



Session Dispatch (4/27/07)

2007 LEGISLATIVE SESSION

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LEGISLATIVE ACTION – WEEK #8

The end is in sight—this is the last week of the Regular Session. There has been some quiet rumbling about a Special Session to resolve property tax issues, but the Governor is optimistic that the Legislature will be able to find a solution to avoid the need for an extra Session.

This week, insurance was a big part of Senate and House action, and FAIFA enjoyed some significant victories. We headed off an amendment by representatives of a group of non-agents which would have authorized general lines, life, and health agents, and non-agents to offer “consulting” services to consumers and advise them about what insurance products they should buy. Here are more highlights from last week on matters of interest to FAIFA members:

FAIFA KILLS EFFORT BY NON-AGENTS TO OBTAIN BROKER EXEMPTION FROM AGENT LICENSURE

There was a move afoot to amend the Florida Insurance Code to create a broker-like exemption which would allow for so-called “unaffiliated insurance consultants” to advise consumers regarding purchase of insurance products. FAIFA stood up and stopped this very bad idea.

Such consultants could contact an agent’s clients and discuss their current insurance coverage, and in some instances would not be required to maintain a life and health agent’s license, and would not require appointment by any insurer.

As defined in the draft amendment, an “unaffiliated insurance consultant” means “a person who is not affiliated with any insurer and chooses to practice as an independent insurance consultant providing objective advice to the buyers of insurance and who [(1) is a licensed agent; (2) is not appointed by an insurer or other authorized appointing authority; (3) does not sell or service insurance on behalf of any insurer, insurance agent, or insurance agency; (4) does not receive any commissions or any direct or indirect compensation from an insurer for work done on behalf of an insurer, insurance agent, or insurance agency; and (5) has provided the Department of Financial Services certain credentials described further down in this summary.] Non-agents allowed to perform these functions would include the following:

- A person with an academic degree from an accredited college or university in risk management or insurance;
- A person who has taught a course in risk management or insurance as a professor at an accredited college or university;
- An attorney who is a member of the Florida Bar
- Persons meeting criteria that the Department of Financial Services (Department or DFS) would be authorized to create as it “deems proper.”

Representatives of a group of non-agents were proposing in a circulated draft amendment that DFS should recognize and register so-called “unaffiliated insurance consultants.” In addition to the non-agents mentioned above, insurance agents could also act as unaffiliated insurance consultants, and would not require an appointment. In order for an agent to qualify as an unaffiliated insurance consultant, the amendment requires that a general lines agent must have a CPCU, ARM, or CIC designation, a life or health agent must have a CLU or CEBS designation, and all such agents must have been licensed for a minimum of 2 years.

Initial qualification as an unaffiliated insurance consultant would have required a written request submitted to the Department in an acceptable form, as determined by DFS, under oath and signed by the applicant in which the applicant would certify that he or she meets the definition of unaffiliated insurance consultant and pay any applicable fees, which must be twice the amount of the fee that an insurer would pay for an agent’s original appointment. An agent would be required to pay a separate fee for each license for which he or she seeks qualification as an unaffiliated insurance consultant. Re-qualification would be on a biennial basis on a form acceptable to the Department accompanied by any applicable fee, which would be twice the amount of the fee that an insurer would pay for “continuation of an agent’s original appointment.”

An agent with multiple licenses for which he or she seeks qualification as an unaffiliated insurance consultant must pay a separate fee for continued qualification. The draft amendment prohibited an unaffiliated insurance consultant from: (1) holding himself or herself out as an agent of an insurer, (2) acting as a counter-signing agent for an insurer, or (3) holding himself or herself out as replacing the need for an appointed agent in the placement or sale of insurance.

FAIFA opposes this concept strongly in its current form. It appears to be instituting a “broker-like” system in Florida. Bringing up an issue like this near the end of Session without the time for review and consideration made the amendment even worse. We have alerted key members of the House and Senate, and stand ready to fight if it appears in the last week.

I expect to see this issue again next year.

COMMITTEE SUBSTITUTE FOR HOUSE BILL 411 - LIMITED INSURANCE LICENSE FOR TRAVEL PROTECTION BILL IS HEADED TO THE GOVERNOR'S DESK

Committee Substitute for HB 411 was passed by the Legislature and is ready to go to the Governor for his action; it has not yet been transmitted to the Governor, but will be in the near future. FAIFA successfully fought to have language amended into the bill which limits the time frame for travel protection insurance products to 60-day coverage. This was done to ensure this legislation would not allow an unlicensed person to compete in the marketplace with licensed agents in selling annual and permanent insurance providing similar coverage. You will recall that this bill replaces the personal accident insurance license with the travel insurance license, and replaces the baggage and motor vehicle excess liability insurance license with the motor vehicle rental insurance license. FAIFA lobbies to assure no limited licensee can directly and unfairly compete with our members.

PERSONAL INJURY PROTECTION REFORM—FAIFA SUPPORTS HOUSE APPROACH

The Senate passed Committee Substitute for Senate Bill 1880 in a form substantially different from previous versions. It still reenacts Florida's Motor Vehicle No-Fault Law ("PIP/No-Fault" or "No-Fault Law"), but provides for future repeal on January 1, 2012, preceded by a DFS/OIR-lead comprehensive review of PIP/No-Fault and its effect on insurance rates, auto insurance policyholders, health care providers, and the trial court system due by October 1, 2010.

The review must be prepared in consultation with various industry, health care provider, and plaintiff's attorney representatives, and review findings submitted in a report to the Governor, President of the Senate, and Speaker of the House of Representatives. The bill removes the fee schedule concept that was in its earlier versions. It now establishes several time lines, reporting, and data collection requirements relating to enforcement of the No-Fault law. Here is what must be reported, and the report time frame, if this bill becomes law: (1) By January 1 of each year, the state attorney in each judicial circuit that receives DFS funds for enforcing compliance with the No-Fault Law must report the number of referrals, convictions (including the number of months of confinement and probation a person is sentenced), victims, and amount of restitution ordered and collected for cases prosecuted during the previous state fiscal year. (2) The Department must collect insurance fraud information that involves the Florida Motor Vehicle No-Fault Law, as specified in the bill. (3) By February 13, 2008, and subsequent years, DFS must submit a report to the Governor, Senate President, and House Speaker of the state attorney information and No-Fault fraud-related data it is required, in the bill, to collect.

The bill, as it passed out of the Senate, appropriates to the Division of Insurance Fraud in DFS the amount of \$2,398,278 and 30 full-time positions for Senior Insurance Fraud Investigators at a minimum salary of \$46,262; all such investigators must be certified law enforcement officers. An additional \$408,000, and six positions, is appropriated to the Justice Administration Commission, specifically for enforcement of the No-Fault Law in Miami, Orlando, and Tampa. If it becomes law, the bill takes effect July 1, 2007. One good thing in the Senate bill, a fee schedule, was also removed, making this bill not our best option. This bill is sponsored by Senator Posey.

Last week, the House pulled its proposed PIP/No-Fault legislation into the Rules and Calendar Council and out of the Jobs and Entrepreneurship Council. The House bill, according to Council staff, is now designated House Bill 7215, formerly PCB RCC 07-07. However, the language now in this bill as the Council passed it on April 23, and it was introduced on April 26 relates only to issues pertaining to the Department of Highways Safety and Motor Vehicles. As it is the bill that staff is identifying for the PIP/No-Fault legislation, it must be amended to address those issues. Currently, there is no House bill filed that amends the provisions of the PIP/No-Fault law—only Senate bills. The House is obviously holding its language "close to the vest."

At this time I am unable to report further on how the House is addressing the PIP/No-Fault issues. The most recently available House PIP/No-Fault proposal, PCB JEC 07-08, provided for outright repeal of PIP/No-Fault effective October 1, 2007, and replaced PIP/No-Fault with \$15,000 in new mandatory coverage for post-accident care in emergency rooms, and a fee schedule that hospitals and other health care providers opposed. PIP clinics would not qualify for reimbursement under this scheme. FAIFA supports this approach strongly, which is being spearheaded by Representative Elyn Bogdanoff. FAIFA supports repeal of PIP, replacement with mandatory medical pay, and opposes the Senate position.

FAIFA supports repeal of PIP, as this would eliminate the rampant fraud that comes with it. However, given the Senate has passed a bill that reenacts PIP/No-Fault, and it is unclear what the House position is on PIP/No-Fault, there appears to be a good chance that we will have to continue living with it for some time to come. FAIFA is working to persuade lawmakers to find a different, and better, approach to auto insurance than what PIP/No-Fault offers.

SENATE BILL 266 – REGULATION OF MEDICARE SUPPLEMENTAL POLICIES

Committee Substitute for 97, removing certain insurance policies from the definition of "Medicare supplement policy," was passed by the House and Senate this week; it is on its way to the Governor. It proved to be controversial, and passed out of the Senate by a vote of 16 -14, followed by reconsideration of its passage, and then a 19-14 vote.

This bill excludes from the definition of "Medicare supplemental policy," those Medicare supplement policies offered by employers, employer groups, or trustees on behalf of employers or labor organizations. FAIFA supported an amendment to this bill to require any qualifying group to be comprised of at least 50 employees in Florida.

INSURANCE CONSUMER ADVOCATE BILL CLEARS SENATE—NOW IN HOUSE

The Senate passed legislation which substantially expands the power and authority of the Insurance Consumer Advocate. Committee Substitute for Senate 1884 is now in the House of Representatives. However, since there is no House companion, no legislation is poised to pass, although it might get amended onto another bill.

The Department of Financial Services Legislative Affairs staff said that the House and Senate have reached agreement to appropriate approximately \$280,000 and two positions to the Insurance Consumer Advocate. As a consequence of no new substantive legislation that expands the power and authority of the Insurance Consumer Advocate, the scope of Insurance Consumer Advocate's powers and authority will remain unchanged from what is currently authorized by law.

FREE INSURANCE

Committee Substitute for House Bill 1473, by Representative Don Brown, provides for offering free insurance to any consumer who purchases a service contract for electronic communications equipment such as a cell phone or pager. The bill is on the Calendar in the House of Representatives; its Senate companion, Committee Substitute for Senate Bill 1754, by Senator Posey is in the Senate Finance and Tax Committee.

The bill amends the Insurance Code's Unfair Methods of Competition and Unfair or Deceptive Acts or Practices law to add language that creates a new exception to the state's ban on free insurance; current law already provides seven (7) exceptions. Free insurance is currently prohibited under Florida law as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with such real or personal property.

The bill amends Florida's prohibition against free insurance to allow, as an exception, an entity to provide free insurance covering communications equipment if that entity provides such insurance to every person that purchases a service warranty covering the same equipment, as long as the entity does not provide free insurance to anyone that does not also purchase a service warranty for the same equipment. This language was amended onto a bill which creates an exception from the free insurance prohibition for insurance covering communications equipment, if: (1) the person paying for the insurance either has an ongoing contractual interest or other economic interest in the communications equipment; (2) requires the communications equipment to deliver its services; and (3) discloses the cost of the insurance at the time the communications equipment is sold. If the bill becomes law, it will take effect July 1, 2007.

FAIFA opposes all free insurance bills, as it removes the agent from the transaction, and because it is never really "free," instead the price is hidden in some other good or service.

MANDATES UPDATE

Governor Crist has positioned himself as a consumer champion. Consider his handling of property insurance, for example. Noting how the Governor handled property insurance matters, there is reasonable basis for concern that the insurance industry may, this year, experience the biggest expansion of mandated coverage in Florida that it has been exposed to in a long time. FAIFA continues to oppose additional health mandates which force increases in the cost of health care to Floridians.

The biggest mandate concern, in terms of fiscal impact, would be mental health parity, CS/HB 291, by Representative Ed Homan & CS/SB 1834, by Senator Dennis Jones; both bills remained in committee this week. Mental health parity would likely result in very heavy patient utilization of services and prescription drugs as well as high expenditures for insurers because of health care providers greater reliance on patient self-reporting of symptoms rather than the more reliable and less biased diagnoses based on established scientific tests and observation techniques. The House bill is in the Policy and Budget Council and the Senate bill is in the Children, Families, and Elder Affairs Committee. The fact that both bills are still in committee at this late point in the Session is an encouraging sign that this legislation may not pass this year, though there are procedural means available for advancing the bills to final passage.

Some of the other mandate bills which continue to move toward final passage and becoming law are:

--- House Bill 345 – Health Insurance/Prostate Cancer Coverage, by Representative Frank Peterman, now in the House Policy and Budget Council; the Senate companion bill, Committee Substitute for Senate Bill 110, by Senator Tony Hill, was on Special Order in the Senate on April 27;

--- Committee Substitute for House Bill 1001 – HMO Contract/Subscriber's Rights, Greg Evers, on the House Calendar; the Senate companion bill, SB 590, by Senator Burt Saunders, passed out the Senate on March 29, and has been in House Messages since April 11 awaiting House consideration;

--- House Bill 1105 – Cystic Fibrosis Treatment, by Representative Jimmy Patronis, has been in the Jobs and Entrepreneurship Council since April 11; its Senate companion, Senate Bill 274, by Senator Gwen Margolis, is on Special Order on April 30;

--- Committee Substitute for Committee Substitute for SB 2022 – Immunization Services, by Senator Michael Bennett, passed out of the Senate on April 27; its House companion, CS/HB 543, by Representative Juan Zapata, is in the Senate, and has been reference to the Senate Health Regulation and Senate Judiciary Committees.

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