Protecting Your Business

NAIFA Law and Government Relations Team

NAIFA's advocacy team is always at the forefront of initiatives designed to protect and advance your business interests. Here are some of the issues this ever-vigilant group is working on—from monitoring legislation that spells potential risk for the products you sell to opposing bills that clearly pose a threat.

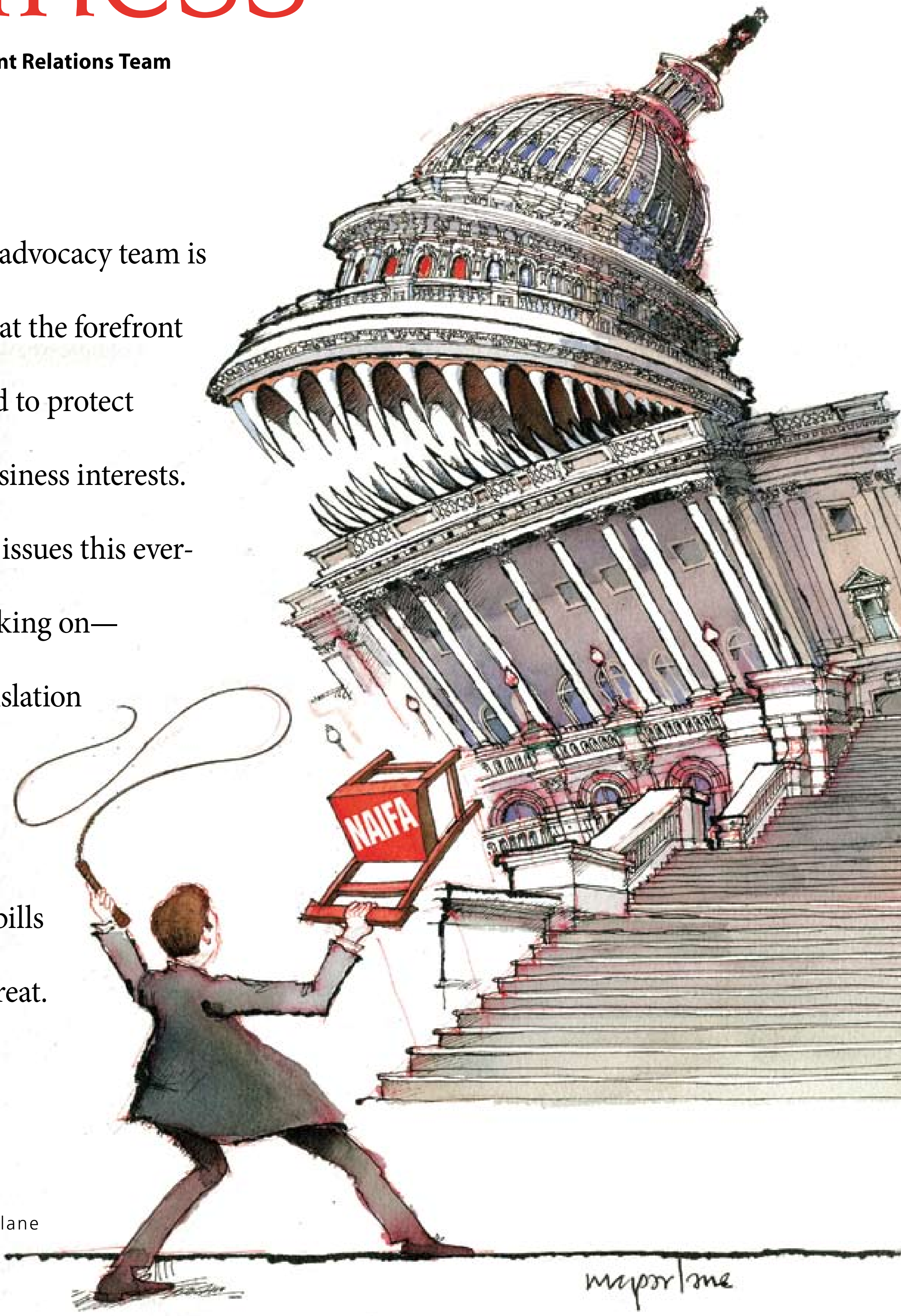

Illustration: Michael McParlane

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SUPPORTING McCARRAN FERGUSON

In 1945, Congress enacted the McCarran-Ferguson Act, which reserves to the states the authority to regulate the business of insurance. In enacting this legislation, Congress was reacting to a decision by the U.S. Supreme Court the year before, which declared insurance to be interstate commerce and therefore subject to federal antitrust laws. The McCarran Act gave insurers limited exemptions from enforcement of these laws, with the understanding that the states would enact a comprehensive scheme of state antitrust laws. All states quickly enacted individual Unfair Trade Practices Acts, based on a model act promulgated by the National Association of Insurance Commissioners (NAIC). NAIFA (then the National Association of Life Underwriters) played a critical role in assisting state legislatures in enacting these important consumer safeguards.

Over the years, Congress has attempted to amend or repeal the McCarran Act and NAIFA has succeeded in defeating these. This year, both houses of Congress introduced bills to amend this law, posing a grave threat to the continued state regulation of insurance.

In the post-Hurricane Katrina era, consumers filed many lawsuits against insurers who denied their claims because the damage was deemed to be caused by water instead of by wind. Two of those lawsuits involve members of Congress who lost their homes in the storm. The issue of wind versus water damage has led to scrutiny of the industry and allegations that some insurance companies used their federal antitrust exemption under the McCarran Act to band together and deny legitimate claims. As a result, the Insurance Industry Competition Act of 2007 has emerged in the House and Senate. The bills would repeal the limited antitrust exemption that insurers now receive and grant the Federal Trade Commission and the Department of Justice unlimited power to second guess the actions of the insurance industry's primary regulators—state insurance commissioners. Doing so would create an environment of regulatory uncertainty that would likely freeze progress toward innovative changes that would benefit everyone. It would also spawn a blizzard of lawsuits that will reopen hundreds of questions that had been settled over the years by prior litigation or regulation, including the current system of disclosure of agent commissions, a favorite target of some federal and state regulators. NAIFA opposes these bills and will continue to work hard against their enactment.

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MONITORING PAY-GO

Another challenge the industry is facing and on which the advocacy team is working is the Pay As You Go budget rules, generally referred to as Pay-Go. Both houses of Congress have adopted these rules as part of the budget process. Pay-Go requires that revenue must be found for every dollar of expense Congress authorizes. Congress had abandoned the Pay-Go rules when the Republicans were in the majority, but the Democratic majority has brought them back. What this means is that the tax benefits of life insurance and annuities will most assuredly be under scrutiny by the tax-writing committees of Congress since they represent a substantial amount of potential revenue loss for the government.

Former Senator and Chairman of the Senate Finance Committee Russell Long (D-La.) once said, "Don't tax you, and don't tax me, tax the man behind the tree!" In this environment, you risk being the "man behind the tree" because almost all of the products and services you sell come with tax "sales incentives." Life, health, disability income and long-term care insurance, as well as annuities and qualified and nonqualified retirement plans, could be targets if NAIFA does not fight to protect their tax treatment.

To illustrate this point, since January, NAIFA's advocacy team has battled a Senate proposal to cut back on the ability of even many rank-and-file employees to use nonqualified deferred compensation to augment their retirement saving. (Businesses often use life insurance to recoup deferred-compensation costs.) Reducing the tax advantages of deferred compensation was nominated to offset the cost of a proposed package of new tax benefits for small-business owners. With NAIFA's support, the House of Representatives insisted on dropping the deferred-compensation proposal. By April, the Senate agreed, but since then, there have been persistent rumors this will resurface in future legislation.

SUPPORTING INSURANCE SALES TO THE MILITARY

Last September, President Bush signed into federal law the Military Personnel Financial Services Act (S.418). This bill, which NAIFA supported, was enacted in response to allegations of unscrupulous sales by life insurance agents to members of the military. The bill requires the states to work together and, in connection with the Department of Defense (DOD), to develop new regulations regarding insurance sales to military personnel. The bill also requires NAIC to report to Congress its progress no later than September 2007.

NAIC has developed a draft model regulation to address this issue. NAIFA and the American Council of Life Insurers (ACLI) have submitted comments that urge NAIC to create a simple and straightforward standard not in conflict with existing laws and regulations. NAIFA is continuing these discussions with NAIC and hopes NAIC will adopt a final model regulation before the September deadline. NAIFA also hopes that NAIC will accept NAIFA and ACLI's recommendations, and that the final regulation will be one the entire industry can support.

SAYING NO TO STOLI

Stranger-owned life insurance has recently emerged as a major threat to the industry. STOLI is basically a way to get around state insurable interest laws to enable investors to own life insurance on strangers. This is accomplished by having the promoters of the STOLI transaction arrange for premium financing to help individuals purchase the policy. The key factor is that it is everyone's intent at the time the policy is initiated–including the insured's—for the policy to be sold to investors as soon as the incontestability period expires.

NAIFA opposes STOLI because it evades longstanding state insurable interest laws and turns insurance into just another investment commodity—a far cry from the legitimate purposes of life insurance. STOLI could lead to higher insurance costs for consumers and threaten the tax advantages of life insurance.

During the past two years, the advocacy team has focused its efforts on developing amendments to NAIC's Viatical Settlements Model Act designed to stop STOLI while not affecting legitimate insurance or life settlement transactions. Despite a major push by the life settlement and life finance industries to derail this effort, the full NAIC recently voted in favor of adopting the amendments to the model act. NAIFA, and its coalition partners at ACLI, AALU and NAILBA, played a key role in the NAIC efforts and will work toward the adoption of these amendments in the states.

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SPEEDING AHEAD WITH INTERSTATE COMPACT

This year, NAIFA's support for the interstate compact went into high gear as the association advanced the leading effort to improve insurance regulation. The compact's goal is to improve speed-to-market conditions for life, annuity, long-term care and disability income insurance products. The compact will allow companies to file new products for approval with one state-based entity—the compact commission—for sale in every state that enacts the compact law, rather than filing products separately state-by-state. NAIFA and state associations have pressed for the compact's adoption nationwide so that innovative products that satisfy a high uniform standard will be available for agents on a timely basis.

Thirty states have embraced the compact so far, and the compact commission held its first meeting last November. As a compact supporter from its inception and the leading association representing agents selling the products covered by the compact, NAIFA was named to the commission's interim industry advisory group last summer. In March, as the compact commission moved closer to opening its doors for product filings, NAIFA and AHIA were appointed as the only producer representatives on the commission's permanent Insurance Industry Advisory Committee. As members of this group, NAIFA and AHIA ensure that the agent viewpoint is heard. In the past year, NAIFA helped the compact commission develop operating procedures for product filings and appropriate standards for reviewing various life products. We look forward to seeing the compact commission accept its first product filings before the end of the year.

TEAMING UP WITH STEPTOE & JOHNSON

In addition to the advocacy team at NAIFA headquarters, NAIFA has a long-standing relationship with the attorneys of Steptoe & Johnson's government relations group. These experts provide in-depth experience on insurance and related tax and securities issues at the federal and state levels. Scott Sinder, a partner at Steptoe, has worked with NAIFA for over 16 years and has extensive experience working with Congress and federal agencies on insurance issues. John Fielding was a securities lawyer and served as NAIC's senior counsel for federal affairs before joining Sinder several years ago. Josh Wilsusen just joined the group from the House Financial Services Committee, where he handled securities and broker-dealer issues. Art Bailey brings tax expertise to support NAIFA's efforts to fight erosion of the tax advantages of life insurance, and Tom Bliley, the former chairman of the House Financial Services Committee, provides NAIFA with substantive knowledge and ready access to decision-makers.

NAIFA and Steptoe work together as a team to ensure that the issues important to NAIFA members are heard and understood by policymakers, and more importantly, that their interests are protected and advanced.

A CALL FOR ACTION

Although Paul Revere earned his living as a silversmith, he is best remembered for his volunteer work. This is not surprising. As Susan Ellis, author of *From The Top Down: the Executive Role in Volunteer Program Success*, wrote, all activism is volunteering because it's done above and beyond earning a living and deals with what people care passionately about. Fiber optic cable has replaced horses and you can't fit a tricorne over a Bluetooth earpiece, but the schema of participatory democracy is the same—if you want changes, you should get noticed by the people empowered to make those changes. NAIFA wants you to make yourself heard to your elected representatives. After all, how are they going to represent you if you don't tell them what you want? Petitioning your government is your right, and unfortunately, so is remaining passive and silent.

You have three precious opportunities to become active in advocacy—and we strongly encourage you to take advantage of them. The first is through the Political Action Committee (IFAPAC), you can make a financial contribution (from $50 to $5,000 per year) to a fund that supports candidates for elective office. The second is by joining the Advisors Political Involvement Committee (APIC) and becoming a contact to an elected representative. And the third is by responding to NAIFA Action Alerts. Fifteen-thousand NAIFA members already give to IFAPAC to support the campaigns of candidates who share NAIFA's business philosophies and 1,440 members participate in APIC by meeting with legislators in their districts and educating them on insurance and financial services matters. And thousands more send letters, phone calls and emails to their senators and representatives when NAIFA asks them to do so.

In the Pay-Go environment, financial products could be targets if NAIFA does not fight to protect their tax treatment.

If you want the decision-makers to take a stand on an issue that is important to the financial well-being of your clients and your business, you have to make your opinions known. Being part of IFAPAC and APIC and responding to Action Alerts are your most effective ways to accomplish this important goal. AT

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