

111TH CONGRESS
1ST SESSION

S. 906

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 28, 2009

Mr. KOHL (for himself and Mrs. McCASKILL) 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—

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. DEFINITIONS.**

2 As used in this Act—

3 (1) the term “misleading designation”—

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

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

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

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

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

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

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

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

11 **SEC. 4. GRANTS TO STATES FOR ENHANCED PROTECTION**
 12 **OF SENIORS FROM BEING MISLEAD BY FALSE**
 13 **DESIGNATIONS.**

14 (a) GRANT PROGRAM.—The Attorney General of the
 15 United States (in this Act referred to as the “Attorney
 16 General”)—

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

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

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

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

7 (b) USE OF GRANT AMOUNTS.—A grant under this
8 Act may be used (including through subgrants) by the
9 State or the appropriate State agency designated by the
10 State—

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

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

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

24 (4) to provide educational materials and train-
25 ing to regulators on the appropriateness of the use

of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations;

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

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

(c) GRANT REQUIREMENTS.—

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

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

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

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the ap-

1 appropriate use of designations in the offer or sale of
2 securities or investment advice, which shall, to the
3 extent practicable, conform to the minimum require-
4 ments of the NASAA Model Rule on the Use of Sen-
5 ior-Specific Certifications and Professional Designa-
6 tions, as in effect on the date of enactment of this
7 Act, or any successor thereto, as determined by the
8 Attorney General.

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

18 (4) STANDARD DESIGNATION RULES FOR IN-
19 SURANCE PRODUCTS.—A State shall have adopted
20 standard rules on the appropriate use of designa-
21 tions in the sale of insurance products, which shall,
22 to the extent practicable, conform to the minimum
23 requirements of the National Association of Insur-
24 ance Commissioners Model Regulation on the Use of
25 Senior-Specific Certifications and Professional Des-

ignations 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 RULES FOR INSURANCE PRODUCTS.—A State shall have adopted suitability standards for the sale of annuity products, under which, at a minimum (as determined by the Attorney General)—

(A) insurers shall be responsible and liable for ensuring that sales of their annuity products meet their suitability requirements;

(B) insurers shall have an obligation to ensure that the prospective senior purchaser has sufficient information for making an informed decision about a purchase of an annuity product;

(C) the prospective senior purchaser shall be informed of the total fees, costs, and commissions associated with establishing the annuity transaction, as well as the total fees, costs, commissions, and penalties associated with the termination of the transaction or agreement; and

1 (D) insurers and their agents are prohib-
 2 ited from recommending the sale of an annuity
 3 product to a senior, if the agent fails to obtain
 4 sufficient information in order to satisfy the in-
 5 surer and the agent that the transaction is suit-
 6 able for the senior.

7 **SEC. 5. APPLICATIONS.**

8 To be eligible for a grant under this Act, the State
 9 or appropriate State agency shall submit to the Attorney
 10 General a proposal to use the grant money to protect sen-
 11 iors from misleading or fraudulent marketing techniques
 12 in the offer and sale of financial products, which applica-
 13 tion shall—

14 (1) identify the scope of the problem;
 15 (2) describe how the proposed program will help
 16 to protect seniors from misleading or fraudulent
 17 marketing in the sale of financial products, includ-
 18 ing, at a minimum—

19 (A) by proactively identifying senior vic-
 20 tims of misleading and fraudulent marketing in
 21 the offer and sale of financial products;

22 (B) how the proposed program can assist
 23 in the investigation and prosecution of those
 24 using misleading or fraudulent marketing in the

1 offer and sale of financial products to seniors;
2 and

3 (C) how the proposed program can help
4 discourage and reduce future cases of mis-
5 leading or fraudulent marketing in the offer
6 and sale of financial products to seniors; and

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

9 **SEC. 6. LENGTH OF PARTICIPATION.**

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

13 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

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

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