



Texas Department of Insurance

Office of the Commissioner, Mail Code 113-1C

333 Guadalupe • P.O. Box 149104, Austin, Texas 78714-9104

512 463-6464 telephone • 512 475-2005 fax • www.tdi.state.tx.us

December 15, 2008

The Honorable Rick Perry
Governor of Texas
P.O. Box 12428
Austin, Texas 78711

The Honorable David Dewhurst
Lieutenant Governor of Texas
P.O. Box 12068
Austin, Texas 78711

The Honorable Tom Craddick
Speaker, Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Governors and Speaker:

This letter conveys the statutorily required report in accordance with Senate Bill 1138, 80th Regular Session. Specifically, the bill directed the Department to conduct a study to determine: (1) the levels and types of insurance coverage fraternities at institutions of higher education in this state are required to carry by the fraternities' chartering or national organizations; (2) the availability and affordability of the levels and types of insurance coverage described by item (1); and (3) whether the levels and types of insurance coverage described by item (1) are available in this state under: (A) insurance policies issued by insurers authorized to engage in the business of insurance in this state or by eligible surplus lines insurers; or (B) independently procured contracts of insurance.

In summary, (1) general liability insurance is required by the national organizations; (2) the required insurance is available through the national insurance programs and rates for coverage vary significantly; and (3) the required insurance is available in this state through licensed insurers and eligible surplus lines insurers.

The report includes detailed information regarding the levels and types of insurance national organizations require local chapters to carry, as well as the cost and availability of the required insurance.

Should you have any questions about this report, please contact me or Carol Cates, Director of Government Relations, at 463-6123.

Sincerely,

Mike Geeslin

Commissioner of Insurance

Cc: Senate Education Committee
Senate State Affairs Committee
Senate Business and Commerce Committee
House Insurance Committee
House Higher Education Committee

Senate Bill 1138, 80th Legislative Session

Report on Insurance Coverage for Fraternities

Executive Summary

The required insurance coverage for fraternities (men's and women's groups) at institutions of higher education is available in this state through three national insurance programs. Insurance is available through licensed insurers and eligible surplus lines insurers. Certain types of insurance, such as property insurance, may be available to local chapters independent of the national insurance programs. However, information obtained in the study indicates that liability coverage for local chapters may only be available through the national insurance programs.

Study Approach

To determine the levels and types of insurance coverage fraternities in this state are required to carry by the fraternities' chartering or national organizations, the Department contacted the following organizations:

- National Panhellenic Conference (NPC) - The NPC is an advocacy and support organization for 26 inter/national sorority groups.
- North American Interfraternity Conference (NIC) - The NIC is an advocacy and support organization for 72 member fraternity organizations.
- National Pan-Hellenic Council (NPHC) - The NPHC is a collaborative organization of 9 historically African American, international Greek lettered fraternities (men's and women's groups).
- National Association of Latino Fraternal Organizations (NALFO) - The NALFO is an umbrella council for Latino Greek Letter Organizations.

The Department developed and submitted surveys to these groups to obtain information necessary to complete the study. At the request of the majority of these national organizations, the surveys were completed and returned to the Department by the respective insurance agents and legal counsel. Approximately 89% of the women's chapters in Texas are represented in the Department's study. At least 80% of the men's national fraternities with chapters in Texas are represented in the Department's study.

Study Findings

1. The levels and types of insurance coverage fraternities at institutions of higher education in this state are required to carry by the fraternities' chartering or national organizations.

All of the women's groups that responded to the Department's survey require local chapters to carry general liability insurance, hired / non owned automobile liability insurance, and property insurance. The types of insurance and policy limits are summarized in the chart below:

WOMEN'S GROUPS		
Type of Insurance	Per Occurrence Limits	Aggregate Limits
General Liability	\$1,000,000 or \$2,000,000	\$2,000,000 per location aggregate with no policy aggregate.
Hired / Non Owned Automobile Liability	\$1,000,000	\$1,000,000 or \$2,000,000
Property Coverage	Insured property values range from \$0 to \$16,116,300	N/A

All of the men's groups that responded to the Department's survey require local chapters to carry either general liability insurance or general liability insurance including hired / non owned automobile liability coverage. The types of insurance and policy limits are summarized in the chart below:

MEN'S GROUPS		
Type of Insurance	Per Occurrence Limits	Aggregate Limits
General Liability including Hired / Non Owned Automobile Liability	\$1,000,000 or \$2,000,000	\$1,000,000 or \$2,000,000 per location aggregate with no policy aggregate. Some policies have a \$10,000,000 policy aggregate limit that is shared by all locations.

Although not all the national organizations require local chapters to purchase them, other types of insurance such as property insurance and directors and officers insurance are available through the national insurance programs.

2. The availability and affordability of the levels and types of insurance coverage described by Subdivision (1).

Three agents administer national insurance programs available to the various women's and

Licensed Insurers:

Policy forms and rates of licensed insurers are subject to filing with TDI. However, policy forms covering certain large risks are not subject to filing with TDI.

men's national fraternities and responded to the Department's survey on behalf of the national organizations. The insurance required by the national organizations is available through these national insurance programs. The insurance for the women's groups is written by **licensed insurers**, whereas the men's program is written by **eligible surplus lines insurers**.

Information provided to the Department indicates that liability coverage is difficult for local chapters to obtain on their own and therefore, may only be available through the national insurance programs. Department staff spoke with seven other insurance agents,

Surplus Lines Insurers:

Insurance not available through licensed insurers may be placed with eligible surplus lines insurers. Policy forms and rates used by surplus lines insurers are not subject to filing with TDI.

some of which were advertised to have programs available for fraternal organizations. Five of the seven insurance agents noted the fraternal organizations they would generally be able to write are organizations such as the Knights of Columbus, American Legion, Elks Lodge, etc., and not student fraternities at colleges and universities. Agents stated that liability losses for fraternities at colleges and universities were the primary reason insurers did not want to write these types of fraternities. Only two of the seven agents contacted by the Department reported that it may be possible to place liability insurance for a local fraternity that has good loss experience, but it would be difficult and expensive if it were available. However, these agents were non-committal as to the extent and cost of the coverage that could be provided.

It was reported that all but two or three of the men's national fraternities require local chapters to purchase liability insurance through the national insurance program. While a limited number of local chapters within the men's groups may have the ability to opt out of the national insurance program (allowing a local chapter to procure its own insurance), information provided to the Department indicated three chapters in Texas have attempted to obtain policies independent of the national insurance programs but were unsuccessful.

Availability and affordability of insurance is affected by loss history. Information provided to the Department indicated that Texas chapters for the men's groups have had poor loss experience and that it is doubtful those chapters would be able to purchase insurance independent of the national insurance programs. Women's groups were reported to have substantially fewer losses and are considered to be lower risk than the men's groups. One agent provided the following information relating to claims activity for men's organizations in Texas for one of the national insurance programs:

- For the period of time from 1991 to 2007, claims have been incurred with paid losses in the amount of \$4,949,500 for Texas chapters which represents 45.93% of all fraternity claims nationwide for the program.
- Between 1997 and 2007, Texas fraternity premiums totaled \$1,304,194 while Texas fraternity claims totaled \$2,974,312 for the same period, resulting in a 228% loss ratio for this period. Reportedly, this loss ratio is 3.79 times the nationwide loss ratio of 60.11% for the program.

Another agent provided loss history information indicating that men's groups in Texas experienced a disproportionate amount of catastrophic losses and subsequent litigation in comparison to the men's groups in other states. The information was based on data collected and analyzed by the claims administrator for one of the men's programs for 34 of the national fraternities, which included 134 Texas chapters. Despite the fact that this represents only 5% of all national chapters, the agent reported the following:

- The cost of claims related to Texas chapters represented 10% of the total incurred claim cost for the program;
- The costs paid to third parties related to claims involving Texas chapters were 13% of the third party costs paid by the program; and
- The claim expenses for the investigation and defense of claims related to Texas chapters were 12% of all claims-related expenses for the group as a whole.

The same agent also presented a statistical analysis at the 2008 Risk Management College that reported men's groups at Texas universities were at or near the top of several categories of losses including catastrophic losses (total incurred loss equaled or exceeded \$100,000), losses resulting from hazing incidents, auto accidents, and accidental falls from heights.

The rates for coverage vary significantly. Adverse loss experience will cause rates for insurance to be higher; conversely, a history of good loss experience will cause rates for insurance to be lower. Also, general liability policy coverages vary between the men's and women's programs.

Two agents representing men's groups provided the following information relating to the cost of insurance:

MEN'S GROUPS		
Type of Insurance	Annual Cost	Comments
General Liability and Hired / Non Owned Automobile Liability	Rates range from \$11.00 to \$150.00 per student member	Rates vary according to the amount of self insured retentions, overall organizational size and individual loss experience. (Deductibles / Self Insured Retentions ranged from \$0 to \$500,000.)

One agent representing women's groups provided the following information relating to the cost of insurance:

WOMEN'S GROUPS		
Type of Insurance	Annual Cost	Comments
General Liability	Rates range from \$5.26 to \$15.31 per student member	No deductible or self insured retention.
Hired / Non Owned Automobile Liability	\$10,000 annual premium for the national program	No deductible or self insured retention.
Property	\$0.17 to \$0.70 per \$100 of Total Insured Value	Rates vary based on the presence of fire sprinklers, occupancy, construction type, age of the building, total value insured, etc.

3. Whether the levels and types of insurance coverage described by Subdivision (1) are available in this state under: contracts of insurance issued by licensed insurers or eligible surplus lines insurers; or independently procured contracts of insurance.

The required insurance coverage for fraternities at institutions of higher education is available in this state through national insurance programs. The national insurance program for the women's groups is written by a licensed insurer, whereas the men's program is written by eligible surplus lines insurers. General liability policy coverages vary between the women's and men's programs. However, information provided to the Department indicates that liability coverage for local chapters may only be available through the national insurance programs. Insurance may be procured in this state or independently procured pursuant to Section 101.053, Texas Insurance Code.

General Liability Insurance Coverages

General liability policies provide coverage for damages an insured may become legally obligated to pay arising out of the insured's premises or activities at or away from the premises. As part of the Department's study regarding the availability of general liability insurance for fraternities in this state, staff reviewed general liability policies submitted by agents in September and October of 2008 for all three of the national insurance programs. General liability policy coverages vary between the women's and men's programs.

Men's groups

The four general liability policies offered through the men's groups are written by eligible surplus lines insurers and are not subject to filing with the Department. The following endorsements that change coverage were included in the policies for the men's groups; however, the same endorsements were not included in the policy for the women's groups:

1. Exclusion - Violation of Risk Management Policy - excludes coverage for any insured that supervises or directs others to participate, and/or participate in the excluded act. This endorsement was attached to one of the four policies reviewed.
2. Exclusion - Assault & Battery - applies only to those insureds that supervise or direct others to participate and/or participate in the excluded act. This endorsement was attached to all four of the policies reviewed.
3. Exclusion - Hazing, Sexual or Physical Abuse or Molestation - applies only to insureds that participate in or direct others to participate in the excluded act. This endorsement was attached to all four of the policies reviewed.
4. Limited Hazing Coverage - extends the definition of bodily injury to include hazing. However, there is no coverage provided for any insured that directs others to participate and/or participates in hazing. This additional coverage was being provided on one of the four policies reviewed.
5. Limited Sexual Abuse or Misconduct Coverage - extends the definition of bodily injury and occurrence to include sexual abuse or misconduct. However, no coverage is provided for those that participate or direct others to participate in the sexual abuse or

misconduct. This additional coverage was being provided on one of the four policies reviewed.

6. Exclusion - Violations of Fraternity Alcohol Policy - excludes coverage for any Chapter, Colony or undergraduate insureds for any claim arising out of violations of Fraternity Alcohol Policy. This endorsement was attached to one of the four policies reviewed.
7. Punitive Damages Coverage - extends definitions of bodily injury, property damage, personal injury and advertising injury to include punitive damages. This additional coverage was being provided on one of the four policies reviewed.
8. Liquor Liability Coverage - A general liability policy generally excludes coverage for injury or damage for which an insured may be held liable by reason of: (a) causing or contributing to the intoxication of a person; (b) the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or (c) any statute, ordinance, or regulation relating to the sale, gift, distribution or use of alcoholic beverages if the insured is in the business of manufacturing, distributing, selling, serving or furnishing of alcoholic beverages. This is a "buy back" endorsement that allows the insured to purchase liquor liability coverage by deleting the liquor liability exclusion in the policy. This additional coverage was being provided on one of the four policies reviewed.

Women's groups

The general liability policy for the women's groups is written by a licensed insurer. The policy issued to the women's groups contains none of the exclusions listed above for the men's groups.