



# OFFICE OF PUBLIC INSURANCE COUNSEL

## Recommendations to the 89<sup>th</sup> Texas Legislature

January 2025

Barbara Jordan Building  
1601 Congress Ave., Suite 3.500  
Austin, Texas 78701

[www.opic.texas.gov](http://www.opic.texas.gov)  
p. (512) 322-4143  
f. (512) 322-4148



## OFFICE OF PUBLIC INSURANCE COUNSEL

David Bolduc, Public Counsel

January 31, 2025

The Honorable Governor of the State of Texas  
The Honorable Lieutenant Governor of the State of Texas  
The Honorable Speaker of the Texas House of Representatives  
The Honorable Members of the 89<sup>th</sup> Texas Legislature

**Via electronic mail**

Dear Governor, Lieutenant Governor, Speaker, and Members of the 89<sup>th</sup> Texas Legislature:

In accordance with Tex. Ins. Code § 501.155, I am pleased to submit the recommendations report for the Office of Public Insurance Counsel (OPIC).

Tex. Ins. Code § 501.155 allows OPIC's public counsel to "recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers." The two recommendations contained in this report follow that statutory directive and are presented for your consideration.

Thank you for the opportunity to provide this report and information. Please contact me at [dbolduc@opic.texas.gov](mailto:dbolduc@opic.texas.gov) or (512)-322-4142 if you have any questions or would like additional information.

Sincerely,

David Bolduc  
Public Counsel

Email: [dbolduc@opic.texas.gov](mailto:dbolduc@opic.texas.gov)  
[www.opic.texas.gov](http://www.opic.texas.gov)

Barbara Jordan Building  
1601 Congress Ave., Suite 305  
Austin, Texas 78701

Phone: (512) 322-4143

## Contents

Introduction .....	4
OPIC’s Duties.....	5
Regulatory Matters - Insurance .....	5
Regulatory Matters – Certificate of Public Advantage .....	5
Consumer Education and Outreach .....	5
Legislative Resource .....	6
Board Service.....	6
OPIC’s Budget Structure.....	7
OPIC’s Achievements .....	8
Generating Consumer Savings .....	8
Preventing Reductions in Coverage.....	8
Helping After Disasters .....	8
Legislative Recommendations .....	9
Recommendation 1: Appraisal .....	10
Issue .....	10
Right to Appraisal.....	10
Pressures on Claims .....	11
Reasons Offered for Limiting Appraisal .....	11
Value of Appraisal .....	11
Recommendation .....	12
Recommendation 2: Credit Scoring.....	13
Issue .....	13
Variability in Updating .....	13
Consumer Impact .....	13
Recommendation .....	14

## Introduction

The Texas Legislature established the Office of Public Insurance Counsel (OPIC) in 1991 and codified the agency's duties in Chapter 501 of the Texas Insurance Code. OPIC represents the interests of Texas consumers in insurance matters. OPIC fulfills its statutory duties through action on regulatory matters, consumer education and outreach, and serving as a resource for the Texas Legislature. OPIC's annual operating budget is roughly \$1.7 million per fiscal year.

Tex. Ins. Code § 501.155 allows OPIC's public counsel to "recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers." The two recommendations contained in this report follow that statutory directive and are presented for consideration.

## OPIC's Duties

### Regulatory Matters - Insurance

OPIC represents the interests of consumers before the Texas Department of Insurance (TDI) on regulatory matters relating to insurance rates, rules, and policy forms. OPIC makes formal comments and objections to TDI on these matters, and when prudent, intervenes as a party in rate hearings before the Commissioner of Insurance and the State Office of Administrative Hearings. OPIC also engages with TDI and stakeholders directly through informal dialogue to achieve positive results for Texas consumers on rates, rules, and policy forms.

### Regulatory Matters – Certificate of Public Advantage

In August 2024, Governor Abbott designated OPIC as the appropriate state agency to review applications for certificates of public advantage (COPAs), and to supervise the activities for which those certificates are issued. The COPA program grants merging hospitals meeting program criteria in seven rural counties immunity from federal and state antitrust laws. This program would add \$400,000 a year to OPIC's budget, coming from fees assessed by the designated agency from the hospitals involved.

### Consumer Education and Outreach

Consumer education and outreach is another important agency duty. OPIC submits Auto Consumer and Residential Property Consumer Bills of Rights to TDI for adoption. These bills of rights advise consumers of their rights under Texas law and are distributed with each new personal auto or residential property policy. OPIC also develops an annual consumer report card on the quality of care, and consumer satisfaction with, Health Maintenance Organizations (HMOs) in Texas. Additionally, OPIC gives public presentations to organizations and consumer groups, publishes consumer advice across multiple social media platforms, and regularly updates its website with timely insurance information. OPIC subject matter experts also serve consumers directly, providing assistance and answering questions over the phone and through email.

OPIC uses its website and social media to increase consumer education and outreach. The agency develops new website content to assist consumers with insurance shopping, claims handling, and general education matters. OPIC also helps provide the HelpInsure tool ([www.helpinsure.com](http://www.helpinsure.com)) in collaboration with TDI, and provides its own online policy comparison tool that helps consumers compare policies and coverage when shopping for property or auto insurance. This tool is currently being updated and revised.

Key means by which OPIC provides consumer education and outreach include

- OPIC website ([www.opic.texas.gov](http://www.opic.texas.gov))
- OPIC Policy Comparison Tool ([www.opic.texas.gov/resources/policy-comparison-tool](http://www.opic.texas.gov/resources/policy-comparison-tool))
- HelpInsure ([www.helpinsure.com](http://www.helpinsure.com))
- HMO reports (using data from DSHS)
- Consumer inquiries
- Public outreach events
- Social media

## Legislative Resource

OPIC recommends legislation to the Texas Legislature that benefits insurance consumers. The agency also provides resource testimony and information on insurance issues. OPIC offered a suggestion to help consumers in the agency's Recommendations Report last session. Time ran out and a bill implementing the suggestion did not become law. OPIC is making the same recommendation again as one of two included in this report.

## Board Service

By statute, OPIC's Public Counsel serves on the boards of the Texas Certified Self-Insurer Guaranty Association and the Texas Self-Insurance Group Guaranty Fund and nominates five public members to the governing committee of the Texas Automobile Insurance Plan Association (TAIPA). The Public Counsel also currently serves on the TWIA Board of Directors Actuarial & Underwriting Advisory Committee.

## OPIC's Budget Structure

TEX. INS. CODE §§ 501.201-205 sets a fee of 5.7 cents assessed on certain insurance policies. Of that fee, OPIC receives less than half, or roughly \$1.5 million per fiscal year. The remaining dollars go to the State's General Revenue Fund. The other portion of OPIC's funding comes from an interagency contract with TDI for \$191,670. That \$191,670 comes from insurers' maintenance taxes, which are appropriated to TDI and passed through to OPIC via the contract. In total, OPIC's annual operating budget is roughly \$1.7 million per fiscal year.

## OPIC's Achievements

### Generating Consumer Savings

OPIC is a small agency with only 16 authorized full-time employees, but we produce significant results for consumers. In FYs 2022, 2023 and 2024, OPIC analyzed almost 1,250, 1,500, and 1,350 rate, rule, and policy forms, respectively. These efforts saved consumers approximately \$22 million in FY 2022, almost \$15 million in FY 2023, more than \$3 million in FY 2024, and more than \$5.7 million in the first five months of FY 2025.

### Preventing Reductions in Coverage

OPIC works with TDI and insurance companies to prevent reductions in coverage on auto and residential property policies. OPIC reviews hundreds of policy forms. More than 270 changes were made in FYs 2023 and 2024 to protect consumers based on these reviews and our involvement. In the first five months of FY 2025, more than 90 policy form changes have been made.

OPIC works hard to protect actively deployed military personnel and their families by objecting to, and getting changes in, personal auto programs that without such changes would have adverse consequences when a family member is deployed.

### Helping After Disasters

OPIC works closely with the Texas Division of Emergency Management (TDEM) and other agencies to monitor critical weather and its aftermath. Following the wildfires, tornadoes, and winds that damaged large areas of Texas in 2024, OPIC created the *Help After a Disaster Toolkit* ([www.opic.texas.gov/help-after-a-disaster-toolkit/](http://www.opic.texas.gov/help-after-a-disaster-toolkit/)). This toolkit is designed to help legislators, local officials, and other stakeholders provide vital insurance-related information to Texans as they begin recovery after severe weather or disasters.



## Legislative Recommendations

In accordance with its statutory authority under Chapter 501 of the Texas Insurance Code, OPIC produces this report to recommend legislation to the Texas Legislature that would positively affect the interests of insurance consumers. This report contains two recommendations:

1. To require personal auto and residential insurers in Texas to preserve the consumer's right to invoke appraisal in disputes regarding the cost to repair, or the amount of a total loss.
2. To require insurers in Texas who use credit scoring in the underwriting or rating of insurance to update credit scores and ratings periodically instead of relying on outdated information.

These recommendations are set forth in the following pages of the report.

## Recommendation 1: Appraisal

---

**Require personal auto and residential property insurers in Texas to preserve the insurance consumer's right to invoke appraisal in disputes regarding the cost to repair or the amount of a total loss.**

---

### Issue

When an insurer and a consumer cannot agree, appraisal is used to quantify the amount of loss for repair or replacement of the property. Generally, an insurance consumer or an insurer can invoke appraisal. Each hires an appraiser. The appraisers review the claim and estimate the amount of loss. If their estimates differ, the two appraisers go to a third appraiser as an umpire, who decides.

### Right to Appraisal

A consumer's right to appraisal as an alternative dispute resolution option has long been the market standard in Texas for both personal automobile and residential property insurance and is provided for in the vast majority of policies. As Texas courts recognize, it is a less expensive, more efficient alternative to litigation. It requires no lawsuits, no pleadings, no subpoenas, no lawyers, and no hearings, and efficiently determines the amount of loss. It is so useful that the Legislature mandated a specific and binding appraisal process for disputes over the amount of accepted coverage in claims against the Texas Windstorm Insurance Association (TWIA) in TEX. INS. CODE §§ 2210.573 and 2210.574.

OPIC is increasingly concerned with restrictions on appraisal in policy forms filed by top insurers. These restrictions can adversely impact consumers, who buy insurance to make sure damage to their property will be repaired or replaced. Without appraisal, consumers may be forced to choose between accepting the insurer's offer and paying out-of-pocket for any disputed amount or taking on the costly and time-consuming burden of going to court, while repairs to their auto or home remain in limbo.

After some insurers tried to limit rights, OPIC recommended that the Legislature preserve historical consumer appraisal rights in disputes over the cost to repair or the amount of a total loss. Three bills passed the House by large margins. One made it through the Senate Committee on Business and Commerce and to the intent calendar, but time ran out. OPIC still works to preserve the right to appraisal in personal auto and residential property policies.

## Pressures on Claims

Since 2015, there have been changes in the market. Costs have risen because of increasing values, inflation, and supply chain issues. Other factors, like disputes between insurers and those doing repair or loss estimation work, seem to have made disputes over property claims more frequent and more contentious.

## Reasons Offered for Limiting Appraisal

Insurers seeking to limit or eliminate appraisal have offered three main justifications for doing so. First, some argue that one insurer was allowed to do so in auto damage claims in the past. However, market conditions have changed, and what might have seemed reasonable for one narrow type of claim years ago now seems less reasonable for a wide range of claims and could become a serious problem for consumers. A better approach would be to provide a fair and level playing field by mandating appraisal for all personal auto and residential property insurers. This may be particularly important in private windstorm policies on the coast in light of the requirements placed on TWIA by TEX. INS. CODE §§ 2210.573 and 2210.574.

Second, some insurers complain that some repair providers abuse the process and demand excessive compensation. If this is the case, it is a problem with some providers, not with appraisal itself. It is an issue that is resolvable through appraisal, rather than being caused by it.

Third, an assertion made for eliminating appraisal altogether is that appraisal in some recent court cases did not provide finality. But the reality is that in the cases cited, lack of finality resulted from claims about insurer behavior, rather than a dispute about the amount of loss. The cases in question simply say that paying an appraisal award neither absolutely precludes nor absolutely mandates insurer liability for claims handling behavior. The fact remains that appraisal still does what it is intended to do – resolve the amount of loss.

## Value of Appraisal

Restrictions on appraisal can remove an important consumer protection that saves the parties and the judicial system time and resources. Appraisal is usually the consumer's only economically realistic option for challenging the amount an insurer offers to repair or replace property. Filing a lawsuit is expensive – often more expensive than the amount of an auto repair claim. Eliminating appraisal leaves the consumer stuck in the middle of a dispute between the insurer and providers over the amount of loss, resembling the balance billing trap that health insurance consumers found themselves in before the Legislature addressed that issue.

Just last December, TDI released the results of its *Appraisal Experience Data Call Report*. A copy of this report can be found online at <https://www.tdi.texas.gov/reports/pc/documents/2024-appraisal-experience-data-call-report.pdf> and is attached. OPIC believes the key findings on page 8 of that report make a convincing argument for the value of appraisal – it is relatively inexpensive, relatively speedy, is usually not preceded or followed by a lawsuit (less than 1% of the time by the end of the study) and generally results in better outcomes for consumers.

## Recommendation

**Amend the Texas Insurance Code to require personal auto and residential property insurers in Texas to preserve the insurance consumer’s right to invoke appraisal in disputes regarding the cost to repair or replace covered property.**

## Recommendation 2: Credit Scoring

---

**Require insurers in Texas who use credit scoring in the underwriting or rating of insurance to update credit scores and ratings periodically instead of relying on old information.**

---

### Issue

An insured's credit score is a rating, tiering, and underwriting variable commonly used when determining personal auto and residential property insurance premiums in Texas. Lower credit scores are associated with higher premiums, and higher credit scores with lower premiums. While TDI requires companies to provide information regarding how often they update policyholders' credit scores for underwriting and rating purposes, no guidelines or regulations exist to provide insurers with expectations concerning these practices.

### Variability in Updating

Recently, OPIC has begun informally tracking the frequency with which credit scores are updated for personal auto and residential property insurance programs. The most common frequencies currently utilized by insurers appear to be once each year, once every two years, once every three years, or at the request of the insured but not more than twice in a twelve-month period. Many insurers offer a combination frequency, where credit scores are updated at regular intervals and will be updated at the request of the insured not more than once in a twelve-month period.

However, a number of large residential property and personal auto programs use an applicant's credit score at the time of initial underwriting and rating, but do not update that credit information at any subsequent renewal re-rating. In these programs, an insured who first purchased their policy at age twenty would, at the age of sixty, continue to be rated according to the credit score they had forty years prior.

### Consumer Impact

Because an individual's credit score generally increases over the course of their lifetime, using an insured's outdated credit score from a younger age will likely not accurately reflect the appropriate level of risk associated with the policy. Tex. Ins. Code § 2251.052(b) provides that an

insurer may not use a rate that does not bear a reasonable relationship to the expected loss and expense experience among risks.

Establishing a threshold credit score update frequency which companies must meet would help ensure that the premium an insured pays is an accurate reflection of their risk profile.

The National Council of Insurance Legislators (NCOIL) in its *Model Act Regarding the Use of Credit Information in Personal Insurance*, sets three year and one year time periods.

## Recommendation

**Amend the Texas Insurance Code to require insurers in Texas who use credit scoring in the underwriting or rating of insurance to update credit scores and ratings at least every three years.**