

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2420 Session of 2010

INTRODUCED BY MARKOSEK, BRENNAN, CALTAGIRONE, COHEN, DALEY, DeLUCA, DeWEESE, FABRIZIO, FREEMAN, GINGRICH, GOODMAN, GRUCELA, HESS, HORNAMAN, KILLION, KNOWLES, KORTZ, KOTIK, LONGIETTI, MELIO, MILLER, MURT, MUSTIO, O'NEILL, PASHINSKI, PHILLIPS, READSHAW, SANTONI, SIPTROTH, STABACK, SWANGER, D. COSTA, R. TAYLOR, JOSEPHS, WHITE, SOLOBAY, MOUL, YOUNGBLOOD, MILNE, BRADFORD AND SAINATO, APRIL 15, 2010

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 29, 2010

AN ACT

1 Providing for the regulation of senior-specific certifications
2 and professional designations in the sale of life insurance
3 and annuities; AUTHORIZING THE INSURANCE DEPARTMENT TO
4 PROMULGATE A REGULATION; and imposing penalties. ←

5 WHEREAS, Pennsylvania has the third-largest percentage of
6 elderly population in the country; and

7 WHEREAS, Approximately 2.5 million Pennsylvanians are 60
8 years of age or older and more than 310,000 Pennsylvanians are
9 85 years of age or older; and

10 WHEREAS, Over the next ten years, the number of citizens who
11 will be at least 60 years of age is projected to increase by
12 more than 27% to approximately 3.2 million citizens, and the
13 number of citizens who will be at least 85 years of age is
14 projected to increase by more than 16% to approximately 365,000;
15 and

16 WHEREAS, The Federal Bureau of Investigation (FBI) has

1 reported that older citizens are most likely to have
2 considerable savings, own a home and have excellent credit, all
3 of which unscrupulous individuals target for theft; and

4 WHEREAS, Individuals attempting to steal these assets will
5 focus their efforts on older citizens since they are most likely
6 in a financial position to make considerable purchases; and

7 WHEREAS, The FBI has also stated that older citizens are less
8 likely to report being defrauded because:

9 (1) they do not know where to report it;

10 (2) they are too ashamed at having been defrauded; or

11 (3) they do not know they have been defrauded; and

12 WHEREAS, In some cases, elderly victims may not report being
13 defrauded out of concern relatives may conclude they no longer
14 have the mental capacity to manage their own financial affairs;
15 and

16 WHEREAS, When an elderly victim does report the crime, the
17 FBI has found they are often unreliable as a witness; and

18 WHEREAS, Individuals attempting to take advantage of senior
19 citizens are keenly aware of the effects of age on memory and
20 the strong possibility the elderly victim will be unable to
21 supply investigators with adequate information to build a case
22 for a successful prosecution; and

23 WHEREAS, By virtue of the act of November 6, 1987 (P.L.381,
24 No.79), known as the Older Adults Protective Services Act, the
25 policy of the Commonwealth is to provide for the detection and
26 reduction, correction or elimination of abuse, neglect,
27 exploitation and abandonment, and to establish a program of
28 protective services for older adults in need of them.

29 The General Assembly of the Commonwealth of Pennsylvania
30 hereby enacts as follows:

1 Section 1. Purpose.

2 The purpose of this act is to set standards to protect
3 consumers from misleading and fraudulent marketing practices
4 regarding the use of senior-specific certifications and
5 professional designations in the solicitation, sale or purchase
6 of or advice made in connection with a life insurance or annuity
7 product.

8 Section 2. Scope.

9 This act shall apply to any solicitation, sale or purchase of
10 or advice made in connection with a life insurance or annuity
11 product by an insurance producer.

12 Section 3. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Commissioner." The Insurance Commissioner of the
17 Commonwealth.

18 "Department." The Insurance Department of the Commonwealth.

19 "Insurance producer." A person required to be licensed under
20 the laws of this Commonwealth to sell, solicit or negotiate
21 insurance, including annuities.

22 Section 4. Prohibitions.

23 (a) Senior-specific certification or professional
24 designation.--It shall be an unfair method of competition and an
25 unfair or deceptive act or practice in the business of insurance
26 within the act of July 22, 1974 (P.L.589, No.205), known as the
27 Unfair Insurance Practices Act, for an insurance producer to use
28 a senior-specific certification or professional designation that
29 indicates or implies, in a way misleading to a purchaser or
30 prospective purchaser, the insurance producer has special

1 certification or training in advising or servicing seniors in
2 connection with the solicitation, sale or purchase of a life
3 insurance or annuity product or in the provision of advice as to
4 the value of or the advisability of purchasing or selling a life
5 insurance or annuity product, either directly or indirectly
6 through publications or writings, or by issuing or promulgating
7 analyses or reports related to a life insurance or annuity
8 product.

9 (b) Specific prohibitions.--The prohibited use of senior-
10 specific certifications or professional designations includes,
11 but is not limited to, the following:

12 (1) Use of a certification or professional designation
13 by an insurance producer who has not earned or is otherwise
14 ineligible to use the certification or designation.

15 (2) Use of a nonexistent or self-conferred certification
16 or professional designation.

17 (3) Use of a certification or professional designation
18 that indicates or implies a level of occupational
19 qualifications obtained through education, training or
20 experience that the insurance producer using the
21 certification or designation does not have.

22 (4) Use of a certification or professional designation
23 that was obtained from a certifying or designating
24 organization that:

25 (i) is primarily engaged in the business of
26 instruction in sales or marketing;

27 (ii) does not have reasonable standards or
28 procedures for assuring the competency of its
29 certificants or designees;

30 (iii) does not have reasonable standards or

1 procedures for monitoring and disciplining its
2 certificants or designees for improper or unethical
3 conduct; or

4 (iv) does not have reasonable continuing education
5 requirements for its certificants or designees in order
6 to maintain the certificate or designation.

7 (c) Applicability.--A job title within an organization that
8 is licensed or registered by a Federal or State financial
9 services regulatory agency is not a certification or
10 professional designation unless it is used in a manner that
11 would confuse or mislead a reasonable consumer when the job
12 title:

13 (1) indicates seniority or standing within an
14 organization; or

15 (2) specifies an individual's area of specialization
16 within the organization.

17 (d) Definition.--As used in this section, the term
18 "financial services regulatory agency" means a government agency
19 that includes, but is not limited to, an entity regulating:

20 (1) insurers;

21 (2) insurance producers;

22 (3) broker-dealers;

23 (4) investment advisors; or

24 (5) investment companies as defined under the Investment
25 Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et
26 seq.).

27 Section 5. Rebuttable presumption.

28 (a) Criteria.--There is a rebuttable presumption that a
29 certifying or designating organization is not disqualified
30 solely for purposes of subsection (b)(4) when the certification

1 or designation issued from the organization does not primarily
2 apply to sales or marketing and when the organization or the
3 certification or designation in question has been accredited by:

4 (1) the American National Standards Institute (ANSI);

5 (2) the National Commission for Certifying Agencies
6 (NCCA); or

7 (3) an organization that is on the United States
8 Department of Education's list entitled "Accrediting Agencies
9 Recognized for Title IV Purposes."

10 (b) Determination.--In determining whether a combination of
11 words or an acronym standing for a combination of words
12 constitutes a certification or professional designation
13 indicating or implying that a person has special certification
14 or training in advising or servicing seniors, factors to be
15 considered shall include:

16 (1) The use of one or more words such as "senior,"
17 "retirement," "elder" or like words combined with one or more
18 words such as "certified," "registered," "chartered,"
19 "advisor," "specialist," "consultant," "planner" or like
20 words in the name of the certification or professional
21 designation.

22 (2) The manner in which those words are combined.

23 Section 6. Enforcement.

24 (a) Penalties and remedies.--Upon a determination by hearing
25 that this act was violated, the commissioner may pursue one or
26 more of the following courses of action:

27 (1) Issue an order requiring the person in violation to
28 cease and desist from engaging in the violation.

29 (2) Suspend or revoke or refuse to issue or renew the
30 certificate or license of the person in violation.

(3) Impose a civil penalty of no more than \$5,000 for each violation.

(4) Impose another penalty or remedy deemed appropriate by the commissioner, including restitution.

(b) Other remedies.--The enforcement remedies imposed under this section are in addition to any other remedies or penalties that may be imposed by any other applicable statute.

Section 7. Existing licenses and designations.

Nothing in this act shall be construed to affect existing licenses and designations issued and approved by the department.

SECTION 8. PROHIBITED LIST.

THE DEPARTMENT MAY PROMULGATE A LIST OF PROHIBITED SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS, THE USE OF WHICH BY AN INSURANCE PRODUCER SHALL CONSTITUTE A VIOLATION OF THIS ACT.

Section 20. Effective date.

This act shall take effect in 60 days.