NAIFA GovTalk

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Post-Impeachment, President Trump' SOTU Speech Calls for Paid Federal Leave, But Not For New Tax Cuts

On February 4, the day before the Senate acquitted President Trump of the House-passed impeachment charges, he delivered his third State of the Union (SOTU) speech. In it, he called for a federal paid leave program, but did not mention the new middle-class tax cuts bill he has said he plans to offer this summer.

Most of President Trump's SOTU speech focused on a litany of accomplishments over the past year. He talked about an increase in jobs, elimination of the Affordable Care Act (ACA) individual mandate penalty, the tax cuts contained in the Tax Cuts and Jobs Act (TCJA), and the regulatory reform that has been taking place across the federal agencies over the past three years. He also mentioned enactment of the U.S.-Mexico-Canada trade agreement, the strong economy, and his promise to be sure that Americans would not lose the current statutory protection they have from having their preexisting health conditions used against them in applying or paying for health insurance.

He specifically called for enactment of the S.2976, a bipartisan paid leave bill introduced by Sens. Bill Cassidy (R-LA) and Kyrsten Sinema (D-AZ). The Cassidy-Sinema bill would fund paid leave benefits by way of an up to $5,000 advance against the child tax credit. The advance would be repaid by reduced child tax credit amounts in future years. (Democrats, at this point, seem to prefer an insurance type federal program that would be funded by a payroll tax.)

The President was notably silent on his announced plan to propose a middle-class tax cut "this summer." But he did call for legislation to reduce the price of health care and prescription drugs. He also urged that Congress and the Administration work together to continue the "great American comeback."

Prospects: Despite the message delivered in his SOTU speech, it does not appear that Congress (especially the Democrat-controlled House) is likely to do more than pay lip service to working with the President (and vice versa). Rather, the acrimony from the impeachment proceedings does not yet appear to have dissipated at all—in fact, one could argue it's gotten worse, despite the Senate's acquittal votes (they were a pure party-line 53-47 on the charge of obstruction of Congress, and 52-48, with Sen. Mitt Romney (R-UT) voting with Democrats, on the charge of abuse of power). And, election-year politics are kicking in with ever-growing intensity as November draws closer. So, we don't expect a lot of enacted legislation this year.

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House Passes PRO Act

On February 6, the House of Representatives approved the PRO Act (H.R.2474), a bill that includes a new independent contractor test that could adversely impact life insurance agents who currently are not employees of the carriers whose products they sell. The vote was 224 to 193.

The “Protecting the Right to Organize Act” (the PRO Act for short) is primarily aimed at making it easier for unions to organize, but its “ABC test” for determining whether a worker is an employee or an independent contractor makes the bill a challenge for many NAIFA members and their companies.

Generally, the ABC test—which originated in what is now California law, although the California law does exempt insurance agents from its reach—provides that workers can be classified as independent contractors only if they are free from the control and direction of the entity for whom they are working—both under the contract of work and in fact; they perform work that is outside the usual course of the hiring entity’s business; and they are customarily engaged in an independently established trade or business that is of the same nature of the as the work performed by the hiring entity. Under this test, few if any insurance agents or brokers would be able to qualify as independent contractors.

Lobbying on the PRO Act is intense—generally, the business community strenuously opposes the measure, while organized labor strongly supports it. In fact, labor forces are telling lawmakers that they regard their vote on H.R.2474 as a “litmus test” if the unions are to support them in their reelection campaigns. On the other side, business groups are calling the bill a jobs killer and a crippler of the economy and are just as strongly encouraging lawmakers to oppose the bill.

Prospects: The PRO Act is a partisan, union-friendly bill that contains a variety of labor-supported reforms, including eased rules for union organizing. It also triggers other controversial issues (e.g., a definition of what constitutes joint employment, and repeal of state right-to-work laws). Thus, many in Washington—both on and off the Hill—view the PRO Act (and House approval of it) as more of a “message” than “real” legislation. It has virtually no chance for consideration, much less enactment, in the Senate.

However, it is already a presidential campaign issue and is likely to get considerable attention both this year and, if Democrats add strength by either taking the Senate or the White House in November, next year. It is, therefore, an issue important to NAIFA and our carriers. Efforts to exempt insurance agents from the ABC test will continue.

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President Signs Congress-Passed Temporary Government Funding Extension

On February 13, the National Association of Insurance Commissioners (NAIC) approved NAIFA-backed revisions to the Suitability in Annuity Transactions Model Regulation, clarifying that all recommendations by agents and insurers must be in the best interest of the consumer.

The revisions incorporate a "best interest" standard into the model revisions that require producers and insurers to satisfy requirements outlined in a care obligation, a disclosure obligation, a conflict of interest obligation, and a documentation obligation. The model revisions also include enhancements to the current model's supervision system to assist in compliance.

Nearly every state has adopted the previous model, which has been protecting consumers for 15 years. You can read the Blog post here.

Prospects: NAIFA will encourage state regulators and legislatures to swiftly adopt the revisions to the NAIC model. Our efforts, in partnership with industry partners, could see a dozen or more states do so in 2020.

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