

State-Based Insurance Regulation & the NAIC

Making State-Based Insurance Regulation Work

An effective state insurance regulatory system would be virtually impossible without an organization like the National Association of Insurance Commissioners (NAIC) providing a forum for uniform regulatory development.

Addressing Ongoing Concerns

While such a forum is essential, standard setting organizations like the NAIC are not without their challenges and insurers in Texas have discussed several areas of concern with Texas regulators. The NAIC's increasing accreditation standards, the confidentiality of information provided to Texas regulators that is then shared with the NAIC, and increased use of market conduct exams as an enforcement tool are among those challenges. Texas regulators have indicated they are also displeased with the direction the NAIC is taking on these issues and have expressed their commitment to pushing back as these activities continue at the NAIC.

Incorporation by Reference

One topic that has been discussed at the NAIC is the opportunity for the public and affected parties to comment once protocols are published. As part of that discussion, the process by which certain manuals, handbooks, instructions and other standards are automatically "incorporated by reference" into state law once those protocols are adopted by the NAIC has come up. This issue has also been the topic of discussion at NCOIL, the National Conference of Insurance Legislators.

Texas Protections in Place

Incorporation by reference of certain NAIC updates may be an issue in other states, but a close analysis of Texas law and regulatory processes indicates this is not a problem in Texas. In reaction to concerns about the NAIC's "one-size-fits-all" regulatory approach, Texas domestic insurers advocated for a Texas law that would require legislative approval of all NAIC model laws and regulations before the Texas Department of Insurance (TDI) could enforce the standards. This law became effective in 1993.

Further, these statutes adopting NAIC Models require any updates made to NAIC standards, such as valuation manuals and mortality tables, to be adopted through the TDI's rulemaking process. TDI has mentioned three exceptions where TDI rules are referred to as "evergreen" because the TDI rule is changed when changes are made at the NAIC level. These "evergreen" rules are: (1) use of NAIC annual statement blanks and instructions in 28 TAC §7.68; (2) the NAIC accounting practices and procedures manual in 28 TAC §7.18; and (3) the reference to NAIC Risk-Based Capital rules in 28 TAC §7.402. There are safeguards in each of these rules in the event of any conflict between NAIC instruction or practice and Texas statute or existing TDI rule. In a conflict, Texas statutes and TDI rules shall control. Procedures also exist that allow any interested party to petition the TDI to revisit the rules if interested parties have concerns about the rule content. These three rules with "evergreen" status are important to insurers and regulators because the TDI rulemaking process can take between 8 and 12 months to complete, and historically, the rules adopting blanks, forms, and other standards would go into effect long after, for example, the annual statements were due from the companies. As a practical matter, companies were following the new standards when completing their annual statements even though the TDI had not formally adopted the rules due to the lengthy rulemaking process.

Texas and the NAIC: A brief history

- ▶ **1957-1993—STATE BOARD OF INSURANCE:** Three-member board appointed by the Governor. Commissioner appointed by the Board. Various board members, Commissioner and staff were active at various times with the NAIC. Lyndon Olson was elected Chairman of the NAIC. Other board members and commissioners who actively participated in leadership roles on various committees with the NAIC at various times included Tom Bond, Doyce Lee, Jay Voorhees, William Daves, Joanne Howard, James Nelson, Woody Pogue, Robert Hunter, and others. TDI staff, particularly staff in the financial area, often actively participated on key NAIC committees.
- ▶ **1993—TDI SUNSET LEGISLATION:** The Legislature adopted a statute prohibiting the use of NAIC standards and models without express legislative approval.
- ▶ **1993-present—TEXAS DEPARTMENT OF INSURANCE WITH A SINGLE COMMISSIONER:** The TDI sunset bill in 1993 eliminated the 3 member board and instead implemented a single Commissioner appointed by the Governor for a two (2) year term. Elton Bomer was the first Commissioner under this model appointed by Governor Bush. Commissioner Bomer participated in some NAIC activities but was much less engaged than his predecessors. He was very vocal in resistance to NAIC pressure on a variety of issues including threats by NAIC to not allow Texas to be an accredited state under NAIC standards. Commissioner Jose Montemayor was the next Commissioner after Bomer. He was very active in the NAIC and actively sought to be elected to a leadership position in the NAIC. Commissioner Mike Geeslin was less active than Commissioner Montemayor, particularly at the beginning of his term of office. TDI staff was actively engaged in key committees and working groups during his tenure. Commissioner Eleanor Kitzman actively sought leadership roles, Commissioner Julia Rathgeber actively participated, and Commissioner David Mattax was elected to a leadership position with the NAIC. Key Texas staff, particularly in the financial division, have been actively engaged in key committees and working groups at the NAIC. Danny Saenz was in key leadership positions on committees resulting in the development of enterprise risk reporting, ORSA, and risk-based capital requirements.

