October 15, 2024

Texas House State Affairs Committee
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768

Chairman Hunter and Committee,

This letter is submitted on behalf of the Insurance Council of Texas, a state-based property and casualty trade association with over 400 member insurers representing over 80% of the Texas market. Our member companies write personal and commercial automobile, residential, and commercial property policies throughout Texas.

We are writing in response to your request for suggestions in response to the State Affairs interim charge regarding the economic factors affecting insurance premiums. We appreciate the opportunity to provide ideas for consideration.

The Texas property and casualty market is competitive and the second largest in the nation. We have over 160 companies writing homeowners insurance, 174 companies writing personal auto insurance, and 325 commercial insurance writers. This market provides policyholders with choices for coverage and varying prices for the insurance coverage that fits their needs.

It is undisputed that rates have increased in multiple lines in Texas, but companies do not raise rates without actuarial justification and without review, follow up questions, and possibility of disapproval by the Texas Department of Insurance (TDI). The ability of companies to review rates and make needed adjustments to loss and cost trends is an important part of maintaining financial solvency for insurers and a competitive market which benefits consumers. This stability ensures that consumers have reliable, financially sound insurers available to cover claims when they need it the most. Rate increases are not made without careful consideration and review of losses, market trends, and actuarial scrutiny of factors that affect the need for proposed rate changes. Under Texas law, rates cannot be excessive, inadequate, or unfairly discriminatory.

During this time of increased rates, policyholders can shop amongst a variety of companies and coverages to find the lowest rate available. Nonetheless, we also understand the need to identify reasonable approaches to lessening pressure on rates and considerations for policymakers in the upcoming 89th legislative session.

First, we note that increasing losses and rising costs are not unique to Texas. Across the country, insurers and policyholders are being impacted by increasingly severe weather events, increased insurance losses, rising costs of replacement and repair of autos and homes, increased cost of

5508 W Highway 290, Suite 100 (78735) | 512-444-9611 | www.insurancecouncil.org

reinsurance, and lawsuit abuse. Some of these factors cannot be addressed by legislation. Hailstorms, tornadoes, and other convective storms are a constant in Texas as we typically rank among the top three in the nation in these events and insured losses from the storms.

For 2023, Texas insurers had a record $45.4 billion in losses, a 21% increase in losses as compared to 2022. Since 2019, losses have increased almost 50%! And for 2023, losses increased across all lines of insurance, both personal and commercial. Insurers reported significant underwriting losses in each of these lines. These are some examples of the significant increases in direct losses in multiple lines:

- 13% increase in private passenger auto, with overall underwriting losses of $422 million;
- 53% increase in losses for cost for homeowners' insurance with overall underwriting losses of $626 million;
- 22% increase in commercial auto with overall underwriting losses of $527 million; and
- 89% increase in general liability with overall underwriting losses of $1.5 billion.

The Texas market faces challenges but has the financial strength and statutory framework for rate and form regulation that helps to keep the market stable and avoid some of the crises facing other states, such as California's property and casualty markets.

As this committee considers possible approaches to address the rising cost of insurance, we suggest that the Legislature consider the following:

Lessen Incentives for Litigation Abuse. A key factor in loss costs is the trend of legal system abuse and nuclear verdicts (verdicts above $10 million). Litigation in the insurance industry drives up costs and complicates the landscape for insurers and policyholders alike. Insurers must defend their policyholders against lawsuits, with the costs of settling claims reported as defense and cost containment expenses. These expenses encompass defense, litigation, and medical cost containment, including surveillance, litigation management, and fees for various specialists.
The Insurance Information Institute has found that four factors contribute to legal system abuse in the United States, these factors are third-party litigation funding (TPLF); plaintiff attorney advertising ("The Billboard Effect"); increasing plaintiff attorney contingency fees, and eroding caps on damages. These factors collectively escalate litigation costs, posing significant challenges for the insurance industry. According to a recent study by Marathon Strategies, in 2023, Texas ranked second in the country in nuclear verdicts with judgments reaching $37 billion.

Further, a report from Swiss Re notes that social inflation has become the "…main growth driver of liability claims in the United States…" Due to a rising number of large court verdicts, social inflation increased liability claims by 57% in the past decade and reached an annual peak of 7% in 2023. Attorneys are incentivized to file lawsuits because of the potential for recovery of significant attorney fees and uncapped noneconomic damages. Watch any television show and attorneys are advertising and encouraging policyholders to file lawsuits after every auto accident, any accident involving a commercial vehicle, or a hail or windstorm. Companies incur costs defending these claims and even when companies prevail in litigation, the cost to investigate, defend at trial, and possibly continue to appeal can be significant.

For 2025, policymakers should consider reforms to reduce the incentives to sue by limiting extracontractual damages, including reviewing future damages and noneconomic damages in Texas law, and setting new standards for recovery of noneconomic and exemplary damages. This is not to prevent the recovery of noneconomic and exemplary damages when appropriate but to refine the standards to reduce the ability to recover beyond legitimate noneconomic and exemplary damages.

In addition, the legislature should review and strengthen laws regarding recovery of health care expenses as economic damages in personal injury or wrongful death claims. Recovery of these expenses should be limited to actual medical expenses paid or incurred. Simply put, all charges and payments should be transparently disclosed in litigation.

Prevent Abuses in Roofing Repair and Protect Policyholders from Fraud. The most expensive and important part of a home is the roof. Hailstorms and wind events often result in damage to the roof structure and can cause tens of thousands of dollars in damage to the roof and sometimes the contents of a house. Unscrupulous contractors often take advantage of policyholders after a storm during their most vulnerable time and offer to pay deductibles, exaggerate roof damage, or simply take the policyholders' insurance claim recovery and fail to make repairs. Many other states have laws requiring roofing contractors to be licensed or registered with the state. Texas requires many other professions and contractors to be licensed and/or trained and should consider the same for roofers who can affect the most expensive and important part of a home.

Protect the Solvency and Competitiveness of the Texas Market. The Texas property and casualty market has grown and remained competitive due to the ability of companies to manage their business while serving the coverage needs of their policyholders. Texas law allows companies the opportunity to develop innovative forms, subject to TDI review and approval, offering different coverage options to policyholders. This approach has been in place since 2003 and works for Texas. Likewise, the current rate filing and review process protects the financial solvency of the insurance market and encourages companies to consider writing new business. Generally, file and use means that companies are able to use rates when filed with TDI subject to whatever effective date the company includes with its rate filing. TDI reviews all rate filings and often raises questions, requests additional information, or can reject a rate change. This approach creates some certainty in the market and reassures companies that they can respond to changing market conditions and address the need for additional rates in a timely manner. This promotes both availability and competition as evidenced by multiple recent rate reduction filings by auto insurance carriers. In prior approval regulatory regimes insurers are much less likely to reduce rates due to uncertainty of how long it would take to gain approval should they need to raise them in the future. For comparison, in states like California, prior approval of rates has resulted in delays or inaction on needed rate changes, impacting the financial well-being of insurers in that state resulting in fewer choices for consumers with, as widely reported, some companies stopping writing business in certain lines. Texas should avoid a similar situation and protect the ability of companies to protect their solvency and encourage other companies to write business in Texas.

Limit Ability to Charge Added Fees for Vehicle Storage During Repair. Insurers are reporting many instances of auto repair shops adding extra costs to repairs for "storage fees" while the vehicle is being repaired and in particular in the event of a total loss. These additional fees can become significant during auto repair, especially if the repairs are taking longer due to part shortages. At a time when auto losses are up 13%, additional and unnecessary repair related costs should be prohibited.

Mitigation and Resilience Strategies. Other states that experience severe weather events and the continuing threat of large losses due to severe weather have instituted various approaches to encourage loss mitigation strategies for structures. The legislature could consider providing grants or other state funding to help encourage homeowners to resilient building repairs or upgrades to existing structures for hail and wind. The state could also review incentivizing building code standards in certain areas impacted by severe weather to help structures be more resistant to losses from wind and hail events. Wind mitigation consists of construction methods that strengthen a home against severe storms, high winds, and wind-driven rain. Mitigation reduces the risk of damage to homes during storms.

If structures are built to be more storm resilient, companies could use these factors in considering actuarially sound rates for resilient structures, along with other factors taken into account in determining an appropriate rate for the risk.

Overall, these suggestions are steps that can help alleviate some of the pressure on rates. However, this does not mean that rates will immediately be lowered, nor will they prevent possible future rate increases by individual insurers. As noted, there are a variety of factors that may affect an insurer's decision on rates. But these recommendations can help alleviate certain losses and cost factors affecting rates.

On behalf of ICT and its member companies, we look forward to continuing this conversation in the 89th legislative session and welcome the opportunity to provide any additional information on these issues.

Sincerely,

Albert Betts Jr.

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Albert Betts
Executive Director
Insurance Council of Texas