

110TH CONGRESS
2D SESSION

S. 2794

To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security.

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 13), 2008

Mr. KOHL (for himself and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Senior Investor Protec-
5 tion Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) many seniors are targeted by salespersons
9 and advisers using misleading certifications and pro-
10 fessional designations;

1 (2) many certifications and professional des-
2 ignations used by salespersons and advisers rep-
3 resent limited training or expertise, and may in fact
4 be of no value with respect to advising seniors on fi-
5 nancial and estate planning matters, and far too
6 often, such designations are obtained simply by at-
7 tending a weekend seminar and passing an open
8 book, multiple choice test;

9 (3) many seniors have lost their life savings be-
10 cause salespersons and advisers holding a misleading
11 designation have steered them toward products that
12 were unsuitable for them, given their retirement
13 needs and life expectancies;

14 (4) seniors have a right to clearly know whether
15 they are working with a qualified adviser who under-
16 stands the products and is working in their best in-
17 terest or a self-interested salesperson or adviser ad-
18 vocating particular products; and

19 (5) many existing State laws and enforcement
20 measures addressing the use of certifications, profes-
21 sional designations, and suitability standards in sell-
22 ing financial products to seniors are inadequate to
23 protect senior investors from salespersons and advis-
24 ers using such designations.

1 **SEC. 3. GRANTS TO STATES FOR ENHANCED PROTECTION**
2 **OF SENIORS FROM BEING MISLEAD BY FALSE**
3 **DESIGNATIONS.**

4 (a) DEFINITIONS.—As used in this Act—

5 (1) the term “misleading designation”—

6 (A) means the use of a purported certifi-
7 cation, professional designation, or other cre-
8 dential, that indicates or implies that a sales-
9 person or adviser has special certification or
10 training in advising or servicing seniors; and

11 (B) does not include any legitimate certifi-
12 cation, professional designation, license, or
13 other credential, if—

14 (i) it has been offered by an academic
15 institution having regional accreditation; or

16 (ii) it meets the standards for certifi-
17 cations, licenses, and professional designa-
18 tions outlined by the North American Se-
19 curities Administrators Association (in this
20 Act referred to as the “NASAA”) Model
21 Rule on the Use of Senior-Specific Certifi-
22 cations and Professional Designations, or
23 it was issued by or obtained from any
24 State;

25 (2) the term “financial product” means securi-
26 ties, insurance products (including insurance prod-

1 ucts which pay a return, whether fixed or variable),
2 and bank and loan products;

3 (3) the term “misleading or fraudulent mar-
4 keting” means the use of a misleading designation
5 in selling or advising a senior in the sale of a finan-
6 cial product;

7 (4) the term “senior” means any individual who
8 has attained the age of 62 or older; and

9 (5) the term “State” means each of the 50
10 States, the District of Columbia, and the unincor-
11 porated territories of Puerto Rico and the U.S. Vir-
12 gin Islands.

13 (b) GRANT PROGRAM.—The Attorney General of the
14 United States (in this section referred to as the “Attorney
15 General”)—

16 (1) shall establish a program in accordance with
17 this section to provide grants to States—

18 (A) to investigate and prosecute misleading
19 and fraudulent marketing practices; or

20 (B) to develop educational materials and
21 training aimed at reducing misleading and
22 fraudulent marketing of financial products to-
23 ward seniors; and

24 (2) may establish such performance objectives,
25 reporting requirements, and application procedures

1 for States and State agencies receiving grants under
2 this section as the Attorney General determines are
3 necessary to carry out and assess the effectiveness
4 of the program under this section.

5 (c) USE OF GRANT AMOUNTS.—A grant under this
6 section may be used (including through subgrants) by the
7 State or the appropriate State agency designated by the
8 State—

9 (1) to fund additional staff to identify, inves-
10 tigate, and prosecute cases involving misleading or
11 fraudulent marketing of financial products to sen-
12 iors;

13 (2) to fund technology, equipment, and training
14 for regulators, prosecutors, and law enforcement in
15 order to identify salespersons and advisers who tar-
16 get seniors through the use of misleading designa-
17 tions;

18 (3) to fund technology, equipment, and training
19 for prosecutors to increase the successful prosecution
20 of those targeting seniors with the use of misleading
21 designations;

22 (4) to provide educational materials and train-
23 ing to regulators on the appropriateness of the use
24 of designations by salespersons and advisers of fi-
25 nancial products;

1 (5) to provide educational materials and train-
 2 ing to seniors to increase their awareness and under-
 3 standing of designations;

4 (6) to develop comprehensive plans to combat
 5 misleading or fraudulent marketing of financial
 6 products to seniors; and

7 (7) to enhance provisions of State law that
 8 could offer additional protection for seniors against
 9 misleading or fraudulent marketing of financial
 10 products.

11 (d) GRANT REQUIREMENTS.—

12 (1) MAXIMUM.—The amount of a grant under
 13 this section may not exceed \$500,000 per fiscal year
 14 per State, if all requirements of paragraphs (2), (3),
 15 (4), and (5) are met. Such amount shall be limited
 16 to \$100,000 per fiscal year per State in any case in
 17 which the State meets the requirements of—

18 (A) paragraphs (2) and (3), but not each
 19 of paragraphs (4) and (5); or

20 (B) paragraphs (4) and (5), but not each
 21 of paragraphs (2) and (3).

22 (2) STANDARD DESIGNATION RULES FOR SECUR-
 23 ITIES.—A State shall have adopted rules on the ap-
 24 propriate use of designations in the offer or sale of
 25 securities or investment advice, which shall, to the

1 extent practicable, conform to the minimum require-
2 ments of the NASAA Model Rule on the Use of Sen-
3 ior-Specific Certifications and Professional Designa-
4 tions, as in effect on the date of enactment of this
5 Act, or any successor thereto, as determined by the
6 Attorney General.

7 (3) SUITABILITY RULES FOR SECURITIES.—A
8 State shall have adopted standard rules on the suit-
9 ability requirements in the sale of securities, which
10 shall, to the extent practicable, conform to the min-
11 imum requirements on suitability imposed by self-
12 regulatory organization rules under the securities
13 laws (as defined in section 3 of the Securities Ex-
14 change Act of 1934), as determined by the Attorney
15 General.

16 (4) STANDARD DESIGNATION RULES FOR IN-
17 SURANCE PRODUCTS.—

18 (A) IN GENERAL.—A State shall have
19 adopted standard rules on the appropriate use
20 of designations in the sale of insurance prod-
21 ucts, which shall, to the extent practicable, con-
22 form to the minimum requirements of the
23 NASAA Model Rule on the Use of Senior-Spe-
24 cific Certifications and Professional Designa-
25 tions, as in effect on the date of enactment of

1 this Act, or any successor thereto, as deter-
 2 mined by the Attorney General.

3 (B) SENSE OF CONGRESS.—It is the sense
 4 of the Congress that the National Association
 5 of Insurance Commissioners (in this section re-
 6 ferred to as the “NAIC”) should work in con-
 7 junction with NASAA in establishing a single
 8 set of regulations regarding the use of certifi-
 9 cations and designations with which all insur-
 10 ance agents and financial advisers should com-
 11 ply.

12 (5) SUITABILITY RULES FOR INSURANCE PROD-
 13 UCTS.—A State shall have adopted suitability stand-
 14 ards for the sale of annuity products, under which,
 15 at a minimum (as determined by the Attorney Gen-
 16 eral)—

17 (A) insurers shall be responsible and liable
 18 for ensuring that sales of their annuity prod-
 19 ucts meet their suitability requirements;

20 (B) insurers shall have an obligation to en-
 21 sure that the prospective senior purchaser has
 22 sufficient information for making an informed
 23 decision about a purchase of an annuity prod-
 24 uct;

1 (C) the prospective senior purchaser shall
2 be informed of the total fees, costs, and com-
3 missions associated with establishing the annu-
4 ity transaction, as well as the total fees, costs,
5 commissions, and penalties associated with the
6 termination of the transaction or agreement;
7 and

8 (D) insurers and their agents are prohib-
9 ited from recommending the sale of an annuity
10 product to a senior, if the agent fails to obtain
11 sufficient information in order to satisfy the in-
12 surer and the agent that the transaction is suit-
13 able for the senior.

14 (e) APPLICATION.—To be eligible for a grant under
15 this section, the State or appropriate State agency shall
16 submit to the Attorney General a proposal to use the grant
17 money to protect seniors from misleading or fraudulent
18 marketing techniques in the offer and sale of financial
19 products, which application shall—

20 (1) identify the scope of the problem;

21 (2) describe how the proposed program will help
22 to protect seniors from misleading or fraudulent
23 marketing in the sale of financial products, includ-
24 ing, at a minimum—

1 (A) by proactively identifying senior vic-
2 tims of misleading and fraudulent marketing in
3 the offer and sale of financial products;

4 (B) how the proposed program can assist
5 in the investigation and prosecution of those
6 using misleading or fraudulent marketing in the
7 offer and sale of financial products to seniors;
8 and

9 (C) how the proposed program can help
10 discourage and reduce future cases of mis-
11 leading or fraudulent marketing in the offer
12 and sale of financial products to seniors; and

13 (3) describe how the proposed program is to be
14 integrated with other existing State efforts.

15 (f) LENGTH OF PARTICIPATION.—A State receiving
16 a grant under this section shall be provided assistance
17 funds for a period of 3 years, after which the State may
18 reapply for additional funding.

19 (g) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out this section
21 \$8,000,000 for each of the fiscal years 2009 through
22 2013.

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