



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 706 (as introduced 9-28-11)
Sponsor: Senator Vincent Gregory
Committee: Families, Seniors and Human Services

(as passed by the Senate)

Date Completed: 10-26-11

CONTENT

The bill would amend the Uniform Trade Practices Act within the Insurance Code to designate as an unfair method of competition, and an unfair or deceptive act or practice, an insurance producer's use of a certification or professional designation to mislead a purchaser that the producer had special certification or training in advising seniors in connection with a life insurance or annuity product.

Specifically, it would be an unfair method of competition and an unfair or deceptive act or practice in the business of insurance for an insurance producer to use a senior-specific certification or professional designation that indicated or implied in a way that misled a purchaser or prospective purchaser that the producer had special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling such a product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

The prohibited use of senior-specific certifications or professional designations would include all of the following:

- Use of a certification or professional designation by an insurance producer who had not actually earned or was otherwise ineligible to use it.
- Use of a nonexistent or self-conferred certification or professional designation.
- Use of a certification or professional designation that indicated or implied a level of occupational qualifications obtained through education, training, or experience that the producer using the certification or designation did not have.

Prohibited use also would include use of a certification or professional designation that was obtained from a certifying or designating organization that met any of the following:

- Was engaged primarily in the business of instruction in sales or marketing.
- Did not have reasonable standards or procedures for assuring the competency of its certificants or designees.
- Did not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct.
- Did not have reasonable continuing education requirements for its certificants or designees in order to maintain the certification or designation.

The bill would establish a rebuttable presumption that a certifying or designating organization was not disqualified solely based on those factors if the certification or designation issued from the organization did not apply primarily to sales or marketing and if the organization, or the certification or designation in question, had been accredited by any of the following:

- The American National Standards Institute.
- The National Commission for Certifying Agencies.
- Any organization that was on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes".

In determining whether a combination of words or an acronym standing for a combination of words constituted a certification or professional designation indicating or implying that a person had special certification or training in advising or servicing seniors, all of the following would have to be considered:

- Use of one or more words such as "senior", "retirement", "elder" or a like word combined with one or more words such as "certified", "registered", "chartered", "advisor", "specialist", "consultant", "planner", or a like word, in the name of the certification or professional designation.
- The manner in which the specified words were combined.

For the bill's purposes, a job title within an organization that was licensed or registered by a State or Federal financial services regulatory agency would not be a certification or professional designation, unless it were used in a manner that would confuse or mislead a reasonable consumer, if the job title indicated seniority or standing within the organization or specified an individual's area of specialization within the organization. "Financial services regulatory agency" would include an agency that regulated insurers, insurance producers, broker-dealers, investment advisors, or investment companies as defined under the Federal Investment Company Act.

Proposed MCL 500.2007a

BACKGROUND

The Uniform Trade Practices Act designates certain actions as unfair methods of competition or unfair or deceptive acts, and prohibits a person from engaging in these trade practices. The Act authorizes the Commissioner of the Office of Financial and Insurance Regulation, upon probable cause, to investigate the affairs of a person engaged in the business of insurance to determine whether he or she has been or is engaged in any of the prohibited practices or acts. The Commissioner may hold a hearing if he or she believes it would be in the public interest and has probable cause to believe that the person has been or is engaged in an unfair method of competition, or an unfair or deceptive act or practice.

After an opportunity for a hearing, if the Commissioner determines that the person has engaged in unfair methods of competition or unfair or deceptive acts or practices, the Commissioner must issue a written decision and an order requiring the person to cease and desist. In addition, the Commissioner may order payment of a monetary penalty of up to \$500 for each violation, not to exceed an aggregate penalty of \$5,000, unless the person knew or reasonably should have known that he or she was in violation. In that case, the penalty may not exceed \$2,500 for each violation or an aggregate penalty of \$25,000 for all violations committed in a six-month period. The Commissioner also may order a refund of any overcharges and, if the person is a knowing and persistent violator, suspension or revocation of his or her license or certificate of authority.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would likely have little fiscal impact on the Department of Licensing and Regulatory Affairs. Under current law, people who engage in unfair practices prohibited under the Insurance Code can be subject to penalties of up to \$500 per violation, for an aggregate total of up to \$5,000. If the violation was willful, the maximum total penalties can add up to \$25,000. The bill simply would add an additional set of actions declared to be unfair practices. To the extent that these new prohibited actions would result in additional violations, the Department could collect additional penalty revenue. Penalty revenue would be credited to the Insurance Licensing and Regulation Fund.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.