

CORPORATE GOVERNANCE DISCLOSURE

NAIC MODEL LAW AND REGULATION

BACKGROUND:

The NAIC has adopted a Corporate Governance Disclosure Model Law and Regulation. This Model law will be required to be adopted by 2020 in order for Texas to be recognized as an accredited state under the NAIC procedures for accreditation.

Texas was the only state that voted against this model law. The reason for the vote against the NAIC Model was because the disclosures were not necessary and were duplicative of other reports required such those required in the Own Risk Solvency Assessment, Enterprise Risk, and annual statement disclosures.

The TDI is concerned of the possible impact, particularly of domestic insurers, if Texas was not accredited. Texas domestic insurers may have to file this disclosure in each state it is licensed to do business in another state. If Texas enacts this model law, a Texas domestic would only have to file the disclosure in its domiciliary state. Other states could request a copy of the disclosure.

The TDI has requested consideration by various industry groups to sponsor and file this bill in 2019. Because of political considerations, this will not be part of the TDI Biennial Report but will be supported by TDI. Additionally, TDI has indicated that they will support certain exemptions for disclosure for small insurers or Texas only based domestic insurers that do not do business in other states. The exemption may be similar to the exemption in the Enterprise Risk reporting requirements.

SUMMARY OF MODEL ACT AND MODEL REGULATION:

- Requires an annual disclosure not later than June 1 of each year
- Contents of the Annual Disclosure is contained in the Model Regulation. This includes:
 - Description of board and committees where oversight occurs (ultimate control level, intermediate holding company, legal entity, etc)
 - Duties of Board and committees, including discussion of roles of CEO and Chairman of the Board.
 - Discussion of policies and practices including qualifications, expertise, experience of board members; amount of independence on the board and committees; number of meetings and committees over the past year; nomination and election of members and committees; and processes to evaluate performance of the Board and its committees
 - Discussion of policies and practices of officers and key personnel in control functions including suitability standards and changes in a key person's suitability;
 - Code of business conduct and ethics

- Processes for performance evaluation, compensation and corrective action to ensure effective senior management including discussion of Board's role in overseeing management compensation programs and practices; how compensation relates to both company and individual performance over time; whether compensation programs include risk adjustments; any clawback provisions to recover awards or payments if performance measures are restated or adjusted; other factors.
 - An Insurer's plans for CEO and Senior Management Succession.
 - Discussion of processes by which the Board, committees, and senior management ensure appropriate amount of oversight to the critical areas of risk management including how responsibilities are delegated; information on strategic plans, risks and steps to manage those risks;
 - Description of critical risk areas:
 - Risk Management (ORSA filers)
 - Actuarial function
 - Investment decision making processes
 - Reinsurance decision making processes
 - Business strategy/finance decision
 - Compliance function
 - Financial reporting/internal auditing
 - Market conduct decision making processes
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- Confidentiality: The Model Act contains language that the disclosure is confidential by law; would not be subject to subpoena or discovery or admissible in any private civil action; Commissioner may use information in any regulatory or legal action brought by the Commissioner; may share information with other state, federal and international financial regulatory agencies, including members of any supervisory college; may share information with the NAIC.
 - NAIC and Third Party Consultants: Commissioner, may retain at insurer's expense, third party consultants to assist the Commissioner in reviewing information; NAIC and third party consultants are subject to the same confidentiality standards. Specific standards and procedures are required to maintain confidentiality by NAIC and third party consultants.