



# Advisor Newsletter

*(Monthly Newsletter of the Florida Association of Insurance and Financial Advisors)*

## **MAY 2006 (LEGISLATIVE WRAP-UP)**

### **LEGISLATIVE AND REGULATORY REPORT**

by Timothy J. Meenan, FAIFA Lobbyist

The legislature adjourned for the year shortly after midnight on Friday May 5, 2006, and FAIFA was on the fourth floor of the Capitol reading every amendment and fighting for issues important to Financial Advisors and Agents to the end. Overall, FAIFA enjoyed a positive 2006 legislative session. Following is a summary of important issues addressed by the Florida Legislature over the past two months:

#### **FAIFA STOPS PRE-LICENSING EDUCATIONAL HOURS REDUCTION**

Legislation reducing the number of pre-licensing hours needed to become a life insurance agent was stopped cold by FAIFA this session. SB 2526 proposed to reduce the pre-licensing educational requirement from 40 hours down to 20 hours for a life insurance agent's license. This reduction was sought by Citigroup and other insurers in an attempt to enhance their "speed to market" with new agents. Stymied nationally in attempting to get support for a "term life only" agent's license, this new tack is even more corrosive to the goal of assuring only well-trained individuals solicit consumers relative to the most important decision of their life – the purchase of financial security for themselves and their families.

We met with almost every legislator on this important topic, and in the end convinced the bill sponsors to support our efforts to maintain the current requirement. In its place, HB 1113 was adopted and will speed up the licensure process for new agents. Examples include: requiring fingerprinting to be available at examination sites, and not requiring the payment of the license fee until an applicant learns they have passed the exam. While these reforms were supported by FAIFA, the legislation also requires the Department to collect information on the race and ethnicity of applicants, and to report on the number of applicants that fail the exam by race and ethnicity. Other data will also be reportable. This new reported data will likely be used by our opponents next year and thereafter to show that few minority applicants for the exam are taking and passing the exam, and will use this as argument to reduce the pre-licensing hours requirement during the 2007 legislative session.

#### **LONG-TERM CARE PARTNERSHIP LEGISLATION ENACTED**

House Bill 947 by Representative Legg was adopted and contains important language implementing Federal Legislation adopted in 2005 that allows states to adopt and implement the Long-term care Partnership Program.

FAIFA testified for and worked hard on this important concept. This program allows purchasers of qualified long-term care insurance policies to protect some or all of their assets from Medicaid's "spend down" requirements when qualifying for Medicaid coverage for payment of long-term care expenses. This legislation will provide a huge incentive for consumers to purchase long-term care insurance as a means of protecting their assets later in life, when long-term care insurance benefits are ultimately exhausted and they are about to enter the Medicaid program. The bill protects assets (from having to be spent) which are equal to the benefits paid under the qualifying long-term care policy. We opposed language requiring a standardized qualifying long-term care partnership policy and were successful in removing this concept from the final bill. FAIFA supports the need for insurers to maintain flexibility to offer innovative and differing products.

Other legislation affecting long-term care was filed by Representative Farkas, and ultimately amended onto the good long-term care partnership legislation. The provisions of HB 1349 (which are now on HB 947) provide for a two-year incontestability period for long-term care policies, require the NAIC model act language providing mandatory contingent benefits upon lapse of the policy for policies sold prior to the adoption of the NAIC Rate Stabilization Model Act, require no greater premium charge for existing insureds than the premium price given to new insureds, and forces pooling of data for rating purposes of all affiliated insurers. The incontestability provision is effective July 1, 2006 for policies which are issued or renewed on or after that date. For any long-term care policy issued prior to July 1, 2006, the incontestability starts on or after July 1, 2008.

FAIFA and insurers were successful at removing language directing the Office of Insurance Regulation (OIR) to develop a standardized core benefit plan that all long-term care insurers must offer policyholders. Insurers and FAIFA fought hard against adding the provisions of HB 1349 onto HB 947, but were unsuccessful. The concern is that these new rating provisions provide a chilling effect on long-term care insurers' willingness to write new business in Florida, or to acquire and service closed blocks of business from carriers no longer writing in the long-term care marketplace. On the upside, it is probably true that huge rate increases on our customers will now be mitigated (many agents report 30, 40, and even 50 percent long-term care rate increases, or more, in the past few years). It is unlikely that Governor Bush will veto this legislation.

FAIFA will be working with its members to determine if any insurers discontinue writing or pull out of Florida as a result of these new requirements. Please contact me if you hear of such a move by an insurer.

#### TRAVEL INSURANCE LEGISLATION AMENDED AND ADOPTED

HB 299 by Representative Sobel is on its way to the Governor for his likely signature. FAIFA has concerns that life insurers may be more hesitant to write in Florida with this new law on the books. In its original form, it would have required historical data to be the determinant actuarially of whether future travel could be denied to a particular location. This is problematic, as changing political issues in countries that once posed no travel risk become tomorrow's danger zones for travel.

This bill, extensively lobbied by FAIFA and life insurers, prohibits underwriting on past travel and gives the Office of Insurance Regulation power to restrict underwriting based on future travel. The industry was able to re-work the language to allow a "forward look" at developing events including "reasonably anticipated experience" in making a determination that travel to a particular locale will either be grounds for increasing premiums, or preventing insurance from being underwritten. 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, and it's not clear what real effect 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 will veto this legislation. It is also possible that Congress may enact federal reforms along these lines, making Florida's legislation moot and lessening any impact on Florida agents and consumers.

#### PERSONAL INJURY PROTECTION INSURANCE FIGHT FIZZLES

FAIFA supported change to the personal injury protection (“PIP”) law during this past session, as this “no fault” law is broken. FAIFA was in favor of either eliminating PIP altogether or drastically restructuring it to eliminate fraud. Whichever outcome, FAIFA wanted to assure that whatever replaces PIP does not shift the costs for auto accidents to the admitted health insurance carrier market, further driving up the cost of health insurance. The laws have been programmed to “sunset” or automatically terminate, on October 1, 2007. In the end, the legislature did not accomplish either task of reforming or eliminating PIP. SB 2114 makes few changes to the PIP law, instead choosing to move the sunset from October 1, 2007, until January 1, 2009.

The legislation does contain one anti-fraud enhancement relating to crash reports. Under the new law, crash reports must now include information such as the date, time and location of the crash; a description of the vehicles involved; the names and addresses of the parties involved; the names and addresses of all drivers and passengers in the vehicles involved; and the names and addresses of witnesses. The bill also now maintains that the absence of information regarding the existence of passengers in the vehicles involved in the crash constitutes a rebuttable presumption that no such passengers were involved in the reported crash.

The bill also provides the Department of Financial Services’ Division of Insurance Fraud with an additional \$1.1 million from the Insurance Regulatory Trust Fund to create a new fraud unit within the Department of Financial Services.

#### MENTAL HEALTH PARITY ALMOST ENACTED

House Health and Families Council Chairwoman Holly Benson (R-Pensacola), at the eleventh hour pursued legislation to require certain large employers to provide mental health coverage. It wasn’t the subject of pending legislation but was the mandate that health insurance lobbyists feared had the best chances of passing. FAIFA teamed up with health insurers to oppose this bad amendment, which would have forced up the cost of regulated insurance products, but not applied to the other half of the group health market obtaining coverage through ERISA. In the end this mandate was defeated.

#### JOINT AND SEVERAL LIABILITY SIGNED INTO LAW

In Florida, trial lawyers have long been able to seek full payment of damages from a defendant barely at fault through a concept known as “joint and several liability”. For example, if a doctor was 98 percent at fault in committing malpractice, and a hospital was found to be 2 percent at fault, the hospital could be forced to pay ALL of the economic damages awarded by a trial court, if the doctor was insolvent, uninsured, and unable to pay. Now the doctrine of “comparative fault” has been restored, and will hopefully help hold down medical cost increases in the future.

#### LAWS GOVERNING TRUSTS COMPLETELY REWRITTEN AND SENT TO GOVERNOR

SB 1170, which creates a new Chapter 736, Florida Statutes, entitled the “Florida Trust Code” has been enacted by both houses of the Legislature and sent to the Governor. As previously reported, this legislation will change the way trusts are formed, governed, terminated, 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 all trusts including spendthrift, discretionary, and revocable trusts. Significant changes to current law include lowering the standard for collecting child support and alimony notwithstanding spendthrift provisions of a trust; forcing persons receiving trust distributions to submit to personal jurisdiction of Florida courts on matters related to the trust; creating a presumption that a trust is revocable unless the terms specifically provide that the trust is irrevocable; making trustees breaching trust agreements liable for the greater of the profit made by reason of the breach or the amount required to restore the trust to the position it would have been in had the breach not occurred; and allowing trust modifications previously requiring court approval to

be implemented upon agreement of the parties to the trust without court approval. 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 it's 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 and Representative Berfield exempts travel agents from obtaining an insurance agents license if they sell a "prepaid limited health service organization" policy covering only air ambulance services. 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 act was adopted and named the "John F. Cosgrove" act, after my good friend State Representative John Cosgrove who died recently being airlifted to a health care facility in Africa.

#### HEALTH INSURANCE ID CARDS MANDATED

While HB 805 by Representative Benson ultimately died, several provisions from that bill were amended onto HB 1361 and adopted into law before midnight on the final day of Session. The bill will require all health insurers and HMOs to provide an identification card to insureds containing basic policy number information, insurer, phone and address where information can be obtained on coverages, co-pay amounts, etc. The act is designed to decrease confusion at the time a person seeks medical care, and was sought by hospitals and other medical providers. Health insurers are concerned about the effective date of the act. HB 805 contained a January 1, 2007 effective date, while HB1361 will become effective upon being signed into law. Health insurers are working with Representative Benson and the OIR to avoid problems that would occur if implementation is required prior to renewal date of policies.

Another provision added to HB1361 loosens restrictions on Discount Medical Plans (DMPOs) related to bundling of insurance and non-insurance products. The bill also doubles the fees which can be charged by a DMPO without subjecting the form to OIR filing requirements.

#### HEALTHY KIDS PROGRAM EXPANSION

HB 241 by Representative Vana expands the Healthy Kids and Medikids programs eligibility requirements. These programs provide lower-cost health insurance or HMO coverage to children of (oftentimes) uninsured parents. The new provisions will allow a family with a child who is not eligible for the Medikids or Healthy Kids programs because the family income is above 200 percent of the Federal Poverty Level or because the child is not eligible for premium assistance, to participate in these programs if the family pays the full premium without any premium assistance. This legislation was enacted and sent to the Governor on the second to last day of Session.

#### FIRST RESPONDER LIFE AND HEALTH CANCELLATIONS PROHIBITED

HB 1325, by Representative Culp, prohibits life and health insurers from canceling or non-renewing coverage to firefighters, police, and other first responders solely because they were injured by toxic fume inhalation exposure at meth labs and other drug crime scenes while in the course of their employment. This legislation was amended to remove a provision requiring the issuance of life insurance to such injured individuals after the injury occurs. The bill started out as a coverage mandate, but in its current form is much more acceptable to the health and life insurance industry. Existing mandates and other laws already account for Florida having fewer admitted market carriers writing health insurance in our state than any other state our size. The bill was enacted and awaits the governor's signature.

## UNLICENSED AGENT ACTIVITY PENALTY INCREASED; INDEPENDENTLY PROCURED INSURANCE STATUTE AMENDED

HB 561 has been enacted and makes it a third degree felony to transact insurance without a license. Additionally, changes have been made to the independently-procured-coverage statute, 626.938, Florida Statutes. The changes increase the Office of Insurance Regulation's (OIR) jurisdiction over coverage procured independently in another state or country, and also clarifies that workers compensation, life, and health insurance coverages cannot be procured independently.

## ALL HEALTH INSURANCE MANDATES DEFEATED

FAIFA worked alongside health insurers to defeat all mandated benefits this session, which included:

- HB51 Autism
- HB59 Breast Cancer
- SB310 Universal Health Care for Children
- SB376 Cystic fibrosis
- HB427 Surgical First Assistants
- SB482 Cranio-facial Anomalies
- HB1013 Lyme Disease
- HB1105 Prostate Cancer
- SB2052 Bone Marrow Transplant Standards
- SB1056 Diabetes Prevention

While many of these mandates, if viewed individually, may seem worthy, when viewed collectively would they would add to the cost of coverage for the small group market, while ERISA plans are exempt.

## SMALL GROUP MARKET REFORMS

Two bills that sought to restructure the small group market saw some action but ultimately died, mainly due to lack of funding:

- HB 1265, a Small Business Pilot Program, would have provided credits to small employers who offer coverage to their employees where the employer did not previously offer coverage;
- HB 1391 Small Employer (Healthy Florida), contained language similar to the Healthy New York program, which places a complicated set of mandates and administrative burdens on carriers, potentially to be offset by a state-funded subsidy. The New York plan is funded by a dedicated tax, whereas the Florida proposal did not contain such a dedicated funding source. Carriers were reluctant to assume new burdens without being assured of dedicated funding.

HB 1265 was supported by both business and health insurers, while there were serious concerns about HB 1391. Yet another proposal which died without a hearing was HB 813, Fair Share Health Care Fund, which would have created a program aimed at companies like Wal-Mart based on similar legislation enacted in Maryland. The bill would have required employers with more than 10,000 Florida employees, who do not spend at least 7 percent of their total earnings on employee health care costs, to pay that amount into a state fund for health coverage. Employers in Maryland plan to challenge that state's law on the grounds that it violates ERISA. Given that Massachusetts also adopted an employer mandate last month, we may see more action in this arena next session.

## TRANSPARENCY

HB 7073 was sent to the Governor for his signature. The bill facilitates greater posting of comparative health service pricing information on The Florida Agency for Health Care's CompareCare website. The bill expands the list of available online prescription drug prices from 50 to 100 drugs, and provides consumers additional access to information on health care providers. The bill changes the type of information that is supposed to be published from performance outcome data to "patient-safety indicators" and "inpatient quality indicators".

## FREE INSURANCE

One of the last bills passed in the session was an insurance "train," HB1361, which contains an amendment which was tacked onto the bill in the eleventh hour. The bill rolls back the Unfair Trade Practices prohibition on "free insurance" in the property insurance market. While the provision won't apply to homes or cars, it could apply in the situation of a boat purchase, for example, when the boat is financed over a five-year term and the seller includes "free" marine insurance for the life of the term. Agents have traditionally opposed the provision of "free insurance" because it is rarely free. Many times the provision is bundled or packaged into the sale in such a way that the customer is not able to decline the "free" insurance. In addition, some such arrangements in the past have sought to bypass the agent. Inclusion of such a provision in this bill sets a bad precedent.

## AGENT TERMINATION NOTICE

HB 355, as originally drafted, would have required carriers to provide agents with a minimum 120-day advance notice prior to termination of the agent's contract. The bill sought to replace the 60-day statutory default provided for cases where no notice period was specified in the contract. The bill was amendment in committee to provide for a 120-day notice period as a default if no term was specified in the contract. The bill passed the House but was never heard on the Senate floor.

## LIFE INSURANCE ARBITRATION

HB 837, which would have authorized life insurance policies under \$50,000 in value to include mandatory binding arbitration policies, died in the House Insurance Committee after it was temporarily passed following heated testimony. The bill was being pushed by one insurance company but was opposed by the trial bar.

## PROPERTY INSURANCE MARKET REFORMS

One of the last bills passed before the closing bell of Session was a massive property insurance rewrite aimed at helping the industry better prepare for the upcoming 2006 hurricane season--a season that forecasters predict could unleash multiple hurricanes on the state for the third straight year. SB 1980 was signed into law by Governor Bush on May 16.

Much of the 156-page bill (CS/CS/SB 1980) focuses on Citizens Property Insurance Corporation (CPIC), the state-run insurer of last resort, but there are provisions which will help private insurers brace for future storm seasons in Florida as well. These include a provision to allow small insurers to buy more reinsurance from the Florida Hurricane Catastrophe Fund (CAT Fund), and a \$250 million surplus loan program with insurers eligible for up to \$25 million if they raise private matching capital. The bill makes significant changes to the Florida homeowners insurance market.

The package addresses the following key issues: Citizens Property Insurance Corporation

- Rates will be subsidized by a combination of assessments on all Florida residential insurance consumers and, for the first time this year, state general revenue dollars - on primary residencies, not vacation and seasonal homes. The bill includes a \$715 million cash infusion from general revenue, which will be used to offset assessments from Citizens. This subsidy will reduce the regular assessment for the 2005 deficit from 11 percent to 2.5 percent. It is required to amortize the looming 8 percent emergency assessment over 10 years. The assessment facing Floridians has been dramatically reduced.
- Removes non-homestead property from Citizens: Effective March 1, 2007, non-homestead property would not be eligible for coverage by the High Risk Account (“HRA”) within Citizens. The owners of such property may reapply to the HRA if they are able to make a sworn statement that the risk was declined by one admitted carrier and three surplus lines carriers.
- Forces owners of \$1 million-plus dwellings out of Citizens and into either the voluntary market or surplus lines market at unsubsidized rates, beginning July 1, 2008.
- Minimizes statewide assessments from Citizens when they do occur by forcing the Citizens High Risk Account, which produces the most massive assessments, to rates covering a 100-year Probable Maximum Loss (“PML”) and requiring private market reinsurance when it is affordable and feasible.

The bill also establishes an unprecedented mitigation system, including free statewide inspections so homeowners know what must be done to make their houses more likely to stand through hurricanes what mitigation steps qualify for insurance discounts and potential buyers of homes know what they are getting into. The program is funded with \$250 million in general revenue, to be administered by the Department of Financial Services. CFO Tom Gallagher has appointed Lisa Miller as Deputy Commissioner of DFS to administer this program.

One of the biggest issues in the bill was forcing the Citizens HRA rates to the 100-year PML standard to generate funds for private reinsurance and reduce if not totally eliminate statewide assessments. Citizens has already filed a 45 percent statewide average rate increase for the HRA, expected to be approved by the OIR. The 100-year PML standard would have meant a dramatic increase on top of that. There were various estimates, but one legislator was concerned some of his constituents would be facing \$46,000-a-year insurance bills. The final agreement in the bill phases in over four years the move to 100-year PML rates, “a gradual slope” approach, as Banking & Insurance Chair Garcia described it. It limits the surcharges on designated Citizens policyholders when there is a deficit to a series of two 10-percent assessments.

Another major issue for the Senate was up to 50 percent surcharges on certain Citizens policyholders, when there is a deficit, to reduce the amount of the statewide assessment paid by non-Citizens policyholders.

The bill also includes provisions somewhat relaxing insurance rate-making.

Carriers have serious concerns about some provisions, including a requirement that ex-wind carriers on High Risk Account policies adjust hurricane claims for Citizens. A compromise provision resulted in a one-year delay until the 2007 hurricane season, plus procedures for development of the contracts and opportunities for insurers to appeal to OIR for an exemption from the adjusting requirement.

A special \$10 million layer of Florida Hurricane Catastrophe Fund (CAT Fund) reinsurance is available in the bill for limited-apportionment companies. An amendment including companies with pending, but not finalized, applications for LAC status failed, leaving several small companies unhappy and facing private reinsurance issues. There was a proposal to allow larger companies to purchase additional, lower layer CAT Fund coverage and that did not pass. Many of these companies, however, will benefit from the capital/surplus note loan program in the final bill.

For more information or a copy of the bill, please contact me.

## HERB MORGAN HONORED

Finally, in a fitting tribute, the Florida Agricultural and Mechanical University (FAMU)--Florida State University (FSU) College of Engineering Building in Tallahassee was designated as the "Herbert F. Morgan Building." (Herb was FAIFA CEO and lobbyist when he passed away in December 2003. He also served in the Florida House of Representatives from 1974 to 1986.) SB 1086, a state building designation bill, passed in the final days of the session and is on its way to the Governor's desk for signature.

It is appropriate that Herb's dedication to the community and university system should be honored in this way, said State Senator Al Lawson, who originally filed the bill in 2003 because Morgan "almost single handedly, as (House) appropriations chairman, got the funding for the school" and "there would be no greater honor we can bestow on Mr. Morgan than to have the building that houses the program he fought so hard to bring about bear his name," Lawson said. Florida A&M University President Fred Gainous added that, during a critical time in the development of higher education, Morgan built a solid foundation for future students, serving "with honor, courage and commitment". I think our friend Herb would have been touched by this well-deserved and long-overdue memorial to his community service endeavors.

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