

Chapter 604

(Senate Bill 774)

AN ACT concerning

~~Life and Health Insurance – Senior Investment Protection~~ Insurance Producers – Use of Senior or Retiree Credential or Designation

FOR the purpose of prohibiting ~~a person~~ an insurance producer from using a ~~senior-specific certification or professional~~ senior or retiree credential or designation in a way that is or would mislead a purchaser of life insurance, health insurance, or an annuity about certain matters; stating the intent of this Act; requiring the Maryland Insurance Commissioner to specify certain misleading uses of certain certifications and designations by regulation or order; providing that certain uses shall be specified as being misleading under this Act; requiring the Commissioner to consult with the Securities Commissioner of the Securities Division on certain matters; establishing a rebuttable presumption concerning certain organizations that issue certain certifications and designations; establishing certain factors to consider in interpreting certain certifications and designations; establishing a penalty for violating this Act, including imprisonment and a fine; providing for the application of this Act; providing for the construction of this Act, including certain conflict of laws; defining certain terms; and generally relating to the sale and purchase of life insurance, health insurance, and annuities be misleading in connection with the offer, sale, or purchase of insurance life insurance, health insurance, or annuities; requiring the Maryland Insurance Commissioner, in consultation with the Securities Commissioner of the Division of Securities in the Office of the Attorney General, to adopt certain regulations; providing that the regulations may contain certain exemptions under certain circumstances; providing that a violation of this Act constitutes a lack of trustworthiness for the purposes of certain provisions of law; providing for the construction of this Act; and generally relating to the offer, sale, and purchase of insurance.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 27–201
Annotated Code of Maryland
(2006 Replacement Volume and 2009 Supplement)

BY adding to
Article – Insurance
Section 27–223
Annotated Code of Maryland
(2006 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

27-201.

The commission of an act prohibited under this subtitle is defined as an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

27-223.

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) “FINANCIAL SERVICES REGULATORY AGENCY” INCLUDES A UNIT THAT REGULATES INSURERS, INSURANCE AGENTS, BROKER DEALERS, INVESTMENT ADVISERS, OR INVESTMENT COMPANIES AS DEFINED UNDER THE FEDERAL INVESTMENT COMPANY ACT OF 1940.~~

~~(3) “HEALTH INSURANCE” MEANS A POLICY OF INDIVIDUAL OR GROUP SICKNESS AND ACCIDENT INSURANCE, LONG TERM CARE INSURANCE, MEDICARE ADVANTAGE, MEDICARE SUPPLEMENT, OR MEDICARE PART D.~~

~~(B) IT IS THE INTENT OF THIS SECTION TO SET FORTH STANDARDS TO PROTECT CONSUMERS FROM DISHONEST, DECEPTIVE, MISLEADING, AND FRAUDULENT TRADE PRACTICES IN THE USE OF SENIOR SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS IN THE MARKETING, SOLICITATION, NEGOTIATION, SALE, AND PURCHASE OF, AND ADVICE GIVEN IN CONNECTION WITH, LIFE INSURANCE, HEALTH INSURANCE, AND ANNUITIES.~~

~~(C) THIS SECTION APPLIES TO ANY SOLICITATION, SALE, OR PURCHASE OF, OR ADVICE GIVEN IN CONNECTION WITH, LIFE INSURANCE, HEALTH INSURANCE, OR AN ANNUITY BY A PERSON.~~

~~(D) A PERSON MAY NOT USE A SENIOR SPECIFIC CERTIFICATION OR PROFESSIONAL DESIGNATION THAT INDICATES OR IMPLIES, IN A WAY THAT IS OR WOULD BE MISLEADING TO A PURCHASER OR PROSPECTIVE PURCHASER, THAT THE PERSON HAS SPECIAL CERTIFICATION OR TRAINING IN ADVISING OR PROVIDING SERVICES TO SENIORS IN CONNECTION WITH THE MARKETING, NEGOTIATING, SOLICITING, SELLING, OR PURCHASING OF LIFE INSURANCE, HEALTH INSURANCE, OR AN ANNUITY OR IN PROVIDING ADVICE AS TO THE~~

~~VALUE OF OR THE ADVISABILITY OF PURCHASING LIFE INSURANCE, HEALTH INSURANCE, OR AN ANNUITY, EITHER DIRECTLY OR INDIRECTLY, THROUGH PUBLICATIONS OR WRITINGS, OR BY ISSUING OR PUBLISHING ANALYSES OR REPORTS RELATED TO LIFE INSURANCE, HEALTH INSURANCE, OR AN ANNUITY.~~

~~(E) (1) BY REGULATION OR ORDER, THE COMMISSIONER SHALL SPECIFY WHAT CONSTITUTES A MISLEADING USE OF A SENIOR SPECIFIC CERTIFICATION OR PROFESSIONAL DESIGNATION FOR PURPOSES OF SUBSECTION (D) OF THIS SECTION.~~

~~(2) THE MISLEADING USES SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:~~

~~(I) USE OF A CERTIFICATION OR PROFESSIONAL DESIGNATION BY A PERSON WHO HAS NOT ACTUALLY EARNED OR IS OTHERWISE INELIGIBLE TO USE THE CERTIFICATION OR DESIGNATION;~~

~~(II) USE OF A NONEXISTENT OR SELF-CONFERRED CERTIFICATION OR PROFESSIONAL DESIGNATION;~~

~~(III) USE OF A CERTIFICATION OR PROFESSIONAL DESIGNATION THAT INDICATES OR IMPLIES A LEVEL OF OCCUPATIONAL QUALIFICATIONS OBTAINED THROUGH EDUCATION, TRAINING, OR EXPERIENCE THAT THE PERSON USING THE CERTIFICATION OR DESIGNATION DOES NOT HAVE; AND~~

~~(IV) USE OF A CERTIFICATION OR PROFESSIONAL DESIGNATION THAT WAS OBTAINED FROM A CERTIFYING OR DESIGNATING ORGANIZATION THAT:~~

~~1. IS PRIMARILY ENGAGED IN THE BUSINESS OF INSTRUCTION IN SALES OR MARKETING;~~

~~2. DOES NOT HAVE REASONABLE STANDARDS OR PROCEDURES FOR ASSURING THE COMPETENCY OF THOSE CERTIFIED OR DESIGNATED;~~

~~3. DOES NOT HAVE REASONABLE STANDARDS OR PROCEDURES FOR MONITORING AND DISCIPLINING THOSE CERTIFIED OR DESIGNATED FOR IMPROPER OR UNETHICAL CONDUCT; OR~~

~~4. DOES NOT HAVE REASONABLE CONTINUING EDUCATION REQUIREMENTS FOR THOSE CERTIFIED OR DESIGNATED IN ORDER TO MAINTAIN THE CERTIFICATE OR DESIGNATION.~~

~~(3) IN SPECIFYING MISLEADING USES UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL CONSULT WITH THE SECURITIES COMMISSIONER OF THE SECURITIES DIVISION IN ORDER TO ESTABLISH WHICH ACTS MAY BE CONSIDERED VIOLATIONS OF THIS SECTION AND WHICH MAY BE CONSIDERED VIOLATIONS OF § 11-305 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.~~

~~(F) THERE IS A REBUTTABLE PRESUMPTION THAT A CERTIFYING OR DESIGNATING ORGANIZATION IS NOT DISQUALIFIED UNDER THIS SECTION IF:~~

~~(1) THE CERTIFICATION OR DESIGNATION ISSUED FROM THE ORGANIZATION DOES NOT PRIMARILY APPLY TO SALES OR MARKETING; AND~~

~~(2) THE ORGANIZATION OR THE CERTIFICATION OR DESIGNATION IN QUESTION HAS BEEN ACCREDITED BY ONE OF THE FOLLOWING ACCREDITING ENTITIES:~~

~~(I) THE AMERICAN NATIONAL STANDARDS INSTITUTE (“ANSI”);~~

~~(II) THE NATIONAL COMMISSION FOR CERTIFYING AGENCIES; OR~~

~~(III) AN ORGANIZATION THAT IS ON THE U.S. DEPARTMENT OF EDUCATION’S LIST ENTITLED “ACCREDITING AGENCIES RECOGNIZED FOR TITLE IV PURPOSES”.~~

~~(G) (1) IN DETERMINING WHETHER A COMBINATION OF WORDS OR AN ACRONYM STANDING FOR A COMBINATION OF WORDS CONSTITUTES A CERTIFICATION OR PROFESSIONAL DESIGNATION INDICATING OR IMPLYING THAT A PERSON HAS SPECIAL CERTIFICATION OR TRAINING IN ADVISING OR SERVICING SENIORS, FACTORS TO BE CONSIDERED SHALL INCLUDE:~~

~~(I) USE OF ONE OR MORE WORDS SUCH AS “SENIOR”, “RETIREMENT”, “ELDER”, OR SIMILAR WORDS COMBINED WITH ONE OR MORE WORDS SUCH AS “CERTIFIED”, “REGISTERED”, “CHARTERED”, “ADVISOR”, “SPECIALIST”, “CONSULTANT”, “PLANNER”, OR SIMILAR WORDS, IN THE NAME OF THE CERTIFICATION OR PROFESSIONAL DESIGNATION; AND~~

~~(II) THE MANNER IN WHICH THOSE WORDS ARE COMBINED.~~

~~(2) FOR PURPOSES OF THIS SECTION, A JOB TITLE WITHIN AN ORGANIZATION THAT IS LICENSED OR REGISTERED BY A STATE OR FEDERAL FINANCIAL SERVICES REGULATORY AGENCY IS NOT A CERTIFICATION OR PROFESSIONAL DESIGNATION, UNLESS THE JOB TITLE IS USED IN A MANNER THAT WOULD CONFUSE OR MISLEAD A REASONABLE CONSUMER, WHEN THE JOB TITLE:~~

~~(i) INDICATES SENIORITY OR STANDING WITHIN THE ORGANIZATION; OR~~

~~(ii) SPECIFIES AN INDIVIDUAL'S AREA OF SPECIALIZATION WITHIN THE ORGANIZATION.~~

~~(H) (1) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A PERSON THAT WILLFULLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$100,000 OR BOTH.~~

~~(2) EACH VIOLATION OF THIS SECTION IS A SEPARATE VIOLATION.~~

~~(i) (1) NOTHING IN THIS SECTION LIMITS THE AUTHORITY OF THE COMMISSIONER TO ENFORCE ANY OTHER LAW.~~

~~(2) IN CASE OF A CONFLICT BETWEEN THIS SECTION AND § 11-305 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, THIS SECTION CONTROLS.~~

(A) IT IS UNLAWFUL FOR ANY INSURANCE PRODUCER TO USE A SENIOR OR RETIREE CREDENTIAL OR DESIGNATION IN A WAY THAT IS OR WOULD BE MISLEADING IN CONNECTION WITH THE OFFER, SALE, OR PURCHASE OF INSURANCE LIFE INSURANCE, HEALTH INSURANCE, OR ANNUITIES.

(B) (1) THE COMMISSIONER, IN CONSULTATION WITH THE SECURITIES COMMISSIONER OF THE DIVISION OF SECURITIES IN THE OFFICE OF THE ATTORNEY GENERAL, SHALL ADOPT REGULATIONS TO DEFINE WHAT CONSTITUTES A MISLEADING USE OF A SENIOR OR RETIREE CREDENTIAL OR DESIGNATION FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION.

(2) THE REGULATIONS ADOPTED BY THE COMMISSIONER MAY PROVIDE EXEMPTIONS FROM SUBSECTION (A) OF THIS SECTION, IF THE EXEMPTIONS ARE CONSISTENT WITH THE PUBLIC INTEREST AND WITHIN THE PURPOSES INTENDED BY THE POLICY AND PROVISIONS OF THIS TITLE.

(C) A VIOLATION OF SUBSECTION (A) OF THIS SECTION CONSTITUTES A LACK OF TRUSTWORTHINESS FOR THE PURPOSES OF § 10-126(A)(13) OF THIS ARTICLE.

(D) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT ANY POWERS OF THE COMMISSIONER GRANTED UNDER THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.

Approved by the Governor, May 20, 2010.