

SENATE BILL 774

C3, C4

01r2324
CF HB 882

By: **Senators Kramer, Conway, Currie, Della, Forehand, Jacobs, Jones, Kelley, King, Klausmeier, Lenett, Madaleno, Middleton, Muse, Peters, Pugh, Raskin, Robey, Rosapepe, Stoltzfus, and Stone**

Introduced and read first time: February 10, 2010

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Life and Health Insurance – Senior Investment Protection**

3 FOR the purpose of prohibiting a person from using a senior-specific certification or
4 professional designation in a way that would mislead a purchaser of life
5 insurance, health insurance, or an annuity about certain matters; stating the
6 intent of this Act; requiring the Maryland Insurance Commissioner to specify
7 certain misleading uses of certain certifications and designations by regulation
8 or order; providing that certain uses shall be specified as being misleading
9 under this Act; requiring the Commissioner to consult with the Securities
10 Commissioner of the Securities Division on certain matters; establishing a
11 rebuttable presumption concerning certain organizations that issue certain
12 certifications and designations; establishing certain factors to consider in
13 interpreting certain certifications and designations; establishing a penalty for
14 violating this Act, including imprisonment and a fine; providing for the
15 application of this Act; providing for the construction of this Act, including
16 certain conflict of laws; defining certain terms; and generally relating to the sale
17 and purchase of life insurance, health insurance, and annuities.

18 BY repealing and reenacting, without amendments,
19 Article – Insurance
20 Section 27–201
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2009 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Insurance**

4 27–201.

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

8 **27–223.**

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

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

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

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

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

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

1 INSURANCE, OR AN ANNUITY, EITHER DIRECTLY OR INDIRECTLY, THROUGH
2 PUBLICATIONS OR WRITINGS, OR BY ISSUING OR PUBLISHING ANALYSES OR
3 REPORTS RELATED TO LIFE INSURANCE, HEALTH INSURANCE, OR AN ANNUITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **(I) THE AMERICAN NATIONAL STANDARDS INSTITUTE**
15 **(“ANSI”);**

16 **(II) THE NATIONAL COMMISSION FOR CERTIFYING**
17 **AGENCIES; OR**

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

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

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

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

32 **(2) FOR PURPOSES OF THIS SECTION, A JOB TITLE WITHIN AN**
33 **ORGANIZATION THAT IS LICENSED OR REGISTERED BY A STATE OR FEDERAL**
34 **FINANCIAL SERVICES REGULATORY AGENCY IS NOT A CERTIFICATION OR**

1 PROFESSIONAL DESIGNATION, UNLESS THE JOB TITLE IS USED IN A MANNER
2 THAT WOULD CONFUSE OR MISLEAD A REASONABLE CONSUMER, WHEN THE JOB
3 TITLE:

4 (I) INDICATES SENIORITY OR STANDING WITHIN THE
5 ORGANIZATION; OR

6 (II) SPECIFIES AN INDIVIDUAL'S AREA OF SPECIALIZATION
7 WITHIN THE ORGANIZATION.

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

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

14 (I) (1) NOTHING IN THIS SECTION LIMITS THE AUTHORITY OF THE
15 COMMISSIONER TO ENFORCE ANY OTHER LAW.

16 (2) IN CASE OF A CONFLICT BETWEEN THIS SECTION AND §
17 11-305 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, THIS SECTION
18 CONTROLS.

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