas homeowners' market in non-rate-regulated companies climbed from 54 percent to 68 percent; an increase of only 14 percent. From 1996 to 2001, the percent of the Texas homeowners' market in non-rate-regulated companies jumped from 70 percent to 95 percent.

This move toward deregulation of homeowners' insurance rates resulted from exemptions from rate regulation that were allowed under Texas law for Lloyd's plan companies and

reciprocals and interinsurance exchanges. Insurance companies writing residential property insurance that were organized as reciprocal exchanges and interinsurance exchanges (reciprocals) and Lloyd's company plans were not subject to the flex rate regulation in Article 5.101 of the Insurance Code. Articles 18.23 and 19.12 of the Insurance Code provided that Lloyd's plan companies and reciprocals, respectively, were exempt from the operation of all insurance laws except as provided in Chapters 18 (currently chapter 941) and 19 (currently chapter 942) of the Insurance Code or unless a law by its own terms specifically provided that the law applied to these types of insurers. Article 5.101 did not specifically state that the article applied to these types of insurers.

The result was that these companies did not have to file their homeowners' rates with TDI, and there was no requirement that the rates charged by these insurers comply with commonly used rate standards. Unlike the rates used by the insurers that were subject to the flex rating regulation of Article 5.101, the homeowners' rates of these companies did not have to be adequate, just, reasonable, and not excessive for the risks to which they applied. By 2002, 95 percent of the homeowners' insurance market was not subject to these rate standards.

Because 95 percent of the homeowners' market was not rate regulated, the vast majority of those companies writing homeowners' insurance in the state were able to increase their rates to whatever level they desired. And because so few companies were writing new homeowners' business in Texas, there were no competitive market forces to hold rates down.

One primary factor in rising insurance rates resulted from the rising frequency and cost of mold and water-related claims. TDI data shows that the total number of mold-related water claims filed with the top five homeowners' insurance writers in Texas in 2000 was 7,083. In 2001, the number of claims filed with the top five homeowners' insurance writers increased to 37,202 claims, a jump of 425 percent. During the period of January 2000 through December 2001, insurers' estimated incurred losses and allocated loss adjustment expenses associated with mold damage claims exceeded $1 billion dollars.

Forms Regulation

Lloyd's plan insurers and reciprocals, however, were subject to the homeowners' policy form regulation as provided in Article 5.35 of the Insurance Code. Under this article, the companies were permitted to use only those policy forms that had been adopted or approved by the commissioner.

The standard promulgated form for homeowners' insurance was the HO-B form. This form provided that insurers cover all water claims regardless of whether the claim was the result of a sudden and accidental event or a slow and steady event that could lead to extensive mold damage.

It was anticipated that rates would stabilize as a result of TDI's approval of residential property insurance policy forms that did not include coverage for mold remediation and were designed to reduce insurers' losses for mold-related claims. According to TDI's 2002 Annual Report, TDI anticipated a reduction in losses for expensive and unregulated procedures that

contributed to unexpected and dramatic losses and premium increases.

Automobile Insurance

Similar trends in rate increases were occurring in the private passenger automobile market. Insurers were writing an ever-increasing amount of business in their non-rate-regulated affiliates. While on average, the rate increases for auto insurance were significant they were not of the magnitude of the increases in homeowners' insurance rates.

Companies organized as county mutual insurers and writing automobile insurance were not subject to the flexible rate system in Article 5.101 of the Insurance Code. Article 17.22 of the Insurance Code exempted county mutual insurers from the operation of all insurance laws unless the law was specifically made applicable to the insurers.

Article 17.25 of the Insurance Code required a county mutual insurer to file a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge to be charged to its policyholders or those applying for policies. However, there was no law that required the rates used by county mutual insurers comply with the rate standards that must have been met by companies regulated under the flex rate system, i.e., adequate, just, reasonable, and not excessive for the risks to which they applied.

Based on TDI estimates, some 34 percent of the private passenger auto insurance market was not subject to these rate standards. This could have gone as high as 50 percent if three of the five major carriers, who had already moved significant portions of their auto business into the non-rate regulated county mutual company in their group, converted their entire book of business into their county mutual.

According to TDI's 2002 rate guide, almost all insurers were charging more than the benchmark rate promulgated annually by the commissioner. Factors affecting the increase in auto rates included rising costs of medical expenses and auto repair.

78th Legislative Session Action

Texas Governor Rick Perry designated insurance reform an “emergency issue” at the opening of the 2003 regular legislative session. This declaration enabled lawmakers to immediately address issues such as rate regulation, prompt payment of health provider claims, prompt settlement of water damage claims, and increasing the number of Texans with health insurance.

Senate Bill 310

The purpose of this bill was to require, on a one-time basis, that residential property insurers immediately file with the commissioner rates and supporting data, including current rates and estimated rates for the upcoming six-month period. The information obtained in this immediate and one-time filing was to be for the purpose of preparation of a summary report to the 78th Legislature. The report was, in turn, intended to inform the legislature as to whether the rates currently being used in the market were just, reasonable, adequate, not excessive, and not unfairly discriminatory and to assist in the determination of the most effective and efficient regulatory system for homeowners' insurance.

TDI’s Final Report, issued on March 28, 2003, stated that individual company rates “could be reduced anywhere from 0 percent to 25 percent from their current rates.” The department’s determination on how much rates might be excessive was based primarily on three factors: 1) loss trend assumptions; 2) target net rate of return, or profit, when calculating the premiums; and 3) accounting for coverage differences and the corresponding reduction in risk exposure.

With the data from this report complied and analyzed, the Legislature concluded it was necessary to move forward with regulation of the insurance market and enacted several laws in an attempt to create a more stable insurance market.

Senate Bill 14

Senate Bill 14 struck a balance between providing protection for consumers by applying rate standards and creating a more flexible, competitive environment for the insurance industry. It created a regulatory system giving the commissioner of insurance the authority to act in a timely fashion to ensure that rates are fair and reasonable.

The new law requires all homeowner and automobile insurers to file their rates with TDI, along with justification for the rates. It also requires all insurers to file their credit scoring models with TDI to ensure no unfair discrimination is taking place.

Other provisions of the new law include:

- All home and auto rates, including Lloyds’ homeowners' and county mutuals’ auto rates, must be reasonable, not excessive, adequate and not unfairly discriminatory. TDI may take action on rates that fail this standard and require refunds of excess premiums from the date the rate becomes excessive.
- Special filing provisions for small county mutuals serving high-risk, nonstandard auto

markets and small homeowners' writers serving niche markets and underserved areas.
• Prior approval of forms with approval by law if no objection is raised by the Department, beginning 2004 for homeowners' and auto policy forms. Companies may file their own forms for approval. TDI will review filed forms and may disapprove any that violate state requirements.
• Prohibiting use of credit scoring as sole criteria for adverse action. Insurers must file credit scoring models with TDI. Models are public information. Methodology cannot include race, color, religion or national origin.
• Disclosure is required when credit scoring contributes to adverse action. Insurer must reconsider adverse action when consumer appeals.
• TDI, by rule, may limit rate impact of credit scoring.
• Property and Casualty companies must file underwriting guidelines and submit updates to TDI after changing underwriting guidelines for personal lines policies.
• Underwriting guidelines for residential property and auto insurance are subject to the Public Information Act.
• Guidelines must be sound and not unfairly discriminatory.
• Rate standards apply to all previously unregulated carriers such as Lloyds carriers, reciprocal exchanges and county mutuals.

House Bill 329 and Senate Bill 127

These bills were enacted to address the handling of water damage claims, because that was the underlying cause behind the mold crisis. By addressing the cause of the problem, the Legislature hoped to reduce the losses being incurred by the insurance companies. When losses decrease, there should be a corresponding decrease in the rates.

HB 329 was designed to protect consumers from abuses by untrained mold remediators. Prior to the 78th Legislative Session, there was anecdotal evidence that untrained and unqualified people were using questionable methods to clean and repair mold damage. This bill required all remediators to be licensed by the Texas Department of Health (now part of the Department of State Health Services) before engaging in mold assessment or mold remediation. In addition, the bill prohibited underwriting decisions by residential property insurers based on previous mold damage or a claim for mold damage if the applicant has property eligible for coverage under a residential property policy, the property has had mold damage, mold remediation has been performed on the property, and the property was remediated as evidenced by a certificate of mold remediation or independent inspection.

SB 127 prohibited insurance underwriting decisions based on mold or water damage claims that had been remediated by requiring that underwriting guidelines relating to a water damage claim or claims be filed with the commissioner of insurance and those guidelines adhere to rules adopted by the commissioner of insurance. And, it prohibited an insurer from using appliance-related claims that had been certified as properly repaired and inspected as a basis for determining rates and whether to issue, renew, or cancel an insurance policy. This prohibition does not apply if three or more claims have been paid in a three year period. SB 127 also required that public adjusters who, for compensation, act on behalf of a homeowner in negotiating the settlement of a claim under the homeowners' residential property insurance

policy. By licensing these individuals, the Legislature hoped to end the practice of some untrained and unscrupulous people (many of whom were from out-of-state) who were advising consumers on how to handle mold claims. In many instances, the claim amounts were artificially high, thus increasing the fee that was paid to the adjuster.

Implementation by Texas Department of Insurance

Senate Bill 14 enacted several changes in the way TDI regulates insurance. The discussion on the implementation of SB 14 will focus on the major components of the legislation affecting the regulation of homeowners' and personal automobile insurance. This section of the report will address issues related exclusively to homeowners' or automobile insurance, then cover issues that apply to both lines of insurance.

Homeowners' Insurance

Senate Bill 310, 78th Regular Session, became effective on February 25, 2003, and required TDI to provide a summary report to the Legislature on homeowners' rates. Among the several findings of the SB 310 Report were that a portion of the rate increases occurring in Texas during 2001-03 were excessive.

In response, SB 14 required TDI to review insurers' homeowners' rates. If the rates were deemed to be in violation of the statutory rating standards, the commissioner was authorized to modify an insurer's rates accordingly. This initial review and modification was designed to restore rates to a level that could be justified in order to provide immediate consumer relief. Insurers were required to file their residential property rates and supporting information by July 1, 2003. TDI reviewed 61 insurance company group filings, a total of 90 companies, and ordered 30 company groups to lower their rates. Ordered rate reductions varied, with a maximum reduction of -31.0 percent and the average reduction being -12.5 percent. The resulting savings to policyholders was estimated to be over $500 million during the 12 months following the rate reductions. The table on the following page lists the rate reduction orders by company.

Twenty-two companies took a one-time reduction of the ordered rate reductions and six companies took a partial phase-in approach. Two company groups appealed their rate orders to State District Court.

The rationale behind the partial phase-in approach for the six companies was to provide for a reduction in rates to fair levels without having to engage in prolonged litigation, and to get the savings to policyholders as quickly as possible. In insurance rate making, rates must cover prospective, or future, losses and expenses. Given the prospective nature of establishing rates, there may be differences in actuarial opinions and approaches as to what the correct rate should be. The phase-in approach minimizes the dispute about the future and, therefore, litigation. Subsequent to the initial reduction, a "true-up" reduction was taken based on actual performance relative to what TDI had projected would occur. If actual performance was commensurate with what TDI had projected, then additional rate reductions would be taken. Additionally, refunds or future premium credits would be granted to policyholders with policies effective on or after September 7, 2003.

2003 Rate Reduction Orders

(*) Denotes phased-in reduction

Company	2002 Premium ($Millions)	Rate Change %	Rate Change ($Millions)
AAA	11	0.0%	-
* Allstate	721	-18.2%	(131)
American National	45	-12.0%	(5)
American Standard	35	-10.0%	(4)
Amica	38	-12.0%	(5)
ASI Lloyds	8	0.0%	-
Beacon	5	0.0%	-
Chubb	108	-4.0%	(4)
CMI Lloyds	16	0.0%	-
Colonial	20	0.0%	-
Columbia	6	0.0%	-
* Consolidated Lloyds	31	-16.7%	(5)
* Continental	35	-20.0%	(7)
Farmers IE, Fire IE	502	-17.5%	(88)
Foremost	6	-20.0%	(1)
Hanover	13	-31.0%	(4)
Hartford	48	-9.0%	(4)
Horace Mann	12	-18.0%	(2)
* Kemper	18	-13.0%	(2)
Liberty	49	-7.0%	(3)
Metropolitan	25	-22.0%	(6)
* National	21	-16.5%	(3)
Nationwide	145	-11.6%	(17)
* Republic	44	-20.0%	(9)
SAFECO	64	-15.0%	(10)
Service Lloyds	15	0.0%	-
State Farm	1,288	-12.0%	(155)
Texas Select	188	0.0%	-
Travelers	193	-8.7%	(17)
Trinity	29	-9.5%	(3)
TX Farm Bureau	77	-1.5%	(1)
USAA	270	-7.0%	(19)
Total	**$ 4,086**	**-12.5%**	**$ (504)**

Contested Rate Reductions
Of the more than $500 million in reductions, State Farm was ordered to reduce rates by 12 percent and Farmers by 17.5 percent, for a total reduction of $243 million, or 48 percent of the total rate reductions ordered. The current combined market share of the two company groups represents approximately 40 percent of the total premium in the Texas homeowners' insurance market.

State Farm and Farmers appealed the commissioner's rate reduction orders to State District Court. On January 21, 2004, the District Court ruled that Article 5.26-1, Texas Insurance Code (Residential Property Insurance Initial Rate Filings; Rate Reductions), does apply to reciprocal exchanges, including Farmers. The court also ruled that Chapter 2001, Texas Government Code (Administrative Procedures Act), did apply to the hearings TDI held before the commissioner, notwithstanding the timing and appeals established under SB 14. On November 8, 2004, Presiding Judge Suzanne Covington granted the motions for summary judgment requested by State Farm and Farmers Insurance Exchange. In that summary judgment, Judge Covington declared the procedural appeals process unconstitutional. The ruling in no way addressed the assertion by the commissioner that both Farmers and State Farm were (and are) charging excessive rates.

On November 19, 2004, TDI initiated administrative actions to demonstrate that the rates charged by both State Farm and Farmers are excessive and that refunds of the excessive premium should be issued directly to policyholders. TDI will seek a refund of the excessive premium plus 10 percent interest. These actions by TDSI represent new rate actions, separate from the September 2003 reduction orders in which 30 insurers were ordered to reduce rates.

At the time this report was printed, no appeal to the 3rd District Court had been made, but the Committee anticipates that an appeal will be made. Additionally, the Committee did not receive detailed testimony or information regarding either company's current rates or the commissioner's rate reduction orders.

Changes in Premium
The Committee heard testimony on increases in homeowners' insurance premiums subsequent to the enactment of SB 14. As previously noted, at least 40 percent of the market has not seen rate relief due to litigation on the part of two major insurance companies. There are several other reasons for changes in premium that may impact policyholders with other companies.

First, it is important to understand the difference between premium and rates. SB 14 established regulatory authority over *rates*, which is a unit price that is used to compute a person's premium. There are other factors, therefore, that affect premium but are not part of the rate regulated by TDI.

For instance, increases in the replacement value of the dwelling may be necessary in order for the insurance on a home to keep pace with inflation and maintain full replacement value. Replacement value is the amount needed, in current dollars, so that the destroyed or damaged

property is restored to previous condition. This contrasts with actual cash value policies, where the payout is based on the cost of replacement adjusted for depreciation. Replacement coverage is especially critical in fire losses, where a total loss of a house would require a new and comparable house to be built. For example, it is most likely that more money would be needed to construct a replacement house in 2004 than what was paid for the original house in 1994. The replacement costs can be driven by many factors, such as additions or improvements to a house, as well as conventional inflation indices that apply to all homeowners when the costs of building materials increase.

Explanations for increases in premium that *are* due to rates include reductions in discounts and rate increases taken prior to the enactment of rate regulation under SB 14. Changes in discounts can occur for several reasons; for example, a reduction or elimination of a discount may occur because an insured poses a greater risk than the previous year, triggering a rate change for the individual. Additionally, policies renewed in late 2003 would have reflected rate increases that occurred in 2003 - after their last renewal in 2002 - but prior to the effective date of SB 14. In this instance, the premium paid starting in 2003 will be effective for the policy that expires in 2004, at which time their renewal should reflect the ordered rate reductions and other subsequent changes. In the case of State Farm and Farmers, rate reductions were never taken as a result of the companies' election to appeal the commissioner's rate reduction orders in State District Court; therefore, a large segment of the market renewing in 2004 has not realized a reduction in rates.

Lastly, as indicated in other sections of this report, TDI provided the Legislature with a summary on homeowners' insurance rates in Texas pursuant to SB 310, 78th Regular Legislative Session. Among the conclusions of the SB 310 report:

> "….revised estimate is that homeowner's rates have increased statewide an average of 45% since 2000. **A portion of the increase would have occurred under a rate-regulated market due to deterioration in experience."** (emphasis added)

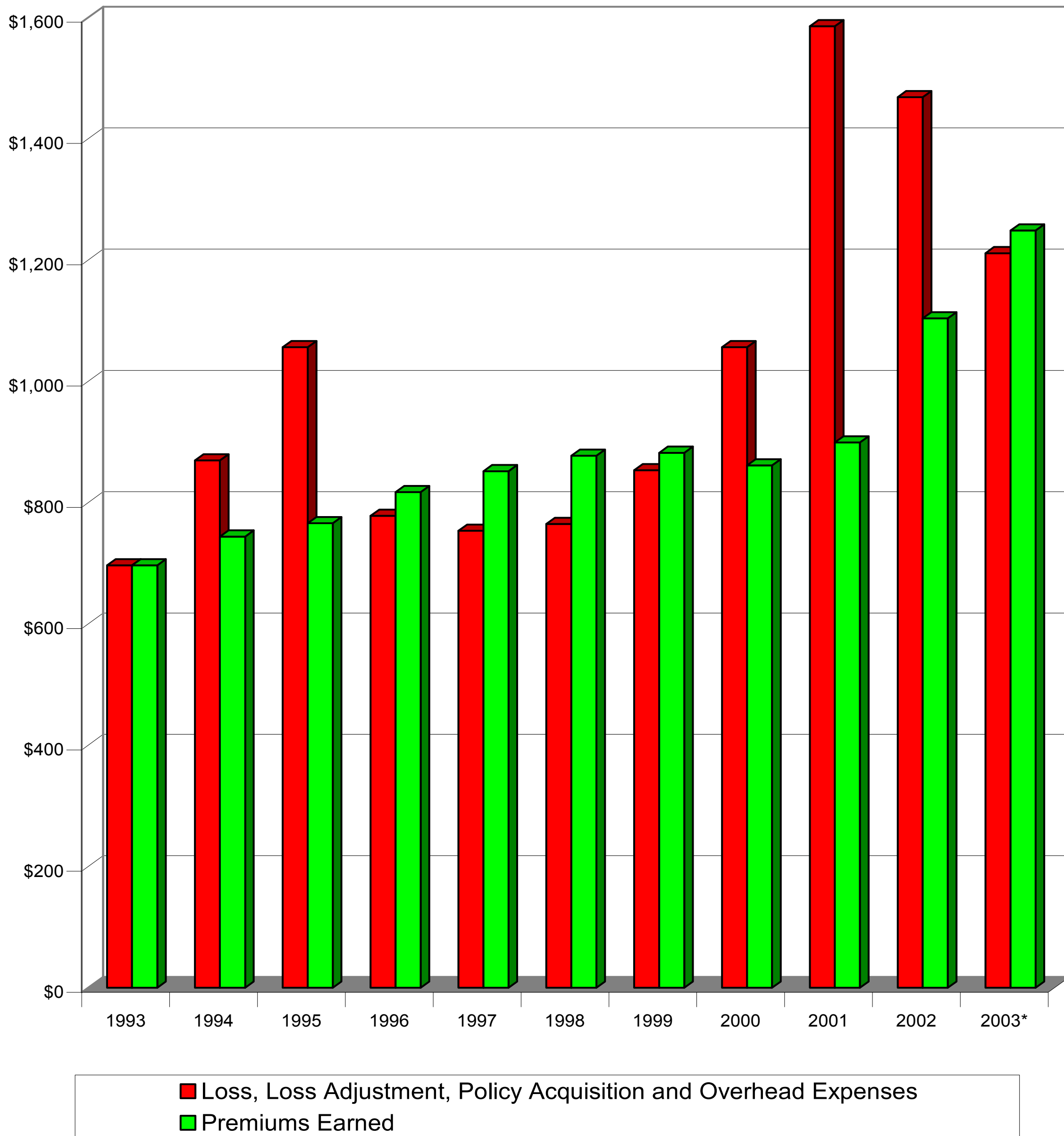
The report further concludes that:

> "In 2002, companies began converting from the Commissioner promulgated forms …policyholders are paying more for less coverage; **however, overall rates would have gone up even if the changes in the coverage had occurred earlier.** …It is estimated that rates could be reduced from 0% to 25%. (emphasis added)

The sum of these conclusions indicates under-pricing prior to 2002, and a subsequent over-correction on the part of the industry as a whole. The nature of the pricing environment in Texas is best illustrated by reviewing the average loss costs and premium per policy (Figure 1) and the changes in causes of loss (Figure 2). Figure 1 illustrates how the losses can greatly exceed premiums from one year to the next. Figure 2 illustrates the surge in water-related losses beginning in 2000, and the volatile nature of the weather related losses from year to year.

Figure 1

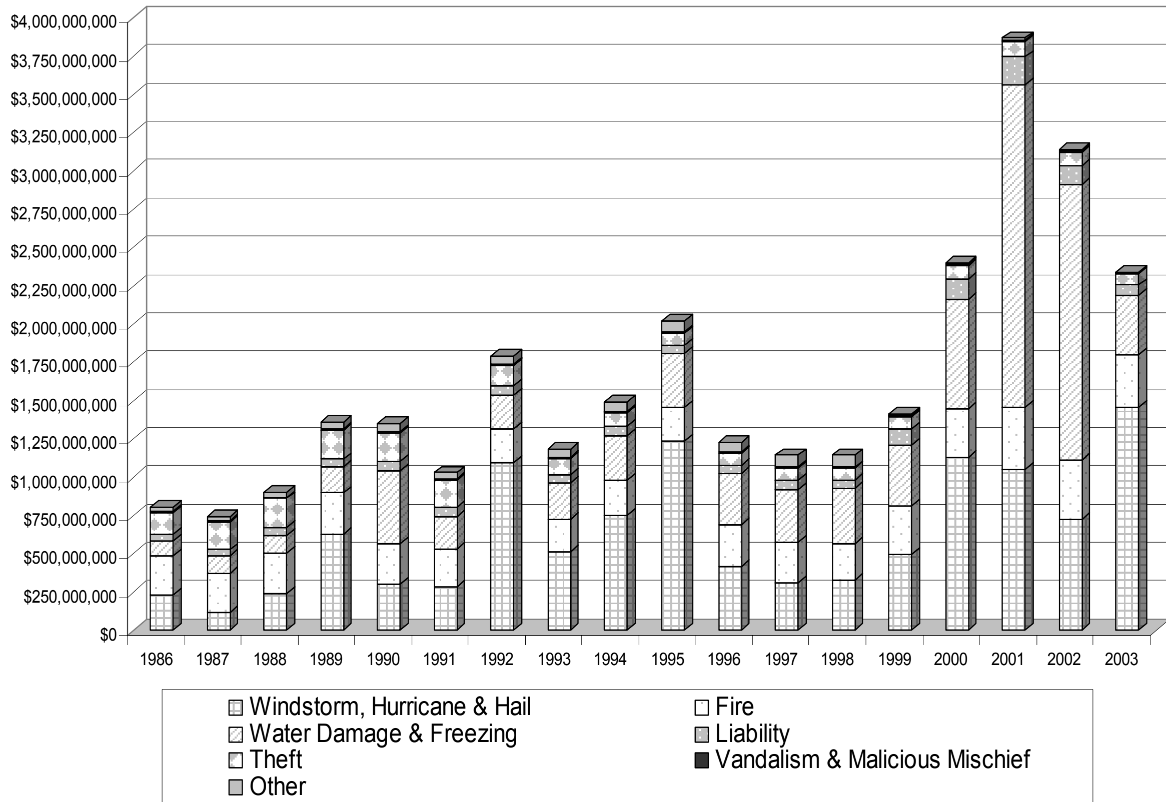
Texas Department of Insurance
Homeowners
Average Costs And Premium per Policy
1993-2003



*2003 values are estimates
Sources:
Residential Property Statistical Plan (TICO); P / C Experience by Coverage and Carriers (Pg 14); Insurance Expense Exhibits

Figure 2

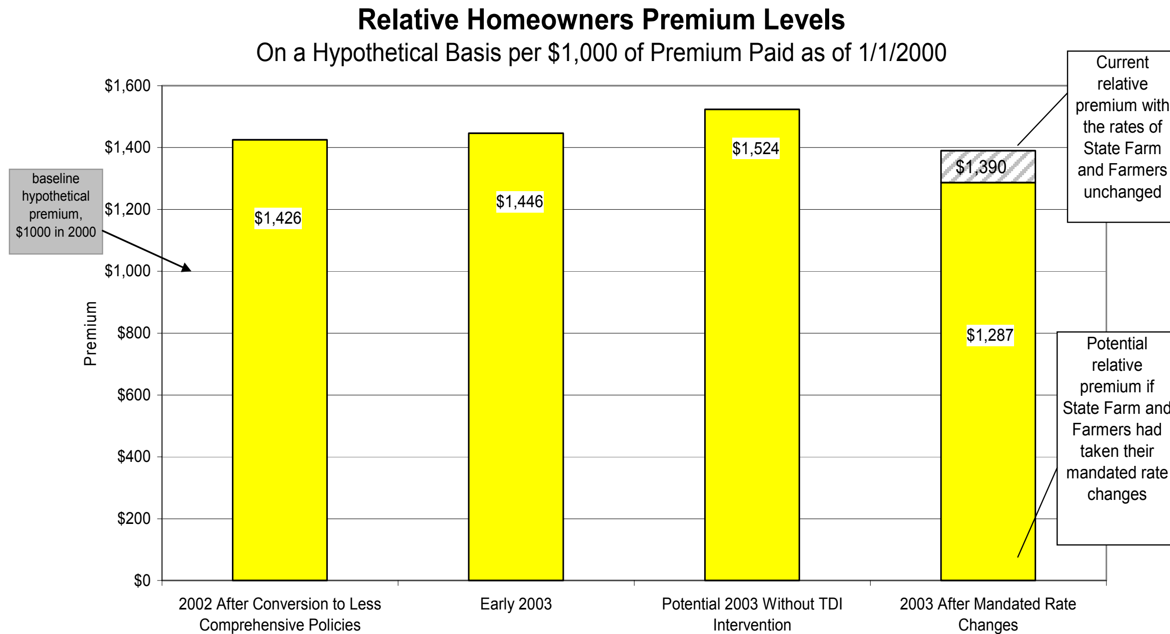
Texas Department of Insurance
Homeowners'
Loss by Cause 1986-2003



Source: Residential Property Statistical Plan (TICO)

The pricing environment in Texas does not fully explain the premium levels in Texas. As previously stated, there was an over-correction on the part of the industry that lead to the commissioner's rate reductions in 2003. Still, it is arguable that a person's perception is that premiums seem high when compared to previous years' premiums and levels of coverage. SB 14, however, governs the rates, which have in fact been reduced to justified, though not historic, levels. To have ordered reductions to historic levels could have resulted in a violation of the statutory rating standards that requires rates to be adequate, likely resulting in litigation that would have further delayed rate relief.
The concepts underlying the changes in premium is best illustrated by Figure 3, below, which assumes a hypothetical policy of $1000 in annual premium and the change in premium level prior to and after the enactment of SB 14.

Figure 3



* Top 10 Companies, industry average.
* Policies currently sold vary by company. They include enhanced versions of the HO-A, the state's minimum peril policy; various national forms that have been approved for use in Texas; as well as the traditional HO-B, the states most comprehensive form.
* From 2000 to 2002, rates increased an average of 42%. As cited in the SB 310 report, a portion of this increase would have occurred under a rate-regulated market due to deterioration in homeowners experience, even in the absence of mold claims.

Homeowners' Insurance Rate Filings
SB 14 provides that, after the initial rate reductions, insurers may file for changes in rates subject to prior approval by TDI. For small and new insurers entering the Texas market, rates may be changed on a file and use basis. The requirement that larger insurers are subject to prior approval is currently in effect and expires December 1, 2004, at which time rates will be governed on a file and use basis.
Since the subsequent rate reductions in homeowners' insurance, TDI has received over 450 residential property rate filings. In general, these filings included:

- New rates for new programs or products
- Revised rates for revised products or forms
- 15 percent territory rule variances
- Credit scoring support
- Rate increases for a few companies for which TDI did not mandate a rate reduction
- Voluntary rate decreases from numerous small companies

New Insurers and Policy Forms
Subsequent to the passage of SB 14, TDI approved for use eight new policy forms and 103 separate endorsement filings for individual insurer groups. These approvals represent increased options for coverage. In the past, coverage options were limited mostly to the state promulgated forms. At least nine new insurers not previously writing in Texas have either filed for a license or have filed for permission to use policy forms (if license previously granted).

Private Passenger Automobile
The private passenger automobile market did not have the same economic and regulatory issues that characterized the homeowners' insurance market prior to SB 14. To date, the major personal lines writers in Texas remain engaged in the automobile market. Further, based on information presented by the commissioner during the October 25, 2004, hearing, competition in the automobile market is strong and there is a downward trend in claim frequency. This downward trend suggests the likelihood for greater price competition due to potentially lower losses.

Prior to SB 14, rate-regulated insurers in Texas were subject to the benchmark system, where companies were subject to the state-promulgated benchmark rate and manuals that served as the basis for determining premiums. As envisioned under SB 14, insurance companies that were once part of the benchmark rating system are beginning to file their own rates and rule manuals.

Starting December 1, 2004, all previously non rate-regulated automobile insurers must file rates with TDI under Article 5.13-2, Texas Insurance Code, and those companies currently operating under the benchmark system will be regulated under the same statute. This creates a level playing field by moving all entities, both regulated and un-regulated, under a file and use system that provides for flexibility in the development and regulation of rates and rating plans.

The Legislature provided an incentive for county mutual insurers to continue writing non-standard risk through reduced filing requirements and an exemption from risk (policyholder) assignments from the Texas Automobile Insurance Plan Association (TAIPA). The reduced filing requirements and TAIPA exemption apply to county mutual companies affiliated with insurer groups with less than 3.5 percent market share and that write exclusively non-standard, high-risk drivers. Under SB 14, TDI published the current benchmark rate as the required Standard Rate Index. All rates must be 30 percent above the published index in order for a county mutual to be considered an exclusive non-standard writer.

Homeowners' and Automobile Insurance

Filing Requirements

TDI held a public meeting on September 9, 2004, to receive public comment on an informal draft rule governing file and use filing requirements under Article 5.13-2, which take effect December 1, 2004. The rule will specify requirements for policy form and rate filings for property and casualty lines of insurance, including homeowners' and automobile insurance. The rule was posted in the Texas Register for formal comment on October 18, 2004, and the public hearing is scheduled for November 30, 2004.

Use of Credit Information

There are several key dates in the implementation of regulations affecting credit scoring.

- September 9, 2003 – Credit scoring models used prior to the passage of SB 14 required to be filed with TDI
- January 1, 2004 – Use of credit scoring required to meet consumer protection provisions regarding limitations of use and appeals processes
- March 1, 2004 – Actuarial support for differences in rates due solely to credit scores required to be filed with TDI
- December 31, 2004 – Credit scoring report due to the Texas Legislature

SB 14 established the authority to review credit scoring models. At this point, the understanding of credit models, including the design and use has improved as a result of SB 14. For example, a model used by one company may only contain 10 variables from the credit history report and is used for both homeowners' and automobile insurance. Another company, however, may have a model that contains 30 variables from the credit history report or use separate models for automobile and homeowners' insurance.

Credit scoring models are open to the public. To date, more than 48 individual open records requests for one or more credit scoring models have been processed by TDI. Copies of the non-copyrighted material are provided on request. While copyrighted material (i.e., trade secret) is also subject to public disclosure, viewing of the material is conducted at TDI offices.

Twenty-five different credit scoring models have been filed for residential property policies,

18 of which are currently being used by insurers in Texas. Thirty-two different models have been filed for private passenger automobile policies, 21 of which are currently being used by insurers in Texas. ChoicePoint, Inc., Fair, Isaac and Company, Inc. and TransUnion, LLC offer a number of credit models for use. In addition, some companies developed their own models. As noted, models can differ by the line of insurance, category of business, number of credit variables involved and formulae used in calculations. Further, credit scoring models can be used at different stages in the insurance transaction:

Underwriting – acceptance or declination of risks
Tiering – eligible risk is further classified into a rating category
Rating – through the use of discounts or surcharges

The following tables provide a breakdown of credit model filings as of August 4, 2004. This count includes companies using credit information for rating, tiering and/or underwriting.

PRIVATE PASSENGER AUTOMOBILE

Vendor	# of Companies
ChoicePoint, Inc.	55
Fair, Isaac and Company, Inc.	52
TransUnion, LLC.	0
Company Developed Model	22
Total	129

RESIDENTIAL PROPERTY

Vendor	# of Companies
ChoicePoint, Inc.	33
Fair, Isaac and Company, Inc.	17
TransUnion, LLC.	0
Company Developed Model	7
Companies reporting use of credit information, but no model (i.e. review credit for bankruptcies, foreclosures, etc.)	4
Total	61

Legislatively Mandated Credit Study

SB 14 mandated a study regarding credit scoring. The study will analyze whether the use of credit scoring results in a disproportionate impact on any class of individuals such as race, income, ethnicity, age, gender, etc. Further, the study will determine whether there is a correlation between insurance scores and losses in the models currently used by insurers. If there is a correlation, the study will examine how much of the correlation is due to other

variables aside from a credit score.

Six companies using nine models - six automobile and three homeowners' - will be evaluated, with the sample size approaching, if not exceeding, over two million policyholders. The University of Texas and Texas A&M University will provide peer review and technical advice, though the study itself will be performed by TDI staff. The Texas Department of Public Safety has provided information related to ethnicity and driving history on a policyholder level, allowing for a level of analysis that goes beyond studies that use a unit of geography, such as zip code.

Data calls related to the study were issued May 10, 2004, and to date, TDI has received requested data from all participating insurers. Staff is in the process of analyzing policy-level data and obtaining credit information from related credit bureaus/vendors. The report must be submitted to the Legislature before January 1, 2005.

Credit Scoring Rules

The commissioner adopted rules pursuant to SB 14 regarding the disclosure and limits on rating impact due to credit scoring. The current rules, 28 Texas Administrative Code §5.9940 & 5.9941, Disclosure Form Required Concerning Use of Credit Information and Differences in Rates Charged Due Solely to Difference in Credit Score, became effective on November 30, 2003. The disclosure rule requires companies to provide a disclosure notifying potential and current policyholders if credit scoring will be used, including a summary of consumers' rights and protections. For the portion of rate differences due solely to credit scoring, the rule requires filing of actuarial justification for allowable differences in rates.

While the credit scoring filings have been reviewed, the testimony provided to the Committee by Commissioner Montemayor indicated future findings on the use of credit scoring as a result of the legislatively mandated credit study. Further amendments to the current rule or legislative recommendations may be forthcoming.

Rating Territories

SB 14 provides that insurers may not subdivide a county into rating territories if the rate for any subdivision is greater than 15 percent higher than the rate used in any other subdivision of the county, unless the commissioner allows a greater rate difference by rule. Pursuant to SB 14, the commissioner adopted 28 TAC §5.9960, effective November 30, 2003. In accordance with this rule, territorial rate differences must be based on sound actuarial principles and supported by data filed with TDI. Filings for support of territorial rating differences were due March 1, 2004.

For homeowners' insurance, 20 companies subdivide one or more counties within the 15 percent rate difference limit. Of these 20 companies, seven of them previously subdivided one or more counties outside the 15 percent rate difference limit and moved to or within the 15 percent limit. Six companies subdivide one or more counties outside the 15 percent limit. For automobile insurance, the rate difference limits among county subdivisions initially affects county mutual insurance companies, given the statutory history of non rate-regulation.

It is anticipated that rate-regulated carriers will file rating manuals that allow for territory-based rate differences among county subdivisions as the transition away from state-promulgated rate manuals and rules continue. Eight out of the 23 county mutual insurance companies subdivide counties within the 15 percent limit. Fifteen out of the 23 county mutual insurance companies subdivide counties outside the 15 percent limit.

Findings

Based on presentations by Commissioner Montemayor and the Office of Public Insurance Council, personal lines insurance markets in Texas are improving in terms of availability and price competition. The actions taken pursuant to SB 14 have accelerated market improvements, bringing about initial rate reductions in homeowners' insurance and implementing more modern market regulation that is consistent with other states.

Recommendations

1. As mentioned earlier in this report, SB 14 required TDI to do an extensive report on the use of credit information by insurers. TDI was instructed to use information obtained from insurer filings and other information obtained by TDI. The report will include the following and will be presented in a non-attributable manner to protect the identity of the individual insurers:

- a summary of the use of credit information by insurers
- a description of insurer practices and the effect of different credit models
- the number of consumer complaints submitted to TDI
- a description of favorable and unfavorable effects on consumers
- any disproportionate impact on any class of people
- legislative recommendations
- any other information considered important by TDI

At the Committee hearing on October 25, 2004, Commissioner Montemayor stated that this particular study was the largest study of its kind currently being undertaken by any state department of insurance. Further, many other states are eagerly awaiting the outcome of this reporting.

Therefore, due to the extensive nature of this report and the fact that TDI is required to submit legislative recommendations regarding the findings of this report, it is possible there will need to be legislation to enact the recommendations submitted by TDI.

2. Chapter 5, Article 5.142, Section 14, Insurance Code (passed as part of SB 14) states that "If on final appeal the court upholds the commissioner's determination as to rates, the insurer shall refund the difference in overcharged premium to each policyholder, plus interest. The interest rate is the prime rate plus one percent as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday."

Due to the current nature of the stock market and other investment opportunities, the Committee finds that the interest penalty originally included in SB 14 might not be considered punitive by those insurers who overcharge policyholders.

Therefore, to further discourage insurers from overcharging policyholders and to promote consumer protection, the Committee recommends that the 79th Texas Legislature approve stricter interest penalties for insurers found to have been overcharging homeowners' and auto policyholders.

3. As major changes to automobile insurance statutes take effect on December 1, 2004; the Committee recommends that the Legislature continue to monitor the implementation of the reforms regarding automobile insurance.

Appendix A

Committee Minutes

MINUTES
JOINT HEARING

SENATE COMMITTEE ON BUSINESS & COMMERCE
Monday, October 25, 2004
10:00 a.m.
E1.030

*****

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce was held jointly with the House Committee on Insurance and the Property and Casualty Legislative Oversight Committee on Monday, October 25, 2004, in Room E1.030 at Austin, Texas.

*****

MEMBERS PRESENT:
Senator Troy Fraser, Chairman
Senator Kip Averitt, Vice Chairman
Senator Kim Brimer
Senator Craig Estes
Senator Mike Jackson
Senator Leticia Van de Putte

MEMBERS ABSENT:
Senator Kenneth Armbrister
Senator John Carona
Senator Eddie Lucio, Jr.

*****

A joint hearing of the Senate Committee on Business and Commerce, House Committee on Insurance, and the Property and Casualty Legislative Oversight Committee was held. Chairman Fraser and Chairman Smithee shared presiding duties. At 10:13 a.m. Chairman Fraser called the Senate Committee on Business and Commerce and the Property and Casualty Legislative Oversight Committee to order. Chairman Smithee called the House Committee on Insurance to order. The following business was transacted:

Chairman Fraser welcomed everyone to the hearing and asked if any of the Committee members had any comments. Senator Jackson made opening remarks.

Upon completion of Senator Jackson's opening remarks, Chairman Fraser called Jose Montemayor, Commissioner, Texas Department of Insurance (TDI), to testify before the Committees. Commissioner Montemayor gave an update on rates, use of credit information, filing of credit models, the legislatively mandated credit study, and rating territories.

Following Commissioner Montemayor's testimony, Chairman Fraser called Rod Bordelon, Public Insurance Counsel, to testify. Mr. Bordelon testified that SB 14 has been an unqualified success.

Upon completion of Mr. Bordelon's testimony, Chairman Fraser opened public testimony and called Beaman Floyd of the Texas Coalition for Affordable Insurance Solutions. Mr. Floyd testified and responded to members' questions.

Chairman Fraser then called Ware Wendell of Texas Watch and Bonnie Shelley of AARP. Mr. Wendell stated that the penalties need to be implemented for companies that fail to comply with TDI rate reductions ordered in August 2003 and that the insurance marketplace needs more informed consumers. Ms. Shelley also testified and responded to members' questions.

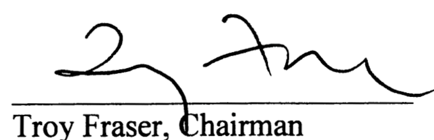
Following Mr. Wendell's and Ms. Shelley's testimony, Chairman Fraser called Hugh Higgins, who represented himself. Mr. Higgins testified and responded to members' questions.

Upon completion of Mr. Higgins' testimony, Chairman Fraser called George Kelemen of AARP. Mr. Kelemen testified and responded to members' questions.

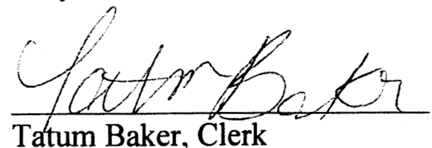
At the conclusion of Mr. Kelemen's testimony, Chairman Fraser closed public testimony.

There being no further business, at 12:58 p.m. Chairman Fraser moved that the Senate Committee on Business and Commerce and the Property and Casualty Legislative Oversight Committee stand recessed subject to the call of the Chairman. Without objection, it was so ordered.

There being no further business, at 12:58 p.m. Chairman Smithee moved that the House Committee on Insurance stand recessed subject to the call of the Chairman. Without objection, it was so ordered.



Troy Fraser, Chairman



Tatum Baker, Clerk

WITNESS LIST

Business & Commerce Committee
October 25, 2004 -10:00 A.M.

Credit Scoring Models

ON: Higgins, Jr., Hugh (Self), Austin, TX

Insurance

ON: Bordelon, Rod Public Insurance Counsel (Office of Public Insurance Counsel), Austin, TX
Floyd, Beaman Lobbyist (Texas Coalition for Affordable Insurance Solutions), Austin, TX
Kelemen, George Director (AARP), Austin, TX
Montemayor, Jose Commissioner (Texas Department of Insurance), Austin, TX
Shelley, Bonnie (AARP), Austin, TX
Wendell, Ware Policy Director (Texas Watch), Austin, TX

Appendix B

History of Homeowners' and
Personal Auto Rate Regulation

History of Homeowners' and Personal Auto Rate Regulation through the 77th Texas Legislature

INTRODUCTION

The history of the regulation of insurance rates in Texas contrasts significantly to that of other states. As noted by one regulator, "Almost from inception, the pattern of regulation in Texas set it apart from the other states by providing for government development of insurance rates."[1] Although the history of the business of insurance in Texas pre-dates its rate regulation and despite the fact that Texas homeowners' and auto ratemaking authority is marked with many transformations in the organization and structure of that authority, the almost 100 years of rate regulation can be summarized as follows: a short lived homeowners' use-and-file rating system from 1909 to 1910; homeowners' rate promulgation from 1910 to 1991 with prior-approval deviations allowed in the later years of this time (starting in 1957); prior-approval auto rate regulation from 1927 to 1937; auto rate promulgation from 1937 to 1991 with prior-approval deviations allowed in the later years of this time (starting in 1971); and, for both homeowners' and personal auto, a flexible benchmark rating system from 1991 to 2003.

The following brief history outlines the evolution of homeowners' and personal automobile insurance ratemaking systems in Texas, describes the changes in organization and structure of that regulatory authority, and provides a chronological overview of the major legislative enactments reviewed in this history. The history of rate regulation begins in 1909 with fire insurance. In 1991, the legislature adopted a flex rating system for both homeowners' and automobile insurance, which in the last few years has led to more and more of the homeowners' and personal auto policies being underwritten by non rate-regulated carriers.

EARLY HISTORY

Late 1800s: Insurance, Statistics, History, and Agriculture

State regulation of the insurance business in Texas dates back to 1874[2] when the 14th Legislature passed a law regulating business and financial requirements of life and health insurance businesses and granting supervisory authority over insurance to the State Comptroller of Public Accounts. In 1874, only four of the 61 companies doing insurance business in Texas were domestic companies. Until the 1876 State Constitution was adopted, Texas insurance corporations were created by special act in the various

[1] "History and Authority of State Board of Insurance," State Board of Insurance staff memo to Board Chairman Paul T. Wrotenbery, October 5, 1989.

[2] The primary source for the information on the early history of the Texas Department of Insurance is the "Texas Department of Insurance History," Texas Department of Insurance web site, www.tdi.state.tx.us.

legislative sessions. These domestic companies, which were mostly fire and marine insurance companies, competed with the financially stronger and more experienced out-of-state companies. As a result, most of them either went bankrupt or had to be reinsured and taken over by the out-of-state insurers.

The first state agency created with the oversight of the insurance business as one of its primary purposes was established two years later. In 1876, the 15th Legislature created the Department of Insurance, Statistics, and History. In addition to insurance oversight responsibilities, the commissioner was charged with keeping information and statistics on the state's population, wealth, commerce, and trade; as state historian, the commissioner was responsible for the maintenance of the state's historical record, including maps and correspondence. In addition, the commissioner also served as state librarian and superintendent of public grounds and buildings.

From 1876 until 1923, the Department underwent numerous structural and operational changes. In 1887, the 20th Legislature added agriculture to the commissioner's authority and renamed the agency the Department of Agriculture, Insurance, Statistics, and History. The business of insurance continued to grow at the turn of the century.

Early 1900s: Department of Insurance and Banking

By the end of 1900, 138 licensed companies of all types of insurance operated in Texas, and premium income reached almost $10 million. In 1905, the regulation and supervision of state banks was added to the commissioner's authority when the first state banking act was passed.

In 1907, the 30th Legislature created the office of Commissioner of Agriculture. All duties relating to agriculture were moved from the old department, which was renamed the Department of Insurance and Banking. In 1923, the 38th Legislature created the Department of Insurance and removed all other areas of regulation from under the insurance department's purview. The Banking Department was created as a separate department headed by a separate commissioner.

Beginning in 1909 when the first rating board was created and lasting until 1927, the Department's oversight responsibilities for the business of insurance were separate from the authority of the various rate regulatory bodies that operated during those years. However, from 1909 to 1923, the Commissioner of Insurance and Banking, and from 1923 to 1927, the Commissioner of Insurance, served as the chair of the rate regulatory body. The Department's oversight functions were finally combined with those of the rate regulatory body in 1927 by the 40th Legislature with the creation of the Board of Insurance Commissioners.

1909 – Fire Insurance Rating Board

The first rate regulation in Texas came in 1909 in the area of fire insurance. The 35th Annual Report of the Commissioner of Insurance and Banking for the Year 1909-1910

described conditions that apparently led to the passage of legislation that enacted the first insurance rating body in Texas, the Fire Insurance Rating Board. The report states that fire insurance companies at the time were "prohibited by the Anti-trust Statute from combining their experience or jointly making surveys, regulations, and rates with a view of measuring the fire hazard of any risk or city." According to the report, rates for fire insurance were set and charged at the level that the insured "would stand, and there were practically no inducements for better protection nor cleaner premises." Nor were there any penalties for allowing unsafe conditions. Discrimination in fire insurance rates was apparently widespread and the amount of loss by fire in Texas was "increasing rapidly from year to year, both in total amount and per capita."

Other sources indicate that rashes of highly competitive rating were driving rates down and raising concern about the solvency of the growing insurance industry. For example, a particular incident of competitive rating in 1904 in San Antonio, referred to as the "four-hour rate war," is believed to have garnered the attention of Texas legislators. In addition, one historical analysis observes that, in contrast to the present day perspective that rate regulation is primarily a consumer protection issue, at least as important to regulators in the first part of the 20th Century was the question of how to keep insurers from harming themselves.[3] It was decided that one way to do this was to limit competition among insurers by limiting the range of premiums each company could offer.

Thus, the 31st Legislature passed in 1909 an act[4] that created the Fire Insurance Rating Board (FIRB) and gave the new Board the power to approve or disapprove fire insurance rates or require the filing of new ones. The Act required every fire insurance company doing business in Texas to file with the FIRB "general basis schedules showing the rates on all classes or risks insurable by such company in this State, and all charges, credits, terms, privileges and conditions which in anywise affect such rates, or the value of the insurance issued to the assured. . . ." The FIRB was given the authority to determine whether rates were either "excessive or unreasonably high" or "not adequate to the safety or soundness of the company granting the same" and to direct those companies to "publish and file a higher or a lower rate as shall be commensurate with the character of the risk." This first very early and short-lived rating system appears to have been a version of the use-and-file system (i.e., the rates were filed after they were in use and were subject to FIRB review, and the FIRB was granted the authority to require the companies to charge a higher or lower rate if the rates did not comply with the statutory standards.).

[3] *A Brief History of the Texas Department of Insurance* by Bruce McCandless III, on file at the Texas Department of Insurance Library, 2001, p. 37.

[4] Acts 1909, 31st Legislature, 1st Called Session, ch. 18.

1910 – State Insurance Board

The 1909 Act was repealed in its entirety in 1910 by the same legislature that passed it. The 31st Legislature in the 4th Called Session enacted a more comprehensive law which replaced the FIRB with the State Insurance Board and authorized the new Board to set maximum fire insurance rates.[5] Excerpts from the 35th Annual Report describe the problems encountered by the FIRB in implementing the rate regulatory authority authorized in the 1909 Act:

> The general basis schedules of the companies are inconsistent in many respects, and. . .many individual risks remain ridiculously high, while others are clearly too low.
>
> The collection of fire insurance premiums under a consistent schedule of rates is the only equitable plan. Practically all authorities on political economy agree that fire insurance is a tax upon the public even though collected and distributed by private enterprise, and therefore being a tax should be assessed equally. Schedule rating aims to accomplish this result, by establishing standards for various classes of risks and providing charges or penalties for deviation from such standards, the charges being in proportion to the fire hazard.
>
> Not only is this an equitable method of distributing this burden, but it has proven the most efficient means of reducing the fire waste.
>
> The [Fire Insurance Rating] Board believes that, under the operation of the State Insurance Board Law that becomes effective December 10th, next, it will be possible for a schedule of rates to be devised, which will not only evenly and equitably distribute the fire premiums according to the hazard, but will encourage a higher class of construction, and cause the removal of hazards to such an extent that the fire waste of the State per capita will be reduced annually instead of increasing, as it has been for the past five years. This will reduce the cost of insurance, and thereby lighten the burden up on our people.

Consequently, to address more rigorously the concerns raised in the annual report about the inconsistency in the general basis schedules filed by the companies and the resulting problems and to ensure that "there may be more reasonable and just insurance rates in Texas", the 1910 Act extended the authority of the newly created State Insurance Board (SIB) to "prescribe, fix, control, and regulate rates of fire insurance." While the 1909 Act merely required companies to submit their schedule of fire insurance rates for approval by the FIRB, the 1910 Act required the SIB to make and prescribe general basis schedules, together with rules and regulations, for determining maximum specific rates to be used by the fire insurance companies. The 1910 Act also required every insurance company writing fire insurance policies within this State to file with the SIB its application of the promulgated general basis schedule to the specific risks of the State and the specific rates obtained thereby. This filing was to be made within a reasonable time after the adoption and promulgation of the general basis schedules and the rules and

[5] Acts 1910, 31st Legislature, 4th Called Session, ch. 8.

regulations for applying the general basis schedules. The maximum specific rates were not effective until approved by the SIB. The SIB was authorized to approve, or reject, alter or amend the maximum specific rates or any part thereof. Under the Act, companies could write fire insurance at a lower rate than the maximum so long as they filed a statement of such reduction with the SIB. Thus, the 1910 Act imposed much greater state regulatory control over the rates charged by companies writing fire insurance in Texas than the short-lived 1909 Act.

1913 – State Fire Insurance Commission

Even greater state regulatory control over fire insurance rates was enacted in 1913 when a new law was passed that largely repealed the 1910 law and replaced the SIB with the State Fire Insurance Commission (SFIC).[6] Under this law, the SFIC was authorized to promulgate a maximum rate of premiums to be charged or collected by all fire insurance companies doing business in the state. No longer promulgating the general basis schedules and rules and regulations for use by the companies in their determining of the maximum specific rates for specific risks, the state rate regulatory body was now required to actually promulgate maximum premium rates. Companies were prohibited from charging premiums in excess of the maximum promulgated rate but were allowed to write insurance at a rate less than the maximum promulgated by the SFIC, "provided, that when insurance is written for less than the maximum rate, such lesser rate shall be applicable to all risks of the same character situated in the same community." The SFIC would operate until 1927.

1913 – Reciprocals Authorized; 1921 – Lloyd's Plans Authorized

Reciprocal or interinsurance exchanges were first authorized by law in 1913.[7] These companies are individuals, partnerships, and corporations called "subscribers" who exchange contracts of insurance among themselves, with each insured effectively insuring fellow policyholders. The subscribers are generally represented by an attorney-in-fact who facilitates the exchange of policies and who provides general management support. First authorized by law in 1921,[8] Lloyd's plan insurers are formed by individuals, partnerships, or associations of individuals, called "underwriters" operating on the Lloyd's plan, who individually or collectively assume insurance risks. They may or may not be insureds themselves. They may be represented by an attorney-in-fact or other representative who acts on their behalf to execute and bind policies. Both Lloyd's plan companies and reciprocals can be licensed to write any line of insurance except life insurance.

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[6] Acts 1913, 33rd Legislature, ch. 106.

[7] Acts 1913, 33rd Leg., p. 210, ch. 109, eff. July 1, 1913.

[8] Acts 1921, 37th Leg., p. 238, ch. 127, eff. June 10, 1921.

The initial role of both Lloyd's plans and reciprocals was as small independent entities organized to write business for specific groups or specialized risks. Up until 1955, Lloyd's plan companies and reciprocals had total rate and form freedom for property insurance. In 1955, the legislature imposed limited regulation on these types of companies, including subjecting them to specific insurance laws by reference and to policy form control for property insurance. However, no rate regulation was imposed in 1955. In 1991, the legislature enacted a law that subjected reciprocals and Lloyd's plans writing automobile insurance to the benchmark flex rate system and required them to use standard promulgated auto insurance forms.

FIRST MAJOR RESTRUCTURING

In 1927, the 40th Legislature enacted a law[9] that restructured the regulatory authority over the State's insurance business. This restructuring included the creation of a new Board of Insurance Commissioners (BIC) to implement the responsibilities of the Department of Insurance, which had been renamed in 1923 when the Department of Banking was separated from the Department of Insurance and Banking.[10] The BIC would also implement the responsibilities of the State Fire Insurance Commission (SFIC), which had operated as the fire insurance ratemaking authority since 1913. Under this law, "all the powers, duties and prerogatives heretofore vested in or devolving upon the Commissioner of Insurance or the State [Fire] Insurance Commission or any member thereof as now constituted by statute" were vested in the new BIC. The BIC consisted of a Life Insurance Commissioner, who served as chair; a Fire Insurance Commissioner, and a Casualty Insurance Commissioner. Each Commissioner had independent control of his or her respective divisions. There was, however, no change in the fire insurance rating authority. In accordance with the functions previously granted to the SFIC, the BIC was responsible for the promulgation of maximum premium rates for fire insurance. The Fire Insurance Commissioner supervised the rate regulation and determined the maximum premium rates for fire insurance. Though the 1927 act provided that the three-member board was required to operate as a whole with a majority vote of the members necessary to take official action, according to a 1958 Texas Research League study, until the enactment of new legislation in 1957,

> . . . the functions of the Insurance Department had traditionally been divided among three virtually autonomous divisions known as the 'Life,' the 'Fire,' and the 'Casualty' Divisions. . . . The Board acted jointly in conducting formal hearings, **in promulgating rates determined by the individual Commissioners,** and in other formal actions largely based on decisions made by the separate Commissioners. . . .The Board of Insurance Commissioners failed to act as a board. Instead, each Commissioner ran his own show. Each division operated as an independent department with almost no overall supervision. [emphasis added]

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[9] Acts 1927, 40th Legislature, ch. 224.

[10] Acts 1923, 38th Legislature, 3rd C.S., ch. 19.

Thus, it appears that at least for some period of time between 1927 and 1957, if not for the entire time, the Fire Insurance Commissioner actually determined the maximum premium rates for fire insurance with the board serving as a rubber stamp.

The first BIC chairman, R. B. Cousins, Jr., remarked on the need to combine and streamline the Department of Insurance and the SFIC:

> The performance of the several duties of the two department[sic] were so inter-dependent and inter-related that the effort to operate them as a unit resulted in a considerable duplication of effort, working of cross purposes, and lost motion.

He also explained the reasoning behind the creation of the three-member board. The Texas Constitution prohibited any officer of the state from having a term longer than two years unless a board was created. With such a board, each board member could serve for six years provided that the terms were staggered so that every two years one-third of the members' terms expired. Thus, the legislature created the new three-member board "so as to provide a harmonious working Department of Insurance, whereof the members would have terms of office of six years which would give them a long enough time to become acquainted with the duties of the office and to become intelligent and vital factors in the supervision of the insurance business of the state." Although the three-member board concept remained operational until 1993, the legislature passed an act in 1957 that unified the independent operating three-commissioner Board of Insurance Commissioners into the State Board of Insurance.

FIRE INSURANCE RATING FUNCTIONS EXPANDED

The 42nd Legislature in 1931 expanded the rating functions of the Fire Insurance Division of the BIC to include insurance against loss by lightning or tornado or windstorm or hail.[11] In 1945, the 49th Legislature further expanded the rating functions to include allied lines written by fire insurance companies (e.g., loss by smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of waters of the ocean or it tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion, leakage of sprinklers, pumps, and numerous others).[12]

[11] Acts 1931, 42nd Legislature, ch. 180.

[12] Acts 1945, 49th Legislature, Ch. 161.

PERSONAL AUTOMOBILE RATE REGULATION

The impact of automobiles on both the insurance industry and insurance regulation was significant.

> The biggest development in the insurance industry in the first half of the 20th Century involved the phenomenal growth of the automobile market. In Texas, given the state's vast expanses and primitive public transportation systems, cars quickly became a necessity. The ascendance of the automobile led surprisingly to a booming business in auto insurance – and to considerable work for the Board of Insurance Commissioners.[13]

1927 –Prior Approval Rate Regulation

In 1927, the same year that the Legislature combined the Department of Insurance and the State Fire Insurance Commission into the Board of Insurance Commissioners (BIC), the Legislature also enacted prior-approval rate regulation for automobile insurance.[14] Any insurer writing automobile insurance business in this State was required to submit its classification of risks and corresponding premium rates to the BIC for approval before use. The Casualty Insurance Commissioner supervised the rate regulation (see discussion under the section on "First Major Restructuring" on the autonomy and power of the individual commissioners from 1927 until 1957). The statutory standards for approval were "just, reasonable and adequate" for the risks to which they apply "and not confiscatory as to the class of insurance carriers authorized by law to write such insurance in this State."

The prior-approval system for automobile insurance operated for ten years. However, the 1927-1928 Annual Report of the Board of Insurance Commissioners made it clear that there were problems with the law from the very beginning:

> The [1927] Automobile Insurance Law as written is far from satisfactory, not only for its failure to provide funds for administration, but because it is a departure from the principles underlying the Texas Fire and Workmen's Compensation Law. It is very doubtful if the Casualty Insurance Division can ever satisfactorily administer the present Automobile Law and the Workmen's Compensation Law together, built as they are on contrary principles. The Automobile Insurance Law should be amended and changed by the Legislature to eliminate its defects.

1937 – Uniform Promulgated Rates

Apparently, the purported defects of the 1927 law were addressed in 1937 when the 45th Legislature passed an act requiring the BIC to promulgate rates of premiums to be

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[13] McCandless III, p. 36.

[14] Acts 1927, 40th Legislature, ch. 253.

charged by all insurers writing insurance on motor vehicles in this State.[15] This act provided that the BIC

> . . . shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plan, designed to discourage losses from fire and theft and similar hazards and to take account of the peculiar hazards of individual risks, and an experience rating plan designed to encourage the prevention of accidents, and to take account of the peculiar hazards of individual risks, **provided that only one such plan shall be fixed or promulgated for each form of insurance hereunder**. . . .the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable, and adequate rates of premiums. [emphasis added]

According to one historical analysis, the 1937 amendments erased ambiguities in the 1927 law and made it clear that uniform, promulgated rates were required. In another historical analysis, the *History and Development of Insurance Law in Texas*, Wm. J.R. King, also observed that the Legislature determined that "uniform, as opposed to competitive, should prevail as to the rates," and that while the Board was empowered to regulate the rates, this power contained no prohibition against the Board prescribing absolute rates as distinguished from different rates for different insurers. The 1937 law remained in effect until 1953 when the Legislature empowered the board with greater flexibility in making or approving rating plans, and thereby ushered in, what the Casualty Insurance Commissioner called "the most modern methods of determining insurance rates for individual risks."

1937 – County Mutual Insurance Companies Regulated

In 1937, the 45th Legislature enacted a law "defining and regulating" county mutual insurance companies.[16] These companies were authorized to write physical damage and property coverage for automobiles if the coverage was written in connection with dwelling coverage. The county mutual companies were not rate regulated under the 1937 law and were not rate regulated until 2003. It is generally believed that because the county mutual companies wrote coverages that the standard insurers would not write, the county mutuals were not required to be rate regulated by the state.[17] There is, however, a different perspective. According to at least one writer who has reviewed the history of county mutuals:

> The so-called 'county mutual' fire insurance companies, for example, were specifically exempted from not only rate regulations but also every statute not

[15] Acts 1937, 45th Legislature, ch. 335.

[16] Acts 1937, 45th Leg., p. 184, ch. 99, eff. April 6, 1937.

[17] *Evolution of Texas County Mutuals*, by the Texas County Mutual Association, November 30, 2001, p. 2.

> specifically made applicable to the companies. The purpose of such legislation was plain: small, local Texas companies ought not to have to play by the same rules the big companies did. Though county mutuals play a useful role in the Texas automobile insurance market by writing insurance in the nonstandard (or "bad risk") market, creation of such a role wasn't the purpose of the statutory scheme exempting them from general state regulation. The purpose was protectionism, pure and simple – an attempt to shelter small, locally-owned insurers from the competitive advantages enjoyed by aggressive out-of-staters.[18]

Over the years, several changes were made to the regulatory laws for county mutuals. Significant regulatory changes were enacted in 1955. The legislature prohibited the chartering of any new county mutuals from then forward, but provided that those county mutuals chartered at the time of the Act's passage could continue to operate.[19] According to insurance department records, as of August 31, 1955, there were 39 county mutual insurance companies chartered to do business within the state. By August 31, 1957, the number had decreased to 28.[20] As of the printing of this report, there were 24 county mutual insurance companies actively chartered and operating in Texas.

The 1955 act also expanded the authority of the county mutuals to write all lines of automobile insurance, both physical damage and liability, on a statewide basis. The law further provided that no company was to assume a risk on any one hazard greater than 5% of its assets, unless such excess was promptly reinsured.

It is generally believed that the authority granted in 1955 to write all lines of auto insurance on a statewide basis was granted under a "gentleman's agreement" that county mutual companies would write only sub-standard or "bad" risks that the rate regulated companies would presumably not write because of their inability to charge adequate rates for these types of risks.[21] Rate regulated insurers operated under a promulgated rate system in which they could not deviate from the promulgated rates which were set based on average risks. Another major change in 1955 was that county mutuals were required to use the promulgated policy forms for all lines of insurance that they were authorized to write.

The so-called "gentleman's agreement" of 1955 remained in effect for several years. However, in the 1960s, out-of-state insurers started purchasing the existing county mutual companies, and county mutual business started to grow substantially. The steady growth in county mutual business continued for many years. Evidently, 1966 was a

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[18] McCandless III, p. 39.

[19] Acts 1955, 54th Leg., p. 413, ch. 117, § 31, eff. September 1, 1955.

[20] Texas Board of Insurance Commissioners, 80th Annual Report of the Board of Insurance Commissioners, year ending August 31, 1955, p. 2; and Texas State Board of Insurance, 82nd Annual Report of the State Board of Insurance, year ending August 31, 1957, p. 8.

[21] *Texas County Mutuals: Their Tradition and Their Future*, by Jack M. Cleaveland, Jr., Thompson Coe, internet version at thompsoncoe.com, November 7, 2000, p. 2.

banner year for county mutuals-- auto premiums, other than those for county mutuals, increased 8.6 percent and auto premiums for county mutuals increased 74.3 percent. This trend continued throughout the 1960s. The county mutual insurance companies, which had less than two percent of the automobile market in 1965, had reached nearly 10 percent or approximately $89 million, of the $945 million total written automobile premiums in 1973.[22]

In the early 1980s, county mutuals were still largely regarded as a market of last resort for non-standard automobile insurance risks, and removal of their exemption from rate regulation (regulated auto insurers' rates were determined by a rate system in which the insurance board promulgated rates and companies could deviate from the rates with prior approval by the board) was not recommended by the board. In information provided to the Sunset Advisory Commission in 1982, the State Board of Insurance explained the justification for continuing the absence of rate regulation of county mutual companies:

> Since county mutuals are exempt from rate regulatory laws in Texas, the loss experience on their insureds is not a part of the data used to promulgate rates in Texas. If the rate exemption for county mutuals were removed, and since their loss experience is generally worse than the losses in the voluntary market, it would cause the average rate for all Texas drivers to increase. This is because the "non-standard risks" losses of these drivers would be considered when promulgating the state rate. Even if companies in the voluntary market used upward deviations for these drivers, the rate impact would be felt by all drivers because of the combining of loss statistics.[23]

1952 – Assigned Risk Plan Established

The Texas Motor Vehicle Assigned Risk Plan was established in 1952 to provide minimum coverages required by the Texas Safety Responsibility Act[24] to those unable to obtain insurance from standard insurers. All companies that write auto insurance in Texas, except county mutuals, were required in the 1952 law to participate in the Plan. In 1968, the Plan name was changed to the Texas Automobile Insurance Plan.

In 1981, the 67th Legislature enacted amendments to the Motor Vehicle Safety Responsibility Act[25] to address concerns regarding the large number of

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[22] Texas State Board of Insurance, 90th Annual Report of the State Board of Insurance, year ending August 31, 1965, p. vi; and subsequent annual reports: 91st Annual Report, 1966, p. viii; 92nd Annual Report, 1967, p. xii; 92nd Annual Report, 1968, p. x; 93rd Annual Report, 1969, p. xi; and 98th Annual Report, 1973, p. xii.

[23] "What Is the History of County Mutuals in This State; Justify the Absence of Regulation," memo by the Information Services Division of the State Board of Insurance to the Sunset Advisory Commission, November 5, 1982.

[24] Acts 1951, 52nd Legislature, ch. 498. Tex. Stat. Ann., art. 6701h, sec. 35. Act passed to be effective January 1, 1952. The historical information on the assigned risk plan is based on information provided on the web site of the Texas Automobile Insurance Plan Association.

[25] Acts 1981, 67th Legislature, ch. 800.

uninsured/underinsured motorists, fraud related to securing proof of financial responsibility, difficulties in enforcing the current system, and the expense and delay in resolving claims. Effective January 1, 1982, H. B. 197 made auto liability insurance compulsory for most motor vehicles. Though the law requiring financial responsibility for liability associated with the operation of an automobile had been in effect since 1952, there had been little enforcement. The 1981 legislation was aimed at reducing the number of uninsured drivers, which had been approximately 25% for several years. The bill required minimum bodily injury and property damage liability coverage for all vehicles in operation and required drivers to show proof of financial responsibility when requested by a peace officer. This enactment led to an increase in the number of automobile insurance policies even though its requirements could be satisfied by several forms of proof of financial responsibility. According to the 1998 *Senate Interim Committee on Civil Justice Report on Uninsured Motorists and Tort Reform Savings*, the passage of the legislation resulted in a sharp decrease in the number of uninsured motorists from 26.9% in 1981 to 8.5% in 1982. That number rose to 21.4% by 1987 and hovered between 20% and 27% until the time of the report's publication in 1998.

In 1991, H. B. 2 was enacted to require proof of insurance in connection with renewing a driver's license and obtaining license plates and vehicle inspections. Drivers who were unable to qualify for insurance in the standard market were placed in the plan causing dramatic increases in business. The number of applications processed in 1982 was 353,000. In 1993, 723,165 applications were processed. In 1999, the number of applications processed had decreased to 47,000 applications. In 1995, the plan became a nonprofit corporation, and the name was changed to the Texas Automobile Insurance Plan Association (TAIPA). Each participating insurer is required to accept a quota of randomly assigned applications based on its standard market writings. TAIPA is governed by a 15-member committee consisting of eight companies, two agents, and five public members. While the governing committee determines the rules governing the operation of TAIPA, the Insurance Commissioner's approval is required for all rule changes.

1953 – Greater Flexibility in Auto Rating Plans

In 1953, the 53rd Legislature enacted amendments to the 1937 automobile rating law. These amendments, as explained in the 1953 78th Annual Report of the Board of Insurance Commissioners,

> . . .empowered the Board to make or approve premium rating plans designed to encourage the prevention of accidents, which may be on an optional basis to apply prospectively or retrospectively, and may include premium discount plans, retrospective rating plans, or other premium rating plans, systems or formulae for Motor Vehicle, Workmen's Compensation, and other lines of Casualty Insurance applicable separately to each class of insurance or in combination with two or more such classes, which will properly take into account and give effect to the experience of individual risks, interstate as well as intrastate.

The need for this change was explained in several of the board's annual reports during the years from 1937 to 1953. For example, the 1953 Annual Report stated that "The urgent need for this legislation has been mentioned in previous reports, and its importance to Texas buyers of insurance cannot be underestimated." Also, in the 1949 74th Annual Report, the Casualty Insurance Commissioner in explaining the deficiencies with the 1937 auto rating law stated:

> The Automobile Rating Law provides that the Board of Insurance Commissioners may approve an experience rating plan but that only one such plan may be approved for each form of insurance. It is my thought that one rating plan will not meet all situations and conditions, as large bus lines might need one type of rating plan, truck lines another and private passenger automobiles still another. It has and can conceivably be argued that the words 'only one such plan' are not broad enough to include a retrospective rating program.

In the 1951 76th Annual Report, the Casualty Insurance Commissioner further explained the need for a new auto rating law:

> The insurance industry generally believes, and I agree, that our Motor Vehicle and Workman's Compensation rating laws need to be amended, to permit them to serve the needs of the industry and business under modern conditions.

The Casualty Commissioner went on to discuss what he perceived to be much needed legislation that failed to pass in the 1951 session:

> This legislation would have made it possible for the Board to give consideration to the approval of more than one experience rating plan, thereby taking cognizance of differences in exposure conditions of various operations.
>
> Under the present law, all operations must be experience rated under one plan, ignoring differences which sound actuarial procedures should take into account. Experience Rating Plans (prospective or optional retrospective) furnish incentive for accident reduction, rewarding risks which reduce losses below average for the class. Such reductions in losses ultimately produce lower class rates, thereby benefiting all risks in the class, regardless of size. . . .
>
> Buyers of motor vehicle insurance would benefit by the introduction of such a program for rating various types of motor vehicles. As previously stated, this cannot be done under the present law.

Subsequent to the passage of the 1953 amendments, the Casualty Commissioner stated in the 1953 Annual Report that under the new law,

> Texas has thus stepped forward to recognize and put into effect the most modern methods of determining insurance rates for individual risks; in addition, this action will be looked upon with favor by industries considering Texas for possible future expansion.

The 1953 law, along with the consent-to-rate law and authorization for rate deviations upward or downward from the promulgated rates that were enacted in the 1970s, remained in effect until 1991 when the Legislature enacted the benchmark rating system.

1951 CODIFICATION OF INSURANCE LAWS

In 1951, the 52nd Legislature codified the state's insurance laws into the Texas Insurance Code.[26] There were no substantive changes to the then existing homeowners' and auto rating laws as a result of the codification.

The emergency clause of the 1951 Act provides insight into the state of the insurance laws at that time and why there was an urgent need for the codification:

> The fact that the present laws relating to insurance are in many respects inadequate, containing in many instances overlapping, ambiguous and inconsistent provisions and seriously interfering with the operation of the insurers as well as jeopardizing the insureds and protection of the public; and the further fact that jurisdictional uncertainties arising from the United States Supreme Court's decision holding that the business of insurance transacted across state lines is interstate commerce within the meaning of the Federal Constitution, making it practicable and necessary that such laws shall by made clear, concise, adequate and consistent for the protection of the insuring public as well as for the protection of those engaged in the insurance business, creates an emergency and an imperative public necessity . . . ."

The 76th Annual Report of the Board of Insurance Commissioners explains that "The Insurance Code enacted by the 52nd Legislature was a rearrangement of the existing statutes relating to insurance, and is a distinct contribution insofar as continuity and consistency are concerned. It did not change any of the substantive laws however."

The 1951 enactment, as noted in the emergency clause, came about in the wake of several developments on the national level. In 1944, the United States Supreme Court reversed a previous ruling and found that the federal government did have the authority to regulate the business of insurance because it was interstate commerce. State governments and the industry rallied together to petition the federal government to take action to ensure state control. In 1945, the federal government passed the McCarran-Ferguson Act which allowed states to regulate the business of insurance unless federal law specifically pre-empted state law.

[26] Acts 1951, 52nd Legislature, ch. 491.

THE SCANDALS OF THE 1950s

The late 1940s and the 1950s proved troublesome for the insurance industry in Texas. According to one historical overview, "At no time was Texas regulation worse than it was during the ten-year period between 1947 and 1957."[27] This view is supported by a 1958 Texas Research League study (TRL study), which described the state's insurance regulatory authority as finding itself "confronted with many acute problems, the inevitable result of long years of inadequate laws, bad organization and diffused administration."[28] The TRL study concluded that the "sorry state" of insurance regulation was directly related to the structure and operation of the Board of Insurance Commissioners that had been created in 1927:

> Under this anomalous arrangement in which three virtually separate regulatory agencies were only formally within one framework, certain glaring weaknesses which had developed over the years gave concern to informed state officials and legislators and to leaders in the insurance industry. These weaknesses finally came dramatically to public view after disclosures of a number of insurance company failures.

According to the TRL study, the deficiencies in the board regulation were numerous, including:

> The Board of Insurance Commissioners failed to act as a board. Instead, each Commissioner ran his own show. Each division operated as an independent department with almost no overall supervision.

There was a lack of board action on important issues such as company licensing, examination, reporting, and investigation. There were three independent and inadequate systems of agency accounting and administration. There was lax enforcement on companies and agents suspected of improper activity and generally poor agency administration.

Another historical analysis presents yet another perspective of this "dark era" which, according to this analysis, was created by the dynamics of at least three factors: first, post-World War II conservatism and a laissez-faire approach to regulatory enforcement in Texas; second, protectionism and the outdated laws that were originally aimed at encouraging growth in the industry but which later set the stage for the rapidly growing number of company insolvencies; and third, "a strong tradition of cronyism and influence-peddling at the agency."[29]

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[27] McCandless III, p. 41.

[28] *Regulation of Insurance in Texas,* by the Texas Research League, December 1958.

[29] McCandless III, p. 42

From 1939 to 1954, 137 companies were placed in either receivership or conservatorship; 86 Texas companies failed in the first ten years after World War II. At the time of the TRL study in 1958, 55 companies were in various stages of liquidation. The wave of insurer insolvencies and the identification of the readily apparent deficiencies in the regulation of the industry led to extensive legislative action.

In the 80th Annual Report of the Board of Insurance Commissioners, Casualty Commissioner J. Byron Saunders, remarked on the 22 major insurance bills passed by the 54th Legislature in 1955:

> The new measures attacked the problem in a four-pronged manner: (1) by strengthening the powers of the Board of Insurance Commissioners; (2) by raising the standards and thus strengthening insurance companies themselves; (3) by providing the Board with additional field forces in order that detrimental practices might be detected early enough to forestall more serious consequences; and (4) by placing the sale of insurance securities under the jurisdiction of this Board.

SECOND MAJOR RESTRUCTURING

The 1958 Texas Research League study noted that in 1955 and 1957 the Texas Legislature took "significant steps. . . to correct long-standing inadequacies in state regulation of the insurance industry."

> The 1955 enactments imposed new standards for the industry and granted new powers to the department. The 1957 measures put emphasis on department reorganization. The 1955 legislation strengthened regulation in a number of ways. . . . Other 1955 legislation instructed the Board to act as a board, jointly, but earlier legislation providing for the old division was not repealed.

Apparently, the Legislature was not satisfied that the three insurance commissioners were acting jointly as a board as intended by the 1955 legislation. Thus, in 1957, the 55th Legislature passed an act that ordered a sweeping reorganization of the Department.[30] The Act eliminated the "three virtually autonomous divisions" of the State Board of Insurance Commissioners and created a new three-member State Board of Insurance that was responsible for the general supervision and policy direction of all Department activities. The three separate and independent kingdoms of insurance regulation that had operated for 30 years were gone; the extent of their autonomy was exemplified by the fact that each of the three divisions had separate "inadequate, inefficient, and uneconomical personnel administration, accounting, budgeting, purchasing, printing, mail and telephone services." This regulatory structure had resulted in the development of "certain glaring weaknesses" that "came dramatically to public view after the disclosure of a number of insurance company failures" and several other major regulatory

[30] Acts 1957, 55th Legislature, ch. 499.

deficiencies. Thus, the 1957 restructuring was designed to establish "a properly functioning integrated operation."

Appointed by the Governor for six-year overlapping terms, the new three-member board was charged with establishing regulatory and departmental policies and with promulgating insurance rates. The rate making responsibilities for automobile insurance and fire and allied lines, which had previously been placed under the individual supervision of the Casualty Insurance Commissioner and the Fire Insurance Commissioner respectively, were vested in the three-member board jointly. The 1957 legislation also created a new position, the Commissioner of Insurance, who was appointed by and responsible to the three board members. As the chief administrative officer of the Department, the Commissioner was responsible for performing most of the regulatory functions and for the day-to-day administration of the Department. The Commissioner's actions were subject to appeal to or review by the board.

The 1957 structure, with its three-member board empowered with broad policymaking and regulatory functions and a Commissioner of Insurance charged with the responsibility to carry out and administer the regulatory functions under the supervision of the board, operated until 1993 when the Legislature disbanded the three-member board and placed the sole responsibility for insurance regulation in a Commissioner of Insurance appointed by the Governor.

DEVIATIONS FROM PROMULGATED FIRE AND AUTO RATES PERMITTED

Prior to August 22, 1957, insurance companies were permitted to sell fire and extended coverage policies at rates below the promulgated maximum rates, provided the reduced rate was applied in a non-discriminatory manner. In 1957, the legislature provided for upward or downward deviations from the promulgated rate upon prior approval. In the 1970s, automobile rating laws were passed that provided for consent-to-rate (use of a rate in excess of the promulgated rate with consent of the insured) and that authorized insurance companies to deviate upward or downward from the promulgated maximum rates with prior approval of the State Board of Insurance. These laws remained in effect until 1991 when the benchmark rating system was enacted.

1957 – Fire Insurance Rate Deviations

In addition to the sweeping restructuring legislation enacted in 1957, the 55th Legislature also amended the 1913 fire insurance rating law (codified as Article 5.26 of the Insurance Code in 1951) to permit rate deviations in excess of, or at a rate less than, the maximum promulgated rates.[31] The rate deviations required the prior approval of the State Board of Insurance (SBI) before they could be used. Those rate deviations that were at a rate less than the promulgated maximum rate were required to be on a uniform percentage basis. This requirement was apparently in response to a growing practice of rate discrimination.

[31] Acts 1957, 55th Legislature, ch. 497.

The 1957 amendments to Article 5.26 provided:

> (a) A maximum rate of premiums to be charged or collected by all companies transacting in this state the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the Board, and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for; provided, however, upon the written application of the insured stating his reasons therefor, filed with and approved by the Board, a rate in excess of the maximum rate promulgated by the Board may be used on any specific risk.
>
> (b) Any insurer desiring to write insurance at a less rate than the maximum rate provided in paragraph (a) above shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser rate than the maximum rate, on a state-wide basis or by reasonable territories as approved by the Board, from the class rates or schedules or rating plans respecting fire insurance and its allied lines of insurance or class of risk within such kind of insurance or a combination thereof promulgated by the Board. Such application shall specify the basis of the deviation, and shall be accompanied by the data upon which the applicant relies; provided, however, such application, data and all other information filed in connection with the deviation shall be public records open to inspection at any reasonable time. The provisions of this paragraph shall not be construed to prohibit the application of a uniform scale of percentage deviations from the maximum rate provided the general standards fixed in paragraph (d) hereof are met.

The 1958 Texas Research League study described the rate-making activities of the SBI as implemented at that time:

> Texas is unique among the states in insurance rate-making. In other states, companies or company association bureaus make statistical studies on premium income and losses and then 'file' proposed rates with the state insurance department. The department then reviews and accepts or rejects the filing. The extent of review varies, perhaps coming close to the Texas plan in a few states.
>
> The Texas department collects, classifies and groups information on insurance premiums, company expenses by purpose, and losses and adjustment expenses of all companies operating in Texas. This is done separately for each line of insurance in accordance with a 'statistical plan' and on forms provided by the department. However, company associations assist in much of this work and make filings of collected data in several lines.
>
> Using rate-making formulas which generally conform to those in other states, the department processes this information to arrive at base rates for the various classifications in each insurance line. These base rates are then promulgated for use by all companies. However, statutes permit companies, with Board approval, to 'deviate' from fire insurance rates on particular classes or pay 'dividends' to policyholders on casualty insurance to return premiums in excess of that needed

> by the company. The deviation system allows companies to make a lower charge initially. . . . Generally Texas insurance rates are 'manual rates' listed in special rate manuals for each line of insurance. However, the Board must approve, after staff analysis, thousands of special rates on individual risks which do not come within the manual definitions. On these, the company makes a special filing of a rate which it considers appropriate to the risk incurred; the Board's approval, if granted, permits this rate to be charged. Such rates, like the 'deviated rates' and 'dividends,' must be re-approved each year. . . .

1970s – Auto Rate Deviations

During the 1970s, three acts were passed that addressed auto rate deviations. In 1971, the 62nd Legislature enacted the consent-to-rate law.[32] Amending Article 5.03 of the Insurance Code, this law provided that under certain conditions a rate in excess of the standard automobile insurance rate, promulgated or approved by the SBI, may be used in rating a specific risk if it is with the consent of the person to be insured and that person has submitted, directly or through an agent or company, a signed application stating the reasons for and indicating consent to the increased rate or premium; the increased rate or premium must also be approved by the SBI. However, according to one historical analysis, deviations in automobile insurance were not permitted until 1973 after successive legislative debates over the advantages and disadvantages of competitive pricing in automobile insurance. Neither the 1971 nor the 1972 Annual Reports of the SBI mention implementation of the 1971 consent-to-rate law.

In 1973, the Legislature passed further amendments to Article 5.03 that authorized insurance companies to deviate upward or downward from the class rates set by the SBI when such deviations had the prior approval of the board.[33] The 1973 Annual Report of the SBI notes that "Automobile Insurance Rate Deviation Regulations were prescribed and furnished to all licensed insurers. (By November 1, 1973, 50 insurance companies had applied for deviations.)" The 1974 Annual Report indicates that "The automobile insurance deviation statute resulted in 95 company applications being approved, 91 of which were downward and four upward deviations from Board prescribed rates. Downward deviations ranged from (-)10% to (-)23% and upward deviations from (+)15% to (+)115%. The average downward deviation was 14% and the upward average was 43%." The 1971 consent-to-rate provisions were substantially unchanged by the 1973 amendments. However, the first mention of the use of consent-to-rate was in the 1974 Annual Report which noted: "Consent-to-rate authority resulted in 310 individual risks being rated in excess of Board prescribed rates under the consent-to-rate authority." This number, however, increased dramatically by 1977. The 1977 Annual Report noted that consent-to-rate authority resulted in 1,971 individual risks being submitted for rating in excess of the Board's prescribed rates and 1,800 of these were approved. This was a 91.4% increase over the previous year's requests. By 1991, the last year that the consent-

[32] Acts 1971, 62nd Legislature, ch. 104.

[33] Acts 1973, 63rd Legislature, ch. 425.

to-rate provisions were in effect, there were 111,464 individual risks being submitted for rating in excess of the Board's prescribed rates.

In 1977, the Legislature enacted non-substantive changes to Article 5.03 relating to the notice requirements on the face of original and renewal policies for which premiums charged are greater than the promulgated premium rates.[34]

The consent-to-rate law and authorization for rate deviations upward or downward from the promulgated rates, along with the 1953 automobile rating law (Article 5.01, Insurance Code), remained in effect until 1991 when the Legislature enacted the benchmark rating system.

EFFECT OF INVESTMENT INCOME ON RATES

In the early 1980s, the automobile rate setting process was reshaped when the SBI began to take investment income into account in setting rates. The following explains how Texas led the way in its treatment of investment income in rate setting:

> In 1982, automobile insurance consumers received help from an unlikely source when Board Chairman William Daves . . . acted to reshape the rate-setting process. The Board had for years allowed annual rate increases as a matter of course, engaging in just the sort of administrative "rubber-stamping" critics were learning to hate. But Daves, a sharp businessman, began to wonder if such increases were necessary in light of soaring interest rates, which were pushing insurance company investment income to record levels. . . . Daves and staff member David Eley pored over investment research data compiled by Best's. 'Sure enough,' said Daves in a contemporary account, 'the trend had continued. 1979 was the best investment year in [industry] history,' with after-tax returns on stockholder equity averaging 25.6 percent. Citing these record investment income levels, Daves and the Board substantially scaled back the industry's rate hike request. Since that time, agency rate-setting has taken investment income into account, often applying a negative underwriting profit factor as a result of the new methodology. Despite industry protests, other states and the N.A.I.C. [(National Association of Insurance Commissioners)] eventually fell into line with the 'total return' approach pioneered by Texas.[35]

LATE 1980s FORESHADOW NEED FOR MAJOR CHANGES

In 1988, National County Mutual Fire Insurance Company, a Dallas-based county mutual that wrote primarily "high-risk" automobile insurance, made history as the largest property and casualty insurance failure in Texas. Its failure left behind 125,000 policyholders seeking new insurers and millions of dollars in unpaid claims. An SBI

[34] Acts 1977, 65th Legislature, ch. 792.

[35] McCandless, pp. 53-54.

appointed investigation followed and, ultimately concluded that the agency had known of the problems at National County Mutual that led to its collapse for some two years but had failed to take necessary action to prevent its failure. The Commissioner of Insurance resigned in December of 1988, and by the end of 1989, all three sitting Board members no longer held their positions.

This highly publicized failure led to intense scrutiny of the industry and the SBI by the legislature. In 1989, the 71st Legislature created a Special Joint Committee on Insurance Regulation to conduct an ongoing study of insurance to ensure that regulatory policy kept pace with the rapidly changing marketplace. The committee held public hearings on four major areas of concern: fraud and insolvency, the regulatory effectiveness of the State Board of Insurance, market competition and rate regulation, and the affordability and availability of health insurance. The resolution establishing the committee included the following findings:

> Whereas, regulatory deficiencies of the State Board of Insurance have been found that caused delayed action against insolvent insurance companies, with consequent adverse effects on policyholders, third-party liability claimants, and state guaranty funds; and
>
> Whereas, the board has been cited for insufficient aggressiveness in enforcing the state's insurance laws, for inadequate oversight in the face of insurance industry fraud, and for dissatisfactory performance in reviewing and approving insurance rate increase requests; and . . . .
>
> Whereas, given resultant diminished public confidence in the State Board of Insurance, there is a need for a comprehensive study by a special joint legislative committee as necessary prelude to restoring the agency to an acceptable level of regulatory effectiveness; . . . .

By 1990, as many as 283 insurance companies doing business in Texas, with annual premiums of $3.1 billion, were operating with questionable financial solvency. The failure of National County Mutual led to major legislative measures and operational reforms at the Texas Department of Insurance.

FLEXIBLE RATING SYSTEM

In 1991, the 72nd Legislature enacted what has been called the most comprehensive insurance reform legislation in Texas history.[36] The reform legislation, H.B. 2, included the enactment of an experimental flexible rating system for homeowners' insurance and personal and commercial auto insurance. The few changes made by the Legislature to the flexible rating system since its enactment in 1991 did not affect the basic design and intent of the overall rate making system, and the system enacted in 1991 was

[36] Acts 1991, 72nd Legislature, ch. 242.

substantially the same system that operated until the enactment of another major insurance reform bill, S.B. 14 in 2003.

Major Reform Legislation Enacted in 1991

The enactment of H.B. 2 resulted in significant changes to insurance regulation, including the regulation of homeowners' and auto rates. The flexible rating system created by H.B. 2 was designed to help stabilize the rates charged for insurance in those lines and to increase competition in the industry. Under the flexible rating system (Article 5.101 of the Insurance Code), the SBI was required to annually establish for each of the regulated lines a benchmark rate. The benchmark rate is a fixed point used as a reference for insurance companies in determining what their rates should be. The SBI was also required to establish a flexibility band—the amount that companies could charge both above and below the benchmark rate without prior approval by the SBI. However, companies seeking to set their rates either above or below the flex band range set by the SBI could only do so upon approval of the SBI. The benchmark rating system was first enacted as a pilot program to expire on December 31, 1995, if the Legislature did not take action to continue the system.

Those insurers that were not rate regulated were not required to determine their rates under the flexible rating program and were not required to use the promulgated rating manual of territories and classifications. They were permitted to determine the process and rating factors that were used to determine their insureds' premiums subject only to prohibitions on unfair discrimination. Insurers that were not rate regulated until 2003 included county mutual insurance companies, Lloyd's plan companies, and reciprocals or interinsurance exchanges.

1993 Amendments

In 1993, the 73rd Legislature, as part of the Sunset legislation that continued the Texas Department of Insurance but made substantial changes to the Department's operational structure, enacted an amendment to allow trade associations that do not collect historical data and that do not provide statistical plans, prospective loss costs, or supplementary rating information to its members to present, on behalf of member insurers that are small or medium-sized insurers, rate making data and to make recommendations to the board at the benchmark rate hearing.[37] This amendment was intended to expand the participation of insurers in the benchmark rate hearing process and to reduce participation costs for small and medium-sized insurers.

1995 Continuation and Amendments

Following the four-year trial period for the flexible rating system, the 74th Legislature in 1995 (H.B. 1988) opted not to sunset the system on the December 31, 1995 expiration date, thereby continuing the flexible rating system until such time as the legislature

[37] Acts 1993, 73rd Leg., ch. 685, §6.04, eff. Sept. 1, 1993.

modified or repealed the system or enacted other changes.[38] A fixed flex band of 30% both above and below the benchmark rate set by the Commissioner was enacted into law. Insurance companies could use rates within the flex band without prior approval. Other amendments addressed the process for insurers seeking approval to use rates outside of the flex band, requiring those insurers proposing to use rates more than 30% above the benchmark rate to show that the rates in the flexibility band are inadequate for risks insured and requiring those insurers proposing to use rates more than 30% below the benchmark rate to show that the approval of the filing will not adversely affect the financial condition of the company filing the rate. The 1994 Annual Report of the Texas Department of Insurance states that the flexible rating system "relies largely on competition to determine the optimum pricing for automobile and residential property insurance." In comparing the old promulgated rate system to the experimental "flex-rating" system, the report commented on the apparent success of the flex-rating system:

> Price stability was a primary objective of flex-rating. Promulgated rates historically had swung widely, increasing substantially in some years and dropping modestly in others. Rate decreases often were followed by company actions to reduce their downward 'deviations' from the promulgated rates—thus nullifying or at least reducing the impact of reductions ordered by the State Board of Insurance. Comparison of actual market rates suggest that flex-rating is achieving its desired end of stability.

In 1995, the Legislature also enacted a temporary rate rollback for certain lines of insurance, including private passenger auto liability insurance for bodily injury and the liability portion of the homeowner's, farm and ranch owner's, and renter's insurance.[39] This legislation was in response to numerous civil justice reforms, popularly known as "tort reforms," passed in 1993 and 1995. The purpose of the rate rollback was to ensure that Texas consumers and businesses realized the benefits of the savings the tort reforms were intended to produce. Under the rate rollback legislation (Article 5.131 of the Insurance Code), the Commissioner of Insurance was required to hold a rulemaking hearing each year to determine the percentage of equitable across-the-board reductions in insurance rates. The last hearing was held in 1999 with the reductions ordered to take effect on January 1, 2000. Consumers realized an estimated total tort reform savings of $2.9 billion, of which $1.06 billion was from reduced rates for private passenger auto liability insurance. Homeowners' insurance rates, however, were not reduced because the liability component accounted for such a small proportion of the losses for that line.[40]

2001 Amendments

In 2001, the 77th Legislature enacted H.B. 2102 which made various changes to the benchmark rate hearing process, including amendments to change the rate hearing

[38] Acts 1995, 74th Legislature, ch. 984.

[39] Acts 1995, 74th Leg., ch. 984, §28, eff. Sept. 1, 1995.

[40] Data provided by the Texas Department of Insurance.

process from a contested case hearing conducted by the State Office of Administrative Hearings to a rulemaking hearing conducted by the Commissioner.[41] Other changes included a requirement that the Commissioner request, before the rulemaking hearing, from insurers, trade associations, the public insurance counsel, and any other interested persons or entities, recommendations regarding changes to the benchmark rates, including any supporting actuarial analyses. The amendments authorized the insurers, trade associations, the public insurance counsel, and any other interested persons or entities to present views, analyses, and arguments in response to the Commissioner's request for recommendations and to ask questions of any person testifying at the hearing. Following the hearing, the Commissioner was required to adopt rules promulgating the benchmark rates.

LATEST MAJOR RESTRUCTURING

The most recent changes to the structure and operation of the Texas Department of Insurance were enacted in 1993 as part of the Department's sunset legislation. In the recommendations of the Sunset Advisory Commission (SAC) to the 73rd Legislature[42], the SAC recommended the Department's continuation with major structural changes. These changes were intended to improve accountability for the Department's operations, to maintain openness and provide a broad perspective in the insurance rate-setting process, and to reduce confusion regarding the daily management of the Department. The SAC recommended replacement of the full-time three-member board with a single Commissioner of Insurance responsible for running the Department and a six-member part-time board responsible for ratemaking. The board would be appointed by the governor to six-year staggered terms with the advice and consent of the Senate. The sunset legislation enacted by the 73rd Legislature implemented the SAC's recommendations in part, including elimination of the three-member board. In lieu of the recommended six-member rate board, the legislature opted to place the sole responsibility for all of the insurance regulatory functions, including those pertaining to ratemaking, with the Commissioner of Insurance.[43]

[41] Acts 2001, 77th Legislature, ch. 1071.

[42] Sunset Advisory Commission Recommendations to the Governor of Texas and Members of the Seventy-third Legislature, March 1993, pp. 50-51.

[43] Acts 1993, 73rd Legislature, ch. 685.

Chronological Overview of History of Regulation
Of Homeowners' and Auto Insurance in Texas

1874	First insurance regulation: Life and health companies regulated by the State Comptroller of Public Accounts.
1909	First ratemaking authority: The Fire Insurance Rating Board. Acts 1909, 31st Legislature, 1st Called Session, Ch. 18.
1910	State Insurance Board created and authorized to prescribe general basis schedules and rules and regulations for determining maximum specific fire rates. Acts 1910, 31st Legislature, 4th Called Session, Ch. 8.
1913	State Fire Insurance Commission created to replace the State Insurance Board and to promulgate a maximum rate of premiums to be charged by fire insurers. Acts 1913, 33rd Legislature, Ch. 106.
1923	Insurance regulation separated from banking regulation and Department of Insurance created. Acts 1923, 38th Legislature, 3rd C.S., Ch. 19.
1927	Board of Insurance Commissioners (BIC) created to operate the Department of Insurance and the State Fire Insurance Commission, which had operated as the fire insurance ratemaking authority since 1913. BIC consisted of a Life Insurance Commissioner, who served as chair; a Fire Insurance Commissioner; and a Casualty Insurance Commissioner. Acts 1927, 40th Legislature, Ch 224.
	Prior approval rate regulation enacted for automobile insurance. Acts 1927, 40th Legislature, Ch. 253.
1937	Automobile rate regulation changed to uniform promulgated rates. Acts 1937, 45th Legislature, Ch. 335.
1951	Insurance laws codified into the Texas Insurance Code. Acts 1951, 52nd Legislature, Ch. 491.
1950s	Wave of business scandals lead to focus on solvency issues. 54th Legislature passed numerous bills to address concerns, including Acts 1955, 54th Legislature, Ch. 117 and several other bills.

1957 Major reorganization of the State Board of Insurance Commissioners and creation of a new three-member board responsible for general supervision and policy direction of all departmental activities and elimination of the three autonomous divisions that had been created in 1927. Position of Commissioner created with actions subject to review by board. Acts 1957, 55th Legislature, Ch. 499. Prior approval for fire rate deviations passed. Acts 1957, 55th Legislature, Ch. 497.

1971 Consent-to-rate law enacted for automobile insurance. Acts 1971, 62nd Legislature, Ch. 104.

1973 Automobile insurance upward and downward rate deviations allowed with prior approval. Acts 1973, 63rd Legislature, Ch. 425.

1981 Amendments to the Motor Vehicle Safety Responsibility Act requiring mandatory proof of financial responsibility enacted. Acts 1981, 67th Legislature, Ch. 800.

1988 Failure of Dallas-based National County Mutual Insurance Company, largest in Texas history, which led to widespread investigations and institutional changes.

1991 Benchmark rating system for homeowners' and auto insurance enacted as part of major insurance reform bill H.B. 2. Acts 1991, 72nd Legislature, Ch. 242.

1993 Sunset Advisory Commission legislation H.B. 1461 enacted which eliminated the three-member board and granted responsibilities for operation of all day-to-day activities and rate and form regulation to a single Commissioner. Acts 1993, 73rd Legislature, Ch. 685.

1995 Benchmark rating system continued; fixed flex band of 30% both above and below the benchmark rate. Acts 1995, 74th Legislature, Ch. 984.

2001 Benchmark rate hearing process changed from contested case hearing by the State Office of Administrative Hearings to a rulemaking hearing conducted by the Commissioner. Acts 2001, 77th Legislature, Ch. 1071.

2003 S.B. 14 enacted to address steadily increasing homeowners' insurance and auto insurance rates, including rate regulation of all insurers and closing of loopholes in the law that permitted certain types of insurers to operate without rate-regulation or oversight; application of rate standards to all insurers; regulation of insurers' use of credit scoring; and more restrictive insurer withdrawal requirements.

Appendix C

Property & Casualty
Implementation and Status Report
78TH Legislative Session

PROPERTY & CASUALTY IMPLEMENTATION AND STATUS REPORT 78TH LEGISLATIVE SESSION

Bill No.	Statute/Rule	Description	Bulletin/ Comm's Order	Status	Comments
SB 14	Articles 5.13-2, 21.49-2B, 21.49-2U, 5.142, 5.145, 5.171, Section 38.002	Issued bulletin informing insurers of certain provisions contained in SB 14 relating to policy forms, rates, credit scoring models, underwriting guidelines, and required notice of rate increases.	Commissioner's Bulletin No. B-0028-03	Bulletin issued July 14, 2003	Added FAQ's to Department website.
SB 14	Article 21.49-2U 28 TAC 5.9940 28 TAC 5.9941	Adopted rules requiring companies to provide a disclosure notifying policyholders if credit scoring will be used in underwriting and rating and requiring filings for allowable differences in rates charged due solely to credit scoring. The differences in rates charged must be based on sound actuarial principles and supported by data filed with TDI. Proposed amendments to 28 TAC 5.9941: · Amendment proposed December 12, 2003 - Provided that a rate difference due solely to the use of credit scoring cannot be greater than plus or minus 10% from what would have been charged had credit scoring not been used. - Also provided if a rate difference due solely to credit scoring is	Commissioner's Order No. 03-1109	Effective date November 30, 2003	

Bill No.	Statute/Rule	Description	Bulletin/ Comm's Order	Status	Comments
		greater than plus or minus 10%, insurers must request and justify a variance. - Public hearing held January 7, 2004 - Withdrawn by operation of law June 12, 2004 · Second amendment proposed July 2, 2004 - Provides that a rate difference due solely to the use of credit scoring cannot be greater than plus or minus 10% from what would have been charged had credit scoring not been used. - Also provides that if the rate difference due solely to credit scoring is greater than plus or minus 10%, the insurer must request and justify an allowable difference in rates and may not use the proposed rate differential until permitted by TDI. - Currently pending – no hearing currently scheduled (comments were due August 2, 2004).			
SB 14	Article 5.171 28 TAC 5.9960	Adopted rule providing insurer's may not use rating territories that subdivide a county unless the rate for any subdivision within the county is not greater than 15% higher than the rate used in any other subdivision of the county, unless actuarially supported.	Commissioner's Order 03-1110	Effective date November 30, 2003	Filings due March 1, 2004
SB 14	Article 5.142, §4(c) 28 TAC 5.3301	Adopted rule regarding simplified rate filing requirements for small and new insurers.	Commissioner's Order No. 03-1177	Effective date December 16, 2003	

Bill No.	Statute/Rule	Description	Bulletin/ Comm's Order	Status	Comments
SB 14	Article 5.13-2C 28 TAC 5.3702	Adopted rule designating areas to be underserved for purpose of Article 5.13-2C which provides exemptions from certain rate filing and approval requirements for certain insurers. Applies to insurers that issued residential property insurance policies that accounted for less than 2% of the total amount of premiums collected by insurers for residential property insurance, more than 50% of which cover property: (1) Valued at less than $100,000; and (2) located in an underserved area.	Commissioner's Order No. 04-0495	Effective date June 3, 2004	
SB 14	Article 5.13-2, §13(c)	Adopted current benchmark rate as standard rate index for purpose of defining non-standard auto business for personal auto insurance issued by a county mutual insurer.	Commissioner's Bulletin No. B-0023-04 Commissioner's Order No. 04-0625	Bulletin issued June 21, 2004 Effective date December 1, 2004	Added FAQ's to Department website.
SB 14	Article 5.13-2 28 TAC 5.9101 and 28 TAC 5.5005	Proposed repeal of 28 TAC 5.9101 and adoption of new rule 28 TAC 5.5005 regarding the regulation of rates for commercial multi-peril policies.		Published in the Texas Register September 17, 2004. Comment period ended on October 18, 2004	

Bill No.	Statute/Rule	Description	Bulletin/ Comm's Order	Status	Comments
SB 14	Article 1.35A and 5.13-2	Office of Public Insurance Counsel (OPIC) submitted petitions requesting adoption of a revised Consumer Bill of Rights Personal Automobile Insurance and Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance based on SB 14 changes affecting consumers rights.		Published in the Texas Register on October 22, 2004. Comment period ends on November 22, 2004.	
SB 14	Articles 5.13-2, 21.49-2U, and §38.002 28 TAC §§5.9310, 5.9320, 5.9330-5.9332, 5.9340-5.9342, 5.9350-5.9352, 5.9355-5.9357	Staff proposed multiple rules that provide filing requirements for property and casualty policy forms, rates and rules, underwriting guidelines for personal automobile and residential property, credit scoring models and reduced filing requirements for certain insurers.		Published in the Texas Register on October 29, 2004. Comment period ends on November 29. 2004.	Public hearing under Docket Number 2604, is scheduled for 10:00 a.m. on November 30, 2004, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Bill No.	Statute/Rule	Description	Bulletin/ Comm's Order	Status	Comments
SB 127 HB 329	Article 5.35-4 Article 21.21-11 TAC 21.1007	Adopted rules amending 21.1007 relating to insurer use of underwriting guidelines based on a water damage claim(s) previous mold damage or a mold damage claim(s).	Commissioner's Order No. 03-1223 Commissioner's Bulletin No. B-0005-04	Effective January 1, 2004	Although the TDI rule became effective January 1, 2004, the underwriting restrictions for mold damage and mold damage claims do not become operative until the Texas Department of Health (now the Department of State Health Services; DSHS) adopts licensure rules for mold remediators and assessors. The Texas Mold Assessment and Remediation Rules adopted by DSHS (25 TAC §§295.301-295.338) became effective May 16, 2004. Information on DSHS's website states that all companies and individuals who perform mold-related activities will have to obtain appropriate licensing from DSHS by January 1, 2005.