



V. INSURANCE POLICY

Legislators' Guide to the Issues

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Homeowners' Insurance

THE ISSUE

The Texas Legislature has devoted considerable effort to ensuring accessible, affordable homeowners' insurance, gradually loosening regulatory restrictions since 1991. Rate setting was replaced first by benchmark standards, and then by file and use. Today the price of homeowners' insurance in Texas is regulated only by the insurance commissioner's authority to disapprove of "excessive" rates.

Deregulation of homeowners' insurance has been driven by necessity and economics. Over the past decade, the cost of insurance premiums has steadily risen to a rate that many Texans consider unaffordable. At the same time, many Texans could not find insurance to buy at any price because companies stopped selling policies in the state. Recognizing that consumers have more insurance choices and lower prices in states with less regulatory control over rates and policy coverage, state policymakers introduced a series of regulatory reforms.

The number of insurance companies offering coverage has grown and prices have slightly fallen, as the Texas Department of Insurance begins the process of replacing benchmark pricing with file and use. Because file and use has yet to be implemented, increased affordability and availability results solely from belief in the marketplace that Texas has made a long-term commitment to deregulation. For Texans to enjoy significantly lower prices and more choice in homeowners' insurance, market forces of supply and demand must be the sole determinant of price and coverage.

THE FACTS

- ★ Texans pay the highest average homeowners' insurance premiums in the nation
- ★ Regulation of insurance rates results in higher premiums and fewer insurance choices
- ★ Experience of other states demonstrates that competitive market forces can protect consumers and insurers better than regulations
- ★ Illinois, with no regulation since 1970, has the highest number of companies writing homeowners' policies in the nation with rates at or below the national average
- ★ Since South Carolina recently enacted reforms modeled after Illinois, the number of companies offering homeowners' insurance doubled and rates steadied and declined in some cases
- ★ If the Department of Insurance implements file and use as an informational process, instead of using it to control rates, Texans should see increased choice and decreased price in homeowners' insurance



RECOMMENDATIONS

- ★ Codify terms to ensure a true, least-regulatory form of file and use is implemented
- ★ Codify standards for the commissioner's disapproval decisions to ensure decision-making limits, rather than increases, regulation
- ★ Phase out file and use over time and allow competitive pricing of supply and demand to determine the cost of insurance premiums
- ★ Establish a long-term plan for enacting deregulation in code
- ★ Focus state resources on solvency, market conduct, licensing, and consumer information, rather than rates

RESOURCES

- *Deregulation, Pricing And Availability Issues In The Texas Personal Homeowners' Insurance Market* by Patrick Brockett, Texas Public Policy Foundation (Forthcoming 2004)
- *Implementation Of Property & Casualty Filing Requirements* by Chris Patterson, Texas Public Policy Foundation, September 2004 (<http://www.texaspolicy.com/pdf/2004-09-insurance-pp.pdf>)
- *Shopping For A Solution: Effective Consumer Protection Through Competitive Regulation Of Insurance Rates* by Nathaniel Shapo, Texas Public Policy Foundation, April 2003 (<http://www.texaspolicy.com/pdf/2003-04-01-insurance-shapo.pdf>)

Workers' Compensation

THE ISSUE

The Texas Workers' Compensation System is widely considered one of the worst in the nation despite aggressive reforms introduced by the state Legislature over the past several decades. Employers participating in the state system pay the third highest insurance rates in the nation, and employees who are treated by the system experience the second lowest recovery rates in the nation. Texas' system was given a D-minus by the Work Loss Institute; only five states earned a lower rating.

The state system works better for some than for others. For a small group of employers who secure approval from the system to develop self-insured programs, costs are lower and health outcomes of injured employees are better. But costs are even lower and health outcomes are even better for employers who decline to participate in the state system and purchase workers' compensation programs that are not state-approved. Because Texas allows employers to elect not to participate in the state workers' compensation system – it is the only state in the nation to do so – Texans have the unique opportunity of comparing the state system with programs established by the private sector.

The private sector beats the state system hands over fists for efficiency, effectiveness, and satisfaction of employees and employers. To ensure employers can obtain workers' compensation programs at lower costs and employees recover rapidly and fully from workplace injuries, the state system of workers' compensation should be dismantled. Eliminating state regulation of workers' compensation will reduce the competitive disadvantage that Texas businesses now face with businesses in other states – a disadvantage that presently diminishes profitability, wage growth, and state economic growth.

Most of the reasons for establishing a state system of workers' compensation no longer exist. Medical protocols have been established by the American Medical Association, and state boards certify health care providers. The federal Occupational Health and Safety Administration sets, monitors, and enforces standards for workplace safety. In fact, there is no demonstrable need for state regulation, given current economic incentives that businesses face to keep employees productive and to avoid liability. Businesses and employees would be better served by government activities that focus on consumer protections for occupational insurance and benefits.

THE FACTS

- ★ Texas is the only state that allows private sector employers the freedom to elect not to purchase workers' compensation insurance or participate in the state workers' compensation system (although several states allow small employers this option)
- ★ 38 percent of Texas employers do not participate in the state workers' compensation system, up from 35 percent in 2001



- ★ 24 percent of Texas employees are not covered by the Texas Workers' Compensation System, up from 20 percent in 1993 – about 80 percent of individuals employed by nonparticipating employers receive health and wage benefits from their employers when injured
- ★ 40 percent of employers who decline to participate in the state system say the state-approved insurance costs too much, but the same percentage say they would not participate if costs were lower because the system's health care is inadequate
- ★ The state workers' compensation system governs the expenditure of about \$4 billion annually and determines the medical outcomes of approximately 200,000 Texans
- ★ Workers treated by the state workers' compensation system have the lowest recovery rate in the nation – 25 percent of treated workers never regain full function and productivity
- ★ Employers in the Texas Workers' Compensation System pay the 3rd highest insurance rates in the nation based on covered payroll
- ★ Cost of the average claim processed by the state workers' compensation system is the highest of 12 states surveyed – the average medical cost per claim increased 21 percent for the system between 1999 and 2001
- ★ Medical costs for workers treated by the state system were six times higher than the cost of care for a similar injury treated by a group health plan
- ★ The Texas Workers' Compensation System received a D-minus on a ranking of state systems by the Work Loss Data Institute – only 5 states received a lower rating than Texas

RECOMMENDATIONS

- ★ Dismantle the state system of workers' compensation
- ★ Provide employers the freedom to select and manage workers' compensation insurance – stop government regulation of insurers, premium rates, wage replacement, and the defining and distribution of medical services
- ★ Require disputes to be resolved by employer-funded, independent arbitration with decisions guided by a tribunal of medical experts – binding if employer is OSHA compliant
- ★ Focus government on consumer protections – ensuring solvency of insurers and providing a clearinghouse of information (including cost of insurance premiums, insurers' experience, medical care, providers, and patient outcomes)
- ★ Limit the liability of employers by extending immunity to all employers that comply with OSHA and maintain workers' compensation or occupational benefits programs

RESOURCE

- *Making Workers' Compensation Work For Texans* by John Colyandro and Chris Patterson, Texas Public Policy Foundation (Forthcoming 2005)