

## SUPPLEMENTARY WRITTEN TESTIMONY

of

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Director of Legislative Affairs

SENATE BUSINESS & COMMERCE COMMITTEE

July 10, 2012

“The Commission... is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that that **supervision is almost entirely nominal**. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things... **The part of wisdom is not to destroy the Commission, but to utilize it.**”

*—Richard Olney, a prominent railroad lawyer, in reply to Grover Cleveland’s request to kill the Interstate Commerce Commission, the first federal regulatory commission.*

“Let the watchwords of all our people be the old familiar watchwords of **honesty, decency, fair-dealing, and commonsense**... We must treat each man on his worth and merits as a man. We must **see that each is given a square deal**, because he is entitled to no more and should receive no less.”

*—Theodore Roosevelt, New York State Fair, 1903.*

The Legislature, and indeed the state, stands at a crossroads. The financial security of Texas families has been endangered and impacted by a disastrous public policy that has worked to the benefit of insurance carriers without any of that benefit being passed to homeowners (or personal auto) policyholders. Texans are paying more in premiums for less coverage, and we need the Legislature to return to fundamentals and implement a comprehensive plan to protect our policyholders (*see sidebar*).

We have tried the carriers’ preferred course of deregulation for almost a decade. We have thoroughly tested their theory and the evidence is clear: the data show that this experiment has failed policyholders. Unless we have a serious course correction in the coming session, insurance carriers will continue to take advantage of their captive customers – our families.

### Policyholder Protection Plan

- ★ Standard policy option for coverage and comparison shopping.
- ★ End Big Brother insurer tactics like using basic inquiries against policyholders.
- ★ Improve transparency regarding coverage.
- ★ Raise public awareness of comparison shopping resources.
- ★ Sensible and streamlined “prior approval” regulation.

This written testimony is intended to supplement the oral testimony I will give at the hearing on July 10<sup>th</sup> on behalf of Texas Watch, a non-partisan, non-profit consumer group that advocates for policyholders. The policy prescriptions contained within would achieve the change in direction that is needed to restore balance and fairness.

*The fundamental question for the Legislature is this: Will Texas have meaningful, responsible, common sense oversight of the insurance industry or merely the illusion of oversight?*

As the quotes above illustrate, the choice is between the false appearance of oversight and actively working to give hard-working families a square deal. The fundamental question for the Legislature is this: Will Texas have meaningful, responsible, common sense oversight of the insurance industry or merely the illusion of oversight?

In this moment of economic crisis, Texans must make hard choices about how to stretch their dollars. Every dollar extracted from their pocket by insurance carriers in coverage reductions and overcharges is a dollar that could have been better spent putting food on the table, supporting small businesses and local economies through purchases, or wisely saved for a better future.

We appreciate your leadership and hope you choose to take bold steps to protect policyholders from continued abuse. We look forward to working with you as we stand together for fair-dealing and common sense insurance reforms that will help Texas families.

### **1) Ensuring fair practices**

Attention has rightly been paid to the rates that carriers charge policyholders, but that is only part of the problem. The broader questions are: What kind of value are policyholders receiving for their money and how are carriers treating their customers?

Because our lending practices require homeowners to purchase insurance for a mortgaged property – and our laws require drivers to insure their vehicles – these customers are captive in a very real sense. Market forces do not operate in the same way for insurance as for a product where consumers can vote with their pocketbooks. Demand for carriers’ products is fixed, or “inelastic” in the language of economists, and having guaranteed customers is a good place to be if you are an insurance company. Policyholders cannot choose to opt out; therefore, they are at risk for exploitation. As a result, our public policy should take common sense steps to protect policyholders from unfair practices. Several necessary reforms follow:

#### **★ *Standard policy option for coverage and comparison shopping***

In the last decade, Texas homeowners have seen their coverage slashed as prices have been raised. As we stated in a letter after the committee raised important questions about junk policies, reductions in coverage range up to 45% and deductibles have increased to as much as 5% of a home’s insured value, meaning a homeowner would have to pay as much as \$10,000 out of their pocket before an insurer was obligated to pay on a claim for a \$200,000 home.<sup>1</sup> Fully 87% of policies provide less coverage for

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<sup>1</sup> See “Correspondence to The Honorable Leticia Van de Putte and Members of the Senate Committee on Business and Commerce,” Texas Watch, 1/25/12, <http://www.texaswatch.org/2012/01/so-just-what-is-a-junk-policy/>.



continuous or repeated leakage from plumbing, heating, or air conditioning; 72% provide less coverage for backup of sewers and drains; and 67% provide less coverage for damage to foundations and slabs.<sup>2</sup> Texans are undoubtedly getting less for their hard-earned dollars.

The Legislature should provide a benchmark for homeowners by requiring carriers to offer a standard policy that provides meaningful coverage for the most common perils. Customers would not be obligated to purchase such a policy if another policy better met their needs, but they would at least have the option. It would allow them to have a single point of reference in comparing one carrier to another. The ability to easily make an apples-to-apples comparison would be a powerful force in creating real price competition in this distorted market. In the current market, competition is a myth. Price comparisons are impossible given the scores of forms and endorsements that are used by the various carriers. Consumers are currently left to compare apples-to-oranges-to-pineapples. Instead of being reduced to making their coverage decisions based on which company has the catchiest ads or best focus group-tested slogan, consumers would be empowered to truly shop the market.

**★ *End Big Brother insurer tactics like using basic inquiries against policyholders***

We ask consumers to be educated about the complex legal products they purchase, and yet we allow carriers to penalize them for asking questions about their policy. Insurers maintain databases of claims filed across the country. If a homeowner calls their insurer and simply asks whether a peril would be covered under their policy, they are penalized as if they had filed an actual claim. The homeowner's inquiry then stays on their Comprehensive Loss Underwriting Exchange (CLUE) report for up to seven years.<sup>3</sup> These so-called claims, which are in reality nothing of the sort, follow the policyholder and the property, stigmatizing you in the eyes of insurers.

For example, the Wall Street Journal detailed a case where a homeowner asked if a water leak coming from the street would be covered after a city crew nicked a water line. No water damage ever took place at the home, and yet State Farm counted the inquiry in the homeowner's claims history. A prospective buyer of the home later encountered a problem when his insurer refused to issue a policy

**Key Points**

- ★ Coverage slashed by up to 45%.
- ★ Deductibles raised significantly, shift from fixed to percentage basis (up to 5% of policy limit).
- ★ Apples-to-apples policy comparisons needed to foster consumer-driven competition.
- ★ A simple phone call to your insurer about coverage may be wrongly counted in an insurance database as an actual claim and penalize you for up to 7 years.

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<sup>2</sup> *Id.*; see also "Texas Homeowners Insurance Policy Comparison: Report to the 82<sup>nd</sup> Legislature as required by Senate Bill 1 (81<sup>st</sup> Legislature, 2009)," Texas Department of Insurance, January 2011, Chart 1, at p. 4, <http://www.tdi.texas.gov/reports/documents/82hopolicycomparison.pdf>.

<sup>3</sup> See "How One Five-Minute Call to Your Insurance Company Can Dog You for Seven Years," Insure.com, <http://www.insure.com/articles/generalinsurance/phone-inquiries.html>. For a comprehensive fact sheet on CLUE reports, see "CLUE and You: How Insurers Size You Up," Privacy Rights Clearinghouse, <http://www.privacyrights.org/fs/fs26-CLUE.htm#1>. For information on ISO's similar database, see "A-PLUS Property Database," ISO, <http://www.isopropertyresources.com/Products/A-Plus/A-PLUS-Property-Database.html>; see also "Frequently Asked Questions about A-PLUS Property Reports," ISO, <http://www.iso.com/Press-Releases/backgrounders/Frequently-Asked-Questions-about-A-PLUS-Property-Reports.html>.

because the property had a “water damage claims history” – in reality it was simply a phone call by a conscientious homeowner.<sup>4</sup>

The Senate should build upon efforts begun last session to do away with this practice, which has a chilling effect on consumers asking intelligent questions in the course of shopping the market and evaluating coverage; a financial impact when policyholders are stigmatized and suffer higher premiums (or are wrongly turned away altogether); and an economic impact on our larger real estate market. Work remains to be done statutorily on preventing insurers from using these inquiries as a basis, in whole or in part, for adverse underwriting or rating decisions.<sup>5</sup> (This includes preventing the insurer who *directly* received the inquiry from using this information against their policyholder.) Furthermore, in order to better inform consumers and facilitate the correction of mistakes, insurers could also regularly publicize in their materials that consumers are entitled to an annual free copy of these database reports under federal law.<sup>6</sup>

### **Key Points**

★ Carriers should be prevented from using inquiries to take adverse actions against policyholders.

★ Our insurance department received an “F” for risk of corruption in a recent study due, in large part, to lack of transparency.

## **2) Improving transparency and consumer education**

In a 50-state study conducted by the Center for Public Integrity and others, Texas received a “D+” for corruption risk and our insurance department, sadly, received an “F,” in large part due to a lack of transparency.<sup>7</sup> Our state can, and must, do better a better job in this area.<sup>8</sup>

### **★ *Improve transparency regarding coverage***

Insurance policies are complex legal documents written in a language that can charitably be described as Byzantine. Buying an insurance policy is unlike buying a television or a carton of milk where consumers can make easy comparisons. An insurance policy is a promise on a piece of paper. The extent of this promise is often unknown until a policyholder has to file a claim and receives a denial of coverage that cites artfully- and cleverly-worded exclusions and endorsements. At that point, it is too late for the homeowner.

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<sup>4</sup> See “Is Your Home Uninsurable? Check the Claims History,” Jeff D. Opdyke and Christopher Oster, The Wall Street Journal, 5/23/02, <http://online.wsj.com/article/0,,SB1022101036734457480,00.html>.

<sup>5</sup> See, e.g., SB 1656 by Watson, 82<sup>nd</sup> Regular Session, Engrossed, <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB1656>.

<sup>6</sup> See “CLUE and You: How Insurers Size You Up: How to Get Insurance Reports Free,” Privacy Rights Clearinghouse, <http://www.privacyrights.org/fs/fs26-CLUE.htm#7>.

<sup>7</sup> “State Integrity Investigation: Corruption Risk Report Card,” a project of The Center for Public Integrity, Global Integrity, and Public Radio International, <http://www.stateintegrity.org/texas>.

<sup>8</sup> For more on problems within TDI, see the following columns: “Texas Insurance Department Not Watching Out for Consumers,” Dave Lieber, Fort Worth Star-Telegram, 6/28/12, <http://www.star-telegram.com/2012/06/28/4067410/texas-insurance-department-not.html> (attached); “Texas Insurance Department Has Made Disciplinary Information Harder to Find,” Dave Lieber, Fort Worth Star-Telegram, 5/5/12, <http://www.star-telegram.com/2012/05/05/3938702/texas-insurance-department-has.html>.



To enable consumers to make intelligent decisions about the product they are purchasing, they need accessible and understandable information. Carriers should provide a checklist of the coverage they are providing, written in plain English and clearly delineating what is – and is not – covered by their policy. This would avoid surprises and personal catastrophes arising after the fact.

Furthermore, since carriers are being allowed to switch to percentage deductibles by our commissioner, confusion may arise as to whether the deductible is a percentage of the claim, as is the case in health insurance, or a percentage of the policy limit. Because policyholders essentially do not trigger coverage until they meet their deductible on a property claim, understanding the amount of the deductible is crucial. To avoid this confusion, carriers could simply state the true cost of the deductible, in a dollar amount, next to the percentage deductible on the policy's "dec sheet" (i.e., declaration page). Some carriers are already providing this information, rendering arguments from other carriers about the cost of doing so without merit. In the interest of clarity, lawmakers should require all carriers to provide this basic information.

Coverage may be modified over time due to endorsements; therefore, it can be difficult for long-time policyholders to keep track of the current state of their coverage. In addition to the reforms listed above, carriers could make a complete and updated version of the policy available to the policyholder, electronically or in paper form, reflecting all endorsements in effect. It isn't asking too much to merely receive an updated copy of the product for which you have already paid many of your hard-earned dollars.

**★ *Raise public awareness of comparison shopping resources***

There a number of good insurance resources available today, which take consumers part of the way towards shopping the market more effectively. The problem is that if you stopped 10 people on the street, you would be lucky if one of them had heard about TDI's HelpInsure.com site<sup>9</sup> or OPIC's policy comparison tool.<sup>10</sup> To remedy this, these resources should be printed prominently on all materials delivered to policyholders, or the public, by the carriers. Public service announcements could also help to raise the profile of these resources.

Industry has long preached the gospel of competition, and if they believe in the value of their products and services, they could not, in good faith, oppose such modest reforms. They should welcome scrutiny of their offerings, viewing it as an opportunity to close the sale.

**Key Points**

- ★ Insurance policies are complex legal documents, and in order to effectively shop the market, consumers need information that is accessible and understandable.
- ★ Carriers should provide a checklist of the coverage they are (and aren't) providing, as well as state the true cost of the deductible in dollar amounts.
- ★ Policyholders should be able to receive a copy of their current policy, reflecting all endorsements in effect.
- ★ Carriers should publicize the comparison shopping resources available.

<sup>9</sup> See "HelpInsure," Texas Department of Insurance, <http://www.helpinsure.com/>.

<sup>10</sup> See "Comparing Insurance Coverage," Texas Office of Public Insurance Counsel, <http://www.opic.state.tx.us/policy-comparisons/how-to-use-the-comparison-tool>.

These are simple and common sense ways to provide consumers with the information they need to better navigate our complicated insurance system.

### 3) Lowering rates

Our homeowners' insurance rates skyrocketed ten years ago due to insurers' manipulation of the "Lloyds loophole," which allowed them to shift their business into unregulated entities. Despite insurers' promises that deregulation would generate competition and drive down prices, that simply has not happened.

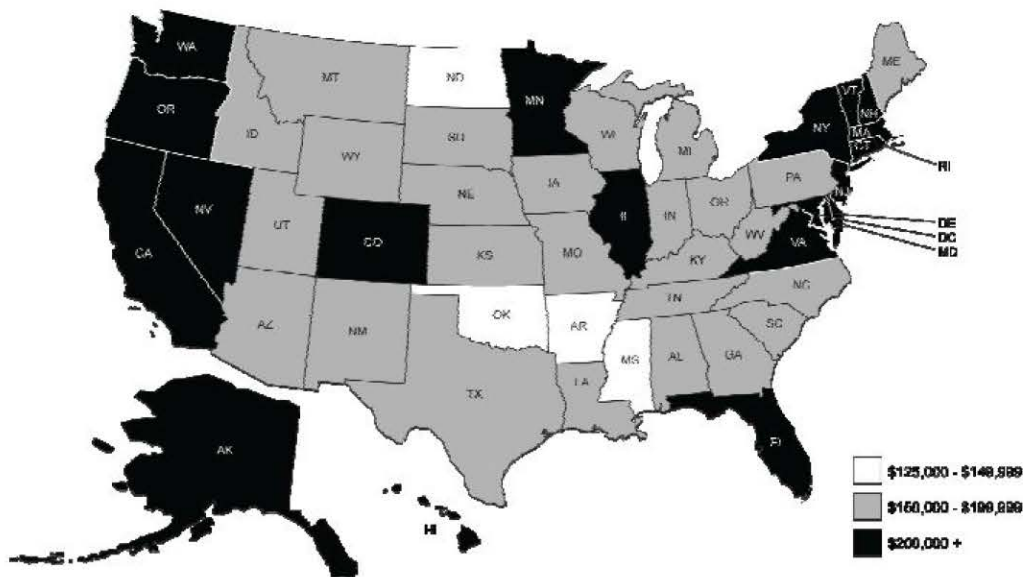
According to TDI, homeowners rates have actually *risen* another 5.1% over time.<sup>11</sup> Rates shot up and never returned to Earth. Texas continues to lead the nation with our homeowners paying \$1511 on average for their insurance, almost twice as much as the national average of \$880.<sup>12</sup> This is compounded by the fact that Texas actually has modest property values, meaning Texans purchase less insurance than homeowners in many states and, yet, pay much more.

The following chart<sup>13</sup> illustrates the point:

**Key Points**

- ★ Contrary to industry promises, rates have risen for homeowners since deregulation was passed in 2003.
- ★ Texans continue to pay the highest homeowners rates in the country (\$1511), nearly double the national average.
- ★ States with higher property values and weather-related risks have found ways to contain insurance costs.

**2008 Homeowners Median Amount of Insurance**



<sup>11</sup> "Biennial Report of the Texas Department of Insurance to the 82<sup>nd</sup> Legislature," Texas Department of Insurance, December 2010, p. 15, <http://www.tdi.texas.gov/reports/documents/finalbie11.pdf>.

<sup>12</sup> "Texas Homeowners Pay Highest Insurance Premiums for Second Year in a Row," Terrence Stutz, Dallas Morning News, 1/9/12, <http://www.dallasnews.com/news/state/headlines/20120109-texas-homeowners-pay-highest-insurance-premiums-for-second-year-in-a-row.ece> (attached).



Other large, urban states with weather, notably California, have found ways to keep their insurance prices in line through reasonable regulation. (California does not even rank in the top 10 in terms of the average price of their homeowners premiums.<sup>14</sup>) Californians may be moving to Texas, but it isn't because they're mad about paying less for their insurance.

Meanwhile, industry and regulators are left to make excuses for our insurance system's poor performance. Talk turns to the "stabilization" of rates and the "slower pace" of rate increases. The system has performed well for carriers bent on charging the highest prices for their products. It has performed terribly for policyholders. This is not what Texas homeowners were promised. This is not what Texas homeowners deserve.

We deregulated our way into this predicament and we will not deregulate our way out of it. We cannot keep doing the same thing and expecting a different result. Texas needs a return to the basics in the area of insurance rate reform.

★ ***Sensible and streamlined "prior approval" regulation***

The "file and use" system has been given many years to prove itself. However, it has proven itself fundamentally flawed because it puts the burden on TDI and leaves regulators to play catch up when they believe rates are too high. Under our current scheme, carriers do whatever they want and regulators are left to ask questions later.

One need look no further than the State Farm example to see how this amounts to "file and abuse" in practice. State Farm was ordered to return overcharges to its homeowners, and they have tied the matter up in court for over eight years. Hundreds of millions of dollars, not to mention the interest and investment income accrued in that time, wrongly remains in State Farm's coffers. Regulators are operating from a position of weakness and policyholders are paying the price.

The solution is a sensible and streamlined "prior approval" regulatory system that provides policyholders with the assurance that they're paying a fair price for their product. This system allows businesses to make a reasonable profit for a product that consumers are forced to purchase. It does not allow carriers to price-gouge or bully, providing protection for vulnerable consumers.

Industry will resist efforts to rein them in; but we have tried it their way, trusting that they would do the right thing, and their preferred system has only worked to their benefit. Because insurance is only regulated at the state level, the Texas Legislature has a unique role to ensure that we have balance and

**Key Points**

- ★ The insurance system has performed well for carriers who wish to charge high prices and poorly for policyholders.
- ★ File and use is fatally flawed, amounting to "file and abuse" in practice.
- ★ We need a return to basics – a sensible and streamlined "prior approval" system.

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<sup>13</sup> "2008 Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance: Market Distribution and Average Cost by Policy and Amount of Insurance," National Association of Insurance Commissioners, p. 10, November 2010.

<sup>14</sup> "Texas Homeowners Pay Highest Insurance Premiums for Second Year in a Row," Terrence Stutz, Dallas Morning News, 1/9/12, <http://www.dallasnews.com/news/state/headlines/20120109-texas-homeowners-pay-highest-insurance-premiums-for-second-year-in-a-row.ece>.

fairness in the insurance arena. To achieve this, it will have to show political courage and leadership. Texas homeowners have suffered for far too long. They need more than the illusion of oversight. It is time for their elected officials to step up and work to make sure that they finally receive a square deal.

As we continue through the interim, please know that you may call on our office at any time to serve as a resource as this committee performs its important work.



## **ATTACHMENTS**

**1) "Texas Homeowners Pay Highest Insurance Premiums for Second Year in a Row," Terrence Stutz, Dallas Morning News, 1/9/12**

**2) "Texas Insurance Department Not Watching Out for Consumers," Dave Lieber, Fort Worth Star-Telegram, 6/28/12**

# Texas homeowners pay highest insurance premiums for second year in a row

By TERRENCE STUTZ

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AUSTIN — Texas homeowners paid the most expensive insurance premiums in the country for the second year in a row, although average premiums in the state have not been increasing as sharply as in other states, according to new figures from the National Association of Insurance Commissioners.

The average annual cost of the most commonly sold policy in Texas was \$1,511, which is well above the national average of \$880 and about \$50 more than in the state with the second-highest rates, Florida. Eight states had average premiums above \$1,000 a year, and some of those have seen dramatic increases in recent years.

While Texas rates were up 3.5 percent (\$51) from the previous year, the national average was up 11 percent as insurance rate increases exceeded the rate of inflation in several states. The figures were based on premiums collected in 2009, the most recent year for which figures were available.

Consumer groups warned that Texas homeowners should not expect any relief soon, while industry representatives noted that premiums in the state are not rising as fast as in other states.

“For as long as anyone can remember, Texas has had among the highest insurance rates in the nation,” said Alex Winslow of Texas Watch, a consumer group active in insurance issues.

“The flip side is that coverage for most homeowners is getting slashed while their rates keep going up. With higher deductibles, expanded exclusions and a growing number of junk policies, Texas policyholders are being forced to pay more for less,” he said. “It’s like being forced to pay Cadillac prices and getting stuck with a clunker.”

Winslow said the situation would not improve until the Legislature beefs up laws regulating insurers and the commissioner of insurance “gets tough” with companies.

Mark Hanna of the Insurance Council of Texas said the premiums listed in the study reflect how catastrophic weather events can affect homeowner rates. He noted that several states with higher premiums were along the hurricane-prone Gulf Coast or in areas that experience a large number of destructive storms.

“The NAIC figures [based on 2009 premiums] came one year after Texas was hit by three hurricanes, which included Hurricane Ike, the costliest storm in Texas history,” Hanna said.

Jerry Johns of the Southwestern Insurance Information Service, an industry group, said the slower increases in insurance rates in Texas indicate that the market has become more competitive as more companies are selling policies.

But he cautioned that a recent type of weather-related catastrophe — wildfires caused by drought conditions — could become a significant factor in premiums.

For example, insured losses from wildfires in Central Texas last year — in the Bastrop area — amounted to nearly \$250 million. Since November 2010, almost 4 million acres have burned and 2,700 homes have been destroyed because of wildfires, according to the Insurance Council of Texas.

Some industry officials have questioned the validity of the NAIC premium comparisons, contending that they do not reflect the variety of homeowners policies sold in Texas — many of which are less expensive than the type used in the comparison.

The so-called HO-3 is the most widely used policy in Texas, according to the NAIC study. Across the country, four out of five policies sold are the HO-3 variety.

Renters insurance in Texas averaged \$222 a year, according to the NAIC study. That is slightly higher than in California (\$218) and New York (\$213). The national average was \$184.

Insurance costs	
<b>Here are the 10 states with the highest average premium for homeowners insurance in 2009, the most recent year for which figures were available:</b>	
<b>State</b>	<b>Premium</b>
<b>Texas</b>	<b>\$1,511</b>
Florida	\$1,460
Louisiana	\$1,430
Mississippi	\$1,185
Oklahoma	\$1,123
Massachusetts	\$1,035



New York	\$1,021
Connecticut	\$1,016
Kansas	\$991
Alabama	\$987
SOURCE: National Association of Insurance Commissioners	

**Link:** <http://www.dallasnews.com/news/state/headlines/20120109-texas-homeowners-pay-highest-insurance-premiums-for-second-year-in-a-row.ece>

# Star-Telegram

## Texas Insurance Department not watching out for consumers

Posted Thursday, Jun. 28, 2012

**BY DAVE LIEBER**

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I've been hearing from consumers that the Texas Insurance Department hasn't been -- how shall I put it? -- as helpful as in the past.

Previously, I heard success stories: Aggrieved customers filed complaints against insurers, the department contacted the insurers, and often enough, Texans got their money.

Lately, consumers tell me the opposite: Their complaints against insurance companies are declared without merit and dismissed.

I checked. The dollar amount that the department says it worked to restore to Texans after their claims were denied or low-balled has dropped in one year from \$40 million to \$26 million. That's the lowest amount in five years that has been returned to consumers because of actions by state regulators.

Add to that a decision -- apparently by Insurance Commissioner Eleanor Kitzman, appointed by Gov. Rick Perry 10 months ago -- to remove from the department's public website a list of bad players in the insurance industry and the enforcement actions against them.

After The Watchdog complained, the names were put back online.

Is the department becoming less consumer-friendly?

Fair question, and one that is getting attention with recent homeowners insurance rate hikes, such as Allstate's increase of 5.7 percent on average and Fire and Casualty Insurance Co.'s request for an average statewide hike of 9.8 percent, approved by the department in late March.

Kitzman also didn't object this year to a Farmers Insurance hike of nearly 10 percent.

The issue also came up recently after Kitzman, at the insurance industry's request, created two fraud prosecutor positions in San Antonio and Houston.

Will they go after customers who cheat companies, companies that cheat customers or both?

Keeping consumers and businesses on an equal footing is the job of the state commissioner, J. Robert Hunter said. He was appointed by Gov. Ann Richards in 1993 as the first insurance commissioner operating solo without a three-member insurance board. It was part of a big reform package that was supposed to fix the industry.

He remembers going to work each morning and seeing a line of insurance company representatives waiting to see staffers who were "bombarded by the industry presence."

Any similar bombardment from consumers? "Nothing," said Hunter, now director of insurance for the Consumer Federation of America.

"There's not much pressure from the public," he said. "You really have to be an advocate if you want to balance the scales. Most insurance commissioners just go along with whatever the pressure is, and the pressure is all from the industry."

Yet "the first responsibility of an insurance commissioner should be to protect the public. The industry can pretty much take care of itself."

Alex Winslow, head of the consumer group Texas Watch, says the public can't count on Kitzman as an advocate.

"Since taking office last year, Eleanor Kitzman, who is a former insurance executive, has shown a bias favoring the insurance companies over their customers," Winslow said. "She has not stepped in to oppose a single rate hike. She allowed companies to dramatically increase deductibles, shifting huge out-of-pocket costs to policyholders. She doesn't even grasp the notion that insurance companies are selling junk policies that slash basic coverage."

I sent Winslow's statement to the department. It did not respond, but officials sent me records showing insurance companies' requests for homeowners rate increases.

Since Kitzman took office, companies announced 91 rate increases, including 27, 29 and 44 percent. Kitzman rejected three, records show.

Winslow and other critics point out that Texas has some of the highest rates in the nation for homeowners and auto insurance while coverage has shrunk.

That's not what the Legislature expected in 2003, when it deregulated the industry. Rates were supposed to drop.

In many cases now, companies need only inform the department of plans to raise rates. After the increase, the commissioner can rule whether the rates meet legal requirements. (Many other states employ that "file-and-use" system, although in some a commissioner must approve rates before increases take effect.)

The department cited in a strategic plan last year that it must "ensure rates are not excessive, inadequate or unfairly discriminatory, while assuring companies are financially sound." Spokesman Jerry Hagins said there is no set number to determine whether a rate is excessive. A state law says a rate is excessive if it "is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided."

While Kitzman has been mostly hands-off with the rate increases, she shifted the budget to make room for fraud units that go after consumers who file false claims, agents who break the law and, sometimes, insurance companies that rip off consumers.

Since the first Dallas fraud prosecutor began a pilot program in 2005, there have been 250 criminal indictments and \$7 million in restitution to fraud victims, the department says.

Kyson Johnson, the Dallas fraud prosecutor, says 3 in 4 cases are against consumers, doctors, body shops and others who try to cheat insurance companies. The rest are against agents, adjusters and companies.

In a big case announced this month, Loya Insurance Co. was fined \$300,000 by the department because, it said, Loya made false claims in its advertising.



Mark Hanna of the Insurance Council of Texas says the industry has been asking for help prosecuting "the huge amount" of insurance fraud in Houston and San Antonio. After the commissioner shifted her department's budget to make it happen, he said, "we were very, very impressed with her."

"It's not trying to protect companies," he said. "It's dealing with crimes that have been under the radar for a long time. A lot of district attorneys don't have the time or expertise. In many of these cases, these are high-dollar crimes where consumers are getting ripped off."

Yes, that's true. But the industry has the National Insurance Crime Bureau, a nonprofit that brings together resources to prevent, detect and deter insurance crime. Profitable insurance companies also have resources to pursue fraudsters.

On their own, consumers can't take on insurance companies that cheat.

State Rep. Todd Smith, R-Eules, says the dilemma is that in many states, insurance commissioners are appointed by governors. These governors, in turn, must raise millions of dollars to run campaigns. The insurance industry gives millions in campaign donations to governors and state legislators.

Because of that, Smith said, "There is a reason to be concerned about the possibility of individuals being appointed who are beholden to or biased in favor of insurance or anti-consumer interests."

Smith said he was not specifically talking about Perry and Kitzman but about the general appointment process.

**Sunday:** The North Texas Tollway Authority gets tougher with fines -- if that's possible.

Dave Lieber, 817-390-7043

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**Read more here:** <http://www.star-telegram.com/2012/06/28/4067410/texas-insurance-department-not.html#storylink=cpy>