



Session Dispatch

(Weekly Insurance News from the Florida Legislature)

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We are about to enter the final two weeks of the 2006 Legislative Session. Desperation abounds in the Capitol, as legislation is getting killed every day, and members and lobbyists look for “vehicles” to attach their amendments to. I am watching every amendment to assure no mischief hurting our financial advisor and agent members occurs. Here are the major issues from this past week:

FORMER HOUSE INSURANCE CHAIRMAN JOHN COSGROVE DIES

The first legislator I ever met in Tallahassee was former State Representative John Cosgrove. (The second Representative was Herb Morgan!). From Miami, John served as House Insurance Committee Chairman immediately after Hurricane Andrew. John huddled in his closet with his family as Andrew ripped the roof off his house. He helped form the Florida Hurricane Catastrophe Fund, and enacted major legislation affecting nearly every facet of Florida’s insurance marketplace. Most important, John was a close friend to me, taught me how to play poker (literally, and legislatively), and was someone who filed the first pieces of legislation I ever sought. When I was Student Body President of Florida State University, John was a freshman legislator who actually loaned me his car one weekend! I spoke to John about two weeks ago, as he was leaving on one of his many trips overseas, this time to Africa. Sadly, John suffered an acute case of appendicitis, and passed away from complications from surgery. Amendments will be filed this week to name the State Catastrophe fund the “John Cosgrove Catastrophe Fund.” John, we will miss you, but we won’t forget you.

LONG TERM CARE PARTNERSHIP LEGISLATION IN JEOPARDY

One of the most important pieces of legislation affecting our members, HB 947, by Representative Legg, is in trouble. The legislation implements in Florida the provisions of the Federal Long Term Care Partnership program. The bill has made it to the Floor of the House of Representatives, and was poised to be sent to the Senate on Thursday. Unfortunately, Representative Farkas is attempting to amend the contents of another important piece of legislation to HB 947...which is the substance of HB 1349. The amendment makes changes to Florida law vehemently opposed by Long Term Care insurers, and could have a chilling effect on the willingness of carriers to sell in Florida.

The amendment would, in effect, place rate caps on long term care rate increases, require pooling of long term care loss experience from affiliated carriers, and put a two-year incontestability provision into all long term care policies. Carriers would not be able to deny a claim based upon misrepresentation or fraud by an insured committed when

purchasing the policy, if not caught within two years. These changes are sought by Insurance Commissioner Kevin McCarty, who is concerned about the spiraling cost of long term care insurance. Carriers are willing to place language into law allowing some level of non-forfeiture benefit for policyholders unable to continue paying for rate increases, but that has not appeased those seeking the amendment. If this amendment gets onto HB 947, it is possible that lobbyists for health insurers will kill the underlying legislation in an attempt to stop the provisions in the amendment. FAIFA is fighting hard to stop this amendment from going onto this bill, so HB 947 can be kept “clean” and enacted into law. If you know Representative Legg, please contact him and ask him to not accept this hostile amendment.

PROPERTY INSURANCE PACKAGE MOVING

The most controversial legislation moving, deemed a “must pass” bill, is the House and Senate versions of property insurance reform. Again. The bills both make numerous changes to Citizens Property Insurance Corporation (“Citizens”) and the private marketplace. Homes over \$1 million in Citizens will either be thrown out of coverage, or will be surcharged an additional 25% depending upon which bill passes. Non-homestead property (second homes, rental property’s, etc.) will be placed in a separate account, and the rates will be extremely high, and should assessments on these homes be needed to pay claims, the assessment base will be limited to just homes in this new Citizens account. (Imagine when these homeowners get a \$5000 assessment on their dec page someday!). Rates are deregulated for homes above \$1 million, and all insurers get rate flexibility to raise rates up to 5% statewide, or 10% per territory, without Office of Insurance Regulation (OIR) approval. Limited Apportionment Companies are insurers with less than \$25 million in surplus, and which are only required to assess the first \$50 million in Citizens loss. As they represent a third of the private marketplace, be prepared for some customers to get hundreds of dollars of assessments from large insurers, and only a few dollars in assessments from limited apportionment companies. The legislature will likely remove this disparity by amendment in the next two weeks. Up to \$920 million will be appropriated to Citizens to cut the deficit in half.

The bills lack any incentive to lure new capital and insurers into the marketplace, as the CAT Fund retention is set to increase from \$4.3 Billion to \$5.4 billion automatically; insurers are finding it difficult, if not impossible, to find reinsurance below this CAT Fund retention. The Poe group of insurers, Southern Family Insurance and Atlantic Preferred are taking a year to non-renew all 186,000 policyholders. A third subsidiary, Florida Preferred, with 145,000 policies, has a freeze on business and is seeking new capital. They even are asking the Legislature for a loan! If any of these companies cannot make it through storm season, policyholders will have claims paid by the Florida Insurance Guaranty Fund. This is a huge problem if it occurs, as claims are capped at \$300,000 by law in FIGA. Agents must advise their policyholders of this fact. The property bills include language increasing this FIGA cap from \$300,000 to \$500,000, but it's still not enough for many homeowners. The bills contain many other issues, like sinkhole insurance reform. This is likely to be the last bill enacted, and many floor fights and amendments are yet to come.

FREEDOM TO TRAVEL ACT ON ITS WAY TO THE GOVERNOR

HB 299 by Sobel has been enacted by both houses of the legislature and was sent to the Governor on Friday. This bill, extensively lobbied by FAIFA and health insurers, prohibits underwriting on past travel, and gives the OIR powers to restrict underwriting based on future travel. Insurers will also be required to show every denial of a policy based on travel plans to the OIR in a market conduct exam. The bill was extensively amended by health insurers, and it's not clear what real affect it will have on the life insurance industry once they have an opportunity to make filings with the OIR. It is unlikely that the Governor would veto this legislation.

LAWS GOVERNING TRUSTS COMPLETELY REWRITTEN AND SENT TO GOVERNOR

SB 1170, which creates a new Chapter 736, Florida Statutes, has been enacted by both houses of the Legislature and

sent to the Governor this week. As previously reported, this legislation will change the way trusts are formed, governed, terminate, and litigated over, forever. The new Trust Code updates and modernizes laws governing beneficiaries, trustees, and others dealing with trusts. It contains new provisions for the creation, validity, modification and termination of spendthrift, discretionary, and revocable trusts. Sought by the Florida Bar and other groups, this legislation must be reviewed by all financial advisors that assist clients in the formation or implementation of trusts. A copy of this legislation, once its enrolled, will be made available by link on the FAIFA website for members.

SELLERS OF TRAVEL EXEMPT FROM AIR AMBULANCE COVERAGE LICENSURE

SB 2432 by Senator Constantine exempts travel agents from obtaining an insurance agents license if they sell a “prepaid limited health service organization” policy covering only air ambulance coverage. Prepaid limited health service organizations are limited lines entities that can sell outpatient only health care coverage. They are regulated by the OIR, and are not very prevalent in Florida. This legislation is on the Senate Calendar, and is moving towards adoption in the House.

NO FAULT LAW EXTENSION MOVING

The House Commerce Council Thursday approved HB 7263 which makes changes to Florida’s Personal Injury Protection (PIP) insurance law. The Senate bill, SB2114, is also moving and pushes back the sunset of PIP to January 2009. The House version includes language inserted by Rep. Frank Farkas, R-St. Petersburg, that makes insurers liable for damages in the amount of three times the amount of benefits due a PIP claimant if the insurer “makes it a general business practice” to not pay valid claims until receipt of the demand letter. The bills notably do not include medical fee schedules, or make changes that I would characterize as significantly fixing this broken line of insurance. Governor Jeb Bush has indicated he may veto any bill that does not offer true reforms of PIP. If he were to do this, then PIP would sunset at the end of this year, and would no longer be required in Florida. Such a move would increase the costs of health insurance, as those injured in automobile accidents would be required to obtain care from their group or personal health insurance coverage.

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