



Advisor Newsletter

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

APRIL 2006

LEGISLATIVE AND REGULATORY REPORT

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2006 LEGISLATIVE SESSION OFF AND RUNNING!

The Florida Legislature is in the middle of what is an action-packed, two-month session. The regular legislative session will end the first week of May. Major issues dominating this year's session include, once again, property insurance reform; the personal injury protection (PIP) insurance sunset; and a myriad of bills aimed at amending our health care and insurance delivery system. FAIFA is embroiled in numerous controversial issues, and is fighting hard for our agent and financial advisor members. This report will outline issues we are working on, but will not cover the full scope of legislation impacting agents. Following are some highlights from this first-half of session.

DAY ON THE HILL A HUGE SUCCESS!

The second week of session, over 130 members of FAIFA traveled to Tallahassee to meet with legislators and to advance our important agenda. Senate President Tom Lee, who is running for Chief Financial Officer, spoke at our luncheon and met with FAIFA members. Lisa Miller, past FAIFA employee, Current Chief of Staff for the Florida Department of Financial Services, also addressed our group. FAIFA members met with legislators and regulators, and ended the Day on the Hill with a very well-attended reception on the 22nd Floor (observation gallery) of our State Capitol building.

FAIFA continues its trend of being the most well-attended day on the hill event for agents, and left a strong impression of our strength. If you have not attended this event, you owe it to yourself to travel to Tallahassee next year -- help your business, your profession, and your understanding of how your government works. **NO ONE ELSE IS FIGHTING FOR THE LONGEVITY, PROFITABILITY, AND VERY EXISTENCE OF YOUR BUSINESS IN TALLAHASSEE, SO YOU MUST GET INVOLVED!**

FAIFA FIGHTS PRE-LICENSING EDUCATION REDUCTION LEGISLATION

Legislation reducing the number of pre-licensing hours needed to become a life insurance agent is dominating our agenda this session. SB 2526 proposes to reduce the pre-licensing educational requirement from 40 hours down to 20 hours for a life insurance agent license. This reduction is being 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" agents license, this new tact 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.

I have now met with a substantial number of legislators, and support to oppose the reduction in pre-licensing education is growing. Other agents trade associations have Joined FAIFA in opposing this legislation, and we are committed to stopping this proposal. After detailed discussions with the House and Senate sponsors, and negotiations with advocates for the reduction, we have reached an agreement in principle to remove this offensive provision from SB 2526. In its place will remain provisions requiring provision of fingerprinting technology at testing centers. Additionally, proponents of the original legislation are working on language to streamline the licensing process, including proposals to require payment of a licensing fee after an applicant passes the pre-licensing exam, and to monitor the race, ethnicity, and gender of applicants for life insurance licenses. This compromise has not been effectuated yet, so we are working hard to assure that the reduction does not occur.

It is important to note that, if we are successful, the proponents of this issue have indicated that they will attempt this reduction again next year, and intend to continue pursuing a reduction in hours for pre-licensure issues. I anticipate this fight taking several years, and FAIFA must be ready. On a final note, proponents of this legislation proffer that its intent is to increase the recruitment of minority agents into the agent community, a goal FAIFA supports, but not by placing purchasers of life insurance at risk.

Please contact your local legislators and oppose this reduction in pre-licensing educational hours!

FLORIDA LEGISLATURE MOVES TO ENACT LTC PARTNERSHIP BILL

House Bill 947 (by Representative Legg), and Senate Bill 1924 (by Senator Fasano), contain important language implementing Federal Legislation adopted in 2005 that allows states to adopt and implement the Long Term Care Partnership Program. The House Elder and Long Term Care Committee unanimously adopted HB 947 this week, and FAIFA testified in support of this important legislation.

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 equal to the benefits paid under the qualifying long term care policy. We oppose any amendments to require a standardized long term care policy as a part of this process, however. Insurers must maintain flexibility to offer innovative and differing products.

Other legislation affecting long term care has been filed by Representative Farkas. HB 1349 provides a two-year incontestability period for LTC policies, requires the NAIC Model Act language providing mandatory contingent benefits upon lapse of the policy, requires no greater premium charge for existing insureds than the premium charged to new insureds, forces pooling of data for rating purposes of all affiliated insurers, and directs the Office of Insurance Regulation (OIR) to develop a standardized core benefit plan that all LTC insurers must offer policyholders.

This legislation is being sponsored on behalf of the OIR, and is likely to engender significant controversy. We will be actively working on all LTC legislation on behalf of FAIFA this session.

SMALL EMPLOYER HEALTH CARE STOP LOSS FUND LEGISLATION

Legislation intended to model legislation currently in force in New York by creating a "Healthy Florida Small Employer Stop Loss Fund" has been filed. HB 1393 creates the fund, and states that it shall reimburse claims of small employer insurers, to the extent funds are available.

The legislation's initial draft is not finalized, and so it is difficult to determine how the plan will work and other details. Generally, uninsured individuals and small business (with employees making less than \$33,000 annually) that have not had coverage for the prior 12 months will be eligible. All small-group insurance carriers will be required to participate. In New York, where this program is in effect, funding of almost \$90 million in the first year, and up to \$40 million in subsequent years was made available by the legislature to offset the costs in providing this coverage. We will be forwarding additional information when it is available.

SMALL BUSINESS HEALTH INSURANCE ASSISTANCE SOUGHT

SB 2428 by Senator Fasano establishes the Small Business Health Care Insurance Assistance Pilot Program. This initial pilot program, if adopted, will infuse \$15 million into a program to provide a one-time rebate for small businesses that employ more than one, but fewer than six, employees that provide full coverage of comprehensive major medical health insurance for such employees on a guarantee-issue basis. The employer must pay at least 50 percent, but less than 100 percent, of the cost of the coverage. The employees would share in the remainder of the cost of coverage. The amount of the rebate would be \$1000 per employee, and only businesses without coverage for a six-month period could apply. The rebate application may be made after one full year of coverage had been provided. The Agency for Health Care Administration (AHCA) would administer the pilot rebate program.

FAIFA strongly supports such a program, and agents could be a strong advocate to get the word out to potential employers should the legislature adopt such a program. It is unclear whether such a large budget item will receive funding this year.

HEALTHY KIDS PROGRAM EXPANSION

HB 241 (by Representative Vana) expands the Healthy Kids and Medikids programs eligibility requirements. The new provisions would 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 adopted by the House Health Care Appropriations Committee and appears to have an opportunity for passage this year.

FLORIDA TRUST CODE RE-DRAFT LEGISLATION MOVING; ALLOWS TRUSTEES TO INVEST IN FINANCIAL PRODUCTS AFFILIATED WITH TRUSTEE INSTITUTION

HB 425 (by Representatives Mahon and Stargel) and SB 1170 (by Senator Aronburg), creates the Florida Trust Code. This substantial legislation repeals existing Chapter 737, Florida Statutes and creates a new Chapter 736, implementing a comprehensive new trust code loosely modeled on the Uniform Trust Code of 2000. This lengthy bill includes requirements for trust creation, the treatment of revocable trusts, and the rights of creditors within this new Trust Code.

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; allowing trust modifications previously requiring court approval to be implemented upon agreement of the parties to the trust without court approval, and clarifying significant disclosures for a bank or trust company trustee that invests in investment instruments offered by that bank or trust company and receiving additional compensation for that investment.

Although FAIFA has expressed concern over the years with the inherent conflict of interest that exists when a trustee invests in instruments of affiliated entities, this practice is authorized under current law. The proposed disclosure will help notify trust beneficiaries of this potential conflict, and give an opportunity for two-thirds of beneficiaries to object and stop the practice. The legislation has been favorably heard and adopted by several committees, and appears to be on a fast track.

HOMEOWNERS INSURANCE REFORMS ... AGAIN

Legislation aimed at reducing assessments in Citizens Property Insurance Company ("Citizens"), and attracting new capital and insurers to the voluntary homeowners market, has been adopted by the House Insurance Committee. Representative Don Brown and Dennis Ross, Chairman of the Committee, spearheaded this legislation, PCB IN-01.

Proposals include rate modernization by allowing insurers to raise or lower rates by 5% statewide, or 10% in any rating territory, without OIR approval. The bill eliminates homes valued at over \$1 million from being eligible for insurance in Citizens (which will reduce Citizens exposure by \$17 billion) and requires substantially-higher

rates for non-homestead homes receiving coverage in Citizens. Mobile homes, apartments and condominiums that are a primary residences will be considered homestead properties for purposes of coverage in Citizens. The proposal to force insurers covering only the ex-wind portion of a Citizens policy to handle all claims administration for both wind and all other-peril claims was removed from the bill, with language requiring further study being inserted.

A FAIA proposal to eliminate liability of agents whose policyholders are subject to a “takeout” from Citizens, when a policyholder sues due to decreased coverage’s, was adopted by the Committee. The bill makes numerous other changes and I will report on these as the bill moves through the process.

Related legislation, PCB IN-02, creates a \$100 million endowment, the proceeds from which will fund low- or no-interest loans to homeowners who install wind mitigation devices such as mobilehome tie-downs or shutters, was enacted by the Committee, as well.

CITIZENS ASSESSMENT OFFSET LEGISLATION ADVANCES

Although opposed by the Governor, the House Insurance Committee adopted HB 551 to require that tax revenues generated by the State of Florida off of repairs and other insured losses of hurricanes be used to offset deficits in "Citizens".

The deficit at CPIC continues to grow -- now an estimated \$1.7 billion dollars. This will result in most homeowners paying an average of more than \$200 on their homeowners bill to pay the claims of those insured by CPIC. Other legislation (PCB IN-01) making significant changes in the coverages of CPIC and the ability of insurers to seek rate increases continues to be debated.

LEGISLATURE MUST ADDRESS PIP INSURANCE THIS YEAR

Laws governing and establishing the provision of personal injury protection insurance (PIP) will automatically “sunset” or terminate at year's-end unless the legislature acts to amend, reform, replace or reform this law. PIP provides mandatory coverage for injured auto accident victims of up to \$10,000 in medical costs. Deemed “no fault”, the system is broken and PIP is now characterized by significant fraud, costly litigation, and high costs.

FAIFA continues to work on assuring that PIP does not sunset in a way that transfers costs of auto accidents over to health insurance, thereby once again providing upward pressure for rate increases in all lines of health insurance.

Legislative proposals include increasing PIP limits from \$10,000 to \$20,000 in emergency rooms, requiring motorcyclists to purchase \$10,000 of PIP coverage in certain instances, implementing a mandatory fee schedule for medical providers, eliminating the attorney fee multiplier in PIP litigation, and other changes to the way PIP insurers interact with consumers and medical providers.

This is a highly contentious issue, which has pitted the insurance companies against chiropractors, the trial lawyers, and the Florida Medical Association. Worse, the insurance industry is divided on whether to eliminate PIP, fix PIP, pursue mandatory bodily injury coverage, and other ideas. A house divided seldom stands, and it is unlikely that major changes will occur in light of the inability of the insurance community to formulate a uniform position.

FAIFA will continue to fight for any viable outcome that does not cost shift accident health care costs to insurers, forcing the products we market to increase rates.

HOUSE VOTES TO ELIMINATE JOINT AND SEVERAL LIABILITY

Billed as the top priority for House Speaker Allan Bense, the House adopted HB 145 this week, eliminating the concept of joint and several liability in Florida. This concept is a legal principle that forces a defendant in a lawsuit that is proven to only have a small percentage of liability in an accident to pay the entire damage award. Cases abound where a hospital or other defendant is shown to be only 1% at fault in an adverse incident, but pays the entire judgment of millions of dollars because the other defendants in the case that caused the damage had no assets.

This legislation may not pass the Florida Senate, and is one of the major fights in this year's session. FAIFA supports the elimination of this outmoded legal principle, as it drives up malpractice insurance costs, which translates into higher charges to insurers, which drives up rates. Additionally, it is simply unfair to be in the small

minority of states that require someone with almost no fault in an accident or injury case to pay all the damages.

TRAVEL UNDERWRITING LEGISLATION ADVANCES

Named the “Freedom to Travel” act, legislation forcing insurers to curtail current underwriting practices in life insurance offered to persons that travel to dangerous countries advanced in both the House and Senate this week. HB 299 (by Representative Sobel) and SB 764 (by Aronburg) both passed out of key committees this week.

The legislation makes it an unfair trade practice to discontinue or refuse to offer insurance to a customer based solely on past travel. It also prohibits such practices based solely on future travel plans, unless the insurer demonstrates to the Office of Insurance Regulation (OIR) that insureds who intend to travel are a separate, actuarially-supportable class whose risk of loss is different from those insureds who intend to travel.

Life insurers believe actuaries at the OIR will make it difficult or impossible to charge correct rates, or exclude coverage for travelers who choose countries that are dangerous destinations. FAIFA supports insurers in their desire to assure that life insurance rates for all insureds are not increased as a result of this elimination of the historic practice of excluding life insurance for those who choose to visit dangerous destinations. I expect this legislation, or some version of it, to pass the legislature, notwithstanding strong industry opposition, due to the politically-charged nature of this bill.

CYSTIC FIBROSIS, SURGICAL FIRST ASSISTANTS AND OTHER MANDATES ONCE AGAIN GET CONSIDERATION

Legislation expanding the coverage mandate for admitted insurers with regard to coverage for currently-uncovered health services for those with cystic fibrosis was passed by the Senate Banking and Insurance Committee. SB 376 (by Senator Margolis) is well intentioned, but will increase the cost of the admitted health insurance market, and is opposed by FAIFA.

HB 427 (by Representative Homan), was adopted by the House Health Care Regulation Committee. This bill is a different kind of mandate, but will still result in increased costs to insurers and payers of health insurance premiums. Currently, surgical first assistants costs are billed as part of the charge paid for by insurers for a surgeon’s time in surgery. This legislation “breaks out” the charge for a surgical first assistants time, and allows them to direct bill insurers for their work. Nothing in the bill requires a reduction of costs paid to the surgeon. The bill also creates a state regulatory structure for surgical first assistants.

FAIFA is opposed to this new kind of “provider” mandate, due to the affect it will have on the cost of admitted health insurance products; again, unregulated ERISA plans will not be forced to likewise pay for this new charge, further broadening the gap between the admitted and the ERISA market.

Before session ends, several other costly mandate bills will be considered, and threaten to further widen the gap in the cost of admitted market insurance and ERISA programs.

100 Innovative Ideas for Florida's Future Established by Speaker-Designate Marco Rubio

A new initiative conceived and developed by Florida House Speaker-Designate (2007-08) Marco Rubio (R-Miami), called “100 Innovative Ideas for Florida’s Future”, invites the citizens of Florida to communicate their concerns and recommendations on how to improve life in Florida. These concerns and proposed solutions are then submitted, by way of a website (www.100ideas.org), to the Florida House of Representatives for their consideration.

According to the web site, “We are not looking for the same old proposals that have failed again and again. We are looking for new and truly innovative ideas. Not ideas from special interest groups -- rather, ideas that come from thoughtful, thorough research. And ideas that come from frank discussions with real Floridians. We are actively involving the people of Florida. We are asking Floridians what they hope for, what they fear, and most importantly, their ideas on what state government can do about it.

“But a vision alone is not enough. We need a plan. And our plan is to write a book that will outline our commitment to Florida’s future. It is called “100 Innovative Ideas for Florida’s Future”. The book will be a written commitment for EVERYONE to read that will detail our vision for the future and our plan to make it a reality.

“We begin with one overarching principle: those who aspire to lead this state must accept responsibility for its future. We cannot see Florida only as it is today. We must envision it as it could and should be tomorrow and have a plan to turn that vision into reality. We have asked the members of the Florida House to make a public commitment to the people of Florida, about our future. A commitment that asks every Floridian to work hard and play by the rules.” Visitors to the “100 Ideas” website can submit their ideas and solutions as well as view and comment on those which have already been submitted.

Resolution at Hand for NAIFA-Supported Pension and Tax Issues?

(The following item was excerpted from NAIFA Political Frontline newsletter.)

The U.S House and Senate have convened conference committees on two omnibus bills encompassing important pension and tax issues. If all goes right, five issues that have a bearing on the business of NAIFA members could get resolved in the next month or so. Some of the issues have been in process for many years.

Four of the issues in play are in the pension bill, H.R. 2830. They are:

Investment Advice

For almost 10 years, NAIFA has been a part of efforts to loosen ERISA's prohibited transaction and fiduciary responsibility rules so that more rank and file workers can access financial advice on which funds to select under an employer sponsored 401(k) plan. Current rules discourage employers from making professional advice available because fiduciary responsibilities are unclear and prohibited transaction laws may prevent agents of 401(k) plan administrators from making specific recommendations. If conferees adopt the House's version of investment advice reform, new opportunities will open for agents of plan administrators to give financial advice to rank and file workers—people in most need of financial advice.

Life Insurance/Annuity/Long-term Care Insurance Combinations

The House version of the pension bill also contains a proposal that has been in the works since 1991. If the Senate conferees agree, tax laws that currently tax life insurance or annuity withdrawals used to pay long-term care expenses directly, or the premiums on long-term care policies, will be fixed. The changes will also spur insurance companies to manufacture combinations of life insurance, annuities and long-term care insurance. The changes should make permanent life insurance and annuities even more flexible and valuable as vehicles that protect long-term individual and family security.

Flexible Spending Account Rollovers

The only thing more maddening than using unspent FSA money on another unneeded pair of eyeglasses by year's end is losing the money by not spending it at all. If House conferees have their way, that will stop. Unused money in FSAs could be rolled over from year to year. Agents in the employee benefits market will have one more arrow in their quiver to help employees build long-term financial security.

Business Use of Life Insurance

Using life insurance in various business settings has been under scrutiny since 1984. If a provision contained in the Senate version of the pension bill is accepted by the House, so-called industry best practices on the use of corporate owned life insurance (COLI) will be defined in tax law. Agents working in the business market will be able to rest easy when discussing how life insurance can solve critical business issues.

While many underlying issues in the pension bill are contentious, conferees hope to finish their work before April 15. If so, it is hoped NAIFA members will have four new reasons to temper the "tax day" blues.

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