InvestmentNews
The Leading News Source for Financial Advisers

Florida annuity proposal worries insurance industry

Provisions address surrender periods, fees, prison time for errant agents

By **Darla Mercado**
March 22, 2009

As Florida weighs proposed legislation that could make it easier to toss annuity salespeople into prison, agents and the insurance industry are rallying to fight the bill.

Florida's Senate Banking and Insurance Committee voted in favor of the proposed legislation, the Safeguard our Seniors Act, March 10. The three Democrats and six Republicans on the committee unanimously approved the measure, putting it two steps away from being taken up by the full Senate.

A similar Florida House bill, HB 981, is being considered by the Insurance, Business and Financial Affairs Policy Committee.

ONE BILL

If both passed, the state Senate and House would have to agree on one bill by May 1 that would become law by July 1.

Under the bill, which would apply to sales in Florida to people over 65, the surrender periods — or the length of time an investor must keep an annuity — would be set at a maximum of five years. The surrender fee — or what investors are charged for early withdrawal from the product — would be set at a maximum of 5% and would be lowered to 0% by the end of the fifth policy year. That could take a bite out of sales commissions, agents fear.

An additional provision would also hit agents and advisers with a third-degree felony charge and a maximum of five years in prison if they made misleading representations about a policy, which is known as "twisting," or if they encourage a client to surrender or withdraw from a product in order to buy another annuity, which is known as "churning."

Finally, the bill would give people over 65 a 60-day "free-look" period of the annuity, up from 14 days now.

Florida chief financial officer Alex Sink championed the proposed legislation as part of an overall campaign to protect the retirement community in the state.

"When you have a statewide officer pushing a bill, it always has a good shot at passage," said Curt Leonard, Tallahassee, Fla.-based regional vice president of state relations at the American Council of Life Insurers of Washington.

Insurance agents and the life insurance industry fear that if the proposal becomes law, it could cut into sales in a prime business area.

According to the ACLI, Florida accounted for $23.1 billion in direct annuity premiums in 2007, the latest year for which data are available.

That makes the state the third-largest source of annuity premiums, behind California, with $33.8 billion, and New York, with $26.6 billion.

Although other states have fraud penalties, none singles out annuities as the Florida legislation would, according to the ACLI.

"We always worry about the national impact of anything Florida does," Mr. Leonard said. "Lots of states take their cue from Florida."

The ACLI, the National Association for Fixed Annuities in Milwaukee and the National Association of Insurance and Financial Advisers of Falls Church, Va., have banded together to lobby locally against the Florida bill.

So far, NAIFA's Florida chapter has asked Ms. Sink, Florida's chief financial officer, to consider a maximum 10-year surrender period and 10% surrender charge limit, as opposed to the five-year and 5% limits originally proposed.

Meanwhile, the variable annuity trade group NAVA Inc. of Reston, Va., is tracking the issue but has no position on it right now, according to spokeswoman Kathleen Driscoll McKee.

Not only would a five-year, 5% rule discourage sales of many annuity products, it could also hurt clients' investments, opponents of the proposed legislation said.

"Annuities with longer surrender periods are the ones that will give you solid downside limitations," said Bob Lotane, communications director at NAIFA's Florida chapter.

NAIFA is also pushing for a 30-day free-look period.

"If the market falls through, you're protected," Mr. Lotane said. "If it does well, you get greater returns."

However, the industry's main concern is the five-year prison term and third-degree felony charge for dishonest sales to people over 65.

The felony charge would place the state attorney's office in charge of prosecuting those cases.

Currently, fraudulent sales tactics in Florida carry a misdemeanor charge if the victim is over 65.

Opponents of the rule proposal fear that agents who update a client's annuity by getting him or her to purchase a second, newer product, could face undue scrutiny, thus discouraging legitimate exchanges. NAIFA is calling for clarified definitions of what constitutes fraudulent behavior, but said that it firmly stands against churning and twisting.

"New products roll out often, and one man's suitable sale is another man's unsuitable sale," Mr. Leonard said. "We have told [legislators] publicly and privately that if they came up with a penalty that everyone cringes at, a lot of agents could easily say, 'We won't go there.'"

That opinion resonates with some agents and financial advisers, who said that there are situations in which older individuals with the appropriate means could benefit from some equity exposure through a variable annuity or through laddering different annuity products.

"You can sit with two people aged 65: A five/five product might be suitable for one, and a 10/10 would be suitable for the other because that person has more flexibility and reserves," said Donald Allen Brown, an insurance agent with Brown and Associates in Miami and a past president of NAIFA's Florida chapter.

FRAUD STANDARDS

As for the fraud standards, he added: "The guy who forgot to get a piece of paper signed shouldn't be held to the same standard as the guy who's ripping people off."

Still, other advisers applauded the bill, some having come across clients in their 70s who are saddled with annuities that have 20-year surrender periods and 20% surrender charges.

"Reducing the compensation and shortening surrender sounds like a positive, and more consumers should be interested," said Chris Toadvine, an adviser at Toadvine & Associates in Orlando, Fla., and chairman of the Denver-based Financial Planning Association's Central Florida chapter. "I think to the degree that the annuity manufacturers can bring fees and expenses down, then the annuities can be looked at as a risk management tool and be incorporated into a plan."

Mr. Toadvine thinks that the 10/10 option that the industry has pitched is too high and too long.

Others agree.

"Over my 22 years as an agent and two decades as a planner, I've seen too many examples of abuse," said Howard A. Kramer, an adviser at H.A. Kramer & Associates PA in Plantation, Fla. He is also president of the FPA's Broward County chapter in that state.

"I don't think the legislation is a problem. If full disclosure is made on the benefits and downside of product replacement, and the clients get it, the agents will sell more products instead of being deceptive," Mr. Kramer said.

E-mail Darla Mercado at dmercado@investmentnews.com.

About Us | Contact Us | Search | Editorial Calendar | Advertise

Subscriber Services: Subscribe | Renew | Subscription Status | Pay an Invoice | Change Mail Address

Reprints | List Rental | Issue Index | Privacy Policy | Terms & Conditions

Crain Financial Group: Pensions & Investments | FinancialWeek | Workforce Management