



INTERIM REPORT

TO THE 88TH TEXAS LEGISLATURE

HOUSE COMMITTEE ON BUSINESS AND INDUSTRY
NOVEMBER 2022

**HOUSE COMMITTEE ON BUSINESS AND INDUSTRY
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2022**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
88TH TEXAS LEGISLATURE**

**CHRIS TURNER
CHAIRMAN**

**COMMITTEE CLERK
KELLY PETERSON**



Committee On
Business and Industry

November 14, 2022

Chris Turner
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Dade Phelan
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Business and Industry of the Eighty-seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-eighth Legislature.

Respectfully submitted,

Handwritten signature of Chris Turner in black ink.

Chris Turner

Handwritten signature of Cole Hefner in black ink.

Cole Hefner

Handwritten signature of Jasmine Crockett in black ink.

Jasmine Crockett

Handwritten signature of Jared Patterson in black ink.

Jared Patterson

Handwritten signature of Stan Lambert in black ink.

Stan Lambert

Handwritten signature of Hugh Shine in black ink.

Hugh Shine

Handwritten signature of Claudia Ordaz in black ink.

Claudia Ordaz

Handwritten signature of Senfronia Thompson in black ink.

Senfronia Thompson

Cole Hefner
Vice-Chairman

Members: Rep. Briscoe Cain, Rep. Jasmine Crockett, Rep. Stan Lambert, Rep. Claudia Ordaz, Rep. Jared Patterson, Rep. Hugh Shine and Rep. Senfronia Thompson

TABLE OF CONTENTS

INTRODUCTION	1
INTERIM STUDY CHARGES	2
CHARGE I: Monitor Implementation of HB 3746	3
BACKGROUND	3
SUMMARY OF COMMITTEE ACTION	4
FINDINGS	4
LEGISLATION TO CONSIDER	5
CHARGE I: Monitor Implementation of SB 22	7
BACKGROUND	7
SUMMARY OF COMMITTEE ACTION	8
FINDINGS	19
LEGISLATION TO CONSIDER	20
CHARGE I: Monitor Implementation of SB 1588 and SB 581	21
BACKGROUND	21
SUMMARY OF COMMITTEE ACTION	22
FINDINGS	23
LEGISLATION TO CONSIDER	25
CHARGE II: Workers' Compensation for Public Safety Employees	27
BACKGROUND	27
SUMMARY OF COMMITTEE ACTION	27
FINDINGS	32
LEGISLATION TO CONSIDER	32
CHARGE III: COVID-19's Impact on the Economy	33
BACKGROUND	33
SUMMARY OF COMMITTEE ACTION	33
FINDINGS	38
LEGISLATION TO CONSIDER	38
CHARGE IV: Organized Retail Crime	39
BACKGROUND	39
SUMMARY OF COMMITTEE ACTION	39
FINDINGS	46
LEGISLATION TO CONSIDER	47
CHARGE V: Unemployment Insurance	49
BACKGROUND	49
SUMMARY OF COMMITTEE ACTION	49

FINDINGS	51
LEGISLATION TO CONSIDER.....	51
CHARGE VI: Data Privacy	53
BACKGROUND	53
SUMMARY OF COMMITTEE ACTION.....	54
FINDINGS	63
LEGISLATION TO CONSIDER.....	64
ENDNOTES	79

INTRODUCTION

The Honorable Dade Phelan, Speaker of the House of Representatives, appointed nine members of the 87th Legislature to serve on the House Committee on Business and Industry. The following members were appointed to the Committee: Chairman Chris Turner, Vice-Chair Cole Hefner, Rep. Briscoe Cain, Rep. Jasmine Crockett, Rep. Stan Lambert, Rep. Claudia Ordaz, Rep. Jared Patterson, Rep. Hugh Shine, and Rep. Senfronia Thompson.

Pursuant to House Rule 3, Section 3 (87th Legislature), the Committee has jurisdiction over all matters pertaining to:

- industry and manufacturing;
- industrial safety and adequate and safe working conditions, and the regulation and control of those conditions;
- hours, wages, collective bargaining, and the relationship between employers and employees;
- unemployment compensation, including coverage, benefits, taxes, and eligibility;
- labor unions and their organization, control, management, and administration;
- the regulation of business transactions and transactions involving property interests;
- the organization, incorporation, management, and regulation of private corporations and professional associations and the Uniform Commercial Code and the Business Organizations Code;
- the protection of consumers, governmental regulations incident thereto, the agencies of government authorized to regulate such activities, and the role of the government in consumer protection;
- privacy and identity theft;
- homeowners' associations;
- oversight and regulation of the construction industry; and
- the following state agencies: the State Office of Risk Management, the Risk Management Board, the Division of Workers' Compensation of the Texas Department of Insurance, the Workers' compensation research and evaluation group in the Texas Department of Insurance, the Office of Injured Employee Counsel, including the ombudsman program of that office, and the Texas Mutual Insurance Company Board of Directors.

During the interim, Speaker Dade Phelan issued six interim charges to the Committee to study and report back with facts, findings, and recommendations. The House Committee on Business and Industry has completed its interim work and has adopted the following report.

INTERIM STUDY CHARGES

- CHARGE I:
Monitor
Implementation of
Legislation Passed by
the 87th Legislature**
- Monitor the agencies and programs under the Committee’s jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:
1. HB 3746, relating to certain notifications required following a breach of security or computerized data;
 2. SB 22, relating to certain claims for benefits, compensation, or assistance by certain public safety employees;
 3. SB 1588 and SB 581, relating to the powers and duties of certain property owners’ associations.
- CHARGE II:
Workers’
Compensation for
Public Safety
Employees**
- Study workers’ compensation claims involving public safety employees described by SB 22. This study should include an analysis of medical costs, return-to-work outcomes, utilization of care, satisfaction with care, and health-related functional outcomes.
- CHARGE III:
COVID-19’s Impact
on the Economy**
- Study the impacts of the COVID-19 pandemic on unemployment trends, hurdles to workforce reentry, and industry-specific disruptions.
- CHARGE IV:
Organized Retail
Crime**
- Study the impact of organized retail crime on Texas businesses. Make recommendations for addressing the redistribution of stolen merchandise into the supply chain, including through online marketplaces, to protect Texas businesses and consumers. Make recommendations relating to transparency for online marketplaces and information that should be provided by sellers.
- CHARGE V:
Unemployment
Insurance**
- Review operational changes and strategies employed by the Texas Workforce Commission to improve outcomes related to Unemployment Benefit Services, including application and payment processes, customer services, and fraud deterrence.
- CHARGE VI:
Data Privacy**
- Evaluate the overall state of data privacy and online consumer protections in Texas and study the related laws and legislative efforts of other states. Make recommendations to ensure data protections and online privacy.

CHARGE I: Monitor Implementation of HB 3746

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

HB 3746, relating to certain notifications required following a breach of security or computerized data

BACKGROUND

In 2007, the Texas Legislature passed The Texas Identity Theft Enforcement and Protection Act (ITEPA), to protect Texans' sensitive and personal identifying information. This law requires businesses that collect customer information to have procedures to protect the data from unlawful use or disclosure, to properly dispose of information so it is not decipherable, and to notify people whose data was acquired, or was likely acquired, by an unauthorized person.¹

During the 86th Legislative Session, House Bill (HB) 4390 was passed to strengthen notification requirements in the event of a system security breach involving sensitive personal information. The law requires businesses who experience a breach impacting more than 250 Texas residents to provide notice of the incident to the Office of the Attorney General (OAG) within 60 days, with their notice including a detailed description of the breach or use of sensitive personal information acquired as a result of the breach, the number of residents affected, the measures taken regarding the breach, measures intended to be taken after notification, and information regarding whether law enforcement is engaged in its investigation.²

Data breaches continue to be a prominent issue affecting Texas consumers. In fact, since the implementation of HB 4390, more than 30 million Texans had their data compromised by a security breach.³ In an attempt to make information regarding these breaches more publicly accessible, the Texas Legislature passed HB 3746 during the 87th Legislative Session, requiring the notice of a security breach sent to the OAG to include the number of Texans affected by the breach and whether the company notified Texans by mail or another method. Further, it required the OAG to post a list of security breach notices on its website, updating the information no later than the 30th day after the agency receives notice and removing the information after one year if no additional breaches occur.

In accordance with House Bill 3746, the OAG Security Breach Reports website was created by the OAG and is currently live. As of October 31, 2022, there were 462 entries on the website. See Appendix A for an example.

SUMMARY OF COMMITTEE ACTION

Public Hearing: September 15, 2022- Room E2.028, 10 a.m.

Esther Chavez, Consumer Protection Assistant Attorney General, Office of the Texas Attorney General

Esther Chavez testified, detailing the OAG's implementation of HB 3746 and information on the number and type of breaches reported to the agency. Because she was the only witness who testified on this charge, information from her testimony is included in the findings section.

FINDINGS

In order to comply with ITEPA and HB 3746, the OAG developed a form on their website for businesses to report data breaches, which can be found at <https://oagtx.force.com/datasecuritybreachreport/s/>. This form prompts reporters to include information about the breach, including the specific information required by HB 3746.

Once the OAG receives notification of a security breach, either via its web form or letter, they upload the information to their Data Security Breach Reports website, <https://oagtx.force.com/datasecuritybreachreport/apex/DataSecurityReportsPage>. The site includes the name and address of the entity, the type of information affected, the number of Texan consumers affected, whether notice was provided, and how it was provided. The list is searchable to assist consumers in finding information on a specific data breach.

When companies report a breach to the OAG through their designated web form, the process is easy for the agency. Breach information auto populates to the website, the report is auto saved, and an automatic reply email is generated and sent to the entity. When businesses do not use the web form, it is more onerous. OAG Consumer Protection Division staff must generate an email to the businesses, manually extract information from the letter, and physically scan the letter to save in their files.

In Fiscal Year (FY) 2022, OAG received 468 data breach reports. Over 70% were submitted electronically using their web form. According to these notices, over 6.6 million Texans were affected by data breaches in FY 2022. The most common type of information affected was Social Security numbers, followed by financial information and medical information.

Types of entities reporting breaches in FY 2022:

- 31% businesses that sell goods
- 19% healthcare
- 12% financial
- 12% insurance
- 12% education
- 2% government

LEGISLATION TO CONSIDER

- Require companies to use the online OAG web form when reporting breaches. The web form is already utilized by over 70% of reporting entities. Exclusively using the form would streamline the reporting process, saving time and lessening the burden on OAG staff.

CHARGE I: Monitor Implementation of SB 22

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

SB 22, relating to certain claims for benefits, compensation, or assistance by certain public safety employees

BACKGROUND

At the onset of the COVID-19 pandemic, amid state, county, and city stay-at-home orders, Texans sheltered in place and limited contact with others to protect themselves from infection with the COVID-19 virus. During that time first responders continued reporting to work and serving their community, often exposing themselves and their families to the virus.

Prior to the passage of Senate Bill (SB) 22, first responders with suspected work related COVID-19 workers' compensation claims were required to prove that exposure occurred during their work duties, which was almost impossible to do due to the nature of COVID-19 and our lack of knowledge about the virus at that time. To rectify this, SB 22 was passed during the 87th Legislative Session.

SB 22 adds new Texas Government Code Section 607.0545 to create a rebuttable presumption that a severe acute respiratory syndrome coronavirus 2 (SARSCoV-2) or coronavirus disease 2019 (COVID-19) injury or death is work-related for certain first responders. First responders include detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians. The effect of a rebuttable presumption is to flip the burden of proof of a claim to the employer to prove the claim is not work related. SB 22 used a broad definition of first responders to include public safety workers who work for the state, including those who work for the Department of Public Safety (DPS) and the Texas Department of Criminal Justice (TDCJ). This is notable because previous presumptions have not always applied to state employees.

It is important to note that for the SB 22 presumption to take effect, a first responder is required to have been working full time in their position, have tested positive for COVID-19 using an FDA-approved test (or in the case of a fatality, diagnosed by other means), and must have been on duty within 15 days prior to being diagnosed, hospitalized with, or dying of, COVID-19. First responders who do not meet these requirements are not eligible for the presumption.

SB 22 applies to a claim for benefits filed on or after June 14, 2021. The law also allowed first responders or their beneficiaries to file an initial claim for benefits by December 14, 2021, if the first responder contracted COVID-19 between March 13, 2020, and June 14, 2021. In addition, SB 22 allows first responders whose previous claim was denied by their insurance carrier to request their claim be reprocessed. Covered employees or their beneficiaries were required to request that their insurance carrier reprocess their claim by June 14, 2022.

Finally, SB 22 creates a process for certain first responders to be reimbursed for out-of-pocket expenses, including copayments and partial payments, directly from the insurance carrier for COVID-19 claims later determined to be work-related using the presumption that Section 607.0545 created.

SUMMARY OF COMMITTEE ACTION

Public Hearing: May 25, 2022- Room E2.028, 10 a.m.

Jeff Nelson & Dan Paschal, Director of External Relations and Deputy Commissioner, Texas Department of Insurance

To implement SB 22, The Texas Department of Insurance (TDI) Division of Workers' Compensation (DWC) immediately sent out a notice to all system participants about its passage and a summary of its effects. The agency created a new sample request form (see Appendix B) to assist injured employees or beneficiaries in requesting a workers' compensation claim to be reprocessed under SB 22. The division also developed a new plain language notice to be used in COVID-19 presumption workers' compensation claims by insurance carriers to notify injured employees or their beneficiaries of actions taken on a claim (see Appendix C).

After this interim charge was announced, DWC added a specific study on the impact of SB 22 to their research and evaluation group's research agenda. It will be published by the end of the year.

The statutory deadline for COVID-19 workers' compensation claims to be requested to be reprocessed under SB 22 was June 14, 2022. In order to make eligible Texans aware of the deadline, DWC implemented a SB 22 communications plan. DWC sent a notice by mail to all impacted injured employees (about 12,000) to notify them of their eligibility to request their claim to be reprocessed and provided instructions on how to do so. In addition, the agency individually called eligible beneficiaries in fatality claims to notify them of their eligibility.

The agency reminded all carriers, including political subdivisions, of their requirements under SB 22 and provided each insurance carrier with a list of specific injured employees eligible to have their claims reprocessed and reminded them about the requirements of SB 22 at the TDI DWC quarterly meeting in May.

To further disseminate information prior to the deadline, DWC sent notices to third-party claims administrators on the provisions of SB 22, sent SB 22 information to associations that represent first responders and detention and correctional officers, more prominently posted SB 22 information on DWC web pages, sent systemwide email reminders about the deadline, posted information about SB 22 and the deadline on social media, and coordinated with the Office of Injured Employee Counsel and their first responder liaison to help share information.

DWC provided the Committee data on SB 22 claims grouped into three carrier types: commercial, political subdivision and the State of Texas. The division divided their data into three sections: claims filed before SB 22's effective date, claims occurring before but filed after SB 22's effective date, and claims filed after SB 22's effective date. A summary of this data is below.

Note, The Department of Workers' Compensation has updated the original data presented at the hearing. The data below includes the most updated information provided to the Committee from DWC on October 18, 2022.

Claims Filed Before SB 22's Effective Date

Before SB 22 was passed, 22,269 COVID-19 workers' compensation claims were filed by first responder employees. Overall, 56% of these claims were denied, with the State of Texas denying the greatest percentage of claims at 87%. Political subdivisions had the greatest number of claims filed (15,549) and the lowest percentage of claims denied (44%). Fatal claims made up 0.56% of all claims filed and 0.59% of claims denied. SB 22 allowed the 12,473 denied claims in this section to be reprocessed if the injured employee submitted a request for their insurance company to do so.

Categories	Total Claims (includes fatal and non-fatal claims)	Fatal Claims
All Claims Filed	22,269	124
Initially Denied Claims	12,473	73
Initially Non-Denied Claims	9,796	51

Source: Data reported to insurance carriers through October 2, 2022.

Note: DWC identified first responders and correctional officers based on the following 6-digit North American Industrial Classification Codes: 621910, 921140, 921190, 922120, 922130, 922140, 922150, 922160, and 922190. COVID-19 vaccine reaction claims were excluded.

Claims Initially Denied by Insurance Carrier Type

Insurance Carrier Categories	Total Claims (includes fatal and non-fatal claims)	Initially Denied Claims (includes fatal and non-fatal claims)	Percentage of Claims Denied	Total Fatal Claims	Initially Denied Fatal Claims
Commercial	953	566	59%	10	6
Political Subdivision	15,549	6,907	44%	63	27
State of Texas*	5,767	5,000	87%	51	40
Total	22,269	12,473	56%	124	73

*SORM accounts for almost all State of Texas claims, although UT, A&M, and TXDOT have their own workers' compensation programs.

See Appendix D for claim data broken down by individual insurance carriers.

Claims Occurring Before SB 22's Effective Date but Filed After SB 22's Effective Date

After the passage of SB 22, 356 workers' compensation claims for COVID-19 cases that occurred before the bill's effective date were filed. 85 of these claims were denied (23.9% of filed claims). Once again, political subdivisions had the most total claims (230) and the lowest percentage of claims denied (19%). The State of Texas had the highest rate of claims denied, 34%. In this category, fatal claims made up 2.2% of all claims, and 5.9% of denied claims.

Categories	Total Claims (fatal and non-fatal claims)	Fatal Claims
All Claims Filed	356	8
Initially Denied Claims	85	5
Initially Non-Denied Claims	271	3

Source: Data reported to insurance carriers through October 2, 2022.

By Insurance Carrier Type, Including Denials

Categories	Total Claims (fatal and non-fatal claims)	Total Claims Initially Denied (fatal and non-fatal claims)	Percentage of Claims Denied	Fatal Claims	Fatal Claims Initially Denied
Commercial	5	0	0%	0	0
Political Subdivision	230	44	19%	6	3
State of Texas*	121	41	34%	2	2
Total	356	85	24%	8	5

*SORM accounts for nearly all State of Texas claims, although UT, A&M, and TXDOT have their own workers' compensation programs.

See Appendix E for claim data broken down by individual insurance carriers.

Claims Occurring After SB 22's Effective Date

Since the passage of SB 22, 24,572 workers' compensation claims have been filed and only 2,376 were denied (9.7%). Political subdivisions have the greatest number of claims filed (22,101), and the lowest percentage of denied claims (7%). Commercial insurance carriers had the highest percentage of denied claims, 35%. In this category, fatal claims made up 0.5% of all claims and 1.6% of all denied claims.

Categories	Total Claims (fatal and non-fatal claims)	Fatal Claims
All Claims Filed	24,572	123
Initially Denied Claims	2,376	39
Initially Non-Denied Claims	22,196	84

Source: Data reported to insurance carriers through October 2, 2022.

Note: DWC identified first responders and correctional officers based on the following 6-digit North American Industrial Classification Codes: 621910, 921140, 921190, 922120, 922130, 922140, 922150, 922160, and 922190. COVID-19 vaccine reaction claims were excluded.

By Insurance Carrier Type, Including Denials

Categories	Total Claims (fatal and non-fatal claims)	Total Claims Initially Denied (fatal and non- fatal claims)	Percentage of Claims Denied	Fatal Claims	Fatal Claims Initially Denied
Commercial	636	220	35%	6	3
Political Subdivision	22,101	1,579	7%	79	19
State of Texas*	1,835	577	31%	38	17
Total	24,572	2,376	10%	123	39

*The State Office of Risk Management (SORM) accounts for almost all State of Texas claims, although UT, A&M, and TXDOT have their own workers' compensation programs.

See Appendix F for claim data broken down by individual insurance carriers.

Reprocessed Claims

Denied claims submitted prior to the implementation of SB 22 could be reprocessed, if requested by the injured employee or beneficiary by the deadline of June 14, 2022. In total, 181 forms were filed requesting a claim to be reprocessed. Of the 181 claims requested, 113 were accepted and 68 were denied. Fatal claims made up 19.9% of all reprocessed claims, and 22.1% of reprocessed claims that were denied.

Reprocessed Claims by Insurance Carrier Type

Insurance Carrier Type	Total Reprocessed Claims (fatal and non- fatal claims)	Reprocessed Claims Denied	Total Reprocessed Fatal Claims	Reprocessed Fatal Claims Denied
Commercial	7	6	3	2
Political Subdivision	52	20	14	10
State of Texas	122	42	19	3
Total	181	68	36	15

See Appendix G for reprocessed claims by insurance carrier.

COVID-19 Claims Broken Down by Type of First Responder

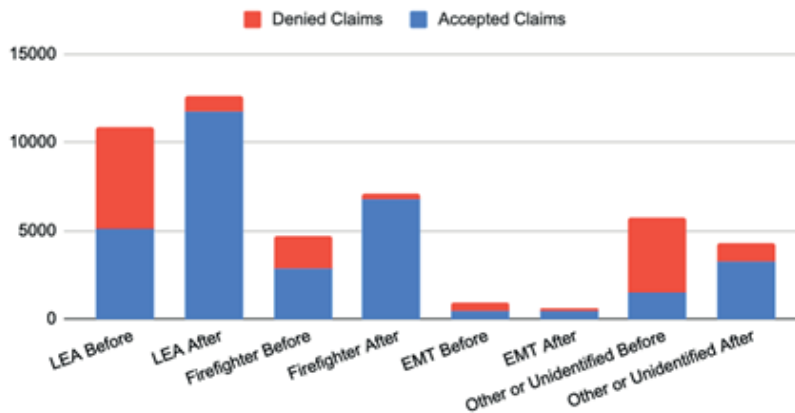
As of October 2, 2022, law enforcement claims made up 24,302 of all COVID-19 workers’ compensation claims, the greatest number of any first responder. Emergency medical technicians had the highest percentage of denied claims, 45.1%. Firefighters had the lowest percentage of denied claims, 18.6%.

Categories	Law Enforcement (claims initially denied)	Firefighters (claims initially denied)	EMTs (claims initially denied)	Other or Unidentified (claims initially denied)	Total
Claims filed before SB 22	10,887 (5,792) (53%)	4,664 (1,837) (39.4%)	962 (553) (58.5%)	5,756 (4,291) (74.5%)	22,269 (12,473) (56%)
Claims filed after SB 22, but the injury happened before SB 22	190 (34) (17.9%)	71 (13) (18.3%)	1 (0) (0%)	94 (38) (40.4%)	356 (85) (23.9%)
New claims filed after SB 22	12,603 (888) (7%)	7,100 (325) (4.6%)	611 (152) (24.9%)	4,258 (1,011) (23.7%)	24,572 (2,376) (9.7%)
Total	24,302 (7,057) (29%)	11,888 (2,210) (18.6%)	1,586 (716) (45.1%)	10,152 (5,366) (52.9%)	47,928 (15,349) (32%)
Claims reprocessed under SB 22	101	11	4	65	181

Source: Data reported to insurance carriers as of October 2, 2022.

Note: The law enforcement category includes police, sheriffs, detention officers, correctional officers, and other law enforcement officers. Other or unidentified groups had different occupational titles that did not match with law enforcement, firefighter, or EMTs or did not report the occupational title.

COVID-19 Claims Before and After SB 22 by Type of First Responder



Benefits Paid by Insurance Provider

Costs incurred by insurance providers from SB 22 can be divided into 4 categories: medical benefits, income benefits, death benefits, and burial benefits. As of October 2, 2022, the largest cost to all insurance providers was income benefits, totaling \$60.58 million for all carriers. Of the three types of carriers, political subdivisions incurred the greatest cost for each of the four benefit categories.

Insurance Carrier Categories	Medical Benefits (\$)	Income Benefits (\$)	Death Benefits (\$)	Burial Benefits (\$)
Commercial	999,497	1,668,656	386,811	10,574
Political Subdivision	29,493,437	56,865,245	2,431,439	392,590
State of Texas	1,255,833	2,046,866	697,046	0
Total	31,748,767	60,580,767	3,515,296	403,164

Source: Data reported to insurance carriers through October 7, 2022.

Note: Income benefits include temporary income benefits (TIBs), impairment income benefits (IIBs), and lifetime income benefits (LIBs). There were no supplemental income benefits (SIBs) paid. Employers' salary paid (ERPDs) were excluded in the income benefits. Due to rounding, the total number might not be exactly equal to the total of whole numbers.

See Appendix H for the cost of benefits broken down by insurance carrier.

Disputes on First Responder Claims

As of October 2, 2022, 78 disputes have been filed on first responder COVID-19 workers' compensation claims. 25 of these disputes were on issues of compensability. Other disputes may have included disagreement on the date of maximum medical improvement, whole body impairment rating, or other issues.

All compensability disputes were concluded through a contested case hearing and 84% (21 cases) were concluded in favor of the first responder. Cases found "against" the injured employee may have been exposure only cases (no positive COVID-19 test) or employees who were not categorized as first responders.

Rebuttal of Workers' Compensation Claims under SB 22

Although SB 22 transitions the burden of proof to insurance carriers, carriers do have the legal right to rebut a case if they have a preponderance of evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a first responder was a substantial factor in bringing about the individual's disease or illness. This does give insurance carriers the right to request medical records and other information about injured employees to make their case. However, this rebuttal cannot be offered solely because of exposure to COVID-19 with a person the first responder lives with.

Deea Western, Chief of Legal Services, State Office of Risk Management

The State Office of Risk Management (SORM) is the workers' compensation carrier for most State of Texas employees, covering approximately 184,000 individual state employees. During the COVID-19 pandemic, SORM saw a sharp increase in workers' compensation claims filed, with the highest numbers occurring during the third and fourth quarters of fiscal year 2020

(3,070 and 5,734 claims, respectively for all employees covered by SORM).

From December 1, 2019 through March 31, 2022, SORM received 8,558 claims and accepted 1,457 claims for an acceptance rate of 17%. In that time, SORM received 92 death claims and accepted 57 of those claims for an acceptance rate of 62%.

Note: The above data was provided by SORM at the May 25th, 2022 committee hearing. It includes all covered employees and is not specific to first responder employees.

As of October 10, 2022, SORM had 1,511 first responder workers' compensation cases that were submitted and eligible under SB 22. 1,153 of these claims were accepted and 358 claims were denied. Of the 358 denials, 49 claims did not have a positive COVID-19 test, 263 claims did not have supporting medical documentation of the COVID-19 test, and 35 claims were determined not to be a result of the claimant's work environment.

77 claims initially denied by SORM were reprocessed under SB 22. Of these claims, 59 were accepted and 18 were denied. Of the 18 denied claims, six did not have a positive COVID-19 test and 11 did not have medical documentation supporting their positive COVID-19 results. The remaining denial was an employee that SORM determined had a case of COVID-19 that was not work related. SORM found that the employee contracted COVID-19 at home from a spouse who was exposed at their non-state place of employment. It is important to note that although the Committee is not privy to all the facts in this case, on its face it appears to be out of compliance with SB 22. Section 7 of the legislation states that a rebuttal cannot be offered solely because of exposure to COVID-19 from a person that a first responder lives with.

At the committee hearing, Ms. Western could not identify any specific reason for SORM's high rate of denials compared to other carriers, other than that they require individuals to qualify for presumption under SB 22. After the hearing, SORM provided the Committee further data outlining the reason each case was denied, which is outlined above. While this data was helpful in illustrating the most common reasons for denial, it did not shed further light on SORM's higher rates of denial than other carriers.

Jessica Barta, *Public Counsel*, Office of Injured Employee Counsel

The Office of Injured Employee Counsel (OIEC) is the state agency charged with helping Texans with their workers' compensation claims. The agency has a first responder liaison program, which includes a dedicated individual who serves as the first contact for first responders applying for workers' compensation. At any given time, OIEC is consistently helping between 110 and 125 first responders through the workers' compensation process. OIEC is involved in the majority of first responder workers' compensation disputes. In 2021, the agency was involved in 85% of all first responder workers' compensation disputes and in 2020, they were involved in 80%.

When SB 22 was passed, OIEC made sure the DWC SB 22 FAQ web page and other website information linked directly to their website. They created a social media campaign to spread awareness of SB 22 and had their ombudsman earmark claims that needed to be revisited under new provisions in the law. The agency has seen numerous success stories from SB 22 and

believes the bill is working as intended, similarly to the cancer presumption working as intended when it was passed. The bulk of claims from SB 22 that OIEC became involved with were from Texans who worked in jails.

However, especially at the beginning of the pandemic, OIEC did see employers attempting to tie exposure to COVID-19 to natural events, including going grocery shopping or attending church to reject claims that the virus was contracted at work. OIEC has seen employers hire private investigators and use medical records to deny claims. The agency continues to help applicants with the rebuttal process when this occurs.

Charley Wilkison, Executive Director, Combined Law Enforcement Associations of Texas
Combined Law Enforcement Associations of Texas (CLEAT) becomes involved in cases when the workers' compensation system does not work as intended. From the vantage point of this organization, the system is designed to prevent claims from being accepted. Mr. Wilkison testified that many insurance carriers and agencies are not complying with SB 22 and families are not receiving benefits. These problems most commonly occur with political subdivisions, but happen with all insurance carriers. First responders in large, urban centers have a better chance of having their claim processed, but problems exist in every area of the state.

CLEAT members report that some employers say COVID-19 is not covered by workers' compensation or is an "ordinary disease of life," even after SB 22's effective date. Some denials allege that SB 22 does not apply even when the employee meets all requirements, and some do not mention presumption at all. Some employers refused to file claims in violation of Labor Code Section 409.005 and employees did not receive their notices about rights and responsibilities telling them how to report their own claims. Some carriers denied claims filed by December 14, 2021 as untimely, even though SB 22 removed those time frames for these claims. Some denials say that the employee did not show "causation" even though SB 22 removes that requirement. Some insurance carriers label cases as pending to disguise denied claims in their data.

Mr. Wilkison testified that many insurance carriers did not do their due diligence to properly notify and educate stakeholders of the impact of SB 22. As a result, few employees who contracted COVID-19 prior to SB 22 knew of their right to file a claim. Further, many injured employees did not know how to resubmit a claim. Insurance carriers only sent notification to previously denied claimants explaining their right to resubmit their claim after CLEAT requested that legislators ask them to do so.

John Wilkerson, Legislative Liaison, Texas Municipal Police Association

The Texas Municipal Police Association (TMPA) represents over 31,000 police officer members throughout Texas. The problems they have been notified of regarding workers' compensation and SB 22 are widespread throughout the state.

The biggest complaint TMPA has heard is that cities and political subdivisions are not taking the legislative intent of SB 22 to heart and are prioritizing money over taking care of first responders. Members often feel like they are being interrogated when they fill out paperwork to receive workers' compensation. It is common for insurance carriers to hire a private investigator

to go through an applicant's social media, talk to their neighbors, and go to extreme measures to rebut a presumptive workers' compensation claim. Further, there are allegations that some employees in state human resource departments have been instructed to collect any information on employees that could assist in denying their claims.

TMPA Recommendations

- (a) **Extend the presumption to September 1, 2025:** Currently, the presumption under SB 22 is set to expire on September 1, 2023. It is important to extend the presumption through another legislative session to allow time for further data to be collected. There is still a significant amount that we do not know about COVID-19, especially long COVID-19. It is important to extend the presumption while more information is collected.
- (b) **Remove the requirement for a first responder employee to have contracted COVID-19 during a disaster period declared by the governor:** If the presumption is extended but Texas' disaster declaration ends, first responders will not be covered. Even if COVID-19 is no longer a declared disaster, the virus will still have the potential to infect and harm first responders. These individuals should still be covered.
- (c) **Consider additional language to cover Reserve Peace Officers:** Due to the shortage of law enforcement officers, reserve officers have been frequently called on to serve. These individuals donate their time and rarely receive any compensation for their work. If a reserve peace officer contracts COVID-19 and there are lasting implications, they risk losing their livelihood with no workers' compensation coverage.
- (d) **Address the confusion on the relation between SB 22 and HB 2073:** HB 2073, also passed during the 87th Session, requires political subdivisions to develop a paid quarantine leave policy for first responders who are ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty. Many employers are unsure how, or if, SB 22 impacts HB 2073.
 - a. One viewpoint is that since the contraction of COVID-19 under SB 22 is presumed to be on duty, the provisions under HB 2073 would apply and therefore the officer should lose no time for quarantine.
 - b. Another viewpoint is HB 2073 was passed in a different statute and the intent of the legislature is that these two situations are viewed independently, meaning a first responder employee quarantining due to a positive COVID-19 test would not be required to be provided paid leave. If this is the case, an employee who was exposed to COVID-19 and required to quarantine yet never infected would receive their full salary, while an employee who tested positive for COVID-19 and received workers' compensation benefits would only receive 70% of their salary.
 - c. Neither of these opinions have been litigated in court.

Michael Glynn, *President*, Fort Worth Professional Firefighters Association

COVID-19 has had a major impact on the firefighting profession because firefighters live together, work together, and stay together 24 hours a day. Prior to the pandemic, firefighters could report for duty with a cold or small illness without impacting the station. Now, one worker having an illness can result in an entire station being shut down due to quarantine and testing.

SB 22 helped many firefighters receive benefits and additionally helped restore order in the

profession during an otherwise chaotic situation by establishing a process to follow when first responders fell ill during the pandemic. The bill has given some workers the chance to have denied claims reprocessed and other workers the opportunity to file claims that were previously unfiled. Overall, firefighters are not seeing widespread denials. However, Mr. Glynn noted that the success of SB 22 depends on the intent of the first responders' insurance carrier: if they are trying to take care of their workers or looking for a loophole to deny claims and save money.

One issue firefighters have noticed is some city policies conflicting with SB 22. Many city departments have told workers they are not eligible for benefits unless there is a documented infected person that they worked with. This is not true under SB 22.

The Fort Worth Firefighters also recommend that the presumption be extended for at least another two years. The presumption was stress-tested with high COVID-19 rates during the Omicron variant and did not break the system. Further, Mr. Glynn recommended for the Legislature to consider firefighters who have been infected with COVID-19 and will never be able to return to work. Long COVID-19 currently does not make these workers eligible for lifetime income benefits.

Cliff Buchanan, Deputy Director, AFSCME Texas Correctional Employees Council 907

As of May 25, 2022, COVID-19 was less deadly for correctional workers, but still taking its toll. At the time of the hearing, there had been almost 22,000 TDCJ employees infected with COVID-19 and 86 TDCJ employees who had died from the virus. In addition, there had been nearly 45,000 cases and 236 deaths among inmates.

Overall, AFSCME reported that SB 22 is a success for TDCJ staff and has addressed the confusion many TDCJ employees faced in the early days of the pandemic: having to fight to prove they got sick at work even though TDCJ was one of the biggest COVID-19 hotspots in the country. This law gives TDCJ staff peace of mind knowing their family will not have to jump through hoops if they get sick. The process is working well and claims related to COVID-19 are being accepted.

However, AFSCME believes the initial rollout of SB 22 was poor. There was significant confusion when the bill was first enacted. Human Resources staff and TDCJ officials did not fully understand the new rules, especially around refiling. TDCJ staff were told that they could not refile claims or that their human resources employees did not know the process for them to do so. These initial problems have been worked out over time, but future bills need to have smoother introductions. Agency staff must be fully trained in the requirements of new laws to avoid costly delays.

David Reagan, General Counsel, Texas Municipal League Intergovernmental Risk Pool

The Texas Municipal League Intergovernmental Risk Pool (TMLIRP) is a governmental entity formed in the 1970s when cities began to self-insure. Many smaller cities combined their resources to create an administrative agency to handle their insurance programs. Although TMLIRP acts like a private insurance carrier in claim handling and administration and is subject to the same requirements, they are a governmental entity and a nonprofit organization.

In 2020, at the very beginning of the pandemic, TMLIRP made the decision to presume first

responder COVID-19 claims were work-related before this was required under SB 22. At the time of the hearing, TMLIRP had received 7,524 COVID-19 workers' compensation claims and accepted 95.5% of these claims as compensable. TMLIRP incurred \$90 million for these claims: \$20 million for medical costs and \$70 million for indemnity. Of that \$70 million, \$65 million of costs incurred were for death benefits for 45 employees.

Although TMLIRP has a high first responder COVID-19 acceptance rate, they have denied a total of 336 claims. One commonly-denied claim is that of an employee reporting only exposure to COVID-19, not a positive test. TMLIRP has always denied such claims. TMLIRP claims are also denied if an applicant does not meet the 15 day on-duty requirement.

At the time of the hearing, TMLIRP had not received any requests to refile rejected claims, likely because they covered COVID-19 as a presumption from the beginning. However, Mr. Reagan did make the commitment to notify all members of the June 14 deadline and TMLIRP sent notice to their employees of the deadline in their May newsletter.

Charles Reed, *Assistant County Administrator, Dallas County*

After the passage of SB 22, Dallas County notified all their employees who had made an eligible workers' compensation claim that they could request the claim to be reprocessed. They ended up with approximately 7 or 8 refiles, which were all approved. Dallas County also sent a memo to all employees explaining the process to file a claim if they got COVID-19 while on the job.

As of April 30th, 2022, this legislation had cost the county \$2.9 million. If a Dallas County employee were to die from COVID-19, that one death would cost the county \$1.5 million over a 25-year period. In April 2022, Dallas County moved the COVID-19 threat level to green, meaning there was low spread and low infection rates throughout the city. However, even during that month of low COVID-19 spread, the county spent nearly \$17,000 on workers' compensation claims. The entirety of these costs was paid for using COVID-19 relief funds; first the CARES (Coronavirus Aid, Relief, and Economic Security) Act and more recently the American Rescue Plan Act (ARPA) funding, which is scheduled to expire at the end of 2024.

An important component of SB 22 for Dallas County is the sunset provision. The county asked for this provision to be included in the bill because once they lose federal COVID-19 funding, they will be responsible for all costs from COVID-19 workers' compensation claims. If the presumption is extended, the county asked for the sunset provision to be extended to December 31, 2024 (when their ARPA COVID-19 funds will expire) or for the legislature to allocate state funds to cover the costs. Without any federal COVID-19 funding or new state funding, the county would have had to increase property taxes by 1% to pay for these costs.

Public Testimony

During the public testimony portion of the hearing on May 25, 2022, numerous widows of law enforcement members who died from COVID-19 testified describing insurance companies' efforts to deny claims. Many of these individuals described the heartbreaking, grueling process of applying for benefits, alleging that insurance companies ignored the intent of SB 22, overzealously investigating claims and appealing cases repeatedly. This testimony raises concerns that insurance carriers are not following the intent of SB 22, resulting in additional pain for families already dealing with unimaginable loss.

FINDINGS

Overall, SB 22 has been effective in ensuring more first responder COVID-19 workers' compensation claims are accepted. The primary rejection rate dropped from 56% prior to SB 22 to 9.7% after its implementation. 181 previously denied cases have been reprocessed under the new legislation, 62% of which were approved. While this data speaks to SB 22's overall success, the Committee did identify some weaknesses in the implementation of this legislation, which are also illustrated by the low rate of reprocessed claims (1.45%). Witnesses testified that there were initial problems when the bill first became effective, specifically a lack of sufficient dissemination of information to affected stakeholders.

At the May 25th hearing, the importance of ensuring that stakeholders were aware of their ability to file claims under SB 22 and the deadlines to do so was emphasized. In response, numerous entities, including DWC, TMLIRP and CLEAT worked to spread information about the bill, especially to notify interested parties of the June 14 deadline to request claims to be reprocessed. Updated data from the DWC shows 38 new requests to refile and 6,010 new COVID-19 first responder workers' compensation claims. This is evidence that the outreach methods of stakeholders were successful.

Although the bill has been effective, there are allegations of unfair denials and claims of insurance companies willfully attempting to deny or appeal claims to save money. According to SB 22, even if every requirement is met, the presumption is still rebuttable, meaning it is within an insurance company's rights to rebut a claim if they are able to show a "preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred."⁴

This option of rebuttal, while necessary, has allowed some insurance carriers to overzealously investigate claims with the intention of proving COVID-19 was contracted elsewhere. Further, these insurance carriers can appeal cases numerous times to wear down the applicant. In these instances, injured employees and their survivors are subjected to a painful back and forth where they are forced to defend the origin of the COVID-19 infection. As described by John Wilkerson, these cases can become a war of attrition, in which insurance carriers use every method possible to not pay a claim.

There is widespread agreement among first responder advocacy groups that SB 22 should be extended, at least for another legislative session, as COVID-19 continues to infect and harm first responders, and we still have quite a bit to learn about the virus. If the presumption was extended, federal COVID-19 funds could cover costs incurred through December 31, 2024. However, after that date those incurring the financial burden have asked that the legislature allocate funding for these costs.

LEGISLATION TO CONSIDER

- Extend the sunset provision of SB 22 until December 31, 2024, when ARPA funding will expire. The Legislature could consider extending the presumption further than that, but if so, consideration should also be given to allocating funds to cover its costs.
- Amend 607.058 of the Government Code to establish limits on reasons an insurance carrier can rebut a claim. The extent of this can be discussed but going to church or the grocery store should not be grounds for a claim to be denied, especially when an employee is still going to work in person.
- When a presumption bill is passed, outreach and education should be prioritized to ensure potentially affected Texans are aware of their rights.
- Establish clarity in the way that SB 22 and HB 2073 affect one another.

CHARGE I: Monitor Implementation of SB 1588 and SB 581

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

SB 1588 and SB 581, relating to the powers and duties of certain property owners' associations

BACKGROUND

Nearly six million Texans live in homes that are governed by property owners' associations, and this number is only likely to increase as new communities are built across the state to meet the needs of our growing population.⁵ Prior to the 87th Legislative Session, concerns were raised that an imbalance of power existed between property owners' associations and homeowners. These concerns spanned a wide variety of topics, including challenges between property owners and oversight boards, costly fees charged for real estate transfers and difficulty accessing governance and operations information. To address these concerns, SB 1588 and SB 581 were passed during the 87th Legislative Session with the goal of reforming the statutes governing property owners' associations to ensure their operations are transparent and that there is an appropriate balance of power between homeowners and property owners' associations.

Key provisions of SB 1588:

- Limits fees for resale certificates and subdivision information;
- Creates a central database of Texas property owners' associations;
- Requires the Texas Real Estate Commission to maintain a website displaying property owners' association management certificates;
- Protects property owners from negative credit reporting when a fine or fee is under dispute;
- Prevents some conflicts of interest within property owners' associations governing boards;
- Provides better due process in dispute resolution;
- Protects owners' and tenants' private information by specifying that property owners' associations may not require access to lease agreements;
- Requires a property owners' association to solicit bids for any contract for services over \$50,000;
- Provides an enforcement mechanism for dedicatory instruments and management certificates;
- Bars property owners' associations from prohibiting certain pool safety enclosures;
- Bars property owners' associations from prohibiting the installation of certain security measures on an owner's private property;
- Bars property owners' associations from prohibiting certain religious displays; and
- Provides additional legal avenues when seeking resolution of a dispute with a property owners' association.

Key Provisions of SB 581:

- Bars property owners' associations from forcing the removal of any religious display on a homeowners' property.

SUMMARY OF COMMITTEE ACTION

Public Hearing: September 15, 2022- Room E2.028, 10 a.m.

Chelsea Buchholz, Executive Director, Texas Real Estate Commission

Under SB 1588, the Texas Real Estate Commission (TREC) is responsible for collecting management certificates and amended management certificates from property owners' associations and making the information collected available to the public on an internet website. In compliance with the bill, TREC created the website www.hoa.texas.gov, where property owners' associations can upload management certificates and homeowners, or prospective homeowners, can search for certificates. The website is currently live.

One problem surrounding this legislation and the TREC database website is the difficulty in knowing what percent of property owners' associations have abided by the new requirements and registered with TREC. As of the Committee hearing on September 15th, 2022, there were over 9,200 certificates uploaded to the website. However, without knowing the total number of property owners' associations in the state, it is impossible to know how complete the database is.

Christy Gessler, Broker-Owner, Freedom 512 Real Estate Group & Texas REALTORS®

While SB 1588 improved the balance between homeowners and property owners' associations, Texas REALTORS continue to hear concerns from property owners regarding property owners' associations, especially considering fees and dispute resolution. Fees still cripple homeowners whether they are trying to buy, sell, or rent their home. Further, the system for dispute resolution is still lacking an entity that could enforce the property code before a dispute escalates to a courtroom setting.

Property owners' associations' policies regarding leases and rental agreements are particularly concerning. Texas REALTORS were informed of one property owners' association in Round Rock that collected a \$500 "filing fee" for the collection of tenant contact information. It has also become a trend for property owner associations to get power of "attorney in fact" over renters, which gives them the ability to dispossess or evict tenants without consulting the property owner.

Connie Heyer, Partner, Niemann & Heyer LLP & Texas Community Association Advocates

As SB 1588 has been implemented, unintended consequences have created challenges for property owners' associations. The requirement for a property owners' association board of directors to be composed of entirely different members than their architecture review board has created further difficulties for associations attempting to staff these committees. Additionally, allowing a homeowner to build any security item on their property has enabled homeowners to build fences right up to their property line, in some cases obstructing sidewalks and drainage ditches, or causing unsafe conditions where a driveway gate is immediately next to a street.

Bill Higgins, *President, Crest Management Company & Texas Legislative Action Committee*

There are over 20,000 property owners’ associations serving residents in Texas. These property owners’ associations provide valuable services and amenities to their residents, including trash pickup, street lighting, mosquito removal, law enforcement control and many recreational amenities, in addition to maintaining home values. Crest Management Company manages 174 communities in the Houston area, representing close to 100,000 homeowners.

Property owners’ associations do have significant power over homeowners, but there are mechanisms in place to control the power that these associations yield. Property owners’ association board members can be voted out if homeowners are dissatisfied. 85% of homeowners report having a positive experience with their property owners’ association. During the implementation of SB 1588, Crest Management has also heard reports of homeowners obstructing sidewalks by building fences right up to their property line.

When questioned about Providence Village Homeowner Association banning homeowners from renting to Section 8 voucher recipients, Mr. Higgins acknowledged that this policy would likely have a discriminatory impact and stated that his association would support legislation restricting property owners’ associations from imposing restrictions on forms of rental payments.

Nick Kornuta, *Board President, Terraces on Memorial & Texas Legislative Action Committee*

Terraces on Memorial is a homeowner association in West Houston with 273 homes. As a gated community, the association handles gate maintenance, private streets, trash collection, streetlights and water features.

It is the nature of property owners’ associations to enforce rules set out in deed restrictions, which are written by developers and established before the board is created and before homes are built. The purpose of enforcing these provisions is to maintain an attractive and desirable neighborhood and maximize property values. People are drawn to this type of community because they offer high property values, community aesthetics and amenities.

SB 1588’s prohibition of a board member, board member’s spouse, or person residing with a board member from serving on the architectural review board has proven challenging for Terraces on Memorial, especially because of its small size. In total, they need to fill 10 positions, which are unpaid and require a significant time commitment. Currently, their board is short one member and their architecture review committee is short two members. If they are unable to fill these positions, they will have to hire someone outside of the committee, costing residents additional money and appointing someone to the board who does not have a connection to the community.

FINDINGS

While SB 1588 has been an overall success in balancing power between property owners’ associations and homeowners, there are additional areas for improvement and some unintended consequences created by the legislation that should be addressed.

Section 4 of SB 1588 prohibits a property owners' association from preventing a homeowner from constructing a security fence around the perimeter of their property. Multiple property owners' associations testified that homeowners have taken this right literally and have built security fences right up to their property line, blocking neighborhood sidewalks or drainage ditches. This can become a safety hazard if fences impede the pedestrian right of way or obstruct the flow of stormwater and sediment drainage, potentially causing flooding.

Another problem raised was property owners' associations' requirements for homeowners who rent their homes. Some property owners' associations collect substantial fees for homeowners who rent their homes or require the homeowner or renter to complete extensive paperwork. Others, like Providence Village Homeowner Association, have restricted the payment a property owner can accept from their renters.

After the hearing, the community that Christy Gessler mentioned that charged \$500 in "filing fees" for the collection of tenant information was addressed by Texas Community Association Advocates (TCAA). This fee is no longer being charged and the Committee thanks TCAA for addressing it.

The Committee continued to engage with stakeholders in discussions of these issues and is encouraging further collaboration between interested parties to identify problems which have not yet been addressed and develop possible solutions.

Further discussions between stakeholders highlighted the difficulty in knowing the total number of property owners' associations in the state. Many smaller associations without a management company or legal representation may not be aware that SB 1588 requires them to register with TREC. If an association does not register with TREC, there is no record of them and TREC will not be aware of them. This presents a challenge; however, stakeholders are engaged in discussions regarding legislation that could be considered to better inform all property owners' associations of the requirements to file their management certificate with TREC. These additional discussions also made it clear that some homeowners still believe that fees charged by property owners' associations are not transparent. Stakeholders have committed to continuing a dialogue to address these claims and identify viable solutions.

No stakeholder concerns were raised regarding SB 581.

Providence Village Section 8 Ban

During the committee hearing, members raised concerns about an occurrence in Denton County. Citing rising crime in their neighborhood, Providence Village Homeowners Association banned their homeowners from renting to tenants who paid rent with Section 8 vouchers. The U.S. Department of Housing and Urban Development is currently investigating this leasing rule, which is on pause until the investigation is completed. Many believe this policy is discriminatory because 93% of households affected were Black.⁶

Many witnesses, including those representing property owners' associations and Realtors, saw the Providence Village ban of Section 8 vouchers as an overreach and expressed support for prohibiting this type of discriminatory restriction of rental payment.

LEGISLATION TO CONSIDER

- Revisit Section 4 of SB 1588 to ensure that a property owner's security measures do not create unsafe situations for community residents. Security fences should not be allowed to block sidewalks or drainage ditches, even if these structures are on a homeowner's property. Further, driveway gates should be set back from the street far enough to not impede passing vehicles.
- Further evaluate property owners' association involvement in rental agreements to determine if legislation is necessary to prohibit interference.
- The Committee realizes that Section 11 of SB 1588, which restricts membership on an architectural review board and property owners' association boards, has raised concerns for property owners' associations and encourages all stakeholders continue discussing the issue in order to determine if a compromise can be reached.

CHARGE II: Workers' Compensation for Public Safety Employees

Study workers' compensation claims involving public safety employees described by SB 22. This study should include an analysis of medical costs, return-to-work outcomes, utilization of care, satisfaction with care, and health-related functional outcomes.

BACKGROUND

SB 22 applies to public safety employees including detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians. This broad definition includes public safety workers who work for the state, including those who work for DPS and TDCJ.

SUMMARY OF COMMITTEE ACTION

Public Hearing: May 25, 2022 - Room E2.028, 10:00 a.m.

Jeff Nelson & Dan Paschal, Director of External Relations and Deputy Commissioner, Texas Department of Insurance

Every other year, DWC conducts an injured employee satisfaction survey through a standing contract with Texas A&M University to gather information on workers' compensation claims. When this charge was announced, DWC coordinated with Texas A&M to expand the scope of the survey to sample a larger population of public safety employees. The survey will be completed by the end of 2022.

First responders and public safety employees are eligible for special provisions for workers' compensation claims, including:

1. Lifetime death benefits for a spouse, regardless if they remarry;
2. Accelerated claim and dispute resolution;
3. Presumption for certain cancers, COVID-19, heart attacks, strokes and tuberculosis;
4. Unique provisions for PTSD claims; and
5. A dedicated first responder liaison at the Office of Injured Employee Counsel.

It is important to note that there are multiple definitions for public safety employee and first responder in statute, so not every provision above applies to every individual.

According to DWC data, public safety employee claims made up about 19% of all workers' compensation claims between 2017 and 2022. From 2017 to 2020, public safety employee claims were denied more often than non-public safety employee claims. Public safety employee claim denials were 4% higher than non-public safety employee claim denials in 2017 and 25% higher at the height of COVID-19 in 2020. Public safety employee claims were denied 5% less than non-public safety employee claims in 2021 and 17% less in 2022.

Number and Percentage of Workers' Compensation Claims Initially Denied Fiscal Years of Injury 2017-2022

As of October 2022

Fiscal Year of Injury	All Reportable Claims			Public Safety Employee Claims			Non-Public Safety Employee Claims		
	No. of Reportable Claims	No. of Reportable Claims Denied	Percent of Reportable Claims Denied	No. of Reportable Claims	No. of Reportable Claims Denied	Percent of Reportable Claims Denied	No. of Reportable Claims	No. of Reportable Claims Denied	Percent of Reportable Claims Denied
2017	86,015	11,355	13%	10,647	1,818	17%	75,368	9,537	13%
2018	89,320	11,299	13%	10,531	1,848	18%	78,789	9,451	12%
2019	77,364	10,718	14%	9,771	1,739	18%	67,593	8,979	13%
2020	88,599	27,032	31%	21,653	10,689	49%	66,946	16,343	24%
2021	98,627	27,300	28%	21,952	5,266	24%	76,675	22,034	29%
2022	104,056	22,835	22%	26,728	2,518	9%	77,328	20,317	26%

Source: DWC, 2022.

Notes:

- Public safety employee claims were identified using these 6-digit North American Industrial Classification Codes: 621910, 921140, 922120, 922130, 922140, 922150, 922160, 922190, 921140, and 921190.
- Reportable claims include claims that are required by law to be reported to DWC, including fatalities, occupational diseases, and injuries with at least one day of lost time. Medical-only claims are not required to be reported to DWC. Data for 2021 should be viewed with caution since the number of reportable claims per fiscal year will continue to grow as "medical-only" injuries begin to lose time away from work. Claims that are denied may be disputed by requesting a benefit review conference with DWC.
- Fiscal years 2020 and 2021 reportable claims include claims involving possible exposure to COVID-19 as well as claims based on a positive test or diagnosis. DWC is unable to distinguish whether a claim is "exposure only" using the administrative claim data.
- Injured employees have up to one year from the date they knew or should have known the disease was potentially work-related to file a workers' compensation claim. Legal beneficiaries have up to one year from the injured employee's death to file a claim for death benefits.

In workers' compensation cases, the insurance carrier pays all medical benefits for life as long as the treatment is related to the compensable injury and is reasonable and necessary. The injured employee is not responsible for any payment. This medical treatment is a substantial portion of the total costs of Texas' workers' compensation system. However, it is important to note that not all workers' compensation claims require medical treatment.

According to DWC data, public safety employees made up about 11% of all medical benefits paid out in the system between fiscal years 2017 and 2022. On average, between 2017 and 2022, the amount of medical benefits paid out to public safety employee claims was about \$6,711, while the amount paid out to non-public safety employee claims was about \$8,705 – a difference of \$1,994.

Workers' Compensation Claims with Medical Benefits Fiscal Years of Injury 2017-2022

As of October 2022

Fiscal Year of Injury	Reportable Claims with Medical Benefits			Public Safety Employee Claims with Medical Benefits			Non-Public Safety Employee Claims with Medical Benefits		
	No. of Claims with Medical Benefits	Total Amount Paid for Medical Benefits	Average Amount Paid per Claim for Medical Benefits	No. of Claims with Medical Benefits	Total Amount Paid for Medical Benefits	Average Amount Paid per Claim for Medical Benefits	No. of Claims with Medical Benefits	Total Amount Paid for Medical Benefits	Average Amount Paid per Claim for Medical Benefits
2017	74,009	\$692,369,966.24	\$9,355.21	8,918	\$64,101,757.41	\$7,187.91	65,091	\$628,268,208.83	\$9,652.15
2018	76,742	\$728,799,247.53	\$9,496.75	8,797	\$62,641,555.72	\$7,120.79	67,945	\$666,157,691.81	\$9,804.37
2019	65,574	\$619,166,899.96	\$9,442.26	8,165	\$65,288,993.47	\$7,996.20	57,409	\$553,877,906.49	\$9,647.93
2020	55,900	\$506,119,387.50	\$9,054.01	8,283	\$61,355,302.30	\$7,407.38	47,617	\$444,764,085.20	\$9,340.45
2021	58,446	\$441,582,950.90	\$7,555.40	9,148	\$60,337,105.14	\$6,595.66	49,298	\$381,245,845.76	\$7,733.50
2022	53,196	\$252,392,100.78	\$4,744.57	7,443	\$26,898,775.83	\$3,613.97	45,753	\$225,493,324.95	\$4,928.49

Source: DWC, 2022.

Notes:

- Public safety employee claims were identified using these 6-digit North American Industrial Classification Codes: 621910, 921140, 922120, 922130, 922140, 922150, 922160, 922190, 921140 and 921190.
- Workers' compensation insurance carriers pay medical benefits.
- Reportable claims include the claims that are required by law to be reported to DWC, including fatalities, occupational diseases, and injuries with at least one day of lost time. Medical-only claims are not required to be reported to DWC.
- Medical costs for fiscal year 2022 will increase as more medical benefit data is reported to DWC.

Jessica Barta, *Public Counsel*, Office of Injured Employee Counsel

OIEC is the advocacy arm for the workers' compensation system in Texas. This agency is unique to Texas and assists in over half of all workers' compensation cases that go through the dispute resolution process. OIEC provides their services free of charge, so applicants do not have to use income benefits to pay for an attorney. According to Ms. Barta, the Texas workers' compensation system usually works as designed. It is only in the small percentage of cases where there are problems that OIEC gets involved.

Unless there is a statutory presumption covering a workplace illness or injury, the burden of proof that an injury occurred at work is on the injured employee. This burden is high and can be difficult for employees to meet, especially as they face a challenging time in their life due to injury. These obstacles can be amplified by insurers hiring private investigators to compile medical records and pictures of injured employees in public to deny claims. The workers' compensation system is technical and complicated, requiring submission of many forms and deadlines an applicant must meet. Oftentimes OIEC sees applicants have to resubmit forms that were only denied because of a technicality. In order to assist applicants, OIEC makes their materials as easy to understand as possible. All their documents are available in English and Spanish and are written at a 6th grade reading level.

Ms. Barta testified that workers' compensation disputes can also be costly for the injured employee. When a dispute arises between an injured employee and insurance carrier, the injured employee has the burden of establishing a "producing cause" (or medical causation) – proof an injury was caused by a work accident. An injured employee must provide a medical narrative on causation from a medical provider to prevail in their dispute. If an injured employee (or OIEC) requests such a medical causation letter from a physician, they must compensate the physician. Many employees do not have the financial means to do so and the OIEC does not have appropriated funds to provide assistance in these cases. Therefore, oftentimes, physicians are asked to do the work pro-bono.

In order to even the playing field in these disputes and ensure physicians are compensated, OIEC recommended a change in policy in which an insurance carrier would be required to provide reimbursement for one medical causation narrative report for each plain language notice disputing the extent of an injured employee's compensable injury. In the 85th Legislative Session, Representative Collier authored HB 2326 to make these changes. This bill passed the House on the Local and Consent Calendar but did not make it out of the Senate Business and Commerce Committee.

John Wilkerson, *Legislative Liaison*, Texas Municipal Police Association

The 2005 workers' compensation reform legislation was written to keep lawyers out of the system and to benefit the insurance carrier. Now, lawyers do not want to take workers' compensation cases because of limited profits and billable hours. The workers' compensation system has become a war of attrition with insurance carriers denying cases and filing appeals to avoid paying claims.

These problems affect public safety employees' confidence in the workers' compensation system. According to a TMPA survey of public service professionals, 40.4% of workers (225 out of 557) were not at all confident in the workers' compensation system if they were injured. Less than 5% of participants were extremely confident in the system.

Michael Glynn, *President*, Fort Worth Professional Firefighters Association

For the first time, Fort Worth Professional Firefighters Association is seeing people hesitant to join or stay in the firefighting profession. Traditionally, most firefighters want to work at the busy fire houses because they want to complete as many EMS and fire calls as possible. Now, some younger firefighters no longer want to work at the busy houses because they want to minimize their exposure to carcinogens.

SB 2551, passed by Senator Hinojosa in the 86th Legislative Session, established a presumption for twelve cancers that public safety employees are at elevated risk for due to their occupations. This bill was extremely effective providing coverage for these individuals and streamlining the presumptive statute for cancer coverage. Denial rates for these diseases dropped from 90% to well under 50%.

However, public safety employees still have issues regarding coverage related to tobacco use. Currently employees are denied cancer presumption for any tobacco use. This is too extreme. Insurance companies have much looser standards around tobacco use and public safety presumption requirements should mirror these standards. Public safety employees also have

difficulties with heart attack denials. State law requires a public safety employee to be on duty and performing a non-routine or stressful activity for a heart attack to be covered. This should be amended to consider the fact that cardiac events often occur after a stressful event.

Lifetime income benefits should also be modernized. Currently, a public safety employee must lose multiple limbs or be diagnosed with insanity or imbecility to be eligible. There are many public safety employees that are injured and unable to work that do not fit this outdated definition. Instead, any injured public safety employee who is not able to gain meaningful employment due to injury should be eligible. Representative Capriglione filed HB 3120 last session to update this requirement, but the bill did not pass out of the Senate.

Finally, there is a lack of cardiologists in the workers' compensation system. It is difficult for public safety workers to find a cardiologist that is willing to take workers' compensation cases.

Cliff Buchanan, Deputy Director, AFSCME Texas Correctional Employees Council 907

Texas needs to expand its network of care for workers' compensation doctors, especially in rural areas where many jails are located. There are times when injured staff cannot find a medical provider or cannot find a provider who can be seen in a timely manner. For example, the Gatesville area has seven units and only one medical provider. A small percentage of injured staff members are able to drive long distances for care, but many are unable to and end up forgoing care and returning to work before they are well.

Communication between claims adjusters and employees must also be improved, especially during the appeal process. Currently adjusters rarely follow up with patients or give updates. This can be especially problematic because the appeals process can be very slow, often taking six months for staff to resolve an appeal. During this time, an injured employee must pay out of pocket for medical costs and use their sick leave or vacation or take leave without pay. Further, even after a claim is approved, workers' compensation pays only 70% of salaries while an injured staff member is out of work, creating an incentive for staff to come back before they are healthy. The combination of a slow appeals process and low pay after a claim is approved incentivizes workers to come back to work before they are ready, simply because they cannot afford to take work off.

One way to improve the system would be to work with agencies to increase utilization of light duty work. TDCJ facilities are so short-staffed that they cannot afford to keep someone at home who could take even a portion of another employee's workload.

David Reagan, General Counsel, Texas Municipal League Intergovernmental Risk Pool

TMLIRP is currently responsible for providing insurance coverage to 210,600 employees. First responders make up 22.6% of those employees, yet their claims make up 66.5% of all benefits claimed. From the data provided, TMLIRP accepted 94.47% of all first responder claims and 88.12% of all non-first responder claims.

Of all 24,517 non-COVID-19 claims that TMLIRP has received, 86% were approved as compensable. TMLIRP incurred \$162 million from these claims; \$80 million from medical costs and \$82 million from indemnity costs.

FINDINGS

In the absence of a presumption, the Texas workers' compensation system puts the onus on the injured employee to prove an injury was caused by work. This can be very difficult for individuals who are already dealing with an injury. The highly technical system, in addition to insurance carriers' skill in denying claims and delaying cases, only further adds to difficulties faced by claimants.

Claims can take a long time, especially when they are appealed by insurance carriers. While injured employees wait for claims to be decided, they are responsible for paying all their medical costs, in addition to using their own sick and vacation leave at work. When their sick or vacation time runs out, injured employees are forced to take time off without pay. This encourages employees to return to work before they are fully healthy.

There is a shortage of doctors who take workers' compensation claims, especially in rural areas and specialties where workers' compensation claims are less common. While some individuals have the means and ability to travel long distances to receive care, many do not and forgo treatment or wait long amounts of time to receive care. This can make injuries worse in the long run and can force workers to return to work before they are ready.

LEGISLATION TO CONSIDER

- Reduce the cost burden on injured employees involved in workers' compensation disputes by requiring insurance companies to provide reimbursement for one medical compensation narrative report if they dispute the extent of an injury. This could be accomplished by passing a bill similar to Representative Collier's HB 2326 (85R).
- Incentivize doctors, especially those in hard-to-access specialty areas, to accept workers' compensation claims and to practice in rural, underserved areas.
- Limit the extent that insurance carriers can appeal a case and/or impose stricter requirements for an insurance company to qualify for appeal.

CHARGE III: COVID-19's Impact on the Economy

Study the impacts of the COVID-19 pandemic on unemployment trends, hurdles to workforce reentry, and industry-specific disruptions.

BACKGROUND

When the first confirmed COVID-19 case was reported in Texas on March 4, 2020, no one could have predicted the all-encompassing and irreversible impact the pandemic would have on our state and our country. According to the Federal Reserve Bank of Dallas, the COVID-19 pandemic resulted in the "steepest and fastest drop in Texas economic activity in modern history."⁷ Between February and April 2020, Texas lost 1.4 million jobs. The state's unemployment rate spiked to 13.5% in April 2020, up from 3.5% just two months earlier.⁸ Today, although COVID-19 is not completely gone, our economy has recovered. The Texas seasonable adjusted unemployment rate for September 2022 was 4%, and for the eleventh consecutive month, the state set new employment highs as total nonfarm employment reached 13,571,800.⁹ The impact of the pandemic was far reaching and devastating. This report will highlight key economic indicators and industries affected but should not be considered an exhaustive account.

SUMMARY OF COMMITTEE ACTION

Public Hearing: April 27, 2022 - Room E2.028, 1:00 p.m.

Ed Serna, Executive Director, Texas Workforce Commission

The Texas Workforce Commission (TWC) began seeing an increase in Unemployment Insurance (UI) claims in the week ending on March 14, 2020, when 16,176 claims were filed. The peak of claims occurred during the week ending on April 4, 2020, when 315,167 claims were filed. The surge in UI claims caused by the COVID-19 pandemic put a significant strain on the UI benefit system. Its full scale can be illustrated by the following statistics and the corresponding graph in Appendix I.

1. In 2019, TWC processed over 738,000 UI claims. In 2020, that number grew by 847% to 6,662,340 claims, more than the combined number of claims processed from 2014-2019.
2. In 2019, TWC paid out about \$2 billion in UI benefits. The agency paid \$37.8 billion in 2020 and over \$19.2 billion in 2021.
3. Prior to COVID-19, TWC received around 13,000 UI calls per day. The previous record for calls received in one day was 60,000, in September 2017 after Hurricane Harvey. In calendar year 2019, TWC UI staff answered 1.97 million calls total. UI staff, with the assistance of contract call centers, answered 8.21 million calls in 2020 and 9.6 million calls in 2021. During the week of April 19-25, 2020, TWC received over 16.5 million call attempts to the UI phone number.

In order to meet the surging demand, TWC had to scale up their operations, starting with technology utilized by the agency. In March 2020, TWC migrated the agency website (www.twc.texas.gov) to a scalable cloud server and partnered with the Texas Department of Information Resources (DIR) to increase memory and server capacity. Server size was doubled

to ten servers by March 27th and doubled again to 20 servers by April 25th, increasing capacity by 200%.

TWC also partnered with a vendor to implement a “failover application” for UI claim website intake. Starting on April 10, 2020, when the UI benefit system was slow, the system’s website link would failover to a vendor application to allow claimants to still file an initial claim online during these occurrences.

One innovation TWC is especially proud of is the development of the agency’s artificial intelligence-enabled virtual assistant, “Larry the Chat Bot,” which was launched on April 1, 2020. Named after former TWC Executive Director Larry Temple, “Larry” the virtual assistant can now answer more than 100 user questions in both English and Spanish. Within the first six months of launch, “Larry” assisted more than 2.3 million TWC customers by answering more than 9.2 million questions and diverting hundreds of thousands of calls from the overwhelmed call centers. The chat bot continues to assist thousands of people per day and, in September 2020, was awarded the Application of Innovative Tools to Transform the Delivery of Public Services Project Excellence Award by the Texas Association of State Systems for Computing and Communications.

In addition to technological advancements, TWC redirected 450 existing agency employees to help with UI claims, hired an additional 200 UI employees, contracted with vendors to utilize four additional call centers, expanded call center hours to 12 hours a day, 7 days a week, and trained more than 1,200 external volunteers of other state agencies and the Legislature to assist with claims.

The agency dramatically increased their messaging with claimants, employers, elected officials, media, and the general public in order to provide a steady stream of clear information. TWC hosted over 40 conference calls with Texas Legislators and staff at both the state and federal levels to provide updates on TWC’s response to COVID-19, benefits available to constituents, and to answer questions from legislators and staff. To disseminate information to affected stakeholders, TWC launched messaging campaigns, media briefings, and social media campaigns. TWC sent over 75 million emails to more than 3 million claimants and employers on over 75 different topics, including the status of an unemployment claim, benefits paid, upcoming program and policy changes, and other information.

As the economy recovered from COVID-19, TWC scaled back their crisis level operations. At the time of the hearing, UI claims had returned to pre-pandemic levels. In the week ending on April 16, 2022, 14,549 claims were filed. Currently, TWC is no longer contracting with outside call centers and is able to process all UI claims with agency staff.

Patrick Jankowski, *Senior Vice President of Research, Greater Houston Partnership*

Prior to the COVID-19 pandemic, Texas was experiencing phenomenal job growth. From 2000-2019, the state created roughly 270,000 jobs a year, excluding downturns during the Great Recession of 2007-2009 and the aftermath of the September 11, 2001, terror attacks. In February 2020, the state had roughly 12.9 million jobs.

The COVID-19 pandemic caused record-setting job losses and unemployment rates. Texas lost

roughly 1.4 million jobs in two months, the most significant and rapid job loss experienced in our state's history. The unemployment rate increased from 3.4% in February 2020 to 12.1% in April, meaning one in eight Texans was out of work.

Arts, Entertainment and Recreation was the industry most affected by the pandemic, losing 50% of industry employment. The hotel industry lost 42% of industry jobs and restaurants and bars lost 36%. Finance and Insurance, an industry where most employees could work from home, was the least impacted, only losing 0.9% of industry employment.

Every major metropolitan area in the state lost jobs during the COVID-19 pandemic. Houston was the hardest hit, losing 359,400 jobs. The city's oil and gas and construction and manufacturing industries took a large hit, and were at least partially responsible for the city's high job loss. Dallas and Austin lost the second greatest number of jobs, at 299,500 and 137,100, respectively. During this time, every metropolitan area in the state saw their unemployment rate triple. Three metropolitan areas, Austin, Odessa, and San Antonio, saw their unemployment rates quadruple over two months.

We began to see recovery begin and jobs return as early as May 2020. As of April 27, 2022, every major metropolitan area in the state has recouped their jobs lost during the pandemic except for Houston, who was still behind by 28,000 jobs due to the oil and gas and manufacturing and construction industries. The unemployment rate, which peaked at 12.1%, stood at 4% in September 2022. This is a mark of recovery as any unemployment rate lower than five percent represents a very tight labor market.

As of April 27th, 2022, most metropolitan areas were 1% or less away from their pre-pandemic unemployment level. Beaumont, McAllen, and Odessa still had slightly higher unemployment rates, but overall, rates have dropped significantly. Statewide, Texas had 255,700 jobs more than the state did in February 2020 prior to the pandemic.

Carrie Griffith, *Government Relations and Policy Specialist*, Texas State Teachers Association

Prior to the pandemic, a surge in the demand for teachers, in addition to a decrease in the number of teachers entering and staying in the profession, caused a staffing crisis that has only worsened amid COVID-19. The official teacher attrition rate in Texas for the 2021-2022 school year was 11.57%, a two-point increase from the prior year and the largest attrition percentage the state has seen since the 2007-2008 school year.

To combat the teacher shortage amid the COVID-19 pandemic, Texas must invest in high-quality teacher preparation programs and strong systems of support for new teachers. State leaders must support teachers in the classroom and improve their working conditions by preserving planning time, funding campus-based personnel to support teachers, and lowering the stakes of standardized testing like the State of Texas Assessments of Academic Readiness (STAAR) test. Texas must also invest in more competitive compensation for educators to ensure they can afford to stay in the teaching profession. Teachers deserve an across the board pay raise, and salary schedules should recognize longevity in the profession through meaningful pay raises.

Jerletha McDonald, *Founder and CEO, Arlington DFW Child Care Professionals*

Arlington DFW Child Care Professionals (ADFW Childcare Professionals) is a professional membership organization that provides professional development training for family child care providers in the Dallas-Fort Worth Metroplex.

Our state's childcare sector is in crisis. The system has long been broken, struggling for decades with low pay for early educators, high costs for parents and the inability of many programs to deliver the quality services needed to care for young children.

According to the Bureau of Labor and statistics, as of August 2021, roughly 126,700 early child care workers had left the industry since the start of the COVID-19 pandemic. In Tarrant County alone, it is estimated that 25-50% of all classrooms in quality-rated child care centers are closed on any given day due to a lack of staff. Further, one in four licensed child care providers in Tarrant County had been forced to close at least temporarily as of September 2021. As of April 27th, 2022, it was estimated that 10-15% of programs certified by Texas Rising Star had permanently closed, leaving parents in Texas' most vulnerable communities without access to child care.

In the family child care sector, the situation is even more dire. Children at Risk estimates that the majority (85%) of all child care business closures in Tarrant County during the pandemic have been home-based providers. This provides further difficulties for working parents, as the flexibility and non-traditional hours of this type of business is vital to the Tarrant County community.

Staff burnout is a problem at child care businesses that have stayed open. Workers at these facilities cared for children when schools were closed and worked overtime to make up for staff shortages, while being paid near poverty level wages. In Texas, the average wage for a child care worker is \$10-\$11 an hour, forcing many employees to rely on public assistance. At a time when other industries can offer remote work, flexibility, and additional benefits, the child care industry is at a disadvantage for recruiting a quality workforce.

ADFW Child Care Professionals Solutions:

Higher pay and comprehensive support for child care workers are crucial first steps to making the field more attractive. The state must adequately fund the system to ensure providers can meet high standards of quality and pay employees meaningful wages without pricing families out. This will require new methodologies for funding child care and additional government funding.

Texas must create pipelines to the child care career path that are easily accessible and produce quality educators. One way to do this is to increase the number of high-quality child care apprenticeships and internships and expand partnerships with high schools and community colleges. It is also vital to create mobility within the child care profession without requiring current workers to take time off to earn a degree. Barriers to on-the-job certification must be removed, and child care workers should be able to utilize credentials earned with on-the-job-embedded coursework when training to become licensed pre-k teachers.

To keep child care employees in their roles, these workers must be supported. Their well-being and professional growth and development should be prioritized, and they should be provided health benefits and paid time off.

Skeeter Miller, *Board Treasurer, Texas Restaurant Association & Owner, The County Line BBQ*

Labor shortages have been extremely difficult for the restaurant industry to overcome. Prior to COVID-19, County Line restaurants had over 500 employees. Now, despite paying their staff competitive wages of \$20-\$30 an hour, they only have about 240 employees. One reason for this staffing difficulty is the volatile nature of restaurant closings during the pandemic. Restaurants were required to close or reduce their hours numerous times as government orders and COVID-19 threat levels changed. This did not provide the steady income necessary for workers who rely on full-time pay. Many of these employees left the industry to work for companies like Amazon or Costco. Many parents stayed home to take care of their children amid child care shortages.

Supply chain problems have made it even more difficult for restaurants to operate. The County Line is no longer able to get long-term contracts for its beef. On Thanksgiving, they could not get turkeys. On many weekends, they have difficulties getting liquor because of a shortage of delivery drivers. At one point in the pandemic, transportation companies flew in drivers and paid them bonuses of over \$8,000 to deliver goods to restaurants. Currently, if a restaurant needs a new piece of equipment, it will take six months to receive. Repair parts can take up to two or three months.

Other supplies are also increasingly difficult to acquire. Liquor and beer shortages are caused by a scarcity of glass bottles and aluminum cans. Straws and lids are difficult to acquire and to-go containers have doubled or tripled in price. Fuel surcharges and shipping costs further add to increased costs for restaurants.

Prices for food have increased as well. A barbecue plate used to cost The County Line \$8-\$15 to produce. Now, the same plate costs the restaurant \$20-\$30. The price of brisket has increased by 69% per pound and the price of Pork Ribs have increased by 63%, costing The County line an additional \$600,000 and \$536,000, respectively.

CJ Bouchard, *President, Excel Fitness*

Excel Fitness is an Austin based Planet Fitness franchise with 91 locations. On March 17, 2020, all Texas Planet Fitness clubs closed their doors and furloughed their employees for roughly 60 days. Planet Fitness franchises did not bill their customers for those days, which was a benefit for members but resulted in no revenue for the franchisees.

During this closure, over one million planet fitness customers could not exercise in their clubs. This impacted the physical and mental health of these individuals. 42% of people reported weight gain during the pandemic. Anxiety and depression increased by 20% during the first year of the pandemic and mental health worsened across all generations. Fitness is essential in caring for the mental health of Texans and it is important to Planet Fitness that fitness clubs are not closed again.

Amid the pandemic, Planet Fitness created a 100-page reopening playbook with guidance of Dr.

Richard Carmona (the 17th Surgeon General of United States) and other franchisees. This playbook became the standard in the fitness industry and is still in use today.

FINDINGS

COVID-19 was devastating to the Texas economy and workforce, but its economic impacts were temporary. Our state is resilient and our economy has grown to levels greater than we had achieved prior to the pandemic. Every sector in our state was affected by the pandemic. Many have recovered, but others, including the restaurant industry and public education, continue to face serious obstacles. The COVID-19 pandemic also contributed to global inflation, which continues to be a major challenge for all Texans.

TWC dramatically scaled up its operations and served record numbers of Texans during the height of the pandemic, despite facing unprecedented challenges. While unemployment has dropped to healthy levels, barriers to entering the workforce still exist, including a statewide shortage of affordable quality childcare. In addition, COVID-19's disruptions to our public education system is likely to have a long-term negative impact on workforce readiness if not addressed.

LEGISLATION TO CONSIDER

- Identify ways for the state to make child care more affordable for Texas parents. Child care enables parents to participate in the workforce. Investing in a strong child care industry will have a positive impact on the workforce of every industry in our state.
- Confront the teacher shortage by investing in public education and the educators who make quality education possible. Prioritize high quality teacher preparation programs and support for teachers in the classroom. Increase compensation for all teachers and recognize longevity in the profession using meaningful pay raises.

CHARGE IV: Organized Retail Crime

Study the impact of organized retail crime on Texas businesses. Make recommendations for addressing the redistribution of stolen merchandise into the supply chain, including through online marketplaces, to protect Texas businesses and consumers. Make recommendations relating to transparency for online marketplaces and information that should be provided by sellers.

BACKGROUND

Organized retail crime has presented a financial and public safety risk to retailers and consumers in recent years. The Washington Organized Retail Crime Association (WORCA) defines organized retail crime as: *“Theft/Fraud activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain (no personal use), with the following elements present: conducted over multiple occurrences, in multiple stores, in multiple jurisdictions, and/or with two or more persons, or an individual acting in dual roles.*

Organized retail crime is a sophisticated operation where career criminals orchestrate the theft of large quantities of merchandise – typically targeting items that can easily be stolen, resold, and monetized. In 2020 alone, organized retail crime cost U.S. businesses \$700,000 per \$1 billion in sales.¹⁰ Today, organized retail theft is becoming more prevalent. According to the National Retail Federation, retailers reported a 26.5% increase in organized retail crime from 2020-2021.¹¹

SUMMARY OF COMMITTEE ACTION

Public Hearing: June 8, 2022 - Room E2.028, 10:00 a.m.

Note: Meta (parent company of Facebook, Instagram, and Facebook Marketplace) and Ebay were invited to testify at the hearing but declined the invitation.

Robert Skidmore, Special Agent, Homeland Security Investigations, U.S. Department of Homeland Security

Retail theft is a problem in Texas and across the country and is increasing in prevalence. In 2019, retailers lost \$70 billion to this type of theft nationwide. The most common perpetrator of organized retail crime is a career criminal. They have participated in numerous operations and retail crime is their primary method of supporting themselves. In this type of operation, the “booster” is the professional thief. They are the individual who physically goes into the store and steals the items. The “fence” facilitates the theft. They pay the booster, in addition to providing front money, renting cars and hotel rooms for the booster, and cleaning the merchandise. These operations carry out high volumes of theft in a systematic way. If arrested, boosters are frequently only charged with simple theft and charges are often dropped.

Once the merchandise is stolen, the fence cleans the stolen goods by removing identifying information that could tie the product to the store it was stolen from. Some fences use lighter fluid and heat guns to remove anti-theft stickers and repackage items together. The most vulnerable types of merchandise include over-the-counter medications, diabetic supplies, and

power tools.

Once items are stolen and cleaned, they are sold. Often, goods end up on online platforms such as Amazon, Ebay, OfferUp and Facebook Marketplace because this type of sale is harder to trace. These individuals also use third-party storefronts to sell goods. In some instances, they have sold their goods under the guise of being a wholesale company, sometimes even selling the stolen goods back to the store they were originally stolen from.

To address the increasing prevalence of organized retail theft, Homeland Security Investigations (HSI), the principal investigative arm of the U.S. Department of Homeland Security, created a special program to target these groups. This program partners with ecommerce programs, especially Amazon and Ebay, to work together to fight this type of crime. The department has attempted to partner with Meta to create a similar task force but has been unable to develop a partnership at the time this report was published. HSI also has partnered with Congress to develop federal laws and create task forces to target these groups. The Combating Organized Retail Crime Act of 2022 was introduced into Congress in October 2022 with bipartisan support. HSI is supportive of this legislation.

It may take more than one solution to reduce this type of crime. Both federal and state legislation would help resolve this problem. Task forces within state attorneys general offices are also a tool that have shown promise in stopping this type of criminal enterprise.

George Collin Craig, *Officer and Legislative Liaison*, Houston Police Department

Organized retail crime is defined differently than shoplifting. It consists of two or more people (often a booster and a fence) acting together with the intent to take items and resell them either wholesale or direct to consumer. Fences target merchandise that is in high demand. Often, a fence will give a list to their booster with numerous items and the amount of money they will pay for them. Some fences have even posted such lists to social media. Low level boosters may not even know they are working for a criminal enterprise. Oftentimes, fences are stealing to finance other crimes, including drug running, human trafficking and terrorism. In Houston, these thieves have begun selling items on online retailers including Facebook Marketplace, Offer Up and LetGo, especially on the local level. This type of person-to-person sale is simple and harder for police to track. On the national level, thieves are more likely to sell items on Amazon or Ebay.

Organized retail crime is becoming more prevalent because it provides a high monetary reward with a relatively low risk. A thief who steals \$2,500 dollars or less will only be charged with a misdemeanor, if caught. Often, these misdemeanors are dismissed or pled down to a lower-level charge. While it is possible for a charge to be enhanced to a felony if a perpetrator is convicted of two or more crimes, the frequency of charges being dismissed makes this rare. Officer Craig recounted one case in which a thief stole from one store on 19 separate occasions. He was charged with one misdemeanor, but the charges were ultimately dismissed. He currently has another warrant related to the thefts but has not yet been charged.

The Houston Police Department (HPD) has a new organized property theft unit that has jurisdiction over retail theft and catalytic converter theft. In 2021, that department had to sift through about 805 shoplifting reports a month to differentiate reports of basic shoplifting and organized retail crime. This can be onerous because once an item is cleaned it is difficult to know

if it was stolen. HPD attempts to be proactive when fighting this type of crime, but they need information about a theft to alert them to begin looking. They rely heavily on stores' loss prevention programs to point them in the right direction. That is why partnership with stakeholders and businesses is vital.

This type of crime hurts more than just large retail companies. Employees who work at targeted stores receive threats and have been assaulted. Stolen products can also be damaged and unsafe for consumers. If not stored correctly, perishable items like baby formula and face cream can be harmful to a consumer's health.

When investigating organized retail crime, police departments often issue subpoenas to Facebook, requesting an individual's username, phone number, unique Facebook identification number, or IP address in order to establish a user's true identity. The unique Facebook ID number and IP address are especially important, as they allow HPD to identify accounts even if a username is changed.

Police departments submit subpoenas to Facebook through an online form. In response, they receive a confirmation email, tracking number, and an email notifying the department if the subpoena has been completed. If a request is denied, Facebook's reasoning is sometimes included. The system discourages communication and does not give police officers the option to speak to a Facebook representative directly if they have a problem.

Different HPD units have varying success when issuing subpoenas, but the property theft unit raised concerns about a lack of communication between Facebook and their department. The property theft division often receives no answer to its subpoenas, and since the website provides no person to talk to or phone number to call for assistance, an unanswered subpoena can be a dead end. Further, because Facebook is headquartered outside of Texas, the department has no recourse if a subpoena is ignored.

Officer Craig testified to a different experience when he worked for the HPD Cyber Crime Division, which has jurisdiction over federal romance scams, grooming, money laundering and revenge porn. His unit's subpoenas were usually answered. However, he did testify that on occasion, subpoenas would seem to be lost, and the lack of direct communication with Facebook meant there was no recourse in those situations. Unfortunately, even a new state law might not fix this problem. Because Facebook is not headquartered in Texas, it would be difficult to mandate their response to out of state subpoenas.

Solutions

One solution to this problem would be to amend state law to add up the dollar amounts of multiple low-cost thefts into one charge, which would often result in an amount over the \$2,500 threshold. This would subject thieves who carry out numerous small thefts to a felony charge and could act as a deterrent. Another option to meet this goal is to model Florida's policy: if a person steals ten or more items from two or more locations in 30 days, they are automatically charged with a third-degree felony.

Task forces in OAG offices are also an effective tool in fighting this type of crime. They create a central area to collect information and allow local agencies to work together to identify criminal

organizations who move from jurisdiction to jurisdiction. Florida, California, Oklahoma and Missouri have all implemented this type of task force.

Pawn shops are no longer a common place for stolen goods to be sold. This type of theft happens rarely and usually by less-experienced thieves. One reason for this is utilization of the LeadsOnline data website. Pawn shops must upload sellers' information to this website. This has deterred thieves from attempting to sell merchandise to these stores.

John McCord, *Executive Director, Texas Retailers Association*

The retail industry is the largest employer in the state, employing almost 3 million people. Retailers in Texas have been seriously affected by online retail crime and Houston is the 6th most affected city nationally. The INFORM Act, which is similar to HB 3852 (87R) by Representative Raney, would be extremely effective in curbing this problem. Members of the Texas Retailers Association, including both brick and mortar and online stores, have come together to support the INFORM Act at the state and federal level. While these companies think a federal bill would be the best option, they believe it is important for states to pass these laws in the absence of federal action.

The INFORM Act gives law enforcement more tools in their toolbelt to track stolen items. It would require additional disclosures for third party sellers on online marketplaces and would help prevent organized retail crime rings from selling stolen property. The act requires third-party sellers on an online marketplace to disclose six pieces of information: business name, address, email address, phone number, tax ID number and bank account information.

This act would not unfairly target small businesses, as it specifically exempts smaller sellers. Only high-volume sellers, defined in the federal legislation as businesses with over 200 transactions a year and over \$5,000 in revenue, would be subject to these requirements. Individuals and businesses who operate out of a home would be exempt from disclosing their home address. This bill would not affect second-hand sales as it focuses strictly on new merchandise.

If the federal INFORM Act were to pass, a provision in the legislation would nullify any state level bills. The Texas Retailers Association believes a federal act would solve their concerns, but they do not think businesses can keep waiting for Congress to pass this legislation.

Organized retail crime task forces are another effective tool to fight this type of crime. A dedicated task force formed with investigators and analysts can acquire theft reports from independent police departments across the state, start linking commonalities and ultimately build a case that crosses multiple jurisdictions. The Texas Retailers Association believes California, Florida, and Utah have effective task forces that Texas could model a state task force from. Regardless of how a task force is designed, it is important that all stakeholders are invested in the process.

Celinda Gonzalez, *Manager, State and Local Government Relations, Home Depot*

Home Depot has more than 181 stores and an annual economic impact of over \$17.6 billion in Texas. They have been heavily affected by organized retail crime. As Ms. Gonzalez explained, this type of theft is not “theft for need.” It is large scale and sophisticated. For example, in Katy,

one home was found with close to \$7.5 million worth of stolen goods. These goods were stolen from a Home Depot in Colorado and driven to Texas. Unfortunately, this is not an isolated incident.

As crime rings have become increasingly violent, Home Depot Associates have been threatened with guns and this has become a public safety issue. These crime rings could be stopped with the passage of the INFORM Act, which is why Home Depot is supportive of this legislation.

Jamie Bourne, *Corporate Manager for Asset Protection Investigations & Organized Retail Crime, Home Depot*

Organized retail crime is an element of many diverse types of crime, including sex trafficking, money laundering, and trafficking of stolen property across state lines. The INFORM Act would standardize information required for online sellers to collect, helping the police analyze online sellers to identify and tie together stolen goods.

Currently, pawn shops are more regulated than online platforms. LeadsOnline is a database where pawn shops report sales, including serial numbers, gift card information, and store credit information. This is accessible only to law enforcement and can tie thieves to their pawn shop sales. The INFORM Act can serve this purpose for online sales. If the federal legislation passes, it would prevent this type of crime, but in its absence, Home Depot believes state legislation is necessary.

Ivan Jaime, *Director, Government & Public Affairs, Texas and Oklahoma, Walmart, Inc.*

Walmart has over 180,000 associates across 590 retail locations and 24 distribution centers in Texas. Walmart is unique in that it is both an online marketplace and brick and mortar store.

Walmart has been significantly affected by this problem, and their stores are also dealing with escalating violence against their associates. Additionally, amid the baby formula shortage, it became increasingly common for baby formula to be stolen from their stores. If a store is not in control of the baby formula, it cannot protect its quality. If formula is not stored correctly or if other substances are added, stolen formula can put babies in danger.

Walmart's online marketplace has stringent requirements for sellers and would be largely in compliance with the INFORM Act. Third-party sellers who sell on Walmart's online marketplace are required to provide their business tax ID, phone number or email, and EID verification number from the Department of the Treasury. Their sellers are strictly vetted and Walmart believes these best practices should be followed by all online marketplaces. No seller on an online marketplace should be able to be anonymous.

The INFORM Act would be effective because it would reduce the demand for stolen products by making it more difficult to make a profit by selling them online.

Chris Schkade, *Asset Protection Manager–Major Crimes, Asset Protection Solutions, Walgreen Co.*

Organized retail crime is a growing problem nationally and locally, especially with the advent of technology and the internet. The problem has skyrocketed, at least partially due to the ability for thieves to sell goods online. Walgreens is a community pharmacy that provides health and

wellness services and immunizations. It is also a retailer that provides consumers with convenient products. The company has seen baby formula, over-the-counter medicines, vitamins, and cosmetics stolen. In fact, there has been a 70% increase in baby formula shrink and loss in the past few months. In July of this year, a warehouse was raided in Houston and pallets of baby formula were found without temperature control.

Thieves have become more violent, and it has become more difficult to protect the safety and security of team members, customers, and communities.

To combat this, Walgreens has spent over \$1 million on product protection devices, but they need support in fighting this crime. State legislation, similar to the INFORM Act, would help their efforts.

Caroline Joiner, *Public Policy Lead, Amazon*

Amazon employs 95,000 employees in the state of Texas in over 100 facilities. Over half of the products sold on Amazon are by small businesses. In fact, in Texas, 112,000 small businesses use Amazon to grow their business. Last year, these businesses sold 152 million products on Amazon, with average sales of \$125,000 a year. Amazon is committed to helping these small businesses succeed.

Amazon is currently an industry leader in verifying sellers. The company looks at hundreds of data points before a user is allowed to sell on the site. Information verified by Amazon includes contact information, business mailing address, and business tax information. A one-on-one conversation is required to verify that a seller matches their photo identification and Amazon mails a postcard to the seller and requires it to be mailed back to confirm a correct address. Further, machine learning looks at hundreds of data points to identify fraudulent sellers. This extensive process weeded out 2.5 million potentially fraudulent users before they were able to sell products last year. Amazon has detailed product pages and publishes the name and address of all third-party sellers.

Amazon also takes complaints seriously. The company investigates every report of stolen goods, blocking accounts and withholding funds when necessary. Amazon responds to every request for information from law enforcement.

Amazon supports HR 5502, or the INFORM Act at the federal level. The law would establish federal standards to prevent a patchwork of state regulations. Amazon would remain opposed to a state law in Texas but would work with the Legislature to ensure alignment with existing state laws.

Amazon is also in support of bills creating organized crime task forces, as the company believes the most important thing states can do to fight this problem is provide more resources for law enforcement.

Servando Esparza, *Executive Director, Texas & Southeast, TechNet*

TechNet's membership includes over 4.7 million employees and customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital and finance. TechNet represents a number of online marketplaces

that do business in Texas.

TechNet members take the issue of organized retail crime seriously, which is why they have invested in technologies, clear policies, personnel and processes that identify suspected bad actors and bad listings, block them from being published and remove them from their platforms. When there is evidence that bad actors are misusing a marketplace to sell stolen or illicit goods, their members work directly with law enforcement, retailers and brands to bring offenders to justice.

TechNet's online marketplaces also:

1. Maintain accessible and easy-to-use reporting forms;
2. Have notice-and-takedown teams;
3. Promptly remove reported listings;
4. Block suspicious listings from being published;
5. Ban sellers with multiple violations;
6. Shut down related sellers and prevent banned users or sellers from returning to the platform;
and
7. Assist in ongoing investigations

Note: While some of TechNet's marketplaces follow the above procedures, not every company follows every procedure. Mr. Esparza believed that Amazon and Ebay followed every above procedure but could not speak to which procedures Facebook employs.

TechNet opposed House Bill 3852, which is similar to the federal INFORM Act, because they were concerned about the privacy of small sellers. Bills like HB 3852 would force sellers to provide personal and private information and force online marketplaces to post that information on the product listing. Making this information publicly available on the internet poses a significant risk of abuse both online and in the physical world. This is especially true for small businesses that operate out of their home and may not have separate business addresses, phone numbers, or email addresses. TechNet continues to oppose state legislation of this type to avoid a patchwork of regulatory legislation.

TechNet Recommendations:

- Develop a task force to coordinate cooperation between stakeholders with a focus on investigating and prosecuting cases and identifying where gaps in resources exist. The task force could also consider what reforms are needed to Texas' criminal statutes to further deter the risk of organized retail crime.
- Ensure online marketplaces have the ability to monitor seller and customer communication. In certain cases where contact information is required to be listed, it could lead to interactions between the seller and customer in which the third-party platform cannot monitor communications for trust and safety or customer service. This would provide bad actors with the ability to circumvent an online marketplace's established anti-fraud systems.
- Avoid a patchwork of state laws. TechNet believes that requirements similar to HB 3852 should be addressed at the federal level, as online marketplaces operate in all states. A

federal bill that was negotiated between brick-and-mortar retailers and online marketplaces was passed by the House as part of the America COMPETES Act and is currently being conferenced with the Senate-passed U.S. Innovation and Competition Act (USICA).

Tyler Smith, *Director of State and Local Government Affairs, Chamber of Progress*

Chamber of Progress is an industry association that promotes technology's progressive future and works to ensure that all Americans benefit from technological leaps. Amazon, Google, and Meta are partners with the chamber but do not have a vote or veto on their positions.

The Chamber of Progress does not believe that state-level legislation similar to the INFORM Act is a solution to organized retail crime. This type of legislation would make small online sellers collateral damage in Walmart's battle against Amazon. Since a federal bill has already been endorsed by retailers and online marketplace coalitions, the chamber believes state legislation is unnecessary. The Chamber of Progress does support the federal INFORM Act. Instead of passing state-level laws to fight organized retail crime, the chamber suggests incentivizing marketplaces to proactively police sellers, directing platforms to work with law enforcement and consumer protection officials in bringing bad actors to justice and encouraging marketplaces to collaborate so that bad actors cannot move from one marketplace to another.

FINDINGS

Organized retail crime does not only hurt big, multi-million-dollar businesses. Employees and customers are put in harm's way when thieves repeatedly steal from stores. Employees and customers alike have been assaulted and threatened when they intervened in a robbery, or were simply in the wrong place at the wrong time. Consumers' health is also put at risk. Once a good has been stolen, there is no guarantee that it is safe. It could be stored incorrectly or tampered with without the knowledge of a consumer. A concerning example of this is the theft of baby formula at the height of the baby formula shortage. Stolen baby formula may not have been stored correctly, and parents could have fed their babies unsafe formula without any knowledge that it had been stolen.

Because low-level thefts incur low level charges, many thieves are aware that if they steal below \$2,500 worth of merchandise, it is less likely that they will ever be charged. These crime organizations can use their profits from organized retail crime to further other criminal enterprises.

Most online retailers prefer the federal INFORM Act, and brick and mortar stores agree that a federal bill would be helpful in addressing the problem. However, as of November 1, 2022 the INFORM Act has not been passed by Congress. It was not included in the CHIPS Act (or America COMPETES Act). Recently, the US Senate included INFORM Act provisions in their Fiscal Year 2023 National Defense Authorization Act (NDAA) substitute, but no stakeholders are confident the INFORM Act provisions will pass before the end of the year. While some online retailers cautioned against state legislation on this issue to prevent a patchwork of regulation, brick and mortar stores warned that it is not sustainable for stores, customers or consumers to wait in the absence of federal legislation.

Another common complaint regarding legislation like the INFORM Act is that it would harm small businesses and businesses that operate out of a private home. It is important to note that both the Federal INFORM Act and Representative Raney's HB 3852 did provide carveouts for small businesses with under 200 transactions and \$5,000 in sales annually. Further, both pieces of legislation exempted individuals and small businesses who operated from their home from having their addresses published.

Stakeholders were supportive of Texas implementing an organized retail crime task force to facilitate information sharing between retailers, online marketplaces and resellers, and law enforcement agencies. Dedicated task forces have proven to be effective in combatting organized retail crime by linking individual incidents of theft to establish larger patterns and identify the worst and most egregious offenders. Eight different states have created and funded dedicated organized retail crime task forces: Arizona, California, Connecticut, Delaware, Florida, Illinois, Michigan, and Utah.

LEGISLATION TO CONSIDER

- Absent federal action, the state should consider passing a version of the INFORM Act, similar to Representative Raney's HB 3852 (87R). In order to address the concerns of small and residential businesses, it would be important to ensure there was still a carveout for small and residential businesses. In addition, care could be taken to write similar legislation to other states to reduce the difficulties from a patchwork of state legislation.
- A statewide retail theft task force should be implemented to foster communication between online marketplaces, law enforcement, and the retail industry. Legislation in California, Florida, and Utah could be used as a model. A centralized hub for information regarding online retail crime would be invaluable to the police departments who are working to catch these criminal organizations as they travel across jurisdictions.

CHARGE V: Unemployment Insurance

Review operational changes and strategies employed by the Texas Workforce Commission to improve outcomes related to Unemployment Benefit Services, including application and payment processes, customer services, and fraud deterrence.

BACKGROUND

Unemployment Insurance (UI) provides a partial income replacement to individuals who have lost their job through no fault of their own. Individuals must meet eligibility requirements and be able to work, available for work, and actively searching for full-time work to receive benefits. The UI Trust Fund, which pays out the benefits to eligible claimants, is funded by employer taxes.¹²

SUMMARY OF COMMITTEE ACTION

Public Hearing: April 27, 2022 - Room E2.028, 1:00 p.m.

Ed Serna, Executive Director, Texas Workforce Commission

The current Texas Workforce Commission (TWC) UI computer systems for claimants and employers have been in use since the early 1980s. Prior to the 86th legislative session, TWC identified a need to modernize its UI systems. TWC sought, and was granted, capital budget authority to use federal funds to replace the system.

TWC issued a Request for Offer in July 2019 to begin the procurement process. In March 2020, the agency was in the final stages of selecting a vendor when the pandemic hit. This put the process on hold, as information technology (IT) and UI staff were needed to respond to the pandemic. In Fall 2020, TWC restarted the procurement process. The agency contracted with a vendor in January 2021 to replace its legacy system. In the 87th legislative session TWC was granted a continuation of this capital budget authority to ensure the federal funds could be expended on this project with the new timeline.

TWC's new, cloud-based technology will incorporate all three UI components – benefits, tax and appeals – into one program. The system will be accessible from a variety of devices, viewable in multiple languages, able to upload documents and other information and automatically integrated with TWC reemployment services to allow claimants to navigate both the claims and re-employment process through one portal. This is all in addition to current functions, such as submitting initial claims, payment requests, appeals and reviewing claim status online.

Claimants will also be enabled to access more of their claims information online and respond to agency requests more easily, reducing call center volumes and improving customer service. Employers can use the system to submit wages and payments, view their account balance and designate multiple users and/or third-party administrators.

TWC staff will benefit from the new system with increased efficiency and ease of use. The system will consolidate information and communication the agency receives from claimants and employers into one place, further improving customer service, knowledge and efficiency. Tax

staff will no longer need to manually reconcile wage information provided by employers, because the system will automatically do so.

One feature TWC is excited about for both customers and staff is the ability of customers who are filing a claim or reviewing claim information to virtually connect with staff to ask a question. TWC employees will be able to see exactly what the claimant is seeing, in real time, and assist them in navigating their question. The new system will also make it much easier for staff to design and implement software changes when policies change at the state or federal level. There will no longer be a need for cumbersome and time-consuming coding work.

Fraud Deterrence

Increased UI funding from the CARES Act and other federal legislation during the pandemic caused an increase in fraudulent activity. Criminals filed millions of fraudulent UI claims across the United States during this time. As TWC worked to process and pay claims as quickly as possible, they also had to be diligent to identify and stop fraudulent claims. The information criminals used to file fraudulent claims was obtained from data breaches of companies and stolen identities sold on the dark web, not from any breach of TWC systems.

TWC has always worked diligently to combat fraud in UI and other programs. The agency's Fraud Deterrence and Compliance Monitoring Division has continued to evolve and enhance its processes to identify and combat UI fraud to ensure public dollars and employer taxes are properly used for their intended purposes.

The federal Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) programs were at a higher risk of fraud because they did not include the checks and balances that exist in traditional state UI programs. These programs were attractive targets for imposter-claim and ID-theft fraud. Also, additional UI FPUC payments up to \$600 a week allowed individuals to receive greater UI benefit payments, further attracting fraud.

When TWC became aware of the spike in potential ID theft claims in these programs, the agency added more checkpoints and controls to detect and prevent ID theft victims from having UI claims filed using their identities. TWC added several additional measures to detect identity theft, such as using ID.me and additional fraud detection technology, implementing an online portal for reporting fraud and ID theft and creating the Identity Theft Task force.

TWC has several safeguards in place to check a claim for potential fraud. Many of these practices existed long before the pandemic and assist the agency in preventing many fraudulent claims from being paid. The description below of fraud deterrence methods was provided without specific details to prevent alerting fraudsters of TWC fraud detection methods.

TWC cross-matches claims with national and state new hire directories and wage records they receive from Texas employers. They also work with the Social Security Administration to check Social Security Numbers and Right-to-Work authorization numbers on filed claims. Using the Systematic Alien Verification for Entitlement (or SAVE), the agency verifies claims with the Department of Homeland Security to check immigration status and citizenship for applicants of federal, state, and local public benefits. Additionally, within the state of Texas, they verify claim

information with the Department of State Health Services (DSHS) to identify if a deceased claimant's claim is still active. TWC also compares incarceration information with filed claims.

During the pandemic, TWC utilized ID.me as another checkpoint to prevent fraud. ID.me is an online identity verification network company that contracts with federal and state governments, healthcare companies, and financial services companies to ensure an individual is who they say they are.

In January 2021, TWC began requiring ID.me verification for all PUA claims and all other claims identified as potential imposter claims. Once a claim is filed, if the agency suspects ID theft, they attempt to contact the individual to verify their identity. If they do not receive a response from the true owner of the Social Security Number, no payment is made. Additionally, the individual's current or previous employer is notified when a claim is filed. This longstanding practice of providing an option for claim dispute is another safeguard, enabling the employer to notify any current employee of a concerning claim they received in their name.

From March 2020 through January 2022, TWC estimates that 776,000 potential imposter claims were filed with the agency using stolen or synthetic identities. They have calculated that \$51.6 million was paid out during this time on 9,573 claims that have now been confirmed to be fraudulent. The \$51.6 million represents 0.1% of the total \$54.3 billion of unemployment benefits paid during this time. TWC also estimates that their methods prevented about \$2.6 billion in payments from being paid to fraudsters

FINDINGS

Although the COVID-19 pandemic prevented TWC from completing their originally scheduled modernization, the upgrades the agency made during the pandemic were impressive and the agency is now on track to finish modernization—complete with additional updates developed during the pandemic in real time.

Overall, TWC was quite effective in preventing payout of fraudulent claims. Their rate of fraudulent claim payout, 0.1%, is extremely impressive, especially as they navigated new programs and requirements and were inundated with claims.

LEGISLATION TO CONSIDER

- The Legislature should ensure TWC has funding to continue to prioritize technological upgrades in order to keep up with current demand and prepare for potential future surges in claims.
- The Legislature should continue to support TWC in its fraud deterrence and investigation efforts.
- TWC should continue to strive to balance their fraud deterrence efforts with their efforts to expediently pay benefits to unemployed Texans.

CHARGE VI: Data Privacy

Evaluate the overall state of data privacy and online consumer protections in Texas and study the related laws and legislative efforts of other states. Make recommendations to ensure consumer data protections and online privacy.

BACKGROUND

As technology continues to advance at breakneck speed, nearly every industry Texans interact with has access to an increasing amount of consumer data. In recent years, data breaches have become increasingly common, putting the personal information of millions of Americans at risk. This risk stems from the prolific amount of information that companies have access to combined with the lack of federal and state data privacy legislation.

Privacy Legislation in California, Colorado, and Virginia

Due to the lack of comprehensive federal data privacy legislation, numerous states have passed consumer protection bills in the past few years. Some of the most notable laws have been in California, Virginia and Colorado. The California Consumer Protection Act (CCPA) (and more recently the California Privacy Rights Act) are generally viewed as the most sweeping and aggressive pieces of legislation, while the Virginia Consumer Data Privacy Act (VCDPA) is seen as a law that is less onerous to businesses while also offering consumers fewer protections. Colorado's Privacy Act (CoPA) is a middle ground between the two. All three states give consumers the right to access, delete, and correct their personal data. They can also opt out of the sale of personal data, targeted advertising, and consumer profiling.

These three laws vary in terms of applicability. First, the CCPA covers more entities than the VDCPA or the CoPA. California's legislation has a pure revenue threshold of \$25 million. Colorado and Virginia do not. The CCPA and CoPA also have broader definitions of what a "sale" is. Virginia legislation defines "sale" as an exchange of personal data for only monetary consideration. Colorado's definition of "sale" includes monetary *and* other valuable considerations. California has the broadest definition of the three. "Sale" can mean anything from the exchange, dissemination, transfer, or disclosure of personal data. The CCPA has the broadest scope of authority while the VDCPA is the most limited. As stated previously, CoPA falls somewhere in the middle.

Finally, state legislation differs on who can enforce the law. California legislation expanded enforcement authority to a new state agency called the California Privacy Protection Agency. The CCPA also has a limited private right of action, allowing citizens to sue businesses in particular circumstances. In Virginia and Colorado, only the Attorney General is responsible for enforcement.

SUMMARY OF COMMITTEE ACTION

Public Hearing: April 27, 2022 - Room E2.028, 1:00 p.m.

Note: Equifax, the Consumer Data Industry Association, TikTok, Twitter and the Texas Cable Association were invited to testify at the hearing but declined the invitation. Experian proactively reached out to inform the Committee they did not want to testify.

Steve Perkins, Former Associate Dean, UT Dallas & VP, Burke Inc.

Throughout the past few years there has been enormous growth in the volume and variety of personal consumer data available to companies, but a lack of growth in protections for consumers. An especially concerning type of company with access to consumer data is data brokers: corporations that collect personal data on individuals and sell it to third parties, even though the consumer has no relationship with the broker. There are over 400 data brokers in the world, with annual sales of over \$200 billion. Data brokers are able to collect and sell most of our personal data including locations, online movements, address, phone numbers, medical conditions and credit information. Existing state and federal laws do not stop this from occurring. See Appendix J for a non-exhaustive list of prominent data brokers.

Acxiom, a large – yet relatively unknown – broker, holds 11,000 pieces of data on 2.5 billion people in 62 countries. Their data includes demographics, religion, political party, credit card purchases, income, net worth, health concerns, media usage and more. Based on this data, they separate individuals into interest group segments such as: “Big Spender Parents” (middle-aged, traditional family households with children with an average income of \$207,000), “Credit Hungry Card Switcher”, or “Rural and Barely Making It.” These results are sold to marketers who produce ads targeted to that segment without any knowledge or permission of the consumer. This use of data can be harmful to consumers in three specific ways: data breaches, privacy abuse and data misuse.

Data Breaches: Data brokers, like any company that collects and holds sensitive consumer data, are vulnerable to data breaches. These breaches can be especially harmful to consumers due to the extensive amount of data these companies hold. For example, Equifax, a credit bureau and data brokerage company, exposed the financial and personal data of 147 million people after a data breach in 2017. Data breaches put customers at risk for identity theft and financial fraud. Perpetrators can use stolen information, including account numbers, passwords and Social Security numbers, to take out loans or seek medical care under someone else’s name or make unauthorized purchases on credit cards.¹³

Privacy Abuse: Brokers can obtain personal data by collecting it without someone’s knowledge and then sell it without their permission. For example, Clearview AI is a company that obtains security store footage from retailers and identifies customers instantly using facial recognition software and images scraped from billions of websites, including social media.

One particularly dangerous example of privacy abuse that Mr. Perkins cautioned might occur is the sale of geolocation data. He explained that location data could be harvested from mobile apps, then sold to data brokers who aggregate it with other personal data and sell the information to third parties to track an individual’s movements. Anyone with a credit card could monitor who

is visiting an Alcoholics Anonymous meeting, a mosque, or a specific store. A divorced wife could be tracked by an unhappy ex.

Data Misuse: Targeted marketing means people have unequal access to information and offers, possibly resulting in discrimination against consumers. For example, the Department of Justice recently settled with Facebook over charges that the company targeted users with housing ads based on algorithms that relied partly on characteristics protected under the Fair Housing Act, like race, national origin and sex.¹⁴ Without laws controlling the use consumer data, cases like this may become more common.

Recommendations:

Build on HR 8152, The American Data Privacy and Protection Act, a bill that has been introduced in the U.S. House. It is important that any data privacy legislation:

1. Defines data brokers broadly enough to include companies that collect and transfer personal data, even if the company does not have a direct relationship with an individual;
2. Requires that brokers register with the state;
3. Gives Texans the opportunity request that brokers delete and stop collecting their data; and
4. Empowers the state to impose penalties on brokers that do not comply.

Andrew Kingman, Counsel, State Privacy & Security Coalition

The State Privacy and Security Coalition is a coalition of over 30 companies and trade associations representing the telecom, payment card, technology, retail, automobile and healthcare sectors. The coalition prefers well-crafted federal legislation on this issue but understands that such legislation may not be passed in the foreseeable future. In its absence, the Coalition encourages legislation similar to the privacy legislation crafted by Virginia, and discourages legislation similar to California's law.

Virginia Framework

After Virginia passed its legislation in the spring of 2021, the framework spread to Colorado, Utah, and Connecticut, which passed similar legislation in 2021 and 2022. Benefits of this framework include:

1. Consumers have the right to:
 - Request a company delete their data;
 - Opt out of the sale of their data;
 - Opt out of being profiled;
 - Opt out of information targeting;
 - Request their information be corrected; and
 - Request access to their personal data a business has access to.
2. Clear language that is easy for businesses to follow without hiring lawyers.
3. Privacy protections that include limitations on secondary use and collecting more data than is necessary and the requirement for businesses to conduct data protection assessments and document the risks and benefits of their activities.
4. Some versions offer opt-in protection for children's data, precise geolocation data, and other types of sensitive data.
5. Prohibition of unlawful discrimination against consumers for both processing personal

-
- data and for consumers exercising any of their rights under the statute.
6. These laws contain identical or substantively similar definitions, scope and enforcement provisions, allowing them to be interoperable across state lines.
 7. Give state officials the authority to enforce provisions and do not allow a private right of action.
 8. Customers have the right to request a company to delete their data, and may opt out of the sale of their data.
 9. No data broker registry under this framework.
 10. If a business denies a right that a consumer has, a consumer has a 45-day period to appeal to the company and the ability to file a complaint with the Attorney General Office.

California Framework

1. Complex language requires legal expertise to understand and comply;
2. High compliance costs; and
3. Numerous notices and links on a website could frustrate consumers.

Evelyn Miller, Vice President, Data and Privacy Policy, Meta

Meta builds privacy into its projects. Through Meta’s privacy review process, teams are dedicated to identifying potential privacy risks - beyond just legal requirements - and finding ways to mitigate them before the product is launched. Meta also invests in technical solutions to support privacy and implements internal compliance and accountability measures, including a company-wide annual privacy risk assessment, which provides a comprehensive view of privacy risks and safeguards across the company.

Facebook allows users to access the data they have shared with the website and that Facebook has collected in other ways, and to delete information they no longer wish to share. Facebook also lets users share information that they want to share. They can download their information from Facebook to share it manually, or transfer it directly from Facebook to other services, including Google, Dropbox, WordPress and others.

The “Facebook Privacy Checkup” tool guides people through their privacy and security settings, letting them decide who can see their posts, who can contact them and what information can be used to target them with ads.

The “Why am I seeing this” tool lets people click on an ad and see why it is being shown to them. Users can also adjust their ad preferences by managing what types of ads they see and limiting or increasing the data used by advertisers to show them ads.

The “Off-Facebook Activity” tool shows users a summary of information Facebook receives about their activity on other apps and websites and lets them disconnect that information from their Facebook account.

Facebook does not sell user data and only shares this information with other Meta companies. However, they do gather information from advertisers on other sites which is then fed into Facebook to make a personalized experience. Facebook does not gather location data unless the user allows it, and only collects information a user provides on their account, including places a

user has attended, who they work for, and their date of birth. Facebook does not have access to users' email accounts, internet search history, photos, or medical information that is not uploaded by the user. The company is aware of the dangers of technology that can scrape information from pictures on Instagram and Facebook is actively working to develop technology to prevent this.

Privacy Legislation

Meta has been vocal in calling for stronger, more consistent privacy rules as privacy laws have not kept pace with technology. Meta believes that an important aspect of any privacy legislation should be personal data rights. People should have the right to know how companies use their personal information and what controls they have over it. Consumers should also have rights to access and delete their information and to transfer their information to another service.

Legislation should also require all organizations that hold consumer information to adhere to basic obligations for responsible data handling, including maintaining comprehensive internal privacy programs, transparency surrounding how and why they collect personal information and notification in the event of a security breach. It is important to have strong centralized enforcement through the Attorney General, rather than through a private right of action. Further, legislation should be technologically neutral, principles-based, applied to all entities, scalable for smaller companies and harm- and risk-based. An effective approach to privacy legislation will also recognize the value of personalized advertising, which connects consumers with the services they're most likely to be interested in. Personalized advertising, in particular, has been vitally important for small and medium-sized businesses.

Meta believes that Virginia and Connecticut's laws are a good example for any state considering privacy legislation. Both laws provide consumers with fundamental privacy rights like access, deletion, correction and portability.

In the absence of a comprehensive federal privacy law, and as more states consider new laws, there is an increasing risk of regulatory fragmentation, which will make it difficult for businesses to comply with regulations. Absent federal action, greater convergence among state laws will provide more businesses certainty and consistent protections for people.

Ryan Harkins, Senior Director of Public Policy, U.S. Government Affairs, Microsoft

Microsoft has been calling for privacy legislation in the United States since 2005, as the company believes there is an urgent need for new, robust laws to address serious privacy concerns. These laws are necessary to help restore the public's trust in technology and enable businesses to innovate with certainty and confidence.

Five states have passed comprehensive privacy laws (CA, CO, CT, UT and VA), with the laws passed in Colorado and Connecticut being the most effective. Many other bills have been introduced, but not yet passed, in other states. Like others, Microsoft would like to see a federal law. However, they expect the real activity to remain in the states and encourage Texas to pass a robust data privacy law.

Important components of a strong privacy policy include:

1. Strong definitions to ensure that the bill will apply to the modern, online data sets that are

used to track consumers on the internet today. Definitions should include data that immediately identifies an individual (Social Security number or passport information) and identifiable data (data that could identify an individual when combined with other information). Colorado's definitions meet this specification, while Utah's definition could leave important personal data out.

2. The right for consumers to control their data, including the right to access, correct, delete, and port their personal data, to opt out of certain sensitive practices (data sales, targeted advertising and consequential profiling) and the right to opt in to the collection and use of sensitive data.
 - Colorado and Connecticut's laws achieve this without making consumers exercise their rights every time they visit a website by including a universal opt out signal, with which users can click an "easy button" once one time to exercise their opt out rights for all websites they view.
 - Language makes a big difference, especially concerning the right to delete. In California and Utah, the right to delete applies to personal information from a consumer but does not apply to information a company could get from a third-party broker, or inferences derived from data. The Colorado law applies to data concerning the consumer and would apply to all three of the above categories.
3. Affirmative obligations on companies to ensure they are responsible stewards of consumers' personal data. There are too many websites with too many privacy policies to put the entire burden on consumers. In 2007, a study found it would take the average American 76 working days to read all of the privacy policies they encounter on the internet over the course of the year.
4. Different but complementary obligations depending on the role that entities play. If a company is consumer facing, requirements will be different than companies providing back-end services. This is known as the controller/processor distinction.
5. Strong enforcement mechanisms, no matter what method is used.

Briana Gordley, *Policy Analyst*, Texas Appleseed

Advances in digital technologies have allowed consumer behavior to be incessantly monitored. Every day, mass amounts of data are collected from consumers using a range of methods, including online cookies, registered loyalty cards, public social media platforms, device or browser identifiers and more. Data brokers are major players in the collection and sale of our personal data to any party willing to pay. They collect data by purchasing it from other parties with whom consumers do business and through internet searches.

Data brokers collect expansive lists of data about individuals. Data collected often includes full names, home addresses (both current and previous), telephone numbers, email addresses, age, gender, Social Security numbers, marital status, income, education history, household income and more. They add to that data a vast trove of digital information, including web browser identification, web history, profile data, location information from mobile apps and purchase history. Little to no accountability exists regarding what can be collected, who has access to the data, or how it is protected.

Consumers are becoming increasingly aware of the harmful ways that data is used, such as through targeted advertisements that can manipulate consumer decision-making or exploit vulnerable circumstances. As consumer data gets passed around among third parties with no

direct consumer relationship, companies profit from personal data and create more possibilities for it to be leaked or breached in a way that causes the consumer harm.

A 2019 Pew Research Center study found that 81% of respondents expressed feeling that they have very little to no control over their data being collected from companies, and 79% expressed concern about how companies are using their data.

Our lack of strong data privacy laws has an immense impact on domestic abuse survivors, an already vulnerable group. Under the current scattered approach to data privacy protection, and with expansive data collection and sharing, survivors find it increasingly difficult to maintain their privacy. This new digital age of innovative technology brings additional ways for abusers to gain access to their victim's personal identifying information and have an even more significant impact on their victims' financial stability and physical safety. A lack of privacy can lead to survivors being fearful to ask for help, seek non-shelter domestic violence services, and enter into a protective space or shelter due to a lack of trust in confidential information procedures. This leads those in need of help to refuse necessary services.

Economic exploitation is one way that abusers can use the vast collection of data available to harass and harm victims during and after their relationship. Economic exploitation is prevalent in abusive relationships and comes in many forms, including economic restriction (an abuser keeping the survivor from going to work) and exploitation (an abuser taking out a credit card in the survivor's name). In a 2021 nationwide study by the Center for Survivor Agency and Justice on domestic violence and economic wellbeing, 97% of survivors were subjected to economic abuse.

Another form of economic exploitation is coerced debt, which can burden the survivor with bad credit caused by the abuser. Coerced debt, defined as non-consensual, credit-related transactions occurring in an abusive intimate relationship, is a form of identity theft where an abuser obtains credit using the survivor's identifying information through threats, fraud or coercion. Although coerced debt is most often associated with domestic violence, it is also found in cases of elder financial abuse, financial abuse of a person with disabilities, or in child abuse and exploitation of youth.

In addition to economic abuse and exploitation, abusers can use access to online data as a way to continue their abuse and intimidation of a survivor. Doxxing, when sensitive, personally identifying information is purposefully released on someone, is an abusive practice that perpetrators of violence will utilize to publicly shame, harass, and stalk their victim.

The sale of location information is also a physical safety issue for survivors of domestic violence. Abusers are often determined to track down their victims, whether that be through harassing friends and family members, incessantly calling shelters, or even going to the police filing a missing person's report to determine their victim's whereabouts. An abuser's tenacity and creativity in locating their victim to further abuse them cannot be underestimated – because it almost always has devastating consequences.

One devastating example Ms. Gordley recounted was an abuser using Docusearch, an internet-based investigation and information service, to request personal information on his victim. Piece

by piece, Docusearch located the information the abuser requested – including the birthdate, Social Security number, home address and workplace address of his victim. The abuser purchased and then used this information to locate the victim. He fatally shot her before shooting and killing himself. Unfortunately, this is not a one-off occurrence. The Safety Net Project, which focuses on how technology impacts domestic violence, found in a 2014 survey that 97 % of domestic violence programs reported that the survivors in their programs experienced harassment, monitoring, and threats by their abusers through technology.

Texas Appleseed Recommendations

1. Allow Texans to see what data companies have collected and to request to have their data deleted;
2. Require companies to ask consumers' permission to "opt-in" (instead of opting out) to sharing or selling of data to third parties;
3. Prohibit companies from collecting unnecessary data outside of the service they are providing; and
4. Prohibit targeting of advertisements that have the effect of exploiting a vulnerability or discriminating against consumers with certain characteristics (lending discrimination based on race data collected).

A 2021 Texas Appleseed report on data privacy and civil rights found that demographic and location data collected can have crucial financial impacts on the type and cost of financial products offered to consumers. This can become discriminatory when race and location biases are factored into the cost of essential products, such as car insurance, forcing historically marginalized groups to pay more than their counterparts for a product.

Similarly, determining loan pricing for consumers in need of financial assistance becomes a data privacy issue when the use of alternative data, which may be incorrect, is factored into pricing. Taking into account the inability of Texans to determine what personal data has been collected, shared, and sold, there is currently no way for consumers to address these issues that result from a lack of data privacy protections.

John McCord, Executive Director, Texas Retailers Association

Data privacy is the right for a consumer to know and control what data is collected and how it is used. The Texas Retailers Association believes data privacy should include four tenants:

1. Businesses should provide transparency surrounding data. Consumers should understand what data is collected, how it is used, and if it is sold;
2. Consumers should have the ability to opt out of the sale of their data;
3. Consumers should have the right to delete their data; and
4. Consumers should have the right to correct their data.

California was the first state to pass a data privacy law, but the legislation had a negative impact on the retail industry. The complicated nature of the bill led to compliance issues and it has been estimated that the bill would cost companies \$55 billion dollars for initial compliance. Texas Retailers Association's larger member companies could afford such costs, but it is likely that smaller members would go out of business if Texas passed a similar bill.

Virginia passed a data privacy law that is more friendly to retailers. The bill ensured user data was protected without impacting a businesses' ability to operate. The law was also simpler and clearer than California's law, especially regarding definitions.

When asked if members of the Texas Retailers Association sold consumer data, Mr. McCord stated that it varied by company. He believed that some member companies likely did, while others did not.

Celeste Embrey, General Counsel, Texas Bankers Association

The Texas Bankers Association represents 412 banks of all sizes and charter types. The banking industry is subject to an extensive federal and state statutory and regulatory framework to protect customers' data privacy. Regulations include:

1. **The Gramm-Leach-Bliley Act (GLBA)**– Requires financial institutions to explain their information-sharing practices to their customers and to safeguard sensitive data. It requires notification of privacy policies and allows consumers to opt out of information sharing between the bank and certain nonaffiliated third parties.
2. **Right to Financial Privacy Act (RFPA)**– Establishes procedures federal government authorities must follow in order to obtain information from a financial institution about a customer's financial records, including obtaining subpoenas, notifying the customer of the request, and providing the customer with an opportunity to object.
3. **Fair Credit Report Act**– Regulates the collection, use and sharing of consumer credit information and provides a process to ensure information is reported accurately. Companies that provide information to consumer reporting agencies have specific legal obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.
4. **Interagency Guidelines Establishing Information Security Standards: 12 CFR 364, Appendix B**– Requires insured depository institutions to implement a comprehensive written information security program that includes administrative, technical and physical safeguards and is designed to safeguard customer information.
5. **Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation: Appendix A to Part 681**– Requires financial institutions to develop and provide for the continued administration of a written program to detect, prevent and mitigate identity theft in connection with covered accounts.
6. **Children's Online Privacy Protection Act (COPPA)**– Protects the privacy of children under 13 years of age by establishing privacy regulations financial institutions must follow.
7. **California Consumer Privacy Act (CCPA)**– Despite being a California state law, the CCPA generally applies to any entity that operates in the state of California or any entity that collects personal information from a California consumer, therefore potentially broadening its scope to financial institutions across the country. A California resident may request that an applicable business or the bank disclose what personal information they have and what they intend to do with that information. A California resident also has the right to request that the bank delete their personal information and/or not to sell their personal information. A California resident or California consumer must be notified, before or at the point that the bank collects their personal information, of the types of

personal information they are collecting and what they may do with that information.

8. **California Privacy Rights Act (CPRA)**– significantly expands upon the privacy rights and protections outlined in the CCPA, including:
 - a. Right to correction, meaning that users can request to have their personal information corrected if found to be inaccurate.
 - b. Right to opt-out of automated decision making, meaning that California residents can say no to their personal information being used to make automated inferences.
 - c. Right to know about automated decision making, meaning that California residents can request access to and knowledge about how automated decision technologies work and their probable outcomes.
 - d. Right to limit the use of sensitive personal information, meaning that California residents can make businesses restrict their use of this separate category of personal information, particularly around third-party sharing.

In addition to following these regulations, banks employ industry standards and best practices to ensure consumer data protection. These standards include:

- **Multi-factor authentication (MFA):** MFA is a security enhancement that requires multiple credentials (factors) before an account can be accessed. Factors fall into three categories: something you know, like a password; something you have, like a token; and something you are, like your fingerprint. MFA greatly increases the level of difficulty for adversaries to compromise enterprise user accounts, and thus gain access to sensitive customer data.
- **Password Management:** Unauthorized use of passwords is a common data security issue. Username and password combinations can be sold on the dark web or posted for free on the internet, which can be used to access not just the accounts in question, but other accounts held by the consumer or employee. Having processes in place to monitor for breaches at other entities where users may be re-using logins and passwords (including notifying users when a password reset is required as a result) and preventing the use of default enterprise logins or passwords can prevent against this risk.
- **Timely Software Updates:** Software vendors regularly update software to address security vulnerabilities within a program or product. When patches are released, the public, including hackers, become aware of the prior vulnerabilities. Therefore, when companies use commonly-available software, including open-source software and open-source libraries, and do not install a patch that has been released for that software or take other mitigating steps if patching is not possible, they neglect to fix a security vulnerability that has become widely known. This includes covered persons or service providers that do not routinely update systems, software and code (including those utilized by contractors) or fail to update them when notified of a critical vulnerability. This also includes not having asset inventories of which systems contain dependencies on certain software to make sure software is up to date and highlight needs for patches and updates, and use of versions of software that are no longer actively maintained by their vendors.

Glenn Hamer, *President and CEO*, Texas Association of Business

The Texas Association of Business (TAB) represents over 1,500 members and over 200 chambers of commerce across Texas. TAB’s core purpose is to “champion the best business

climate in the world, unleashing the power of free enterprise to enhance lives for generations.” Today, every business depends on information technology to reach and better serve customers, process payroll and HR benefits, accommodate hybrid work and disaster recovery, and make things better, faster, and cheaper for customers and workers alike.

In 2019, after California passed the Consumer Privacy Act, an economic impact report predicted the new law could cost companies up to \$55 billion in initial compliance costs, or about 1.8% of California’s Gross State Product.

Note: The \$55 billion dollar estimate of compliance costs was mentioned by multiple witnesses, however no witness could specify the specific bill requirements that created such a high cost.

Three data privacy principles developed by the TAB Technology Means Business Task Force:

1. A data privacy standard should ensure transparency for consumers and give the consumer clear and balanced rights to control their personal information, including:
 - a. The right to access personal data;
 - b. The right to correction and deletion of personal data; and
 - c. The right to opt out of sale of personal data.
2. A customer should have the right to opt out of the sale of personal data, including derived data and inferred data. TAB believes any federal or state law should preempt other governmental entities, including local governments, from enacting laws that alter the way personal data is controlled or processed.
3. TAB strongly opposes the creation of any new private right of legal action against Texas employers and businesses.

FINDINGS

There is widespread agreement that privacy legislation has not kept pace with technology. The vast majority of stakeholders would prefer federal legislation, but it seems unlikely for a federal data privacy bill to pass Congress in the near future. Businesses are wary of California's law, but witnesses expressing these concerns were not able to specify what specific provisions or requirements in the law were so onerous and costly for businesses.

One area of concern voiced during the committee hearing was regarding companies who own user data without the user's knowledge, primarily data brokers. Some stakeholders felt it was problematic that many consumers do not even know what companies have their data. This makes an opt out button on a website less effective since a consumer would not know which companies or websites to visit to make this request.

The Committee believes that the data broker issue needs more study. While the Texas Legislature should consider data privacy legislation to protect consumers, such as a data broker registry, the body should be wary of passing legislation with unintended consequences for businesses with legitimate purposes. There is further concern with some stakeholders that legitimate companies could be covered in data broker legislation and hindered from fulfilling their purpose. This is especially true for businesses who have user data but enable consumers to access credit, apply for a student loan or buy a vehicle.

Federal Trade Commission Report on Internet Service Providers

During the committee hearing, an October 2021 Federal Trade Commission staff report was referenced.¹⁵ This report states that several Internet Service Providers (ISPs) amass large amounts of sensitive consumer data and combine this information across the broad range of products they provide and with other entities to identify extremely granular insights and inferences about consumers. The report found that while several ISPs in the study told consumers they would not sell such data, they failed to reveal to consumers the numerous ways that their data was used, transferred or monetized outside of selling it. The study concluded that many ISPs can be at least as privacy-intrusive as large advertising platforms.

Unfortunately, because the Texas Cable Association declined the Committee's invitation to testify, there was not substantive discussion of this report at the hearing. However, since the hearing, stakeholders have reached out with feedback on the FTC report. While some believe the dangers in the report are accurate and must be rectified, others have cautioned that its contents are misleading.

Specifically, AT&T warned that the report was not accurate due to the narrow slice of online data collection examined. AT&T stated that ISPs do not have unique access to data, and that data encryption further limits their ability to access data. The company warned against privacy regulations only applying to one set of technologies or industry players.

LEGISLATION TO CONSIDER

- Texas should consider passing legislation that gives consumers more control over their data. Important provisions for a strong law would include consumers having the right to correct and delete their information. Attention should be paid to the definitions. While short, uncomplex definitions can seem ideal and easier to follow, lawmakers should be wary of definitions that leave out essential pieces of data. Care should also be taken to match other state legislation whenever possible to prevent compliance difficulties from a patchwork of state legislation.
- A data broker registry has the potential to be complementary legislation, but care should be taken to protect legitimate businesses from being prohibited from operating. It is also important to note that data broker registry legislation would not be sufficient without additional data privacy legislation, as the data broker definition leaves out many social media companies, who hold the most consumer data.

Appendix A

Office of the Attorney General Data Security Breach Reports Website



Home (<https://www.texasattorneygeneral.gov/>)

Contact Us (<https://www.texasattorneygeneral.gov/contact-us>)

Data Security Breach Reports

Search:

ENTITY OR INDIVIDUAL NAME	ENTITY OR INDIVIDUAL ADDRESS	ENTITY OR INDIVIDUAL CITY	ENTITY OR INDIVIDUAL STATE	ENTITY OR INDIVIDUAL ZIP CODE	TYPE(S) OF INFORMATION AFFECTED	NUMBER OF TEXANS AFFECTED	NOTICE PROVIDED TO CONSUMERS (Y/N)	METHOD(S) OF NOTICE TO CONSUMERS	DATE PUBLISHED AT OAG WEBSITE
Nations Lending Corporation	4 Summit Park Drive, Suite 200	Independence	Ohio	44131	Name of individual;Address;Social Security Number Information;Driver's License number;Government-issued ID number (e.g. passport, state ID card);Other	1757	Yes	U.S. Mail	09/20/2021
Goldwater Bank, N.A.	2525 East Camelback Road, Suite 1100	Phoenix	Arizona	85016	Name of individual;Address;Social Security Number Information;Financial Information (e.g. account number, credit or debit card number)	2569	Yes	U.S. Mail	11/01/2021
Professional Healthcare Management, Inc.	7900 Players Forest Drive	Memphis	Tennessee	38119	Name of individual;Social Security Number Information;Medical Information;Health Insurance Information	614	Yes	Notice by publication in print media;Posted at company website or special website;U.S. Mail;Broadcast on Texas-wide Media	11/01/2021

Appendix B

Texas Department of Insurance Division of Workers' Compensation Sample Request Form

Sample Request to Reprocess a SARS-CoV-2 or COVID-19 Claim for an Injured Employee Covered under Texas Government Code Section 607.0545

Send this request to the insurance carrier handling the claim.

I am the:	injured employee
	injured employee's beneficiary
	injured employee's representative or attorney

Part 1: Injured employee information

1. Employee's name (first, middle, last)	2. Social Security number (last four digits) <small>XXX-XX-</small>
3. DWC claim number (optional)	4. Date of injury (mm/dd/yyyy)
5. Address (street or PO box, city, state, ZIP code)	6. Occupation
7. Phone number ()	8. Email (optional)
9. Attorney or representative's name (if applicable)	10. Attorney or representative's address (street or PO box, city, state, ZIP code)

Part 2: Employer information (at the time of the injury)

11. Employer's name	12. Address (street or PO box, city, state, ZIP code)
----------------------------	--

Part 3: Insurance carrier information

13. Insurance carrier's name	14. Insurance carrier claim number
-------------------------------------	---

Part 4: Requester information

<p>I certify that I am authorized to submit this request to reprocess a COVID-19 claim under Texas Government Code Section 607.0545 and that all the information on this written request is true and correct.</p> <p>15. Signature _____</p>

Sample Request to Reprocess SARS-CoV-2 or COVID-19 Claim for an Injured Employee Covered under Texas Government Code Section 607.0545
Rev. 07/21

Note: The English sample request form is pictured above. A Spanish version of the form was also available.

Appendix C

Texas Department of Insurance Division of Workers' Compensation Plain Language Notice

[Recommended: Insert letterhead here]

Notice of Request to Reprocess a SARS-CoV-2 or COVID-19 Claim Subject to Texas Government Code Section 607.0545

[Date]

To: [Name of injured employee]
[Address]
[City, state, zip]

Re: Date of injury: [Date of injury]
Nature of injury: [Nature of injury]
Notice of injury date: [Date carrier received notice of injury]
Part of body injured: [Part of body injured]
Employee SSN: [Employee SSN]
DWC claim #: [DWC claim #]
Carrier name/TPA name: [Carrier name/TPA name]
Carrier claim #: [Carrier claim #]
Employer name: [Employer name]
Employer address, city, state, zip: [Employer address, city, state, zip]

We, [Name of carrier], got your request and took another look at your workers' compensation claim. Based on the facts we have about your claim, we:

- will pay income or medical benefits when due.**
- will not pay income or medical benefits.**

[The following appears only if this second box is checked.]

We denied your claim again because:

[Provide a full and complete statement explaining the action taken, including a statement of whether the statutory presumption applied to the claim and a description of the evidence reviewed in making the determination.]

Contact me if you: (1) have questions, (2) need to give more facts about this claim, or (3) disagree with this decision.



Appendix D
Claims Filed before SB 22's Effective Date

Insurance Carrier Categories	Total Claims (includes fatal and non-fatal claims)	Initially Denied Total Claims (includes fatal and non-fatal claims)	Total Fatal Claims	Initially Denied Fatal Claims
Commercial Insurance Carriers				
Ace American Insurance Co	3	0	0	0
Benchmark Insurance Co	39	28	1	0
Berkshire Hathaway Homestate Insurance Co	1	1	0	0
Indemnity Insurance Co of North America	4	2	0	0
Old Republic Insurance Co	2	0	0	0
QBE Insurance Corporation	241	135	0	0
Safety National Casualty Corp	1	1	0	0
Starr Indemnity & Liability Co	1	1	0	0
Texas Mutual Insurance Co	563	346	8	6
Travelers Property Casualty Company of America	98	52	1	0
Total of Commercial Insurance Carriers	953	566	10	6
Political Subdivisions				
Bexar County	23	23	2	2
City of Amarillo	11	5	0	0
City of Arlington	287	55	0	0
City of Austin	953	590	0	0
City of Baytown	8	2	0	0
City of Beaumont	134	84	0	0
City of Bryan	100	92	0	0
City of College Station	123	63	0	0
City of Dallas	461	166	1	0
City of Denton	2	0	0	0
City of El Paso	627	285	0	0
City of Fort Worth	964	18	1	0
City of Garland	23	1	0	0
City of Houston	4,223	2,288	11	1
City of Lewisville	56	4	0	0
City of North Richland Hills	21	9	0	0

City of Odessa	39	0	0	0
City of Plano	17	1	0	0
City of Richardson	109	55	0	0
City of San Antonio	507	223	3	3
City of Tyler	20	17	0	0
City of Waco	3	3	0	0
City of Wichita Falls	4	4	0	0
Dallas County	495	421	0	0
Deep East Texas Self Insurance Fund	207	171	2	2
Fort Bend County	6	5	0	0
Harris County	1,731	1,147	7	5
Hidalgo County	41	40	0	0
Jefferson County	1	1	1	1
Montgomery County	3	2	0	0
Port of Houston Authority	2	1	0	0
Public WC Program	4	4	1	1
Regional Pool Alliance	2	2	0	0
Tarrant County	285	15	3	0
TPS Joint Self Insurance Funds	37	27	1	1
Travis County	74	63	1	1
Texas Association of Counties Risk Management Pool	1,211	715	12	7
Texas Municipal League Intergovernmental Risk Pool	2,735	305	17	3
Total of Political Subdivisions	15,549	6,907	63	27
State of Texas				
State Office of Risk Management	5,767	5,000	51	40
Total for State of Texas	5,767	5,000	51	40
Grand Total	22,269	12,473	124	73

Appendix E
Claims Occurring Before SB 22's Effective Date but Filed After SB 22's Effective Date

Insurance Carriers (commercial)	Total Claims (fatal and non-fatal claims)	Initially Denied Total Claims (fatal and non-fatal)	Fatal Claims	Denied Fatal Claims
Standard Fire Insurance Co	2	0	0	0
Texas Mutual Insurance Co	2	0	0	0
Travelers Property Casualty Company of America	1	0	0	0
Total	5	0	0	0

Insurance Carriers (political subdivisions)	Total Claims (fatal and non-fatal claims)	Initially Denied Total Claims (fatal and non-fatal claims)	Fatal Claims	Denied Fatal Claims
Bexar County	1	1	0	0
City of Amarillo	53	11	0	0
City of Arlington	3	0	0	0
City of Austin	2	1	0	0
City of Beaumont	7	0	0	0
City of Dallas	12	1	1	0
City of El Paso	1	0	1	0
City of Fort Worth	1	0	0	0
City of Houston	43	13	0	0
City of San Antonio	2	1	0	0
City of Waco	7	0	0	0
City of Wichita Falls	9	1	0	0
Dallas County	13	2	0	0
Fort Bend County	1	0	0	0
Galveston County	1	1	1	1
Harris County	6	4	0	0
Montgomery County	9	0	0	0
Public WC Program	1	0	0	0
Tx Association of Counties Risk Management Pool	6	0	0	0
Texas Municipal League Intergovernmental Risk Pool	52	8	3	2
Total	230	44	6	3

Appendix F
Claims Occurring After SB 22's Effective Date

Insurance Carriers (commercial)	Total Claims (fatal and non-fatal claims)	Total Claims Initially Denied (fatal and non- fatal claims)	Fatal Claims	Fatal Claims Denied
Ace American Insurance Co	10	4	0	0
Benchmark Insurance Co	45	10	0	0
Indemnity Insurance Co of North America	22	2	1	1
QBE Insurance Corporation	37	22	0	0
Standard Fire Insurance Co	1	1	0	0
Starr Indemnity & Liability Co	85	9	0	0
Texas Mutual Insurance Co	378	161	5	2
Travelers Property Casualty Company of America	58	11	0	0
Total	636	220	6	3

Insurance Carriers (political subdivisions)	Total Claims (fatal and non- fatal claims)	Initially Denied Total Claims (fatal and non- fatal claims)	Fatal Claims	Fatal Claims Denied
Bexar County	6	3	1	0
City of Amarillo	102	18	3	0
City of Arlington	474	3	0	0
City of Austin	1,797	70	2	0
City of Baytown	1	0	0	0
City of Beaumont	237	2	0	0
City of Bryan	109	3	0	0
City of College Station	167	4	0	0
City of Dallas	302	27	4	1
City of El Paso	789	32	2	0
City of Fort Worth	675	28	0	0
City of Garland	30	0	1	0
City of Houston	4,236	264	7	0
City of Lewisville	164	4	1	0
City of Midland	3	0	0	0
City of North Richland Hills	21	1	0	0
City of Odessa	28	0	0	0
City of Pearland	6	0	0	0
City of Plano	44	14	1	0
City of Richardson	149	8	0	0

City of San Angelo	7	0	0	0
City of San Antonio	1,208	257	3	1
City of Tyler	151	3	0	0
City of Waco	80	3	0	0
City of Wichita Falls	64	12	0	0
Dallas County	759	77	2	1
Deep East Texas Self Insurance Fund	286	84	3	1
Fort Bend County	242	27	0	0
Harris County	1,128	294	3	2
Hidalgo County	22	21	0	0
Jefferson County	1	1	1	1
Lubbock County	173	2	0	0
Montgomery County	231	4	0	0
Public WC Program	3	0	0	0
Tarrant County	66	4	1	1
Texas Association of Counties Risk Management Pool	1,734	94	13	6
Texas Municipal League Intergovernmental Risk Pool	6,461	185	30	4
Texas Political Subdivisions (TPS) Joint Self Insurance Funds	31	12	1	1
Travis County	114	18	0	0
Total	22,101	1,579	79	19

Appendix G
Reprocessed Claims by Insurance Carrier
(Data in these tables represent only reprocessed claims.)

Insurance Carriers (commercial)	Total Reprocessed Claims (fatal and non-fatal claims)	Reprocessed Claims Denied	Reprocessed Fatal Claims	Reprocessed Fatal Claims Denied
QBE Insurance Corporation	1	1	0	0
Texas Hospital Insurance Exchange	1	1	1	1
Texas Mutual Insurance Co	5	4	2	1
Total	7	6	3	2

Insurance Carriers (political subdivisions)	Total Reprocessed Claims (fatal and non-fatal claims)	Reprocesse d Claims Denied	Reprocesse d Fatal Claims	Reprocesse d Fatal Claims Denied
Bexar County	1	1	0	0
City of Beaumont	1	0	0	0
City of Dallas	2	2	0	0
City of El Paso	10	0	0	0
City of Wichita Falls	1	0	0	0
Collin County	1	1	1	1
Dallas County	7	0	0	0
Deep East Texas Self Insurance Fund	2	2	2	2
Fort Bend County	3	0	0	0
Harris County	15	6	6	3
Public WC Program	1	0	1	0
Texas Association of Counties Risk Management Pool	5	5	2	2
Texas Municipal League Intergovernmental Risk Pool	3	3	2	2
Total	52	20	14	10

Appendix H

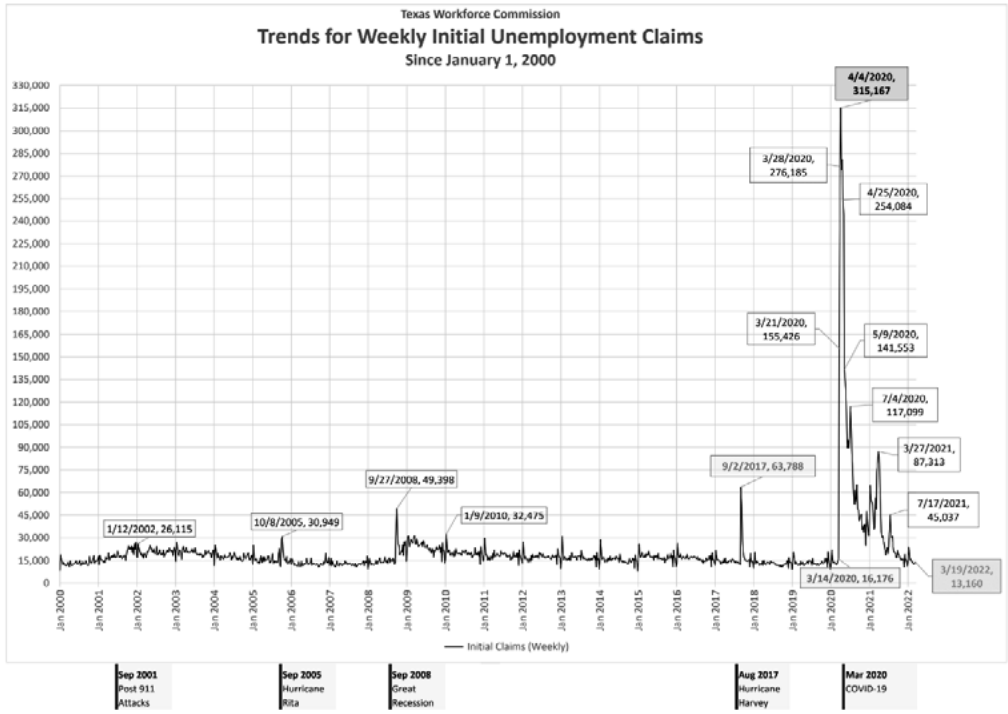
Benefits paid by Individual Insurance Carriers

Insurance Carriers	Medical Benefits (\$)	Income Benefits (\$)	Death Benefits (\$)	Burial Benefits (\$)
Commercial Insurance Carriers				
Ace American Insurance Co	21,772	15,846	0	0
Benchmark Insurance Co	72,215	73,218	334,062	0
Indemnity Insurance Co of North America	30,318	32,077	0	0
Old Republic Insurance Co	0	2,532	0	0
QBE Insurance Corporation	475,138	174,423	0	0
Standard Fire Insurance Co	8,852	151	0	0
Starr Indemnity & Liability Co	8,519	16,379	0	0
Texas Mutual Insurance Co	281,806	1,142,334	48,153	3,846
Travelers Property Casualty Company of America	100,876	211,696	4,596	6,729
Total of Commercial Insurance Carriers	999,497	1,668,656	386,811	10,574
Political Subdivision				
Bexar County	30,851	95,097	72,725	9,353
City of Amarillo	477,065	201,026	42,097	0
City of Arlington	118,621	1,353,505	0	0
City of Austin	601,440	2,417,477	13,754	0
City of Baytown	0	10,467	0	0
City of Beaumont	98,108	869,405	0	0
City of Bryan	4,873	189,371	0	0
City of College Station	35,923	216,495	0	0
City of Dallas	938,001	1,081,368	27,897	0
City of Denton	0	3,309	0	0
City of El Paso	1,904,367	3,281,467	72,670	0
City of Fort Worth	1,479,749	11,926,693	330,628	0
City of Garland	156,655	187,232	0	0
City of Houston	5,714,407	2,597,777	263,595	28,196
City of Lewisville	185,377	249,485	21,291	0

City of Midland	84,356	10,547	0	0
City of North Richland Hills	28,065	72,972	0	0
City of Odessa	63,703	1	0	0
City of Pearland	20,108	16,467	0	0
City of Plano	154,289	43,081	12,177	10,000
City of Richardson	65,133	1,333,454	0	0
City of San Angelo	118,673	0	0	0
City of San Antonio	637,438	1,259,308	21,563	15,502
City of Tyler	285,909	201,974	0	0
City of Waco	2,993	70,814	0	0
City of Wichita Falls	28,872	76,149	0	0
Dallas County	382,045	751,732	12,947	0
Deep East Texas Self Insurance Fund	137,710	286,311	0	0
Fort Bend County	186,241	257,958	0	0
Harris County	1,357,874	12,369,432	421,188	10,000
Lubbock County	6,520	95,129	0	0
Montgomery County	161,882	201,477	0	0
Port of Houston Authority	0	2,160	0	0
Public WC Program	3,944	37,430	61,427	0
Regional Pool Alliance	0	3,051	0	0
Tarrant County	394,966	955,272	22,129	0
Texas Municipal League Intergovernmental Risk Pool	10,198,205	11,149,117	638,790	220,673
TPS Joint Self Insurance Funds	20,226	26,373	80,360	0
Travis County	6,692	141,349	52,434	0
Texas Association of Counties Risk Management Pool	3,402,156	2,823,515	263,767	98,864
Total of Political Subdivisions	29,493,437	56,865,245	2,431,439	392,590
State of Texas				
State Office of Risk Management	1,255,833	2,046,866	697,046	0
Total of State of Texas	1,255,833	2,046,866	697,046	0
Grand Total	31,748,767	60,580,767	3,515,296	403,164

Appendix I

Trends for Weekly Unemployment Claims since January 1, 2000



Source: U.S. Department of Labor (USDOL)
<https://doi.gov/ia/unemployment/claims.asp>
<https://www.dol.gov/ia/data.pdf>
 Unemployment Insurance Weekly Claims Data
 Latest USDOL News Release for Unemployment Insurance Weekly Claims
Note: Most recent week reflects advance claims which are not directly comparable to claims reported in prior weeks.

Appendix J Prominent Data Brokers


4000+ data brokers, \$200+B annual sales

acxiom.

IBM.

neustar.
A TransUnion® Company

 CoreLogic®

 IHS Markit®

 LiveRamp®

ORACLE®

 THOMSON REUTERS® **Bloomberg**

EQUIFAX

 NortonLifeLock®

 DataRaker

 experian.

MOODY'S

 Alibaba.com

TransUnion.^{tu}

MORNINGSTAR®

Innovis

FICO.

 RELX

towerd@ta

<https://www.webfx.com/blog/internet/what-are-data-brokers-and-what-is-your-data-worth-infographic/>

ENDNOTES

¹*Identity Theft Enforcement and Protection Act*, H.B. 2278, 80th Leg. §521.001 (2007).

²H.B. 4390, 86th Leg., R.S. §521.053 (2019).

³Senate Research Center, *HB 3746 Bill Analysis*, Giovanni Capriglione. 2021.
<https://capitol.texas.gov/tlodocs/87R/analysis/html/HB03746E.htm>

⁴S.B. 22, 87th Leg., R.S. §607.051 (2021).

⁵*SB 1588 Bill Analysis*, Bryan Hughes, 2021,
<https://capitol.texas.gov/tlodocs/87R/analysis/html/SB01588H.htm#:~:text=1588%20seeks%20to%20address%20concerns,to%20association%20and%20management%20contac>

⁶Joshua Fechter, “A Neighborhood's New Anti-Section 8 Rules Will Push Many Black Residents out of a North Texas Suburb,” *The Texas Tribune* (The Texas Tribune, July 21, 2022),
<https://www.texastribune.org/2022/07/21/texas-hoa-bans-section-8-providence-village/>

⁷Olga Garza, TJ Costello, and Jessica Donald, “Weathering the Pandemic: Texas Industries and COVID-19,” *Fiscal Notes*, January 2021, <https://comptroller.texas.gov/economy/fiscal-notes/>

⁸Garza, Costello, and Donald, “Weathering the Pandemic.”

⁹“Texas Employment Numbers Continue to Set Records in September, Unemployment Ticks Down,” *Texas Workforce Commission*, October 21, 2022,
<https://www.twc.texas.gov/news/texas-employment-numbers-continue-set-records-september-unemployment-ticks-down>

¹⁰Tom Wickham, “Organized Retail Theft 101.”

¹¹Policy Issues: Organized Retail Crime, <https://nrf.com/hill/policy-issues/organized-retail-crime#:~:text=ORC%20is%20a%20primary%20driver,in%20over%20the%20previous%20year>

¹²Ed Serna, TWC, Charge 5 Testimony

¹³Data Breaches: Range of Consumer Risks Highlights Limitations of Identity Theft Services § (2019), <https://www.gao.gov/products/gao-19-230>

¹⁴Lauren Feiner, “DOJ Settles Lawsuit with Facebook over Allegedly Discriminatory Housing Advertising,” *CNBC* (CNBC, June 22, 2022), <https://www.cnbc.com/2022/06/21/doj-settles-with-facebook-over-allegedly-discriminatory-housing-ads.html>

¹⁵A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers, <https://www.ftc.gov/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers>

