



## Legislative Update

April 2007

### **SB 722 (Correa): Decedents' Estates: Judgments of Conviction – SPONSOR/SUPPORT**

NAIFA-California is pleased to inform our members that our sponsored bill, SB 722 (Correa), passed unanimously out of the Senate Judiciary Committee on Tuesday, March 27<sup>th</sup>.

SB 722 seeks to provide clarification in the Probate Code for disbursement of proceeds of life insurance. Under current law, a named beneficiary of a bond, life insurance policy or other contractual agreement who feloniously and intentionally kills the person upon whose life the policy is issued is not entitled to benefit from any of the foregoing and it becomes payable as though the killer had predeceased the decedent.

In recent cases, however, despite a conviction of murder, some attorneys have argued that a 'final judgment of conviction,' as necessitated under Probate Code 254, is not final until the defendant has exhausted all appeals in the penal case. Furthermore, Probate Code 254(a) and 254(b) refer to the 'final judgment of conviction,' but they do not define 'final judgment of conviction.' Without clarification in this area, in some cases, victims and their families have been subjected to a lengthy appeals process despite a conviction that ended with a guilty verdict.

In order to correct this injustice on behalf of its members' clients, NAIFA-California is sponsoring SB 722 by Senator Correa (D-Anaheim). By clarifying the Probate Code, SB 722 will help ensure that victims' families are able to secure the life insurance benefits of their murdered loved one rather than forcing them to endure further pain due to the lengthy appeals process.

SB 722 is now pending hearing on the Senate Floor. Upon approval by the Senate, it will be sent to the Assembly for hearing.

### **AB 1271 (Carter): Life Insurance – OPPOSE**

NAIFA-California is strongly opposed to AB 1271 (Carter), sponsored by the Department of Insurance, which would require an agent to prepare a contract comparison summary of the coverage provided by the existing and replacing insurers of a life insurance policy and would require that information be included in the replacement notice information concerning surrender charge penalties and interest rates.

For years, in an effort to help improve the annuity and life insurance marketplace in California, NAIFA-California has strongly supported efforts to provide appropriate product disclosures, enhance consumer protections, improve agent education, increase fines and penalties and fund enforcement actions. We have worked closely with the Department in their past efforts to protect the senior population, and consumers in general, but feel that their effort to pass SB 1271, which would impose yet another costly and overly burdensome disclosure requirement on agents and insurers, is unwarranted at this time.

For the past few years, NAIFA-California has supported efforts to pass the National Association of Insurance Commissioners' (NAIC) Senior Protection in Annuity Transactions Model to protect seniors in annuity transactions. These model regulations were finalized by the NAIC in September of 2003 and since that time NAIFA-California has strongly encouraged the Legislature and the DOI to pass the NAIC model.

In addition to supporting the NAIC Model, NAIFA-California actively participated in numerous policy hearings and meetings that resulted in the protections established by SB 620 (Scott) in 2003. We have also illustrated over the years our commitment to ensuring that life insurance and annuity products remain a valuable and safe investment tool for all California consumers while helping to make sure that sales practices are appropriate for all consumers. NAIFA-California worked with Senator Scott and the DOI on SB 618 in 2003 and SB 1273 in 2004 that enhanced the penalties for bad actors and AB 2316 (Chan) in 2004, which provided for a \$1 assessment on all life policies and annuities sold in California to enhance the DOI's investigations and enforcement efforts pertaining to the sale of life insurance and annuities.

According to the Department, AB 1271 will assist the Department achieve a more objective overview of the sales transaction and the information that was communicated to the consumer for placement of life insurance and annuity sales. However, there are numerous laws currently on the books pertaining to this specific issue. In fact, Insurance Code Section 10509.4 requires insurance agents to provide consumers with a notice regarding replacing their life insurance policy or annuity. The disclosure encourages the consumer to make a careful comparison of existing benefits and to contact the existing insurer or agent to make sure the consumer has the appropriate information to make the decision. In addition, Insurance Code Section 10509.8 states that it is a violation of the article if an agent or insurer recommends the replacement by use of materially inaccurate presentation. The code section also deems an unnecessary replacement as the sale of an annuity that requires the insured to pay a surrender charge for an annuity that is being replaced and that does not confer a substantial financial benefit over the life of the policy to the purchaser. If an agent violates this section then he or she is liable for an administrative penalty for no less than \$1,000 for the first offense.

NAIFA-California believes that AB 1271 is yet another example of the Department of Insurance trying to simply pass legislation in an effort to remove the bad actors from the industry instead of enforcing the laws and penalties currently in effect. AB 1271 will create yet another overly costly and burdensome disclosure requirement on the law abiding insurance agents and insurers that are providing valuable services within their communities. In addition, AB 1271 does a disservice to consumers by burying them in additional disclosures which will undoubtedly result in the disclosures not being given the attention by the consumers that the disclosures deserve.

NAIFA-California has argued that simply passing laws and promulgating regulations does not remove the bad actors from the business. The most effective way to remove bad actors from the marketplace is by the Department of Insurance taking the enforcement actions necessary to remove them from the business. The Legislature has given the Department the tools, penalties and funding necessary to punish the bad actors and the burden should now be on the DOI to prove that they are willing and able to do the job.

AB 1271 is scheduled for hearing in the Assembly Insurance Committee on Wednesday, April 25<sup>th</sup>. NAIFA-California is adamantly opposed to the bill in its current form and will continue to work with the Department to address our concerns prior to the bill being heard on the 25<sup>th</sup>.

***If you have any questions regarding any of the topics mentioned in this report, or others not mentioned, please contact Shari McHugh or Dawn Sanders Koepke at 916/440-0850. Thank you!***