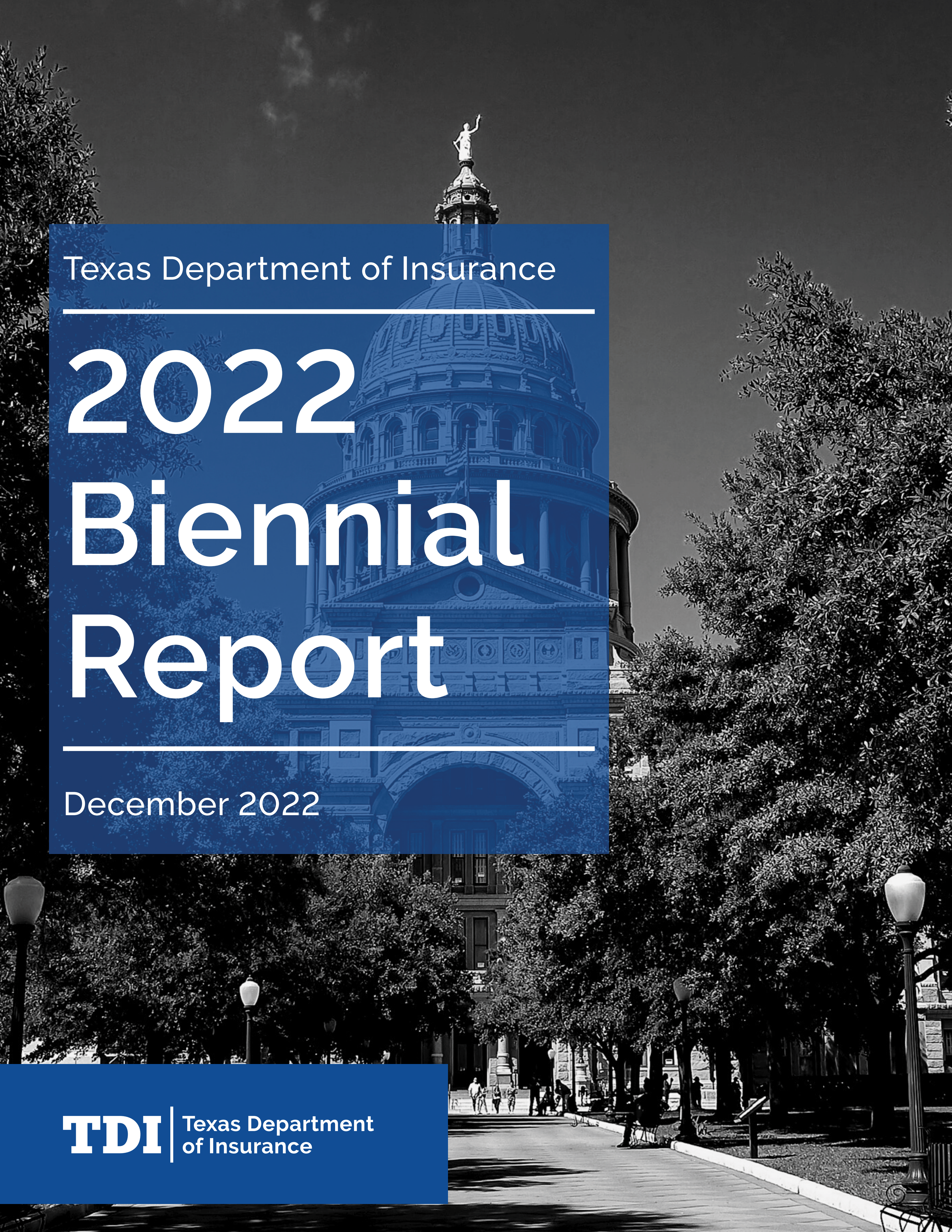

Texas Department of Insurance

2022 Biennial Report

December 2022

TDI | Texas Department of Insurance

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by the

Texas Department of Insurance

Submitted December 2022

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Commissioner of Insurance

First posting, December 2022
Publication ID: TDIBR | 1222
This document is available online at [tdi.texas.gov/reports.](tdi.texas.gov/reports)

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Overview

Texas Insurance Code 32.022 requires the Texas Department of Insurance (TDI) to submit a report before each regular legislative session with recommended changes in state laws relating to regulation of the insurance industry or other areas under the agency's jurisdiction. TDI sought input from the insurance industry, the public, and staff in developing recommendations for the 88th Texas Legislature.

TDI recommendations would expand consumer protections, improve agency efficiency and knowledge, and address market needs:

- **Expand consumer protections:** TDI recommends giving consumers more time to shop for a new policy after cancellation and expanding information in provider directories.
- **Address market needs and innovation:** TDI has identified financial regulations that can be eliminated without harm to consumers. Clarifying company obligations and reporting during catastrophic events is also recommended.
- **Improve agency efficiency:** TDI recommendations support the agency's modernization effort by allowing electronic submissions of required reports or eliminating requirements for paper processes.
- **National Association of Insurance Commissioners (NAIC) accreditation:** TDI recommends two changes to conform to NAIC accreditation standards. Accreditation is a designation given to state insurance departments for effective regulatory oversight of insurers. TDI recommends amending the Insurance Code to add liquidity stress testing requirements and confidentiality standards and revising principles-based reserving standards to align with NAIC valuation manual changes.
- **Development for TDI staff:** TDI supports statutory changes to allow for the acceptance of gifts, grants, and donations to enable employees to participate in educational opportunities, such as classes on emerging issues in the insurance industry.

Recommendations to the Texas Legislature

Allow electronic audit report submissions

Recommendation:

Amend Insurance Code 2651.151 to allow electronic submissions of audit reports.

Issue:

Current law requires paper filings of annual trust fund account audit reports. Title agents must submit the audit report using certified mail. This results in TDI having to manage and scan the paper filings for retention and processing. Not allowing electronic submission of the reports is inefficient and adds costs for title agents and TDI.

Background:

The Insurance Code requires title insurance agents to submit an annual audit of trust fund accounts to TDI by certified mail. Allowing electronic submissions would reduce costs for agents and improve TDI efficiency.

Eliminate paper fireworks permit booklets

Recommendation:

Amend Texas Occupations Code 2154.202 to eliminate the State Fire Marshal's Office (SFMO) requirement to sell paper retail fireworks permit booklets.

Issue:

Current law requires paper booklets for retail fireworks permits. This is inefficient and delays SFMO receiving fireworks stand location information.

Background:

Occupations Code 2154.202 allows a licensed manufacturer, distributor, or jobber to purchase retail fireworks permits from SFMO "in books containing 20 permits each." The booklets, which contain carbon copies of each permit sold, are returned to SFMO at the end of the calendar year. SFMO must manually enter information from sold permits and issue refunds for unsold permits.

SFMO already has an electronic, retail fireworks permit process in place. However, requests are still accepted for paper booklets. Processing paper booklets is a manual process, which leads to higher costs, delays SFMO receiving fireworks stand locations, and increases the risk of data entry errors. This recommendation streamlines the process by removing the paper booklet option.

Relax capital stock requirements

Recommendation:

Amend Insurance Code Chapters 822 and 841 to remove the requirement for insurers to have at least 50% of their authorized stock issued and outstanding.

Issue:

Insurance Code Chapters 822 and 841 require stock insurers to have at least 50% of their authorized stock issued and outstanding. This requirement has been in place since 1961 for par value stock and for longer for no par stock. This limits the number of shares that can be authorized when the insurer is formed and results in TDI receiving a filing when the insurer wants to expand to other states.

Background:

Insurance Code Sections 822.055(d), 822.056(d), 841.055(c), 841.056(d), and 841.057(c) require insurers to issue at least half their authorized shares before receiving a charter or filing a charter amendment to increase their authorized shares.

Because capital stock requirements differ from state to state, Texas-domiciled insurers sometimes must request TDI approval to increase the number of authorized shares before expanding to other states. Removing this requirement won't harm consumers and reduces regulatory burdens on insurers.

Clarify prompt pay waivers during a catastrophe

Recommendations:

Amend Insurance Code Chapters 843 and 1301 to:

- Clarify standards for health plans and providers to seek relief from claims submission and payment deadlines during catastrophic events.
- Define qualifying events, duration of waivers, and authority of TDI to approve, limit, or disapprove waiver requests.

Issue:

Prompt pay laws under Insurance Code Chapters 843 and 1301 provide claim submission and payment deadline exceptions if a physician, provider, HMO, or insurer misses a deadline as a "result of a catastrophic event that substantially interferes with the normal business operations." Some health plans and providers have used this exception and challenged TDI's rule requiring notification when an entity is affected by a catastrophic event. The statute does not authorize TDI to limit the duration of relief from claim-handling deadlines, nor does it allow TDI to approve or disapprove requests for such relief.

Background:

In 2003, TDI adopted a rule to implement provisions in Insurance Code 843 and 1301. The rule requires a health plan or provider to notify the agency within five days of the catastrophic event and within 10 days of resuming normal business operations. If the entity meets the notification requirements, TDI suspends the claim submission and payment deadlines.

The Texas Administrative Code defines a "catastrophic event" as an event that can't be reasonably controlled or avoided and that causes an interruption of an entity's claims submission or processing activities for more than two consecutive business days." Events listed include:

- War.
- An accident.
- A fire or explosion.
- Organized labor stoppage.
- An earthquake, windstorm, or flood.
- An act of God, civil or military authority, or public enemy.

In March 2020, Governor Abbott suspended certain claim-handling deadlines, and TDI issued Bulletin #B-0007-20, which together extended claim-handling deadlines for an additional 15 days to help issuers respond to the COVID-19 outbreak. Governor Abbott rescinded the insurance-related statute and rule suspensions, effective September 2021, and the temporary claim-handling deadline extension was canceled and superseded by Bulletin #B-0020-21.

Several health plans have said the rule isn't clear and restricts their right to relief. Some health plans have attempted to assert their need to bypass prompt payment deadlines due to the "catastrophic event" beyond the expiration of the statutory suspension of these deadlines.

As a result, some entities are avoiding paying large penalties to providers and the state. The statute should be amended to resolve uncertainty and authorize TDI to approve, disapprove, or limit requests for relief from claim-handling deadlines.

Require earlier notice of nonrenewal

Recommendation:

Amend Insurance Code 551.105 to require earlier notice when an insurer nonrenews a policy so policyholders have more time to shop for replacement coverage. Specifically, change the 30-day notice to a 60-day notice.

Issue:

Individuals need more than 30 days to shop for insurance when insurers won't renew their insurance policies. Coverage and policy conditions vary greatly among insurers, and consumers need time to evaluate their options. Similarly, governmental entities should have the same 60-day notice as other commercial risks.

Background:

Insurance Code 551.105 requires insurers to give 30 days' notice for nonrenewal of personal auto and residential property policies and policies issued to governmental entities. When this law was enacted, shopping for new insurance was simpler because of the standard personal auto and residential property policies promulgated by TDI.

In 2003, the 78th Texas Legislature stopped requiring insurers to use TDI's forms, allowing them to use their own policy forms, subject to TDI's approval. Since then, shopping for insurance has become more time-consuming due to additional coverage options, exclusions, limitations, and conditions.

Expand provider directory requirements

Recommendation:

Amend provider directory requirements in [Insurance Code 1451, Subchapter K] to include facility-based providers and physicians.

Issue:

State law only references facility-based physicians with specified specialties in its facility provider directory requirements. Provider directories are not required to identify other types of facility-based health care providers, such as certified nurse midwives; certified registered nurse anesthetists; or physical, occupational, or speech therapists.

Background:

In 2019, the Legislature expanded provider directory requirements under [Insurance Code 1451.505] to allow consumers to search for doctors who practice at in-network facilities. Directories must list specified types of "facility-based physicians," including radiologist, anesthesiologist, pathologist, emergency department physician, neonatologist, and assistant surgeon. Consumers looking for other types of facility-based physicians or providers can't find those authorized to practice within a particular in-network facility.

Amending the language to include other types of facility-based physicians and providers will help consumers plan their care, avoid accidentally using out-of-network providers, and maximize their in-network benefits. It will also provide a more comprehensive picture of health plan provider networks, which would help TDI regulate these networks effectively.

Align life principle-based reserving exemption with recent changes

Recommendation:

Amend Insurance Code 425.073 to eliminate references to specific premium thresholds for the life principle-based reserving exemption.

Issue:

This change is necessary to maintain accreditation, align with recent valuation manual changes, and allow Texas companies to be exempt from principle-based reserving requirements under certain conditions.

Background:

The insurance industry asked for an exemption in the bill that adopted the NAIC valuation manual with principle-based reserving instead of relying on the manual to detail the exemption. However, when an updated valuation manual was adopted, it included specific language for exemptions that differ from code. Because of this conflict, Texas law is different from the valuation manual, which could jeopardize Texas' accreditation status.

Add liquidity stress testing requirements and confidentiality standards

Recommendation:

Amend Insurance Code Chapter 823 to add requirements and confidentiality standards for an annual liquidity stress test for large life insurers and authorize the commissioner to adopt rules as necessary to implement reporting from companies.

Issue:

TDI doesn't have a way to assess liquidity risk across the broader U.S. financial markets.

After the 2008 financial crisis, there were several attempts to assess the potential market impacts of liquidity stress in the life insurance industry. Much of the analysis was based on assumptions and observations. To provide more evidence-based analyses, the NAIC developed a liquidity stress framework for large life insurers to capture the financial market impact of aggregate asset sales.

Background:

Liquidity stress testing (LST) is an accreditation standard in states designated as a Lead State for companies triggering the LST requirement. The companies subject to the LST requirements, and their results, are confidential. Currently, Texas is not designated as a Lead State for a company subject to LST, but recent filings suggest it may be soon. LST will be an NAIC accreditation requirement in 2025.

Allow TDI to accept gifts, grants, and donations to attend training

Recommendation:

Add a new section to Chapter 31 of the Insurance Code, similar to Insurance Code 2501.009, to expand insurance education for other lines of insurance.

Issue:

Staff needs training to stay updated on the rapidly evolving insurance marketplace. This includes training about new products, complex rating models, and innovative financial strategies. As experienced staff retire, newer staff need extensive training to reduce knowledge gaps and prepare them to handle complex work.

Background:

Insurance Code 2501.009 allows TDI to accept free or discounted insurance education related to title insurance. As a result, many employees attended seminars and webinars at a reduced cost or no cost. Expanding this option to other lines of insurance will allow more staff to participate in educational seminars, webinars, and other training while reducing the impact on TDI's budget.

Policy considerations

Establish policy form appraisal guidance

Issue:

Auto and residential property insurers want to restrict or eliminate a policyholder's contractual right to appraisal.

Background:

Nearly every residential property and personal auto insurance policy in Texas allows the policyholder and the insurer to ask for an appraisal. Policyholders can ask for an appraisal if they disagree with the amount an insurer offers on a property insurance claim. The loss amount set by an appraisal decision is typically binding.

In 2015, TDI approved a large insurer's auto policy that eliminated the policyholder's and the insurer's right to an appraisal for disagreements about vehicle repair costs. With this change, policyholders and the insurer have a contractual right to appraisal only for disputes about total loss vehicle claims.

In July 2022, TDI rejected a filing from another large insurer with the same appraisal limitation for its auto policy. TDI rejected that filing because it didn't provide enough information to support the request.

In August 2022, an insurer filed residential property policies that would eliminate the right to ask for an appraisal for all claims. The insurer is an affiliate of the insurer with the approved limited appraisal provision in its auto policy. The insurer sent TDI data showing that almost 90% of homeowners insurance claims that went through appraisal over a three-year period were settled without litigation.

Other insurers have expanded appraisal provisions to:

- Include more deadlines.
- Require detailed appraiser estimates.
- Define qualifications for appraisers and umpires.

At a September 6, 2022, House Insurance Committee hearing, people testified about the benefits of the appraisal process and current challenges.

Workers’ compensation maintenance tax financing

Issue

The maintenance tax in [Labor Code 403.002], which funds the Division of Workers’ Compensation (DWC) and the Office of Injured Employee Counsel (OIEC), is not generating adequate collections to match the amount appropriated to those organizations. The tax funds DWC and OIEC, and is estimated to generate $9.4 million less than the legislature appropriated for DWC and OIEC for fiscal year 2023 in the General Appropriations Act (GAA).

TDI has some tools to accommodate this shortfall in the near term, however the tax in its current form is unlikely to generate sufficient revenues in future years. While the tax is meant to be self-leveling to match the amount appropriated by the Legislature, the current 2% statutory cap does not accommodate this.

This revenue collection shortfall is a side-effect of a healthy workers’ compensation system. Claim and system costs are down, along with more efficient and effective medical care, fewer disputes, and a better injured employee return-to-work rate.

Even with a growing labor market and more policy enrollees, the tax base has fallen 49.9% since 2003, primarily driven by workers’ compensation insurance premiums declining 77%. We expect premium rates and the tax base to continue declining. The maintenance tax under Labor Code Section 403.002 will not generate enough revenue to fund DWC and OIEC’s appropriations in the future.

Background:

The administration and regulation of the Texas workers’ compensation system is funded by maintenance taxes authorized by statute. The tax rates are set by the Commissioner of Insurance. This year the maintenance tax rate under Labor Code Section 403.002 is set at the workers' compensation insurance premium statutory cap of 2%.

DWC is the system regulator, and OIEC assists injured employees that have a workers’ compensation dispute. The taxes are added to all Texas workers’ compensation insurance premiums. Employers certified by DWC to self-insure also pay a tax. The comptroller collects revenue from insurance carriers and certified self-insured employers, and the legislature appropriates that revenue to DWC and OIEC in the GAA.

Windstorm market incentives study

Insurance Code 2210.015 requires TDI to conduct a study of market incentives to encourage property insurers to write windstorm and hail insurance in Tier 1, which includes 14 coastal counties and parts of Harris County.

For 2022, TDI contracted with Texas A&M University at Galveston to perform a study that included insurer surveys and interviews, aggregate analyses of homeowners insurance market performance, and analyses of residual insurance market mechanisms. Their report is posted on TDI's website.

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