Frontline

NAIFA | AALU | AHIA | AdvisorToday.com

Read *Frontline* online at www.naifa.org/frontline.

May 15, 2006 Vol. 4, No. 9

- **26 States Adopt Interstate Compact**
- **Association Health Plans Stall In Senate**
- **Estate Tax Vote Delayed**
- **IOLI Jettisoned From Tax Reconciliation Bill**
- **NAIFA Board Adopts Policy on Stranger-Owned Life Insurance (SOLI)**
- **Woods Expresses Industry Concerns Over Stranger-Owned Life Insurance at NAIC Hearing**

---

26 States Adopt Interstate Compact

The National Association of Insurance Commissioners (NAIC) has achieved a major milestone as 26 states have now adopted the Interstate Insurance Product Regulation Compact. The compact is the NAIC's leading initiative to reform state insurance regulation by improving speed-to-market for life, annuity, long-term care and disability income products.

The compact would enable those products to reach consumers faster by allowing companies to file new products in one place for approval in every state that enacts the compact law. NAIFA has strongly supported the compact, and NAIFA state associations around the country have pressed for its adoption so that new products satisfying uniform standards will be available sooner for agents to offer to their clients.

Twenty-six states were required to adopt the compact before the NAIC's model law could go into effect. The compact achieved its magic number this month, when legislatures in Georgia, Alaska and Ohio adopted the law (with gubernatorial signatures expected soon). Other states that have adopted the compact, which together are reported to represent 39 percent of the premium volume for the covered products, include Colorado, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Nebraska, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming. Further enactment of the compact may occur this year in Delaware, D.C., Massachusetts, Michigan, Minnesota, Missouri and New Jersey.

NAIFA hopes the compact will become law in every state, to make speed-to-market a reality for all agents and their clients. NAIFA members are urged to support the compact if it's introduced in their state, and to ask their insurance commissioners and state legislators to introduce the compact if it's not yet on their legislative agenda.

While this state legislative activity has been under way, the NAIC has been developing product standards and draft bylaws for the commission that will operate the compact's product review process. NAIFA submitted multiple comments on the various drafts of the bylaws to ensure the compact commission will operate in an open, fair and efficient manner. In particular, NAIFA succeeded in convincing the NAIC to give the agent community a formal role in the compact

commission, through representation on an insurance industry advisory committee, so that agents can help the commission develop appropriate product standards and review procedures. With 26 states now on board, the compact is expected to become operational in the near future.

Association Health Plans Stall In Senate

Lacking the votes to proceed, the U.S. Senate is poised to set aside work on a bill designed by its authors to help small businesses acquire employee health insurance. While intended to help small business, the bill would have changed fundamental insurance underwriting, pricing and mandated benefit rules established by most state legislatures that apply to all group health insurance plans — not just to those sponsored by associations.

The bill is S.1955, dubbed the Health Insurance Marketplace and Modernization and Affordability Act of 2006 by its authors, Sens. Mike Enzi (R-WY) and Ben Nelson (D-NE). S.1955 was intended to be a substitute for the House passed Association Health Plan (AHP) legislation, H.R. 525. The House has passed AHP legislation numerous times in the last 10 years, but the Senate has never followed suit. NAIFA and its health insurance division, AHIA, have consistently opposed the enactment of AHP legislation in the form passed by the House, but did not take a position on S.1955.

The House AHP legislation would preempt state solvency, regulatory oversight and mandated benefit and community rating laws for small group health insurance plans sponsored by associations — and only associations. All other health insurance plans would remain under current rules — state regulation for insured plans, U.S. Department of Labor for qualified self-funded plans. The House AHP bill would transfer oversight of small business association plans offered to diverse small employers to the U.S. Department of Labor. The bill sets very low capital requirements for AHPs.

The Enzi/Nelson bill would maintain established state solvency and regulatory standards, permitting associations to offer only fully insured plans. The bill would override state benefit mandate laws but substitute a requirement that all plans must offer plans that contain a comprehensive list of mandated benefits offered to employees of five of the most populous states. However, there would be no requirement to buy that package of benefits.

In all likelihood, the failure to proceed to a debate in the Senate ends the effort for the near term (though the November 7 elections) to improve the climate for employer provided health insurance, particularly in the small businesses market.

Estate Tax Vote Delayed

Some months ago, the Senate leadership promised to bring the bill to repeal the estate tax permanently to the Senate floor for a vote the week of May 7. It now looks like a vote on H.R.8 will not take place until June. The “press of other business” is usually cited as the reason for delay. Many people suspect another reason: there are not enough votes in the Senate (it would take 60) to approve repeal. That being the case, efforts are under way to seek a compromise but so far none has emerged.

Since Congress voted in 2001 to “repeal” the estate tax — forgetting for the moment that it comes roaring back in 2011 and that there is no step up in basis during the one actual repeal year of 2010 — AALU and NAIFA have supported reforming the estate tax rather than repealing it. AALU and NAIFA have proposed an individual exemption of $2.5 million and a top rate of 40-

45 percent as politically sustainable “reform” that will exempt 99.6 percent of all estates. Pro repeal supporters both in and out of Congress are pushing “reform” with a $5-7.5 million individual exemption and a 15 percent tax rate. At that level, almost all tax revenue generated by the estate tax would disappear in future years and would be tantamount to full repeal.

There is no telling at this time whether full repeal or compromise can be reached. Pure partisan politics as much as ever-expanding federal debt will undoubtedly enter the picture as the November 7 elections grow closer. In that partisan political environment it may not be possible to reach agreement on a sustainable solution.

IOLI Jettisoned From Tax Reconciliation Bill

The House and Senate have passed and forwarded to President Bush a $70 billion tax reduction bill, H.R. 4297. In doing so, House and Senate Conferees dropped a provision supported by the Treasury Department to put a stop to Investor Owned Life Insurance (IOLI) transactions. NAIFA and its coalition partners, AALU and ACLI, had asked the House and Senate tax writers to drop the IOLI provision because it went well beyond its intended target.

The reconciliation bill extends though 2010 the current law — 15 percent tax rate on capital gains and stock dividends. Without the extension, the 15 percent rate would have expired in 2008. The bill hit its budget law mandated $70 billion net revenue loss number by removing the income cap on Roth IRAs. Removing the cap is expected to spur conversions from traditional IRAs into Roth IRAs and therefore produce a revenue gain in the early years of the package. The President is expected to sign H.R. 4297 almost immediately.

IOLI transactions bring together pools of investors that use the insurable interest that charities and education institutions have in their donors to form investment pools using life insurance policies. NAIFA and the life insurance coalition hope to help legislators craft a narrowly focused alternative to the dropped provision for inclusion in future bills. One possibility is a major pension overhaul bill currently in conference between the House and Senate.

The IOLI issue has also been fought in several states in the last two years. One state legislature, Tennessee, adopted changes to its insurable interest law last year that enabled IOLI transactions in Tennessee. Since that occurred, NAIFA-Tennessee has worked tirelessly to reverse that decision. Today, congratulations are in order for the volunteer leaders of the Volunteer State, who this month finalized a successful effort to overturn last year’s change in Tennessee’s insurable interest law. Hooray for Tennessee!

NAIFA Board Adopts Policy on Stranger-Owned Life Insurance (SOLI)

On May 9, the NAIFA Board accepted the recommendation of NAIFA’s Government Relations Policy Formation Subcommittee and adopted a policy statement expressing serious concerns about certain life insurance practices commonly known as stranger-owned life insurance, or SOLI.

Under SOLI arrangements, investors with no traditional insurable interest in the prospective insured facilitate coverage on healthy older people and provide non-recourse financing to fund the premium payments. In a typical SOLI arrangement, the insured individual’s intent at the time

the policy is purchased is to transfer ownership of the policy, and the expiration of the policy's two-year incontestability period triggers a transfer of ownership or control of the policy to the investors, who will receive the death benefit when the insured dies.

NAIFA's concerns about SOLI practices are similar to our concerns about so-called investor-owned life insurance arrangements, in which an entity funded by private investors uses a charity's rights under insurable interest laws to take out life insurance that would otherwise not be available to that entity or its investors. Both practices are inconsistent with the intended purposes of state insurable interest statutes, and will erode principles designed to ensure that life insurance is used to protect the long-term interest of parties associated with the insured: families, businesses, business associates and/or charities. Over the past several years, NAIFA has worked in close cooperation with the broad life insurance industry, including AALU, NAILBA and ACLI, to oppose the loosening or circumventing of state insurable interest laws.

It is important to note that NAIFA's concerns do not extend to situations where there is: (1) full recourse or adequately collateralized non-recourse premium financing and the intent is for the long-term retention of the policy by one who has an insurable interest in the insured, or (2) a valid life settlement motivated by circumstances arising after the policy issuance.

A copy of the policy statement on stranger-owned life insurance is available online at www.naifa.org/advocacy/documents/soli2006.pdf.

Woods Expresses Industry Concerns Over Stranger-Owned Life Insurance at NAIC Hearing

Speaking on behalf of the National Association of Insurance and Financial Advisors (NAIFA), the Association for Advanced Life Underwriting (AALU) and the National Association of Independent Life Brokerage Agencies (NAILBA), NAIFA CEO David F. Woods, CLU, ChFC, LUTCF, told the National Association of Insurance Commissioners' Life Insurance and Annuities Committee at a May 3, 2006, public hearing that insurable interest laws should not "permit those who do not or should not enjoy such an interest to take out insurance on the insured, either directly or indirectly."

The NAIC Committee held the hearing to receive testimony regarding potential insurable interest issues in some premium finance programs, and to explore the connection, if any, between premium-financed policies and the mainstream life settlement industry.

Woods stated that life insurance insurable interest statutes have been enacted across the country to ensure that life insurance is taken out by those with a recognized, pre-existing interest in the life of an insured. This purpose is not accomplished if the intent from the outset is to sell the policy to someone who lacks insurable interest. Woods emphasized that the organizations' concern did not extend to "full recourse or adequately financed non-recourse premium finance arrangements where the motivation is to help the insured finance insurance that he or she needs and expects to keep." Nor was their concern with "settlements where the transaction was not contemplated in advance but is motivated by a change in circumstances."

Jim Poolman, chair of the NAIC's Life and Annuities Committee and Insurance Commissioner of North Dakota, stated at the end of the hearing that only a small portion of those requesting to testifying were able to do so. NAIFA's presence and testimony demonstrated, once again, the important role NAIFA and its partners (AALU & NAILBA) play when speaking with one voice on

important legislative matters. The hearing room was standing room only — probably close to 250 people.

The clear message from representatives from the life insurance industry was that “Stranger-Owned Life Insurance” is not something that should be allowed to continue. All the witnesses made the point in different ways but all ended up with the same conclusion. It needs to be stopped.

Representatives from the life settlement and premium financing industry were, somewhat reluctantly, in agreement that SOLI should be addressed but made sure to caution the regulators that any solution to SOLI should not in any way hinder “legitimate” premium financing activity or “legitimate” viatical/ life settlement activity. And, of course, that is the challenge for the regulators: Which activities are legitimate and which are not.

Commissioner Poolman indicated at the end of the hearing that he has received two proposals on how to address this question; One from the ACLI, NAIFA, AALU and NAILBA and the other from the life settlement industry, and both proposals make suggestions on ways to amend the NAIC’s Viatical Settlements Model Act. He invited others in the room to also submit to the Committee other proposals to deal with this issue. Regulators intend to deal quickly with the SOLI issue. The process by the NAIC will likely be concluded sometime at the end of this year or sooner.