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Submission to the House Committee on Insurance Request for Information
Interim Charges, 86th /Legislature
From
Texas Coalition for Affordable Insurance Solutions

September 8, 2020

Mr. Chairman and Committee Members,

Thank you for the opportunity for the Texas Coalition for Affordable Insurance Solutions (“TCAIS”) to comment on your interim charges during the unprecedented conditions created by the COVID 19 pandemic. We very much appreciate your efforts to continue stakeholder dialogue on insurance policy matters despite the current dislocation of our usual processes. TCAIS strongly supports thoughtful, fact-based insurance policy and regulation in the Texas marketplace, and views your committee deliberations as a critical step in the policy process.

Interim Charge 2: Study the adequacy of the state’s insurance laws on regulating the introduction of insurtech products into the Texas insurance market. Include in the study the impact of big data, blockchain, internet of things, and artificial intelligence technologies on industry practices such as claims handling, underwriting, and policy writing. Study whether these technologies present challenges for any of the state’s insurance laws, including the state’s antidiscrimination, data privacy, anti-rebate, and licensing laws and regulations. Additionally, examine the pros and cons of adopting a regulatory sandbox and consider sandbox programs that are implemented in other states.

TCAIS response: TCAIS supports the study of insurance laws and their effect on the use of emerging technology and innovation in the insurance marketplace. We advise a study should respect the ongoing policy of fostering a dynamic private marketplace in Texas that allows for innovation, and gives companies an opportunity to use emerging tools so long as they do not compromise the basic principles of fairness we seek to establish in law.

TCAIS has always supported the fair regulation of insurance, but has, from time to time, experienced issues with a slow understanding of and unhealthy barriers to innovation that have

resulted in everything from lost opportunity for consumers to major market disruptions. In some cases, such as the years long delay in the implementation of forms freedom in the late 1990s and early 2000s that led directly to the “mold crisis,” companies were not offered a cogent explanation for regulatory opposition to innovation.

However, we have also over time enjoyed good communication with regulators and legislators that has allowed innovation and improvement in the marketplace. In our experience, the best results for companies and consumers have come from market innovation (again, in the context of proper insurance regulation) coupled with clear communication. Texas is not alone in this project. Other entities, including the National Association of Insurance Commissioners, have established programs to foster dialogue on emerging insurance technologies.¹

Regulatory Sandbox

With regard to a “regulatory sandbox,” TCAIS has very direct concerns related to both the current understanding of that tool and our own historical experience. The emergence of the regulatory sandbox is very recent, with the first generally recognized sandbox established in Great Britain in 2015. Most of their short history has been devoted to financial services regulation, but some insurance regulatory sandboxes have appeared in the past few years, including in Kentucky and Vermont.

The more enthusiastic support for sandboxes seems to be their use to foster innovation between global financial markets and banking innovations and needs in developing nations.² However, as the use of sandboxes has grown, so has critical review of their uses and unintended consequences. A recent publication from Dan Quan of the Cato Institute observed, “some sandboxes are nothing but shiny toys with lots of fanfare and no substance... There are far fewer sandbox success stories than there are critiques of unsuccessful sandboxes.”³

TCAIS sees at least four potential problems that could arise from a sandbox system for insurance in Texas:

- A sandbox could become a substitute for better broad-based regulation. If a regulator decides to place all innovation in a sandbox rather than do the work of broad-based regulation, innovation could actually be stifled. This possibility is recognized by many regulators, including Securities and Exchange Commissioner Susan Pierce, who

¹ Information related to the NAIC’s Center for Insurance Innovation and Policy Research may be viewed at: https://content.naic.org/cipr_topics/topic_insurtech.htm.

² For a description, see: <https://www.unsgsa.org/files/1915/3141/8033/Sandbox.pdf>.

³Stanford Center on Philanthropy and Civil Society, “A Few Thoughts on Regulatory Sandboxes,” Dan Quan, <https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/>.

prefers the broader regulatory “beach” that includes the whole marketplace to a regulatory sandbox.⁴

- A sandbox could lead to too much discretionary authority for regulators and confusion of regulatory roles. Much of the criticism of sandboxes centers on the discretion created for regulators, either as gatekeepers of the sandbox or as unwelcome participants in the process of innovation. The Vermont rule for application of a regulatory waiver to enter the sandbox states, “The burden of persuasion rests with the participant to demonstrate that the Commissioner should exercise his or her discretion to grant an innovation waiver.”⁵ Further, the Vermont sandbox legislation specifically denied appeal of the commissioner’s decision to grant waivers.⁶ Such discretionary authority could allow a regulator’s approval of a sandbox to bias decisions for or against a particular kind of innovation.
- A sandbox could lead to dual regulation. During the 86th Legislative Session, SB 860 would have created a sandbox for financial regulation in the Office of the Attorney General rather than under a Texas financial regulator. Though not related to insurance, TCAIS reviewed the legislation with great concern as a clear example of potential dual regulation. Such a bill related to insurance would be confusing and potentially destructive to reasonable regulatory operations in Texas.
- A sandbox could lead to institutional bifurcation of regulation. Texas has a dubious history with bifurcation of insurance regulation that continues in the present day. We have historically allowed the creation of certain kinds of companies that are not subject to regulation because of a perceived special need or circumstance. These companies over time often grow beyond their original purpose into the standard marketplace, but hold on to their regulatory privileges. Examples include Texas Lloyds companies, county mutual companies, and farm mutuals. TCAIS has long held that such bifurcation confuses regulation, creates artificial incentives to place business in these arcane entities, stifles innovation, and ultimately damages the fair operation of the insurance marketplace. As we still struggle with evolving away from such

⁴ Commissioner Pierce’s full comments may be viewed at <https://www.sec.gov/news/speech/speech-peirce-050218>.

⁵ Insurance Regulatory Sandbox; Innovation Waiver Regulation, Reg. I-2019-03, <https://dfr.vermont.gov/reg-bul-ord/insurance-regulatory-sandbox-innovation-waiver-regulation>.

⁶S131, Vermont Legislature, 2019. <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT057/ACT057%20As%20Enacted.pdf>.

bifurcation toward a level, well regulated market, TCAIS is concerned that a sandbox has the potential to reinvent this destructive practice.

TCAIS urges the committee to carefully review the broad criticisms of sandboxes, to recognize that they have almost no record in insurance regulation, and to recognize that well executed broad regulation that allows for innovation should be the preferred regulatory model for Texas.

Thank you again for the opportunity to address the committee. Please let us know if you have questions or comments.

Best Regards,

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