



Legislative Update

November 2009

SB 98 (Calderon) – Stranger Originated Life Insurance – STOLI

SIGNED

NAIFA-California is pleased to report the Governor signed this very important legislation on October 11. This follows many months of efforts to reform this largely unregulated area of life insurance.

After last year's STOLI bill, SB 1543 (Machado), was vetoed, there were extensive discussions between the life insurance, life settlement industries and associated interest groups that resulted in amendments being taken to remove the one opponent from last year that we believed to be the main reason for the Governor's veto. Unfortunately, the amendments that were taken resulted in a few insurance companies opposing the bill. However, regardless of the opposition, SB 98 moved its way through the process with overwhelming bi-partisan support.

SB 98 goes into effect on January 1, 2010 and will do the following:

- Extend reasonable regulation to a relatively new, multi-billion dollar industry that offers complex financial products to California's senior citizens. Life Settlements affect seniors' life insurance, estate and overall financial situation; require access to medical records and other sensitive financial information; and have unique tax consequences;
- Protect California consumers who choose to enter into life settlement transactions by enacting some 24 consumer disclosures, the absolute right to rescind, providing protection of the insured's medical records, requiring confidentiality of sensitive financial information and establishing licensing and disclosure requirements for all parties involved in life settlement transactions; and
- Make illegal the practice of STOLI and provides life insurers critical tools they do not currently possess to fight the abuse of life settlements and the state's insurable interest law.

AB 299 (Assembly Insurance Committee) – Website Removal

SIGNED

NAIFA-California is pleased the Governor signed AB 299 (Assembly Insurance Committee), which is a simple bill that makes a number of clarifying and technical amendments to the California Insurance Code (CIC).

One of the provisions in the bill will require the Department of Insurance (DOI) to remove or clarify each document, pleading or order that is posted on its website when an enforcement action against a licensee is withdrawn. Under current law, the DOI is required to post all enforcement actions against licensees on its website. There is no requirement, however, that the information be

removed from the website if the enforcement action is withdrawn. This has proven to be a problem in the marketplace because a competitor can copy and send to a prospective insurer or client a pleading from DOI's website that references an individual licensee even when an enforcement action has been withdrawn.

The disclosure of information by the DOI to the general public regarding licensees' conduct is an important public safeguard. However, continuing to post information that is inaccurate or out-of-date can be economically disastrous for a licensee. It is for this reason that NAIFA-California strongly urged the Governor to sign AB 299.

Other Legislative Victories in 2009...

AB 125 (DeLeon) – Open CalPERS to Private Sector Employees

OPPOSE

A bill that was opposed by NAIFA-California was held by the Senate Appropriations Committee due to the large price tag associated with its implementation. In an attempt to address the "savings gap" issue that exists in California, Assemblyman DeLeon (D-Los Angeles) introduced AB 125. The bill would have allowed CalPERS to offer Simple IRA plans and IRAs to private sector employees. As a result of the Senate Appropriations Committee's actions, AB 125 is "dead" for the year.

AB 989 (Block) – Private Cause of Action Against Agents

OPPOSE

NAIFA-California strongly opposed AB 989 (Block), which would have created a private cause of action for seniors who are "harmed" by an insurance agent and/or insurance company. If enacted, AB 989 would have transformed the Insurance Code into a class action vehicle for trial attorneys and result in insurance agents having to spend significant resources in order to defend themselves. Furthermore, the bill would have usurped the Insurance Commissioner's regulatory authority and undermined his ability to regulate consistently and effectively.

Based in part to NAIFA-California's opposition, the author decided not to try to move the bill in 2009 and to continue to work with the industry to see if there was another solution to the problems he sees in the marketplace.

AB 1521 (Jones) – Commission Disclosure

OPPOSE

Four years ago, the insurance agent and broker community was successful in defeating legislation sponsored by former Insurance Commissioner John Garamendi to impose fiduciary obligations on insurance brokers and enact mandatory disclosure of producer compensation. That legislation was in response to the investigation of the activities of large national brokers by former New York Attorney General Elliott Spitzer.

This past Spring, Assemblyman Dave Jones, candidate for Insurance Commissioner in 2010, introduced AB 1521 that would have required insurance agents to disclose all commissions received when selling health insurance products and create new fiduciary duties insurance agents would owe to their clients. Any compensation other than that amount disclosed would be prohibited under this bill.

NAIFA-California strongly opposed AB 1521 and managed to convince the author to amend his bill to remove all of the commission disclosure and fiduciary duty language. As amended, the bill simply codified current practice as it pertains to health insurers' relationships with their agents. As amended, NAIFA-California removed its opposition. Regardless of the industry's neutrality on the bill, the Senate Appropriations Committee held the bill and it failed to make its way to the Governor's desk.

Thanks to NAIFA-California's legislative team and the political involvement efforts of its members, 2009 was a very successful year for insurance agents and advisors doing business in California. Every agent and advisor NOT a member of NAIFA-California should thank every NAIFA-California dues paying member for protecting their businesses from burdensome and unnecessary legislation. It certainly pays to belong!

If you have any questions regarding any of the topics mentioned in this report, or others not mentioned, please contact Shari McHugh, Legislative Advocate for NAIFA-California, at 916/440-0850. Thank you!