

Assembly Bill No. 2150

CHAPTER 327

An act to add Section 787.1 to the Insurance Code, relating to insurance.

[Approved by Governor September 26, 2008. Filed with
Secretary of State September 26, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2150, Berg. Insurance: sales designations.

Existing law provides that no insurer, agent, broker, solicitor, or other person or other entity shall solicit persons 65 years of age and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

This bill would provide that a broker or agent may not use a senior designation, as defined, unless specified conditions have been met. This bill would provide that in determining whether to approve a senior designation for use, the commissioner shall ensure that the organization that issues the senior designation fulfills specified requirements. This bill would require certain experience and education, as specified, before the commissioner may approve the use of a senior designation by a broker or agent. The bill would specify the penalties and remedies if its provisions are violated, and make related changes.

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

SECTION 1. Section 787.1 is added to the Insurance Code, to read:

787.1. (a) The following definitions apply to this section:

(1) "Senior designation" means any degree, title, credential, certificate, certification, accreditation, or approval, that expresses or implies that a broker or agent possesses expertise, training, competence, honesty, or reliability with regard to advising seniors in particular on finance, insurance, or risk management.

(2) "Use" means utilizing a word, phrase, acronym, or logo, in any oral or written communication from which a sale of insurance to a senior may directly or indirectly result, that states or suggests, alone or in context, that a broker or agent holds a senior designation.

(b) (1) A broker or agent may not use a senior designation unless all of the following conditions have been met:

(A) The broker or agent has been granted the right to use the senior designation by the organization that issues the senior designation, and the

broker or agent is currently authorized by the organization to use the designation.

(B) The senior designation has been approved by the commissioner for use by brokers and agents in the sale of insurance to seniors.

(C) The broker or agent has been licensed for at least four years to sell the types of insurance with which the designation is used.

(2) A broker or agent may not use a senior designation in a manner that misleads a person as to the significance of the senior designation. Each time a broker or agent uses a senior designation in a writing, the writing shall also contain the words “California” or “CA” next to “Insurance Agent” or “Insurance Broker Agent” and “License,” and these words shall be located immediately prior to the broker’s license number or the agent’s license number, in type that is in the same font and at least the same size as the type used for the senior designation. The requirements set forth in this subdivision are in addition to the requirements of Section 1725.5 and shall apply regardless of whether the broker or agent is an insurance agent, as defined in Section 1621. For purposes of this paragraph, “writing” means business cards, written price quotations, and print advertisements distributed exclusively in this state.

(c) (1) In determining whether to approve a senior designation for use in the sale of insurance to seniors, the commissioner shall ensure that the organization that issues the senior designation fulfills the following:

(A) Requires applicants for the designation to complete a minimum number of hours of education in topics approved by the commissioner before granting them the right to use its senior designation. The courses must be relevant to the sale of insurance to seniors.

(B) Is exclusively an educational or certification organization, and is not directly or indirectly, through an affiliate or partner, involved in selling insurance, nor receives any compensation directly or indirectly from any sale of insurance.

(C) Maintains reasonable standards and procedures for disciplining its designees for improper or unethical conduct, as established by proven complaints or by disciplinary action by a government licensing agency or a quasi-governmental licensing and regulatory organization.

(D) Imposes reasonable continuing education requirements or other means of periodically verifying a designee’s knowledge and skill, in order for designees to retain the senior designation in good standing.

(E) Maintains a code of ethics for its designees.

(F) Maintains reasonable standards and procedures to test for proper mastery of the knowledge and skill required to receive the designation.

(G) The commissioner may recognize an accredited organization for the purpose of this subdivision when the organization has been accredited by the American National Standards Institute, the National Commission for Certifying Agencies, or an organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the certification, credential, or professional

designation issued therefrom does not primarily apply to sales and or marketing.

(2) A senior designation shall not be approved by the commissioner unless the courses required to earn it include, at a minimum, material covering the following topics: insurance products marketed to seniors; statutes, regulations, and case law applicable to seniors; social, psychological, and medical issues of seniors; and marketing of insurance to seniors, including when a duty of good faith and fair dealing exists.

(3) The commissioner shall consult with the curriculum board created pursuant to subdivision (a) of Section 1749.1 regarding the course material that should be deemed relevant to the sale of insurance to seniors, and regarding the minimum number of hours referred to in subparagraph (A) of paragraph (1) of subdivision (c). The minimum number of hours required shall be at least 75.

(d) (1) A word, phrase, acronym, or logo shall be deemed a senior designation if it contains the word “senior,” “Medicare,” “Medi-Cal,” “retire,” “mature,” “gerontology,” or “elder,” or any variation or synonym of one of these words within several words of the word “certified,” “chartered,” “registered,” “adviser,” “specialist,” “consultant,” “agent,” “broker,” “insurance,” “planner,” “professional,” “enrolled,” “accredited,” “analyst,” or “fellow,” or any variation or synonym of one of these words. A word, phrase, acronym, or logo may constitute a senior designation if it meets the definition in paragraph (1) of subdivision (a) regardless of whether it contains one of the words recited in this subdivision.

(2) A word, phrase, acronym, or logo shall not constitute a senior designation if it is a job title or description of an employee of a government entity, or of an organization with a contract with that government entity to provide free counseling to seniors.

(3) No exemption exists under this section for use of a senior designation that constitutes a job title or description or part of a job title or description, except as provided in paragraph (2) of subdivision (d).

(4) An advanced academic degree, such as a Ph.D., M.B.A., or M.S., may be used without compliance with subdivision (c), if the degree was awarded by an institution of higher education that has been accredited by an organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes.”

(e) A violation of subdivision (b) by a broker or agent shall be grounds for suspension or revocation of the broker or agent’s license pursuant to Sections 1668 and 1738. Such a violation also shall be grounds for a cease and desist order and monetary penalty pursuant to Section 12921.8, as if the broker or agent had acted in a capacity for which a license was required but not possessed.

(f) Any person who grants to a California resident the right to use a senior designation that has not been approved by the commissioner, without reasonably attempting to determine whether California is one of the designee’s residences, shall be subject to a cease and desist order and

monetary penalty pursuant to Section 12921.8, as if the person had acted in a capacity for which a license was required but not possessed.

(g) The disciplinary and remedial authority recited in this subdivision shall be in addition to any other disciplinary and remedial authority included in this code.

(h) Notwithstanding any other provision of this code, the criteria in Sections 1668 and 1668.5 apply to an organization that issues a senior designation, and the commissioner may deny or rescind approval of an organization issuing a senior designation based on that criteria.

(i) On and after January 1, 2009, and on or before June 30, 2010, notwithstanding subdivision (f), an organization may issue designations, and an agent or broker who has complied with subparagraphs (A) and (C) of paragraph (1) of subdivision (b) may use a designation, as long as the commissioner has made a determination that the organization, with respect to the designation, has for the past four years continuously done the following:

(1) Met the requirements of subparagraphs (B) to (F), inclusive, of paragraph (1) of subdivision (c).

(2) Met the requirements of paragraph (2) of subdivision (c).

(3) Required at least 75 hours of education in topics relevant to the sale of insurance to seniors before issuing the designation.

(j) The commissioner shall maintain a list of senior designations approved pursuant to subdivision (c), and determinations made pursuant to subdivision (i), and shall publish the current list on the Internet Web site of the Department of Insurance.

(k) A broker or agent holding a designation that was obtained before January 1, 2009, may continue to use that designation until June 30, 2010, if the organization that issued the designation meets the requirements of subdivision (c) or (i) and certifies in a letter to the broker or agent that he or she has completed at least 75 hours of education in topics relevant to the sale of insurance to seniors.