Section 1: 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, public, and staff in developing recommendations for the 87th Texas Legislature.

TDI’s first recommendation – amend the Insurance Code to eliminate collateral requirements for some reinsurance – must be adopted by the 2021 legislature to avoid federal action to preempt state laws. The Federal Insurance Office in the U.S. Treasury Department has indicated it will take action to preempt any states’ laws that do not comply with the terms of international covered agreements it has approved. Preemption could impair the state’s ability to effectively regulate insurance in Texas.

Other TDI recommendations would expand consumer protections, eliminate out-of-date regulations, and improve agency efficiency:

• Expand consumer protections: TDI recommends strengthening the agency’s authority to stop unauthorized insurance schemes, requiring actuarial support for auto and home rates in underserved markets, and protecting consumers from balance bills for ambulance services.

• Eliminate out-of-date regulations: TDI has identified several licensing and financial regulations that can be eliminated without harm to consumers. These reduce the regulatory burden on the industry and help the agency operate more efficiently.

• Improve agency efficiency: Several TDI recommendations support the agency’s modernization effort by allowing electronic submissions of required reports or eliminating requirements for paper processes.
Section 2: Recommendations to the Texas Legislature
Amend collateral requirements to avoid federal preemption

Recommendation:
Amend Insurance Code Chapter 493 to eliminate collateral requirements for certain insurers. This change is necessary to avoid federal preemption of state regulations.

Issue:
Changes to Texas statute are needed to avoid federal action in 2022 to preempt certain state laws governing collateral requirements for reinsurance. Preemption could impair the state’s ability to effectively regulate the business of insurance in Texas.

Background:
The Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the federal government to negotiate “covered agreements” with foreign governments to provide for the preemption of state laws that treat foreign insurers differently than U.S. insurers. A covered agreement is similar to a treaty, except that no Congressional approval is required. Under the authority of the Dodd-Frank Act, the U.S. Treasury Department signed agreements with the European Union and the United Kingdom in 2017 and 2018.

Under the agreements, states must eliminate the collateral requirements within five years or be subject to federal preemption. The Treasury’s Federal Insurance Office (FIO) will begin evaluating state laws for potential preemption in spring 2021. FIO has agreed to complete the preemption process by September 2022 for any states’ laws that do not comply with the terms of the covered agreements.

Senate Bill 1070, adopted by the 2017 Texas Legislature, included most of the changes required by the covered agreements. In addition to the SB 1070 changes, the agreements also require states to eliminate collateral requirements for E.U. and U.K. based reinsurers with capital and surplus of more than $250 million. In exchange, the E.U. and U.K. agreed to eliminate requirements for U.S. reinsurers to have a physical presence in the E.U. or U.K.

Reinsurance is insurance that insurers buy from other insurers, more commonly called reinsurers. Insurers buy reinsurance to limit their losses or protect against the risk that policyholder’s claims are more than the insurer’s capital can support.

The change in collateral requirements for reinsurance is supported by U.S. insurers, the National Council of Insurance Legislators, and the National Association of Insurance Commissioners. As of December 2020, 17 states have eliminated collateral requirements as required by the covered agreements.
Strengthen TDI authority to stop unauthorized insurance schemes

Recommendation:
Revise standards for emergency cease and desist orders under Insurance Code Chapter 83 and revise sanctions and hearing timelines allowed under Chapter 101.

Issue:
Modern technology makes it possible for people not authorized to conduct the business of insurance to expand their reach and collect millions of dollars in a short period of time. A combination of the high burden of proof, short timelines for administrative hearings, and limited administrative sanction options make it difficult for TDI to shut down these sellers before consumers are harmed.

Background:
The current standard for emergency cease and desist orders under Chapter 83 requires TDI to prove not only that a person is engaging in unauthorized insurance business, but also that the conduct is fraudulent, hazardous, or causing irreparable public injury. The burden of proof required by Chapter 83 requires TDI to gather extensive evidence before taking steps to shut down operators selling insurance without a license, which defeats the purpose of an emergency cease and desist statute where time is of the essence.

Insurance Code 101.104 allows TDI to request information from a person engaging in the unauthorized business of insurance and requires an immediate response; however, most unauthorized sellers are unwilling to provide information to TDI. The agency has limited options for getting the requested information if a seller will not cooperate.

As an alternative way to gather information, state law allows the commissioner to issue a subpoena. If there is a failure to comply with a subpoena, TDI must request that the Texas Attorney General file an action in court to obtain an order to enforce the subpoena. Issuing subpoenas for out-of-state materials or to entities domiciled outside of Texas poses other procedural challenges.

Chapter 101 also prevents TDI from seeking restitution for consumers or assessing penalties in actions taken solely under that chapter. Instead, the agency must rely on the Attorney General to file and win a civil suit to obtain a civil penalty.

The short administrative hearing timeline set by Chapter 101 also complicates TDI’s efforts to stop the sale of unauthorized insurance. Section 101.152 requires hearings to be conducted as contested cases under Chapter 2001 of the Government Code and held within 30 days of the date of service unless the parties and the commissioner agree to move the hearing. As a result, TDI must be ready to prosecute the case within 30 days of docketing without time to conduct discovery to collect additional evidence, or TDI must turn the case over to the Attorney General for lengthy legal action.
The following changes would improve TDI’s ability to prevent unauthorized insurance business in Texas and protect consumers:

- Allow the commissioner to issue an emergency cease and desist order if an entity does not hold a TDI authorization or meet a valid exemption and is engaging in the business of insurance.
- Allow the commissioner to impose sanctions and enter immediate cease and desist orders if an unauthorized entity refuses to respond to a TDI request for information.
- Expressly allow the commissioner to assess administrative penalties for unauthorized insurance activity.
- Expressly allow the commissioner to order restitution in an administrative action for any unauthorized insurance activity. This would apply to anyone who engaged in an act of unauthorized insurance, including agents, agencies, managing general agents, and third-party administrators.
- Provide a longer hearing period for discovery or remove time limits for holding a hearing.
Require actuarial support for auto and home rates in underserved markets

**Recommendation:**
Repeal Insurance Code 2251.1025 and Chapter 2251, Subchapter F, which exempt or limit filing requirements for certain insurers.

**Issue:**
Insurers exempted from certain filing requirements often have a significant portion of their business in underserved markets, where competition may be limited. The limitations on filing requirements make it easier for these insurers to increase rates or charge unfair rates to consumers in underserved markets.

**Background:**
Personal auto insurers do not have to provide actuarial support for their rates if they write less than 3.5% of the market and issue personal automobile liability insurance policies at minimum financial responsibility limits. Similarly, insurers that write residential property do not have to provide actuarial support for their rates if they have less than 2% of the statewide market share and more than half of their policies cover property valued at less than $100,000 in areas designated as underserved.

An actuarial review ensures that rates meet statutory rate standards that rates not be excessive, inadequate, or unfairly discriminatory. TDI should perform actuarial reviews of rates used for policies in underserved markets to protect consumers from potentially excessive or unfairly discriminatory rates.
**Protect consumers from balance bills for ambulance services**

**Recommendation:**
Amend the state’s protections against medical balance bills when the consumer doesn’t have a choice of providers to include ambulance services.

**Issue:**
Senate Bill 1264 from the 86th Texas Legislature created new protections for consumers with state-regulated health plans from balance bills in certain situations. The protections do not extend to ambulance services.

**Background:**
While SB 1264 doesn’t cover ambulance services, TDI had rules in place to protect consumers with TDI-regulated health plans from balance bills for ambulance services in emergencies. A lawsuit was filed in 2018 challenging these rules, claiming TDI exceeded its statutory authority by adopting these rules. A state district court in Travis County declared the rules invalid in October 2020. The ruling leaves consumers without protection from balance bills for ground or air ambulance services.

More than 85% of ground ambulance services and more than 60% of air ambulance services are billed as out-of-network, according to data submitted by health plans for TDI’s report on SB 1264 balance billing protections.
Eliminate paper fireworks permit booklets

Recommendation:
Amend Texas Occupations Code 2154.202 to eliminate the requirement for the State Fire Marshal’s Office (SFMO) to sell paper booklets of retail firework permits.

Issue:
Current statutory language for retail fireworks permits leads to an inefficient paper process and delays SFMO receipt of information on fireworks stand locations.

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 fireworks season. SFMO must manually enter information from permits that were sold and issue refunds for unsold permits. The manual process leads to higher costs, delays SFMO receiving fireworks stand locations, and increases the risk of data entry errors.

Amending statute to repeal the booklets option will allow SFMO to modernize the process, eliminate the need for customers for wait for booklets to be mailed, and allow credit card payments.
Update agent and adjuster licensing requirements

TDI manages more than 700,000 active agent and adjuster licenses. Updates to licensing requirements will help TDI improve efficiency and customer service.

Recommendations:

Improve temporary license process

When exam sites and fingerprint locations closed due to the COVID-19 pandemic, TDI was able to continue to process temporary agent and adjuster licenses. Based on issues that became apparent during the pandemic, TDI recommends several updates to ensure the integrity of temporary licenses and improve efficiency. Recommendations include:

- Change “shall” to “may” in Insurance Code 4001.153, which requires that TDI “shall issue a temporary license immediately on receipt of a properly completed application.” The current language prevents TDI from denying a temporary license to an applicant with known criminal history or compliance issues. Instead TDI must issue the license and then seek revocation through a hearing before the State Office of Administrative Hearings.
- Amend Insurance Code 4001.155 to extend temporary licenses from 90 days to 180 days and repeal 4001.156, which would no longer be necessary.

Make it easier to revoke nonresident licenses

Agents and adjusters licensed in other states may apply for reciprocal nonresident licenses in Texas. When TDI becomes aware that the license in the person’s home state has been revoked, canceled, or expired, TDI must initiate an enforcement action to remove the Texas license, which may include taking a case to the State Office of Administrative Hearings. This process is inefficient. Authorizing TDI to automatically cancel a nonresident license based on the home state’s action will protect Texas consumers.

Repeal requirement to report branch locations

Insurance Code 4001.106 requires a business that sells insurance products to register each of its branch locations with TDI. TDI recommends removing this requirement because location information is easily accessible online.

Increase ethics training

Texas requires agents and adjusters to complete two hours of ethics training every two years as part of their continuing education to renew their license. However, the National Association of Insurance Commissioners recommends three hours of ethics training, and most other states require three hours. Aligning Texas requirements with national standards helps licensed Texas agents and adjusters get licenses in other states on a reciprocal basis. TDI recommends amending Insurance Code 4004.054 to require three hours of ethics training every two years.
Eliminate obsolete licenses

TDI manages about two dozen types of agent licenses. Removing licenses that are no longer necessary helps streamline applications and processes. Obsolete licenses include:

- **Provisional licenses authorized by Insurance Code 4001.351.** Applicants can pay an additional $50 fee to get a provisional license that allows them to act as an agent while TDI processes their license. However, TDI now processes applications in about one day, making provisional licenses unnecessary.

- **Insurance Service Representative license authorized by Insurance Code 4051.151.** Few applicants seek this license and the functions are covered by other licenses.

- **Home Office Salaried Employee registrations authorized by Insurance Code 4051.301.** Few applicants seek this license and the functions are covered by other licenses.

Clarify the calculation of PIA commissions

Insurance Code 4102.104 states that a public adjuster’s commission “may not exceed 10 percent of the amount of the insurance settlement on the claim.” It is not clear if the percentage is based on the total settlement amount or the additional amount obtained by the public adjuster. To avoid confusion, the statute should be amended to clarify the legislature’s intent.

Remove annual affidavit requirement

Remove the requirement in Insurance Code 4102.114(d) that nonresident adjusters file an annual sworn statement of familiarity with relevant state laws. All agent and adjuster licensees must comply with state law. This additional requirement creates an unnecessary step in the renewal process for nonresident adjusters.

Eliminate subagent designation

Insurance Code 4001.003(9) defines a subagent as someone “who acts for or on behalf of an agent” and states that “a subagent is an agent for all purposes of this title.” Few states use a subagent designation and eliminating the designation simplifies the licensing process.

Eliminate requirement for letters of clearance or certification

Someone applying for an agent license in Texas must provide a letter of clearance or certification from other states where they've been licensed. This requirement is no longer necessary. TDI can verify an applicant’s licensing status and history online, and some states no longer provide letters of clearance or certification.

Remove catastrophe exemption for nonresident adjusters

Require nonresident adjusters to get a Texas license to adjust catastrophe claims by removing the exemption in Insurance Code 4101.002. This will ensure that Texas-licensed adjusters serve residents after a disaster and decrease fraud risks. Emergency adjuster licenses are available when additional adjusters may be needed after a catastrophe.
Provide regulatory relief

Updating statutes to allow electronic submissions and eliminating out-of-date requirements provides relief from unnecessary regulations for the industry and helps TDI operate more efficiently.

Recommendations:

Allow electronic submissions of audit reports

Insurance Code 2651.151 requires title agents to submit an annual audit of trust fund accounts to TDI by certified mail. Allowing electronic submissions reduces costs for agents and improves TDI efficiency.

Eliminate HMO fidelity bonds and statutory deposits

The 2019 Texas Legislature required HMOs to become members of the Texas Life Health Insurance Guaranty Fund Association. This provides HMO members with protection in the event of an insolvency. The state can now remove requirements that were necessary in the absence of guaranty fund protection:

- Insurance Code 843.105 requires fidelity bonds on HMO officers and employees.
- Insurance Code 843.405 requires HMOs to have statutory deposits with TDI.

Relax capital stock requirements

Insurance Code 822.055(d) requires companies to issue at least half their authorized par value shares before receiving a charter or filing a charter amendment to increase the number of 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 they can expand to other states. This process can cause delays in their expansion plans.

Exempt large risks from rate filings

Insurance Code 2301.004 provides a filing exemption for policy forms used with large risks. However, it does not exempt companies from filing rates for these forms, which are typically specific to a large property, business, or event. The exemption should be extended to cover rate filings.
Section 3: Potential issue concerning state-mandated benefits

The Affordable Care Act (ACA) requires states to pay the premium costs attributable to state-mandated benefits applied to qualified health plans if:

- The benefits were enacted after 2011.
- The benefits exceed the ACA’s essential health benefits.

TDI’s position is that existing state-mandated benefits do not exceed ACA essential health benefits. However, to mitigate the risk of a cost to the state, Texas began adding language to laws containing state-mandated benefits exempting qualified health plans if in the event there’s a federal determination that the state must pay.

The Centers and Medicare & Medicaid Services (CMS) now indicates a state exemption may violate federal law if it applies only to qualified health plans while non-qualified health plans sold in the same market must provide state-mandated benefits. The language in Texas statute does not exclude non-qualified health plans.

In addition, new federal rules require states to submit annual reports on state-required benefits and justify why defrayal payments are not required. The first report is due to CMS July 1, 2021. If CMS disagrees with TDI’s position, the language of the current exemption in state law may not adequately protect the state from additional costs.

TDI has asked CMS to confirm that the state’s mandated benefits do not exceed ACA essential benefits, but we haven’t received a response. TDI will keep legislators apprised of developments on this topic.
Section 4: Survey of windstorm market incentives

The Insurance Code 2210.015 requires TDI to survey property insurers about incentives for writing windstorm and hail insurance in Tier 1, which includes 14 coastal counties and parts of Harris County.

For the 2020 study, TDI contracted with Texas A&M University at Galveston to perform a comprehensive review of published literature. Texas A&M focused on catastrophe insurance market features and analyzed possible incentives. Results are posted on the TDI website.

For the next biennial study, TDI will ask the Texas A&M researchers to conduct insurance company surveys, explore practices in other states, and examine wind pool and company data to further analyze market incentives.