

AMENDED IN SENATE AUGUST 12, 2008  
AMENDED IN SENATE JUNE 24, 2008  
AMENDED IN SENATE JUNE 4, 2008  
AMENDED IN ASSEMBLY APRIL 1, 2008  
AMENDED IN ASSEMBLY MARCH 24, 2008  
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2149**

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**Introduced by Assembly Member Berg  
(Coauthors: Assembly Members Arambula, Charles Calderon,  
Coto, De Leon, Jones, Lieber, Lieu, Mendoza, Parra, Swanson,  
Torrico, and Wolk)**

February 20, 2008

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An act to add Section ~~25405~~ 25243.5 to the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2149, as amended, Berg. Broker-dealers and investment advisers. Existing law, the Corporate Securities Law of 1968, provides for the certification and regulation, by the Commissioner of Corporations, of broker-dealers and investment advisers. Existing law also provides for the regulation of broker-dealer agents and investment adviser representatives. Existing law makes it unlawful for an investment adviser to, among other things, defraud or engage in any transaction that operates as a fraud or deceit upon any client or prospective client, or represent that he or she is an investment counsel or to use the name "investment counsel" unless certain requirements have been met.

Existing law also makes it unlawful for ~~any person to, among other things, make or omit any false or misleading statement regarding the sale of a security that he or she knows or has reasonable ground to believe was false or misleading~~ *a broker-dealer or investment adviser to represent or imply that he or she has been sponsored, recommended or approved by the commissioner, except as specified.* Under existing law, a violation of these provisions is a crime and a violator is subject to specified penalties.

This bill would prohibit a broker-dealer or investment adviser, or an agent or representative thereof, except as specified, from using a ~~senior specific~~ *senior-specific* certification, credential, or professional designation indicating or implying that he or she has a special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person. ~~The bill would specify that a certification, credential, or professional designation issued by an accredited organization recognized by the commissioner shall not be deemed to mislead any person. The bill would require the commissioner to maintain a list of recognized accredited organizations.~~ The bill would make these provisions operative on July 1, 2009.

Because a violation of the bill’s provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section ~~25405~~ 25243.5 is added to the
- 2 Corporations Code, to read:
- 3 ~~25405.~~
- 4 25243.5. (a) A broker-dealer or investment adviser, or an
- 5 agent or representative thereof, shall not use a ~~senior specific~~
- 6 *Senior-specific* certification, credential, or professional designation
- 7 in connection with the offer, sale, or purchase of securities, or the
- 8 provision of advice as to the value of or the advisability of investing
- 9 in, purchasing, or selling securities, either directly or indirectly or

1 through publications or writings or by issuing or promulgating  
2 analyses or reports relating to securities, that indicates or implies  
3 that the broker-dealer, investment adviser, or an agent or  
4 representative thereof, has special certification or training in  
5 advising or servicing senior citizens or retirees, in such a way as  
6 to mislead any person. ~~The use of such a certification, credential,  
7 or professional designation by a broker-dealer or investment  
8 adviser, or an agent or representative thereof, shall not be deemed  
9 to mislead any person if the certification, credential, or professional  
10 designation has been issued by an accredited organization  
11 recognized by the commissioner as provided in subdivision (e).~~

12 (b) The prohibited use of these certifications, credentials, or  
13 professional designations includes, but is not limited to, the  
14 following:

15 (1) The use of a certification, credential, or professional  
16 designation by a person who has not actually earned or is otherwise  
17 ineligible to use the certification, credential, or designation.

18 (2) The use of a nonexistent or self-conferred certification,  
19 credential, or professional designation.

20 (3) The use of a certification, credential, or professional  
21 designation that indicates or implies a level of occupational  
22 qualifications obtained through education, training, or experience  
23 that the person using the certification, credential, or professional  
24 designation does not have.

25 (4) The use of a certification, credential, or professional  
26 designation that was obtained from a designating, credentialing,  
27 or certifying organization where any of the following apply:

28 (A) The organization is primarily engaged in the business of  
29 instruction in sales marketing.

30 (B) The organization does not have reasonable standards or  
31 procedures for assuring the competency of individuals to whom  
32 it grants a certification, credential, or professional designation.

33 (C) The organization does not have reasonable standards or  
34 procedures for monitoring and disciplining individuals with a  
35 certification, credential, or professional designation for improper  
36 or unethical conduct.

37 (D) The organization does not have reasonable continuing  
38 education requirements for individuals with a certification,  
39 credential, or professional designation in order to maintain the  
40 certificate, credential, or professional designation.

1 ~~(e) (1) The commissioner may recognize an accredited~~  
2 ~~organization by rule or order. The commissioner shall consider~~  
3 ~~any request for recognition by an accredited organization.~~

4 ~~(2) The commissioner may recognize an accredited organization~~  
5 ~~for the purpose of subdivision (a) when the~~

6 ~~(c) There is a rebuttable presumption that a designating,~~  
7 ~~credentiaing, or certifying organization is not disqualified solely~~  
8 ~~for the purposes of paragraph (4) of subdivision (b) when the~~  
9 ~~organization has been accredited by the American National~~  
10 ~~Standards Institute, the National Commission for Certifying~~  
11 ~~Agencies, or an organization that is on the United States~~  
12 ~~Department of Education’s list entitled “Accrediting Agencies~~  
13 ~~Recognized for Title IV Purposes” and the certification, credential,~~  
14 ~~or professional designation issued therefrom does not primarily~~  
15 ~~apply to sales and/or marketing.~~

16 ~~(3) The commissioner shall maintain a readily accessible list,~~  
17 ~~with contact information, of all recognized accredited~~  
18 ~~organizations.~~

19 (d) In determining whether a combination of words, or an  
20 acronym standing for a combination of words, constitutes a  
21 certification, credential, or professional designation indicating or  
22 implying that a person has special certification or training in  
23 advising or serving senior citizens or retirees, factors to be  
24 considered shall include both of the following:

25 (1) Use of one or more word such as “senior,” “retirement,”  
26 “elder,” or like words combined with one or more words such as  
27 “certified,” “registered,” “chartered,” “adviser,” “specialist,”  
28 “consultant,” “planner,” or like words, in the name of the  
29 certification, credential, or professional designation or credential.

30 (2) The manner in which those words are combined.

31 (e) This section shall not apply to the use of a job title by a  
32 person within an organization that is licensed or registered by the  
33 Department of Corporations or a federal financial services  
34 regulatory agency, when that job title indicates seniority or standing  
35 within the organization, or specifies a person’s area of  
36 specialization within the organization, ~~unless the facts and~~  
37 ~~circumstances associated with the use of the job title either~~  
38 ~~improperly indicate or imply certification or training beyond that~~  
39 ~~which the broker-dealer or investment adviser, or an agent or~~  
40 ~~representative thereof, possesses or otherwise misleads senior~~

1 ~~citizens or retirees~~. For the purposes of this subdivision, federal  
2 financial services regulatory agency includes, but is not limited  
3 to, an agency that regulates brokers or dealers, investment advisers,  
4 or investment companies as described under the Investment  
5 Company Act of 1940 (15 U.S.C. Sec. 809-1 et seq.).

6 (f) (1) This section shall not apply to a broker or agent who is  
7 licensed by the Department of Insurance and is in compliance with  
8 the requirements of Section 787.1 of the Insurance Code.

9 (2) This subdivision shall be operative only if Assembly Bill  
10 2150 of the 2007–08 Regular Session is chaptered and becomes  
11 effective and that bill adds Section 787.1 to the Insurance Code.

12 (g) This section shall become operative on July 1, 2009.

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.