

111TH CONGRESS
1ST SESSION

S. 1661

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2009

Mr. KOHL (for himself, Mrs. McCASKILL, Mrs. GILLIBRAND, and Mr. CASEY) 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 Investment Pro-
5 tection Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) many seniors are targeted by salespersons
2 and advisers using misleading certifications and pro-
3 fessional designations;

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

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

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

22 (5) many existing State laws and enforcement
23 measures addressing the use of certifications, profes-
24 sional designations, and suitability standards in sell-
25 ing financial products to seniors are inadequate to

1 protect senior investors from salespersons and advis-
2 ers using such designations.

3 **SEC. 3. DEFINITIONS.**

4 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;

1 (2) the term “financial product” means securi-
 2 ties, insurance products (including insurance prod-
 3 ucts which pay a return, whether fixed or variable),
 4 and bank and loan products;

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

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

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

15 **SEC. 4. GRANTS TO STATES FOR ENHANCED PROTECTION**
 16 **OF SENIORS FROM BEING MISLED BY FALSE**
 17 **DESIGNATIONS.**

18 (a) GRANT PROGRAM.—The Attorney General of the
 19 United States (in this Act referred to as the “Attorney
 20 General”)—

21 (1) shall establish a program in accordance with
 22 this Act to provide grants to States—

23 (A) to investigate and prosecute misleading
 24 and fraudulent marketing practices; or

1 (B) to develop educational materials and
2 training aimed at reducing misleading and
3 fraudulent marketing of financial products to-
4 ward seniors; and

5 (2) may establish such performance objectives,
6 reporting requirements, and application procedures
7 for States and State agencies receiving grants under
8 this Act as the Attorney General determines are nec-
9 essary to carry out and assess the effectiveness of
10 the program under this Act.

11 (b) USE OF GRANT AMOUNTS.—A grant under this
12 Act may be used (including through subgrants) by the
13 State or the appropriate State agency designated by the
14 State—

15 (1) to fund additional staff to identify, inves-
16 tigate, and prosecute (through civil, administrative,
17 or criminal enforcement actions) cases involving mis-
18 leading or fraudulent marketing of financial prod-
19 ucts to seniors;

20 (2) to fund technology, equipment, and training
21 for regulators, prosecutors, and law enforcement in
22 order to identify salespersons and advisers who tar-
23 get seniors through the use of misleading designa-
24 tions;

1 (3) to fund technology, equipment, and training
2 for prosecutors to increase the successful prosecution
3 of those targeting seniors with the use of misleading
4 designations;

5 (4) to provide educational materials and train-
6 ing to regulators on the appropriateness of the use
7 of designations by salespersons and advisers of fi-
8 nancial products;

9 (5) to provide educational materials and train-
10 ing to seniors to increase their awareness and under-
11 standing of designations;

12 (6) to develop comprehensive plans to combat
13 misleading or fraudulent marketing of financial
14 products to seniors; and

15 (7) to enhance provisions of State law that
16 could offer additional protection for seniors against
17 misleading or fraudulent marketing of financial
18 products.

19 (c) GRANT REQUIREMENTS.—

20 (1) MAXIMUM.—The amount of a grant under
21 this Act may not exceed \$500,000 per fiscal year per
22 State, if all requirements of paragraphs (2), (3), (4),
23 and (5) are met. Such amount shall be limited to
24 \$100,000 per fiscal year per State in any case in
25 which the State meets the requirements of—

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

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

5 (2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the ap-
 6 propriate use of designations in the offer or sale of
 7 securities or investment advice, which shall meet or
 8 exceed the minimum requirements of the NASAA
 9 Model Rule on the Use of Senior-Specific Certifi-
 10 cations and Professional Designations, as in effect
 11 on the date of enactment of this Act, or any suc-
 12 cessor thereto, as determined by the Attorney Gen-
 13 eral.

14 (3) SUITABILITY RULES FOR SECURITIES.—A
 15 State shall have adopted standard rules on the suit-
 16 ability requirements in the sale of securities, which
 17 shall, to the extent practicable, conform to the min-
 18 imum requirements on suitability imposed by self-
 19 regulatory organization rules under the securities
 20 laws (as defined in section 3 of the Securities Ex-
 21 change Act of 1934), as determined by the Attorney
 22 General.

23 (4) STANDARD DESIGNATION RULES FOR IN-
 24 SURANCE PRODUCTS.—A State shall have adopted
 25

standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Attorney General.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the extent practicable (as determined by the Attorney General), provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

1 (ii) that insurers and insurance pro-
2 ducers are required to apply a standard for
3 determining the suitability of each rec-
4 ommended annuity transaction, including
5 fixed and index annuities, that is at least
6 as protective of the interests of the con-
7 sumer as rule 2821(b) of the Financial In-
8 dustry Regulatory Authority (in this para-
9 graph referred to as “FINRA”), as in ef-
10 fect on the date of enactment of this Act,
11 or any successor to such rule;

12 (iii) that insurers and insurance pro-
13 ducers are required to maintain a process
14 for review of the suitability, and approval
15 or disapproval, of each recommended annu-
16 ity transaction that is at least as protective
17 of the interests of the consumer as the
18 principal review required under rule
19 2821(c) of FINRA, as in effect on the date
20 of enactment of this Act, or any successor
21 to such rule;

22 (iv) that insurers and insurance pro-
23 ducers are required to maintain processes
24 for the supervision of direct annuity sales
25 and insurance producer-recommended an-

1 nuity sales (including procedures for the
2 insurer to obtain and confirm consumer
3 suitability information and for the insurer
4 to confirm consumer understanding of the
5 annuity transaction) that are at least as
6 protective of the interests of the consumer
7 as member broker and dealer supervision
8 requirements of FINRA, as in effect on
9 the date of enactment of this Act, or any
10 successor to such requirements;

11 (v) that insurers are required to verify
12 that each insurance producer successfully
13 completes, and each insurance producer is
14 required to receive, training designed to
15 ensure that the insurance producer is com-
16 petent to recommend each class of annuity;

17 (vi) that insurers are required to
18 verify that insurance producers receive,
19 and insurance producers are required to
20 receive, training regarding the features of
21 each offered annuity product, to an extent
22 that is at least as protective of the inter-
23 ests of the consumer as the FINRA firm
24 element training requirements, as in effect

1 on the date of enactment of this Act, or
2 any successor to such requirements;

3 (vii) for coordination of such rules
4 with the rules of FINRA governing mem-
5 ber brokers, dealers, and security rep-
6 resentatives, to the extent appropriate,
7 consistent with protecting the interests of
8 consumers, for State insurance regulators
9 to rely on, or to avoid duplication of
10 FINRA rules; and

11 (viii) for exemption from such rules
12 only if such exemption is consistent with
13 the protection of consumers.

14 **SEC. 5. APPLICATIONS.**

15 To be eligible for a grant under this Act, the State
16 or appropriate State agency shall submit to the Attorney
17 General a proposal to use the grant money to protect sen-
18 iors from misleading or fraudulent marketing techniques
19 in the offer and sale of financial products, which applica-
20 tion shall—

21 (1) identify the scope of the problem;

22 (2) describe how the proposed program will help
23 to protect seniors from misleading or fraudulent
24 marketing in the sale of financial products, includ-
25 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 **SEC. 6. LENGTH OF PARTICIPATION.**

16 A State receiving a grant under this Act shall be pro-
 17 vided assistance funds for a period of 3 years, after which
 18 the State may reapply for additional funding.

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to carry out
 21 this Act, \$8,000,000 for each of the fiscal years 2010
 22 through 2014.

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