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Coverage at what cost? Homeowners pay higher insurance premiums, yet many policies limited

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Last of four parts **By JENNIFER LaFLEUR and ED TIMMS / The Dallas Morning News**
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Six years since a crisis in homeowners insurance compelled legislators to make sweeping reforms, many Texans have less coverage but still pay some of the highest premiums in the country.

More than a million Texas homeowners have bare-bones policies that don't completely cover damage. Coverage that once was routine no longer exists in many policies. Policies that cover fewer risks or pay less have supplanted many that offered full coverage.

And state oversight occurs in a political environment in which industry lobbyists and campaign contributions are prevalent.

While coverage diminished, Texas routinely ranked among the leaders in average premiums. Statistics from the National Association of Insurance Commissioners show the average annual Texas premium – the nation's highest – is $1,372. That's 80 percent more than the national average.

Other catastrophe-prone states fill out the top rankings: Louisiana takes second place at $1,144 a year, with Florida a distant third.

"The industry is really making money on both ends," said Alex Winslow, executive director of the consumer advocacy group Texas Watch. "They're reducing coverage so they have less exposure and less risk, and they're charging at least as much as they were before the reduction in coverage."

Since the Texas Legislature overhauled homeowners coverage, insurance companies have collected far more than they have paid in claims. From 2003, when reforms passed, until 2007, the last year for which full data is available, insurers took in about $23 billion in premiums while paying out about $9.6 billion in claims – a loss ratio of about 42 percent.

That's better for the companies than the 59 percent national average for those years.

Those figures do not include last year, which – with Hurricane Ike and other severe weather events – was deeply unprofitable for Texas insurers. The Texas Department of Insurance estimates that in 2008, companies incurred claims of $6.3 billion against $5.2 billion in premiums.

A strong and well-financed lobby promotes the interests of the insurance industry. At least 120 lobbyists represent the insurance industry in Texas, according to the Texas Ethics Commission.

State Sen. Rodney Ellis, D-Houston, said "the power of the insurance lobby was a big factor" behind shortcomings in the 2003 insurance reforms, along with "good people in public office wanting to believe that the insurance industry would, for some reason, do the right thing just because they were asking them to do it."

The industry also has been generous with its political donations. Since 2000, insurance-related contributions to members of Texas Senate and House committees that oversee the business have exceeded $1 million.

Insurance industry representatives say Texas consumers receive good value for their insurance dollar and have more coverage choices. The market is relatively stable now and more competitive, they say, and complaints filed with state regulators have decreased.

"I hear groups sometimes say that coverage has been slashed and rates have gone up," said Beaman Floyd, director of Texas Coalition for Affordable Insurance Solutions, an industry trade association. "And the fact is that any kind of coverage is available in the marketplace. ... And the rates have gone down."

Rates have dropped, but the extent of that decrease keeps changing.

In a recent report to the Legislature, TDI said overall homeowners insurance rates decreased 13.5 percent between 2003 and 2006. However, rates charged by Texas' largest insurer, State Farm, were not included. TDI officials said that was because State Farm had challenged the agency's double-digit rate reduction in a still active court case.

Current rates, with State Farm included, are 2.7 percent below what they were in 2003. TDI attributed the change to "adverse rating conditions" – recent storm damage – along the coast.

Last week, state regulators said they would not object to double-digit rate increases by Farmers Insurance, the third-largest home insurer in Texas.

Rates are what companies charge for a specific dollar amount of coverage. Premiums are what customers pay for insurance and can be based on such factors as property values, the cost of repairs and types of coverage. Even when rates drop, premiums can rise.

Texas Insurance Commissioner Mike Geeslin said homeowners insurance is better than in 2003 in terms of oversight, rates and an increased number of insurance companies writing policies. The reforms, he said, made things better – or, at a minimum, kept matters from becoming worse.

"We have a mission here at TDI, and that is to regulate the industry diligently and fairly," he said.

Using premiums for a state-by-state comparison is problematic, he said, because Texas actually consists of multiple markets. He suggested that looking at comparable markets, such as hurricane-prone Florida communities and Galveston, might provide a more accurate picture.

Insurance companies say any examination of factors such as loss ratios must, to be fair, span a number of years. Good weather largely was responsible for the profitable years, Floyd said, but 2008, with record hailstorms and hurricanes Dolly and Ike, was a "complete disaster."

Since 1992, homeowners insurance companies in Texas have collected $56 billion in premiums and paid $38 billion to cover claims – a loss ratio of almost 68 percent, including 2008 projections.

Jerry Johns, president of the Southwestern Insurance Information Institute, which represents Texas insurance companies, said profitable years are needed to balance the disastrous ones.

"Profits enable companies to make improvements in the way they serve their customers, invest in Texas communities and pay for multibillion-dollar catastrophic weather events," Johns said. "Without profits, companies are not only incapable of expanding but over time will lose their competitive advantage and possibly wither."

Legislative sway

The feud over homeowners insurance has played out in the Legislature and in the public arena for years.

"We need comprehensive review of insurance company practices and reform," said Dallas attorney Steve Wolens, a former legislator who saw several of the changes he sought tabled in 2003. "And the only thing we've been great at doing is reviewing it."

Homeowners insurance promises to be a battleground issue again this year, with several legislators pushing for changes.

"Looking back, the Legislature should have done more," said state Sen. Eddie Lucio Jr., D-Brownsville. "Homeowners have not seen the rate relief they were promised."

Every legislative session, consumer groups push for reforms. And industry pushes back, with a multitude of paid advocates.

The ranks of insurance company lobbyists include many Capitol insiders. Lobbyists who have done work for insurance companies in the last three years include:

• Seven former Department of Insurance staffers, including two former insurance commissioners.

• Two former members of the Texas Senate.

• Eight former members of the Texas House, including Michael Toomey, who also served as Gov. Rick Perry's chief of staff. Also, Terral Smith, who was Gov. George W. Bush's legislative director and served as former House Speaker Tom Craddick's chief of staff.

• Ten former House or Senate staffers.

• Four former staff members for Perry, including former general counsel Bill Jones and communications director Robert S. Howden.

• Four former staff members of other state agencies or offices, including a former assistant attorney general and former assistant secretary of state.

This is all legal: Texas laws allow legislators to become lobbyists immediately upon leaving the Legislature. Former agency executive directors and board members face a two-year prohibition on lobbying their former agencies. Informal rules preclude former senior staff in the governor's office from lobbying on any issue – and all other staff on any issue they managed or handled while working for the governor – for a year after leaving.

David T. Weber, an attorney and lobbyist in the Austin office of Gardere Wynne Sewell LLP, has lobbied for a number of insurers. He worked more than 10 years as a legislative aide in the Texas House. That included more than two years advising then-Speaker Craddick on insurance issues when the Legislature passed the 2003 reform. He later spent a year as special counsel for public policy for insurance Commissioner Geeslin, a Perry appointee.

Weber said clients hire him for that background. "Having that 11-year experience in the Legislature and TDI, you know why certain bills changed the rule or why rules were implemented, what issues were there, what concerns were there," he said.

But Weber said his experience and connections don't give his clients an unfair advantage.

"Yes, I know people," he said. "But I have found it harder to get things through because you don't want to be perceived in this business as being unethical. You don't want to be perceived as getting something through just because you know that person."

In addition to the influence exerted by lobbyists, insurance-related political action committees also spread the wealth.

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The PAC for Farmers contributed more than $280,000 to candidates and committees in 2008, including $35,000 to Craddick, who lost his speaker's position this year. In 2002, as Craddick prepared to become House speaker, his transition team included Bill Messer, a former House member-turned-lobbyist whose clients included State Farm, and Bill Miller, a paid spokesman for Farmers Insurance. The third member of his team, former Dallas state representative Bill Ceverha, served as treasurer of a Republican political action committee that had received $150,000 in donations from the Farmers PAC three weeks before the 2002 election.

"Political contributions from any industry had no effect on my decisions on policy matters as speaker or as a House member," Craddick said in an e-mailed response to questions. "No lobbyists had special access to meet with me while I was Speaker."

Although Miller acted as his spokesman, Craddick said, "he never spoke to me about any insurance issues, even while the company was pursuing legal action against the State of Texas."

Craddick added that the 2003 insurance legislation "has had a positive impact on the state." Members of legislative committees that oversee insurance – some of whom work in the industry – legally can collect contributions from special interest groups representing the businesses they regulate. Legislators must disclose contributions, but there are no dollar limits.

Birny Birnbaum of the Center for Economic Justice, an Austin-based advocacy group, said that the insurance industry makes "mammoth contributions" to legislators on insurance oversight committees and to others in state government who are the "gatekeepers" on insurance-related legislation.

Former Texas Insurance Commissioner J. Robert Hunter, appointed by Gov. Ann Richards in 1993, said he was initially taken aback by the industry's inside influence. Some legislators, he said, "worked in the insurance industry, were on the insurance committee and were writing insurance laws."

One of the newest additions to the House Insurance Committee is Todd Hunter, R-Corpus Christi, a four-term legislator who left the House in early 1997 but was elected again in November. In the interim, he worked as a lobbyist. His clients included several insurance companies – among them, Allstate and Farmers. He received at least $17,000 in contributions from insurance-related groups during his most recent bid for office.

Rep. Larry Taylor, R-Friendswood, an insurance committee member who also is an insurance agent, said groups and individuals don't make contributions to buy someone, but "they've found somebody who they can talk to, who's reasonable on their issues or at least will listen."

Taylor said that being an agent gives him expertise, but that he has had to fight with companies for claims on many occasions. "I challenge you to find something I've done that harms my consumers," he said.

Taylor's campaign committee collected more than $70,000 from insurance-related donors from 2000 to July 2008, according to Texas Ethics Commission reports.

Cutting back

Few would argue that in 2003, the Texas Legislature faced a disaster in the making. Homeowners premiums shot up because of an epidemic of mold damage claims.

In 2001 and 2002, companies paid out millions more in claims than they collected in premiums, much of it related to mold claims. Some insurers began closing shop; others stopped offering comprehensive policies that covered mold damage.

Legislation passed in 2003 brought all insurance companies under rate regulation. For the first time, TDI officials were able to obtain certain data, including some rate information, from insurers. Many companies were ordered to reduce rates.

But the reforms also gave insurers the freedom to offer different types of policies – what some legislators saw as an opportunity for consumers to have more choices. For companies, it meant they could use policies offered in other states, which helped cut expenses.

In place of more comprehensive policies, many homeowners ended up with policies that reduced coverage – or even more bare-bones policies that pay cash value on a loss, less depreciation.

"Unfortunately, we see more and more of these actual cash-value policies showing up in the marketplace and consumers being left stranded when they actually need to file a claim," said Winslow of Texas Watch.

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Since 2004, the number of policies with cash-value coverage has jumped 48 percent to about 1.1 million policies, according to figures from TDI.

In some parts of the state, the cost of comprehensive coverage is so high, "it's not worth having," said Ellis, the Houston Democrat.

Some homeowners may have had little choice, while others simply did not know all their options when they ended up with more limited policies.

Lawyers John and Carmen Hunter said that, as the mold crisis was unfolding, they ended up with a cash-value policy after their insurance carrier said it would no longer offer them a comprehensive policy. In early 2003, they learned that a water leak had caused a serious mold problem in their Fort Worth home, a problem they said had begun while the more comprehensive policy was in effect.

Their insurer balked at their claims under either policy. A Fort Worth jury ruled in favor of the Hunters, but an appeals court overturned that decision.

Ultimately their house was torn down, and the Hunters estimate their loss exceeded $150,000.

"I just assume that if enough people have a problem, insurance will stop covering it," Carmen Hunter said. "So I assume we are uninsured."

A *News* analysis of types of insurance policies and demographic data found that areas with more minorities and poor people had more cash-value policies. (See the "How we did it" box.)

All things being equal, there should be no statistical relationship between income or minority population and policy type. What the data cannot say is whether people in a given ZIP code had low-coverage policies because they were cheaper alternatives or because those were the only type of policies available.

"If we have data showing unfair or illegal discrimination, as we have in the past, we would take action," insurance Commissioner Geeslin said. "And we have a number of race-based pricing enforcement actions under our belt."

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Since 1999, TDI has reviewed 186 cases for race-based pricing and taken action against 15 companies, all involving life insurance.

Ellis said he believes the insurance industry should be more open about where it offers different policies and what's covered.

Reforms gave homeowners a variety of policies that offer different levels of coverage, said Floyd, the trade association director.

Geeslin said he thinks that consumer groups "have a legitimate concern about the forms of coverage," but that the market is starting to demand better options and some insurers are moving toward more enriched coverage.

Weather gauge

To explain Texas' high premiums, the insurance industry and state officials cite the state's severe weather. But a *News* analysis of national weather data and insurance premiums found that Texas' premiums were higher than expected given weather damage over the years. In fact, they were 50 percent higher than what they statistically should have been if weather were the determining factor. (See "How we did it" box.)

Texas has more tornadoes and hailstorms than any other state, federal weather data show, but when the state's land area is taken into account, its ranking drops. Texas ranked fifth in total damage from 1990 to 2007.

"The reality is that other portions of this country have incidents of weather also," said state Sen. Royce West, D-Dallas. "But their rates are not the same as Texas."

Floyd, the insurance trade association director, said studies comparing weather incidents to land area can be misleading.

"You can't just look at land mass or even population," he said. "What you have to look at is insured value in the way of your natural weather patterns."

Along the Texas coast, insurers have limited coverage, declined to renew policies or refused to write new policies for decades. The reason: hurricanes.

The Legislature created a special program to provide coverage after Hurricane Celia caused $500 million in losses in 1970.

All Texas insurers must join the Texas Windstorm Insurance Association, which is backed by a Catastrophe Reserve Trust Fund built by insurance premiums.

Losses from hurricanes Dolly and Ike in 2008 wiped out the reserve fund. For now, insurance companies can be assessed up to $300 million without reimbursement to cover TWIA claims. For any assessments beyond that, the companies can get state tax credits – which means less revenue for the state.

Mandatory membership in TWIA keeps some companies from doing business in Texas, said state Rep. John Smithee, R-Amarillo, who leads the House Insurance Committee. "If I'm an insurer and I want to come into Texas and write business or I already write business here and I want to expand, for every policy that I write in Dallas, I have to take a piece of the coastal exposure," he said.

Cost of coverage

The process of determining what companies charge can be complicated for consumers and regulators. Numbers may be hard to come by, blocked by the companies or delivered with disclaimers.

The data showing that Texas is No. 1 in average premiums, for example, date to 2005. Also, the National Association of Insurance Commissioners, which compiled the averages, cautions against using them as a basis for comparison, noting that some insurers and states report their data differently. However, no other data examine state premiums comparably, and industry critics say the differences are not large enough to significantly affect Texas' ranking.

Rate filings – documents filed with the state that show how companies decide what to charge – can be difficult to access. Texas Farmers Insurance Co. has sued the state to block the release of its rate filings to *The Dallas Morning News.* (See accompanying story.)

And the system set up to regulate what companies charge often is bogged down in court proceedings.

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A major component of the 2003 homeowners insurance reform was legislation that created a file-and-use regulatory system. This allowed insurance companies to charge a higher rate immediately after submitting a proposed increase to the insurance department.

If TDI later disapproves the proposed rate, consumers are to be reimbursed – and the company can be required to obtain preapproval for future rate increases.

After file-and-use began, TDI had concluded that Allstate's and State Farm's rates were too high. The companies – which represent nearly half of the Texas homeowners insurance market share – disagreed. They took their cases to court.

In 2004, a state district court found that State Farm overcharged customers $100 million and ordered it to refund the money. An appeals court ruling in May 2008 rejected the lower court's decision. The dispute between TDI and State Farm continues.

Also in May 2008, after a four-year court battle, Allstate agreed to refund homeowners $51.6 million in a settlement.

"We have a system that is intended to allow the insurance commissioner to review rates and determine when they are excessive," said state Rep. Todd Smith, R-Bedford. In some instances, Smith said, the commissioner has determined that rates are excessive, "and yet, because of this unending appeal process, those reduced rates have not gone into effect."

Smith, who until recently served on the House Insurance Committee, said that insurance companies do have a right to legally challenge the decision of the insurance commissioner, "but if we allow those due process rights to drag on for years and years and years, then the concept behind file-and-use would seem not to have any practical effect."

The Texas Sunset Advisory Commission has made several recommendations about file-and-use that would refine how the system is applied, but not replace it. The report described prior approval as an "important tool" for TDI to protect consumers from excessive rates. But the commission also noted that it is not clear what can lead to a company being placed under prior approval – or how to return to file-and-use rate regulation – and recommended that TDI address that.

Kevin Davis, a State Farm spokesman, said the process TDI uses to review company submissions needs to be streamlined.

Credit checks

Insurance companies can use the controversial practice known as credit scoring – calculations that include homeowners' credit histories – to set premiums.

In 2007, Irving resident Stephen Dunston's insurer notified him that his premium was going up because of "factors that adversely affected your credit-based insurance score."

Those factors, according to a notice from the company, were "time since newest bank or credit card inquiry too recent" and "too many bank inquiries in the past 2 years."

Dunston, a retired marketing executive, found that his credit report showed one inquiry made when a bank where he had a sizable account was being acquired by another bank. It was a joint account with his wife and was counted twice, he said.

Dunston doesn't think he's much of a credit risk. After he sold his business and retired, he "purchased a 4,300-square-foot house on a golf course outright." He said he carries no debt.

"And yet, they think my credit is bad enough that they would charge me more than the very base lowest rate of their insurance policy," Dunston said.

According to TDI, nearly 100 companies in Texas – including State Farm and Allstate – use credit scores to calculate premiums for homeowners insurance. Insurers say that credit history can help predict whether someone files a claim.

A TDI study in 2004 found that homeowners with poor credit were more likely to file insurance claims and that minorities and low-income homeowners were more likely to have lower credit scores, but that the practice was not discriminatory.

Experts warn that in a faltering economy – when delinquent payments are likely to increase – credit scoring may lead to higher premiums as homeowners can least afford it. Insurance company representatives say the 2003 reforms included credit-scoring protections so that consumers would not be penalized for aberrant life events, such as extraordinary medical bills.

Two states, Hawaii and Maryland, have banned the practice. In 2003, the Texas Legislature said credit scoring could not be the only factor in determining homeowners rates.

Smithee, the insurance committee chairman, suggested that the Legislature revisit the issue in the current session.

It can be a way, he said, "to focus in and cherry-pick the better customers – which is some cause to watch that."

Staff writers Ryan McNeill, Randy Lee Loftis, Gregg Jones and Terrence Stutz contributed to this report.

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