

# ConsumerLine

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## 77th Legislative Session in Focus

*As session kicks off, low and moderate-income consumers bear brunt of market abuses, failed deregulation efforts*

Protecting low- and moderate-income consumers from market excesses that range from price gouging to predatory and fraudulent practices will be the focus of Consumers Union's legislative agenda in 2001, Reggie James, director of CU's Southwest Regional Office announced at a recent press briefing.

"Two years ago when our state was awash in cash, we wasted an excellent opportunity to shore up our social safety net to protect consumers who live at the margins," James said. "Instead, tax cuts took a priority over investing our surplus wisely in order to get our state out of its dead last or near to dead last ranking in most social economic indicators."

In the meantime, newly deregulated financial services and telecommunications industries have continued to expand, and the soon-to-be deregulated electric industry has proven to be a failure elsewhere. Generally, deregulated markets have failed to bring about their promises of lower prices and better service for most consumers.

"Left to their own device, market players tend to act in their own self-interest and base their actions purely on the bottom line rather than the needs of even their very own customers," said James. James used local telephone deregulation as an example. "Five years after passage of the Federal Telecommunications Act, the promise of competition in local markets is all talk and no savings. For the most part, the new companies are serving businesses or select high usage customers, and when they serve the little guy they target those least able to pay by selling them costly prepaid service."

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Senior Attorney Rob Schneider (left) fields a reporter's question about predatory lending as Director Reggie James looks on during a media briefing Jan. 26.

## Contact lense laws: Consumers lose

A survey released in February by Consumers Union finds many eye doctors in Texas are creating barriers that violate the spirit, if not the letter, of a 1997 law that gives consumers the right to their contact lens prescriptions.

"The bottom line is Texas consumers often still face an uphill battle when shopping around for the best deal in contact lenses," said Lisa McGiffert, a senior policy analyst with the Southwest Regional Office of Consumers Union. "We'll be asking the Texas Legislature to give us the tools to remedy the situation."

One legislator, Rep. Glen Maxey, D-Austin, has filed HB 846 to close key loopholes in the 1997 law.

CU surveyed 83 eye doctors in nine Texas cities, including: Austin, Corpus Christi, Dallas, El Paso, Houston, Laredo, Midland/Odessa, San Antonio and Tyler. Shopping around is important because the cost of replacement contacts varies widely — from \$19 to \$42 for the same brand and

type of soft contact lenses, according to the CU survey.

Only two of the 83 optometrists surveyed by CU refused to release a prescription at all, but four others would not release it unless patients first agreed to buy an initial supply of contact lenses from them. Both are clear violations of the 1997 law.

While the '97 law made some medical and other exceptions to releasing contact lens prescriptions, the survey noted: "Some eye doctors,

with the blessing of the Texas Optometry Board, have instead used the flexibility granted by statute to create procedures that apply to every patient." For example, many are requiring patients to attend follow-up visits or buy an initial supply of contact lenses from them first before releasing the prescription.

Current Texas law requires an optometrist or ophthalmologist to provide a contact lens prescription to any patient who requests it. It forbids eye doctors to condi-

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Inside...

Issues to Watch

Phone competition:  
is it working?

# Issues to Watch in 2001

Two years ago, the Legislature opted for tax cuts over investing Texas' surplus to shore up our social safety net. Consumers Union doesn't want to see another opportunity wasted. Here's a closer look at our top issues for this session.

## E-Business

**Electronic Transactions.** Two major pieces of legislation affecting business in the Internet age will make their way into the Texas Legislature this session. The Uniform Electronic Transactions Act permits businesses and consumers to interact electronically and to "sign" their agreements with electronic signatures. The Uniform Computer Information Transactions Act replaces traditional paper contracts, warranties and copyrights with online electronic contracts. Consumers groups nationwide have given UETA the thumbs up so long as federal e-sign protections are extended to the state level. UCITA – which essentially makes it legal to sell flawed goods that consumers can't return – is another story. CU recommends adoption of UETA with e-sign protections, and a firm rejection of the flawed UCITA.

## Environment

**Sunset and the Texas Natural Resources and Conservation Commission.** Adequate public representation in agency proceedings is essential for consumers, and the TNRCC, charged with "protecting the State's human and natural resources consistent with sustainable economic development," is no exception. Unfortunately, the Public Interest Counsel, an office designed to represent the public, is still employed by TNRCC Commissioners -- a conflict of interest that threatens the position's very purpose. CU supports the recent Sunset Advisory Commission recommendation to strengthen the PIC by severing it from the agency.

## Financial Services

**Consumer Credit Loopholes: Payday Loans and Sale-Leasebacks.** Loopholes in state law governing interest rates have allowed for the mushrooming of a toxic trend: high-cost, short-term loans that use a personal check for collateral. These "payday loans" or "sale-

leaseback arrangements" carry interest rates as high as 700 percent and can financially devastate Texas families, who face court action from their lenders if they fall too far behind in payments. The state must prohibit these abusive lending practices by closing the loopholes that make them possible.

**Office of Access to Financial Services.** For some Texans – especially those of modest means – the financial services marketplace often fails. Their home mortgage applications are turned down. Credit becomes avail-

able only through lenders who charge exorbitant rates. And unable to open a checking account at a bank, many families rely on expensive check-cashing services. The OAFS has a mandate to help ensure consumer access to financial services under fair terms and conditions, and right now it needs some attention. CU's recommendation: make this office work for consumers by staffing it, giving it a director and requiring that the office study ways to enhance the quality and fairness of financial services for all Texans.

**Predatory Lending.** The dream of home ownership can become a nightmare when buyers find themselves locked into abusive loans they have little chance of repaying. Predatory, or subprime, lenders lure borrowers into home-secured loans with exorbitant interest rates, excessive fees or other stipu-

## Contact lenses...continued from page 1

tion the release of a contact lens prescription on the patient's agreement to buy contact lens or other ophthalmic goods. Eye doctors also cannot charge a fee in addition to the examination and fitting fees as a condition for releasing the prescription.

Eye doctors can refuse to release prescriptions for medical reasons, if financial obligations have not been met (such as pending insurance claims), or if the request is made after the first anniversary of the patient's last eye exam. A doctor who refuses to release a prescription must tell the patient the reason and document it in the patient's record.

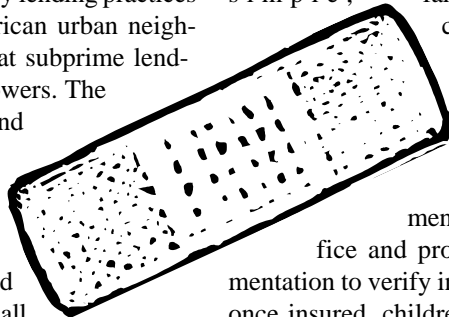
McGiffert said most eye doctors appear to be following the law, but added: "While we think the law is clear, apparently it's not clear enough for some eye doctors who put their self-interest above that of their own patients."

Another troubling finding in CU's survey was that 58 percent of optometrists refused to release a prescription unless a patient came back for a follow-up visit, even if the patient had previously worn the same type of contact lenses. Approximately one third of contact lens complaints to the Texas Optometry Board tracked by Consumers Union dealt with this very problem.

Other barriers to the reasonable and fair use of the prescription found in the survey are:

- A requirement that the prescription be an original, which can prevent Texas consumers from purchasing inexpensive mail order or Internet order contact lenses.
- Since contact lens prescriptions must include the number of lenses, some eye doctors refuse to release a prescription if the customer has already purchased that specific number of lenses. This requires those who lose a box of lenses or who are prone to tearing their lenses to return for another exam before replacing the lost lenses.
- Some eye doctors charge customers for a "service agreement" covering follow-up visits that tie the patient to that practitioner's office.
- The Texas Optometry Board interpreted current law in a restrictive manner, saying eye doctors are only required to give out a prescription once--leaving consumers who lose their prescription no choice but to purchase lenses from the eye doctor again.
- Some eye doctors refuse to release the prescription if insurance companies are late in paying a claim.

lations that can leave a homeowner in financial ruin. Even more disconcerting is the concentration of predatory lending practices in Texas' African-American urban neighborhoods, suggesting that subprime lenders target minority borrowers. The Legislature should expand existing predatory lending protections to all home-secured loans, limit loan costs, prohibit abusive loan terms and practices, and ensure that all Texas borrowers get the lowest-cost loan for which they qualify.



## Funeral Services

**I**mprove prepaid contracts and funeral laws. The devastation of a recent death is only compounded when families face “sticker shock” or poor care from a funeral home, monument company, cemetery or insurer. Prepaid funeral contracts, while promising to ease families' stress, often hit consumers with hidden costs that drive the funeral price tag as high as \$15,000. Meanwhile, the fragmented bureaucracy overseeing Texas' funeral industry leaves consumers without a clear advocate and funeral service providers without accountability. The Legislature should reform prepaid laws to ensure consumer value for money invested, as well as consolidate funeral regulation into a single agency.

## Health Care

**A**ccess to complaint information on hospitals. According to the Texas Department of Health, citizens make an average of 35 complaints per day against hospitals across the state. But what kinds of complaints? And what was done about them? Your guess is as good as ours. Under a law passed in 1999, “all information and materials obtained or compiled by the department [of health] in connection with a complaint and investigation concerning a hospital” is completely confidential – despite a 1998 Sunset Commission recommendation to the contrary. What happened to the Texas Public Information Act? The Legislature should amend the Health and Safety Code to allow for public access to hospital complaint information in accordance with public information law.

**Children's Health Insurance.** In 1999, the Children's Health Insurance Program was created for Texas children of low-income

families not qualifying for Medicaid. Simply put, the CHIP application process – simple, family-friendly – only accentuates Medicaid's outdated, onerous procedures. Parents must take time off work to go to the Texas Department of Health Services office and provide extensive documentation to verify income and assets. And once insured, children lose or regain their insurance with every fluctuation in Mom's or Dad's pay. The Legislature should reform the Medicaid application process to more closely resemble CHIP's, and reform the Medicaid program stipulations that force Texas' poorest families to jump through counterproductive hoops to insure their children.

**Nonprofit Health Care Conversions.** When a nonprofit hospital or health plan is sold to or merged with a for profit company, the law requires the nonprofit's charitable assets to be earmarked for the public trust and applied to the community's health care needs. Too often, though, these funds remain unmonitored, landing eventually in the hands of the for-profit corporation. Since current law does not obligate nonprofits to notify the Attorney General of impending sales or mergers, the AG cannot intervene to protect charitable trusts, gifts and entities. Texas must establish minimum standards governing nonprofit-for profit transactions to ensure that charitable funds end up where they belong: community health care.

## Housing

**M**anufactured Housing: Rental Community Tenants' Rights. Millions of Texans, many of them retirees, live in manufactured homes (also called mobile homes), and many rent the lots on which their homes sit. Although these individuals invest tens of thousands of dollars in their homes, they live at the whim of park owners who can evict them with little notice and, often, little reason. Why? Because Texas has no law in place to govern manufactured home park leases. Residents of manufactured homes deserve legislation that ensures renewable, written leases;



just cause for eviction; reasonable park maintenance by landlords; and adequate notice or relocation assistance in the event of park closure.

**Texas Department of Housing and Community Affairs.** As real-estate prices escalate and rents climb higher, many low-income Texans struggle to maintain a home while thousands wait for scarce public housing. Meanwhile, the agency charged with addressing state housing needs is mired in scandal and poorly managed programs. Audits by the state and by federal Housing and Urban Development officials turned up mismanagement and questionable fund allocation; a TDHCA board member was recently convicted on federal bribery charges. Only by changing the management and mindset of the agency will the state be able to provide housing assistance to adequately meet citizens' needs and get resources to those who need them the most.

## Insurance

**I**nsurance Rate Deregulation. According to the *Dallas Morning News*, Texas homeowners' insurance rates are 47 percent higher than the national average—a development arguably due to a loophole in state law that has led to virtual deregulation of the homeowners insurance market. More than two-thirds of the market is controlled by “Lloyds” companies, which under law are exempt from regulation and not required to file their rates with the Texas Department of Insurance. Now insurers want deregulated auto insurance rates, too. Currently about a quarter of the auto insurance market is in “county mutuals,” also not rate regulated. The Legislature should ensure reasonable rates by bringing Lloyds and county mutual insurance into the benchmark rating system.

### Public Counsel Offices: OPIC/OPUC.

Utilities and insurance companies spend millions of dollars on experts, lobbyists and lawyers to present their case for higher electric or insurance rates. The Office of Public Insurance Counsel and the Office of Public Utility Counsel act as the voice for consumers in complex agency proceedings, ensuring a more level playing field in decisions where ordinary citizens are outnumbered and



outgunned. CU supports full funding of OPIC and OPUC, as well as expansion of OPUC's role to include representation of gas utility customers before the Railroad Commission.

## Open Government

**Public Information Act.** The Texas Legislature improved the Public Information Act last session to ensure that citizens have access to basic information critical to educated public participation in decisions of state and local officials. The reforms are starting to work, but exceptions made for certain decisions—namely those involving municipal utilities or tax incentive negotiations with local corporations—have limited citizens' access to "protected" information, threatening their ability to partake in public proceedings. These broad exceptions to public information law in certain privileged arenas should be narrowed, and future exceptions avoided.

## Privacy

**Financial Privacy.** As online services become increasingly consolidated, federal law now allows banks, securities firms and insurance companies to share your personal information with each other—or even with third parties. Luckily, states can go further than the federal government has in providing adequate privacy protection. CU recommends adoption of an "opt-in" requirement in Texas under which financial services companies must get consumers' permission before sharing information with affiliates or third parties.

**Medical Privacy.** Imagine a future where your most sensitive health information is practically common property, where confidentiality is a thing of the past. Could that future be now? Though electronic storage of information has brought many positive changes into the medical arena, it has also introduced troubling dilemmas—the most prominent being the protection of sensitive and highly personal health information. Fearing misuse of their private records, some consumers will actually avoid health care rather than risk providing information that could be leaked by health care professionals or insurers. CU supports the creation of both federal and state health privacy policies to ensure the confidentiality of personal health information.

## Utilities

**Transfer of Gas Regulation to the Public Utility Commission.** Increasing consolidation in the energy industry means that many consumers' gas and energy bills are combined, yet Texas continues to split oversight for these services between the Railroad Commission and the Public Utility Commission. As natural gas prices and home heating bills reach record highs, CU proposes the wholesale transfer of gas regulation from the Railroad Commission to the

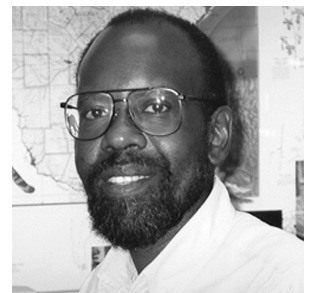
PUC; or, at the very least, collaboration between the two agencies on utilities under common ownership.

**Electric Deregulation.** There are many lessons to be learned from the electric deregulation mess currently overtaking California. The most important is that consumers and businesses will not sit idly by and tolerate steep price increases in the electricity market. When high electricity prices hurt consumer pocketbooks and drain the bottom line for businesses, they turn to lawmakers to fix the problem—deregulation or not. The havoc wreaked by California's rolling blackouts demonstrates that electricity is too important a public good to leave entirely to an unfettered free market. If problems in other states continue, the PUC should delay implementation of our deregulation law. And the state must remain prepared to take quick action on unforeseen problems once the market opens.

## Legislature...continued from page 1

Other markets, such as automobile and homeowners insurance, are largely deregulated in Texas. For example, Texas has the highest homeowners insurance rates in the nation, 47 percent higher than the U.S. average. Unsurprisingly, two-thirds of the market is controlled by unregulated "Lloyds" companies.

In the financial services arena, lenders have found loopholes in the consumer credit law to increase interest charges on loans far above the statutory caps. Consumer complaints filed with the Office of Consumer Credit Commissioner outline the desperation of borrowers who struggle to make their payments and never see a decline in principal.



SWRO Director Reggie James

For these reasons, Consumers Union's legislative focus will shift somewhat in 2001. "Since the prospects for assistance for consumers with the greatest need didn't materialize, we now need to make sure those consumers can survive in a market that either ignores them or preys upon them," James said.

At the same time, CU will insist on strengthening the state's safety net by using available tax dollars wisely, particularly in areas where the money invested will far outweigh the social consequences of not taking action. A perfect example is Consumers Union's continued advocacy to expand children's health care coverage.

Currently, about 600,000 of the 1.4 million uninsured Texas children who are eligible for Medicaid are not enrolled. The reason? Cumbersome and bureaucratic enrollment requirements that keep many families from applying or re-enrolling.

"The legislature should work this session to remove these inequities that make the poorest children jump through the most hoops to get and keep health insurance," James said.

# Study finds competition in local phone market 'All Talk, and No Savings'

A study of 46 local residential telephone companies in six major Texas metropolitan areas released today by Consumers Union shows that the much-anticipated competitive market for local phone service in Texas has been largely a failure for the average consumer.

The markets studied were Dallas, Fort Worth, Austin, San Antonio, Houston and El Paso. Consumers Union researchers called each company listed in the phone book as "local service alternatives" or advertising local services in *Greensheet*. CU inquired about basic local rates, installation fees, optional services, credit requirements and charges for changing addresses. The information was compared to Southwestern Bell prices and services in each region.

The report notes that nearly six years after the telephone market was deregulated in Texas and later by Congress: "Texas consumers find the promise of competition in the local telephone market all talk, and no savings. Indeed, local phone bills are higher,

rather than lower, for consumers who use minimum service."

Jane Briesemeister, a senior policy analyst for CU's Southwest Regional Office, urged state regulators to retain the current price cap and to reconsider the deregulation of local service prior to the expiration of the cap. One suggestion made by a recent Public Utility Commission report is to lift the price cap in order to encourage competitors to enter the market.

"The idea of allowing prices to go up by lifting the cap just to bring in new companies which may or may not end up serving the needs of the average residential customer is simply bad public policy," Briesemeister said.

Only five companies in CU's study were offering residential phone services. Two of the companies, AT&T and MCI, have recently pulled back from their newly launched marketing efforts. Two companies, En Touch Systems and Time Warner, do not offer basic service to all customers. The remaining company — Westel — offers only package deals.

Of the 46 companies CU contacted which were listed as local residential service providers in local phone books and classified in the six markets studied, 10 companies told CU they serve business customer only. Nine were no longer in business by the time CU called them.

Meanwhile, those customers who use only basic service and a few extra services have seen increases or new fees and surcharges on their phone bills. Since the 1999 Texas Legislature allowed monopoly phone companies the flexibility to raise rates for various optional services without approval from regulators, Southwestern Bell has raised prices several times for those services.

More than three-quarters of the companies actually providing residential phone services in CU's survey target low-income at a price substantially above the capped local SWBT rate.

Other key recommendations to state officials in the report are:

- Keep phone bills affordable by stemming the tide of add-on fees, surcharges and optional service price increases which may act as rate increases in disguise.
- Support initiatives to bridge the digital divide, including programs to provide advance service in rural Texas and to lower-income households.
- Prohibit disconnection of basic phone service when customers make a payment to cover the basic local service portion of their phone bill.
- Do not once again lower long distance "access" charges and permit phone companies to turn around and make up for it by raising prices on residential services or by adding or increasing surcharges on bills.

## Consumer news for KIDS? Just a click away.

*Consumer Reports'* web site for kids, *Zillions Online*, was one of only 11 sites selected as a 2001 Notable Children's Website by the American Library Association! Visit *Zillions* at <http://www.zillions.org>.

## Consumers Union SWRO *Reports*

Consumers Union's Southwest Regional Office publishes periodic reports on issues of interest to Texas consumers.

Texas eye doctors circumvent contact lens law.  
Bereaved families suffer even more when funeral plans go bad.  
Texas is #1 in waste from large-scale animal production operations.  
Inequities continue in home purchase, refinance markets.  
Texas schools score from A to F in integrated pest management.  
"Payday" loans disguise usury.  
Telephone competition promise falls short.  
Public information doesn't flow like it should in Texas.  
Nonprofit hospital conversions can be costly to the public.  
Do you really shop around for the best price in pay phone s (Austin)?  
Payphone competition still ineffective (San Antonio).

*The Eyes Don't Have It...Yet*  
*Final Committal*  
*Animal Factories*  
*Access to the Dream 2000*  
*Pesticide Report Card*  
*Wolf in Sheep's Clothing*  
*Texas Digital Divide*  
*Break the Dam*  
*Preserving the Charitable Trust*  
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*San Antonio Payphones*

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# The Editors Speak Out on...

## Children's Health Insurance

"The Legislature ought to do all it can to fully fund the second phase of [CHIP], a step that would raise the number of children enrolled to more than 800,000. And the state ought to examine seriously the barriers it has raised on the other mainstay of children's insurance, Medicaid. Texas simply requires more application forms and red tape than would seem necessary to enroll in Medicaid, presenting parents in too many cases with the dilemma of losing work time in order to get insurance for their children. The intent may be to save state matching funds, but that's an economy that's miserly and, worse, far more expensive in the long run."

*Corpus Christi Caller-Times*, Jan. 8, 2001

## Electric Deregulation

"Texas lawmakers have a unique opportunity to go to school on California's current crisis to ensure, as much as possible, that Texas consumers are not lambasted with soaring utility bills after they enter the competitive marketplace for their electricity."

*Waco Tribune-Herald*, Jan. 11, 2001

## Consumer Privacy

"Businesses eager to exploit and sell personal information, such as medical and banking records, will be working overtime in both state capitols and in Washington. The public's voice is often muffled by the amplified cries of lobbyists for big interests. Lawmakers need to listen hard for that voice and take a hard line on crime."

*Austin American-Statesman*, Jan. 9, 2001

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