Texas Department of Insurance

TDI response to House Insurance Committee Request for Information of August 11, 2020

September 8, 2020

Charge Two: Insurtech

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.

Texas law does not prohibit the use of big data or artificial intelligence by insurance companies. However, insurers are responsible for the accuracy of all data used in rating, underwriting, and claims handling – even if the data is provided by a third party.

Technological advancements allow insurers access to vast amounts of data that can be used in underwriting and pricing. The appropriate use of big data can be beneficial to consumers. For instance, telematics programs monitor driving and can result in safe driver discounts. Greater access to data also can help insurers improve efficiency and accuracy processing claims, deliver quicker settlements, and result in more accurate loss reserving.

Big data's use also is increasingly the focus of scrutiny over possible discriminatory effects. Data elements that in isolation are not discriminatory could, when combined with other data elements, create a discriminatory impact. If a carrier is using devices or technology to serve insurance customers, there could be discrimination among people of the essentially the same hazard if the issuance of the devices or technology is not uniform and consistent.

State law requires rates to be set following sound actuarial principles. Section 544.052 of the Texas Insurance Code says insurers may not engage in unfair discrimination between individuals of the same class and of essentially the same hazard. Section 544.002 of the code says insurers may not discriminate based on race, color, religion, national origin, age, gender, marital status, geographic location, disability, or partial disability. Sections 544.003 and 544.053 allow for exceptions.

Blockchain

Blockchain is a ledger technology allowing the making of transactional records verifiable and permanent. It uses a decentralized network to maintain a continuously growing chain of data records, which are secure from tampering and revision. Each block may hold one or more transactions or batches of transactions. Also, each block contains a timestamp and a link to a previous block. This makes it extremely resistant to modification of the data and provides a reliable audit trail. Blockchain can be used to create "smart contracts," or self-executing contracts, in which any decision is executed by a computer algorithm on a blockchain.

In the insurance context, some insurers are using or exploring blockchain to reduce fraud risk, streamline policy administration, and manage claims in a transparent and immutable manner. TDI is participating in a National Association of Insurance Commissioners (NAIC) sponsored pilot project to determine if blockchain is a viable solution to support a faster, more efficient, and flexible method for data collection.

Texas lawmakers in 2019 amended the state's Business & Commerce Code to allow domestically formed entities, including insurance companies and agencies, to store business records using blockchain technology and to transfer ownership of the domestic entity using blockchain technology. Separately, Chapter 35 of the Texas Insurance Code allows insurers to deliver information by electronic means, but the definition does not mention blockchain technology or contemplate digital transactions. This could impede the full use and potential of blockchain by insurers.

Internet of things

In the context of insurance, the "internet of things" refers to an insurer providing technology to customers to help the insurer rate a policy or mitigate risks. For instance, a telematics device placed in a car can monitor driving habits.

State laws, including the Insurance Code's anti-discrimination statutes, could affect whether insurers expand the internet of things. Anti-rebating laws bar giving things of value to a customer that are not specified in the insurance policy. (Texas Insurance Code sections 541.056, 543.003, 1806.053 - 1806.059, 1806.153, and 4005.053.) State law allows promotional giveaways of incentive or educational items valued at $25 or less—in some cases higher. (Texas Insurance Code sections 1806.059 and 1806.1541)

Data privacy

Texas laws generally govern data privacy. However, no privacy law focuses specifically on insurance. (Business & Commerce Code Chapter 521; Government Code Chapter 2054; Health & Safety Code Chapter 181, 182; Insurance Code Chapters 601, 602)

The NAIC Insurance Data Security Model Law contains provisions for notice to TDI if a data breach occurs and safeguards related to securing insurance data. In October 2017, the U.S. Department of the Treasury recommended that states adopt the model law. Treasury also recommended that Congress impose national standards of implementation of the model law by states does not, within five years, result in uniform data security regulation. As of June 2020, 11 states have adopted versions of the model law. It's not yet clear if revisions by states to the NAIC model law will affect the ability to achieve a uniform national standard.

Regulatory sandbox
A "regulatory sandbox" is intended to promote innovation in insurance when laws and regulations might not keep pace with technological advancements. In 2019, Kentucky's governor signed into law legislation creating a regulatory sandbox in that state through 2025. Under such a law, a state could waive enforcement of rules or laws to allow for technologies or innovations otherwise considered violations of law. Regulatory guardrails would need to be in place to ensure that participants meet licensing and financial requirements and that waivers are issued uniformly and consistently.

On-demand insurance
There has been interest in the market for commercial "on-demand" insurance, which is typically short term in duration, such as coverage for a few hours or days. For example, on-demand insurance would allow a business to quickly cover a one-day marketing event with a general liability policy.

In the realm of general liability insurance, Section 551.054 of the Texas Insurance Code requires that an insurer give 60 days' notice of nonrenewal. This implies that policies must be at least 60 days in duration—an impediment to an insurer writing on-demand policies. This statute could be amended to shorten the amount of notice required for general liability insurance, or a statute could explicitly allow limited-terms on-demand coverage for specified lines of commercial coverage.

Questions? Contact GovernmentRelations@tdi.texas.gov.