

Introduced by Senator Leno

February 22, 2012

An act to amend Sections 787 and 787.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1170, as introduced, Leno. Senior insurance.

(1) Existing law sets certain standards with regard to any advertisement, as defined, or other device designed to produce leads based on a response from a potential insured that is directed to a person 65 years of age or older, including, but not limited to, disclosing certain information, not using certain language, names, letters, or symbols, and not using specified deceptive or misleading practices and materials.

This bill would change the definition of advertisement to also include worksheets, questionnaires, or other materials designed to collect personal or financial information about a prospective insured or annuitant. The bill would also add veterans organizations or agencies and the United States Department of Veterans Affairs to the list of those entities that cannot be used in specified deceptive or misleading advertising practices and materials.

(2) Existing law provides that a broker or agent may not use a senior designation unless he or she has met certain conditions, including, but not limited to, that the broker or agent has been granted the right and is currently authorized to use the senior designation by the organization that issues the designation, and the senior designation has been approved by the Insurance Commissioner for use by brokers and agents in the sale of insurance to seniors, as provided. Existing law deems certain words, phrases, acronyms, and logos as a senior designation.

This bill would add the term “veteran” to those words deemed a senior designation.

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

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

1 SECTION 1. Section 787 of the Insurance Code is amended
2 to read:

3 787. Any advertisement or other device designed to produce
4 leads based on a response from a potential insured ~~which that~~ is
5 directed towards persons *age 65 years of age* or older shall
6 prominently disclose that an agent may contact the applicant if
7 that is the fact. In addition, an agent who makes contact with a
8 person as a result of acquiring that person’s name from a lead
9 generating device shall disclose that fact in the initial contact with
10 the person.

11 (a) ~~No~~ An insurer, agent, broker, solicitor, or other person or
12 other entity shall *not* solicit persons *age 65 years of age* and older
13 in this state for the purchase of disability insurance, life insurance,
14 or annuities through the use of a true or fictitious name ~~which that~~
15 is deceptive or misleading with regard to the status, character, or
16 proprietary or representative capacity of the entity or person, or
17 to the true purpose of the advertisement.

18 (b) For the purposes of this section, an advertisement includes
19 envelopes, stationery, business cards, *worksheets, questionnaires*,
20 or other materials designed to describe and encourage the purchase
21 of a policy or certificate of disability insurance, life insurance, or
22 an annuity, *or to collect personal or financial information about*
a prospective insured or annuitant.

23 (c) Advertisements shall not employ words, letters, initials,
24 symbols, or other devices ~~which that~~ are so similar to those used
25 by governmental agencies, a nonprofit or charitable institution,
26 *veterans organization or agency*, senior organization, or other
27 insurer that they could have the capacity or tendency to mislead
28 the public. Examples of misleading materials, include, but are not
29 limited to, those which imply any of the following:

30 (1) The advertised coverages are somehow provided by or are
31 endorsed by any governmental agencies, nonprofit or charitable

1 institution *institutions*, veterans *organizations or agencies*, or
2 senior organizations.

3 (2) The advertiser is the same as, is connected with, or is
4 endorsed by governmental agencies, nonprofit or charitable
5 institutions, veterans *organizations or agencies*, or senior
6 organizations.

7 (d) No-An advertisement may *not* use the name of a state or
8 political subdivision thereof in a policy name or description.

9 (e) No-An advertisement may *not* use any name, service mark,
10 slogan, symbol, or any device in any manner that implies that the
11 insurer, or the policy or certificate advertised, or that any agency
12 who may call upon the consumer in response to the advertisement,
13 is connected with a governmental agency, such as the Social
14 Security Administration *or the United States Department of*
15 *Veterans Affairs*.

16 (f) No-An advertisement may *not* imply that the reader may lose
17 a right, or privilege, or benefits under federal, state, or local law
18 if he or she fails to respond to the advertisement.

19 (g) An insurer, agent, broker, or other entity may not use an
20 address so as to mislead or deceive as to the true identity, location,
21 or licensing status of the insurer, agent, broker, or other entity.

22 (h) No-An insurer may *not* use, in the trade name of its insurance
23 policy or certificate, any terminology or words so similar to the
24 name of a governmental agency—or, governmental program, *or*
25 veterans organization *or agency* as to have the capacity or the
26 tendency to confuse, deceive, or mislead a prospective purchaser.

27 (i) All advertisements used by agents, producers, brokers,
28 solicitors, or other persons for a policy of an insurer shall have
29 written approval of the insurer before they may be used.

30 (j) No-An insurer, agent, broker, or other entity may *not* solicit
31 a particular class by use of advertisements which state or imply
32 that the occupational or other status as members of the class entitles
33 them to reduced rates on a group or other basis when, in fact, the
34 policy or certificate being advertised is sold on an individual basis
35 at regular rates.

36 (k) In addition to any other prohibition on untrue, deceptive, or
37 misleading advertisements, no advertisement for an event where
38 insurance products will be offered for sale *at, or as a result of, the*
39 *event* may use the terms “seminar,” “class,” “informational
40 meeting,” “benefits assistance,” “qualification information,” or

1 substantially equivalent terms to characterize the purpose of the
2 public gathering or event unless it adds the words “and insurance
3 sales presentation” immediately following those terms in the same
4 type size and font as those terms.

5 SEC. 2. Section 787.1 of the Insurance Code is amended to
6 read:

7 787.1. (a) The following definitions apply to this section:
8 (1) “Senior designation” means any degree, title, credential,
9 certificate, certification, accreditation, or approval, that expresses
10 or implies that a broker or agent possesses expertise, training,
11 competence, honesty, or reliability with regard to advising seniors
12 in particular on finance, insurance, or risk management.

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

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

20 (A) The broker or agent has been granted the right to use the
21 senior designation by the organization that issues the senior
22 designation, and the broker or agent is currently authorized by the
23 organization to use the designation.

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

27 (C) The broker or agent has been licensed for at least four years
28 in any state or United States territory to sell the types of insurance
29 with which the designation is used.

30 (2) A broker or agent may not use a senior designation in a
31 manner that misleads a person as to the significance of the senior
32 designation. Each time a broker or agent uses a senior designation
33 in a writing, the writing shall also contain the words “California”
34 or “CA” next to “Insurance Agent” or “Insurance Broker Agent”
35 and “License,” and these words shall be located immediately prior
36 to the broker’s license number or the agent’s license number, in
37 type that is in the same font and at least the same size as the type
38 used for the senior designation. The requirements set forth in this
39 subdivision are in addition to the requirements of Section 1725.5
40 and shall apply regardless of whether the broker or agent is an

1 insurance agent, as defined in Section 1621. For purposes of this
2 paragraph, “writing” means business cards, written price
3 quotations, and print advertisements distributed exclusively in this
4 state.

5 (c) The commissioner shall approve a senior designation only
6 if the organization that issues the designation satisfies all of the
7 following requirements with respect to the designation:

8 (1) The organization has applied for approval on a form
9 prescribed by the commissioner.

10 (A) The department may require the filing of any supplementary
11 documents and declarations it deems necessary to determine
12 whether the prerequisites for approval have been met.

13 (B) Before or after approval, an organization shall notify the
14 department in writing within 45 days following any material change
15 in information recorded on the application form or in declarations
16 or documents submitted along with it or in response to a department
17 request.

18 (2) The designation is accredited by the National Commission
19 for Certifying Agencies, or the organization or the designation is
20 accredited by an agency that is on the United States Department
21 of Education’s list entitled “Accrediting Agencies Recognized for
22 Title IV Purposes” and it is established to the satisfaction of the
23 commissioner that the agency is qualified to accredit an
24 organization or designation involved with financial services
25 provided to seniors.

26 (3) The organization requires California candidates for the
27 designation to demonstrate superior expertise in advising seniors
28 in particular in finance, insurance, or risk management by passing
29 examinations that are based on applicants with no prior insurance
30 education or experience completing at least 75 hours of study
31 covering at least the following topics: aspects of aging, health care
32 coverage, long-term care insurance, financial planning for
33 retirement, investments, estate planning, and ethics. Textbooks or
34 other study materials may use chapter and subchapter titles that
35 differ from those general topics as long as the essential content is
36 the same. No part of the examinations, textbooks, or other study
37 materials may concern techniques on how to increase the amount
38 of insurance or financial products one sells, or recommend the
39 selling of products offered by specific companies.

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

5 (A) Is exclusively an educational or certification organization,
6 and is not directly or indirectly, through an affiliate or partner,
7 involved in selling insurance, nor receives any compensation
8 directly or indirectly from any sale of insurance, other than the
9 receipt of charitable gifts by a nonprofit institution.

10 (B) Maintains standards and procedures for disciplining its
11 designees for improper or unethical conduct, as established by
12 proven complaints or by disciplinary action by a government
13 licensing agency or a quasi-governmental licensing and regulatory
14 organization. The standards and procedures shall include, at a
15 minimum:

16 (i) A written procedure to receive, log, and conduct a preliminary
17 review of complaints alleging improper, illegal, or unethical
18 conduct.

19 (ii) Written standards for determining when a complaint warrants
20 further investigation into the merits of the allegations contained
21 therein.

22 (iii) Written standards and procedures to ensure that, once a
23 complaint is determined to warrant further investigation, the
24 investigation is diligently conducted.

25 (iv) Written standards for determining when to file disciplinary
26 charges based on the results of an investigation.

27 (v) Written standards and procedures to ensure due process in
28 the adjudication of disciplinary charges by adjudicators who are
29 fair, knowledgeable, and otherwise qualified.

30 (vi) Written standards and procedures for the imposition of
31 appropriate sanctions, including, when warranted, revocation of
32 the designation.

33 (C) Maintains a code of ethics for its California designees
34 consistent with that of one of the designations recited in Section
35 1749.4.

36 (e) (1) A word, phrase, acronym, or logo shall be deemed a
37 senior designation if it contains the word “senior,” “Medicare,”
38 “Medi-Cal,” “retire,” “mature,” “gerontology,” or “elder,” or
39 “veteran,” or any variation or synonym of one of these words
40 within several words of the word “certified,” “chartered,”

1 “registered,” “adviser,” “specialist,” “consultant,” “agent,”
2 “broker,” “insurance,” “planner,” “professional,” “enrolled,”
3 “accredited,” “analyst,” or “fellow,” or any variation or synonym
4 of one of these words. A word, phrase, acronym, or logo may
5 constitute a senior designation if it meets the definition in paragraph
6 (1) of subdivision (a) regardless of whether it contains one of the
7 words recited in this subdivision.

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

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

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

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

27 (g) Any person who grants to a California resident the right to
28 use a senior designation that has not been approved by the
29 commissioner, without reasonably attempting to determine whether
30 California is one of the designee’s residences, shall be subject to
31 a cease and desist order and monetary penalty pursuant to Section
32 12921.8, as if the person had acted in a capacity for which a license
33 was required but not possessed.

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

37 (i) Notwithstanding any other provision of this code, the criteria
38 in Sections 1668 and 1668.5 apply to an organization that issues
39 a senior designation, and the commissioner may deny or rescind

1 approval of an organization issuing a senior designation based on
2 that criteria.

3 (j) The commissioner shall maintain a list of senior designations
4 approved pursuant to subdivisions (c), (d), and (e) and shall publish
5 the current list on the Internet Web site of the Department of
6 Insurance.

7 (k) This section shall apply to all types of insurance, including
8 those listed in paragraphs (1) and (2) of subdivision (c) of Section
9 785, except those listed in paragraphs (3) to (7), inclusive, and
10 paragraph (9) of subdivision (c) of Section 785 and subdivision
11 (d) of Section 785.

12 (l) The commissioner may, upon receipt of a petition from an
13 organization, issue written confirmation that a designation issued
14 by that organization is exempt from the requirement of approval
15 pursuant to this section. The commissioner may issue confirmation
16 if the designation, according to its title or curriculum, or in its
17 actual use, concerns almost exclusively subject matters other than
18 insurance or financial services sold to seniors in particular.

19 (m) (1) The commissioner may rescind approval of a
20 designation whenever there has been a material change in the
21 management or operation of the organization that issues the
22 designation, or in the procedures or criteria for issuance of the
23 designation, such that if the organization were to apply for approval
24 of the designation subsequent to the change, approval would be
25 denied.

26 (2) Any rescission of the approval of a designation shall be after
27 notice and a hearing conducted in accordance with Chapter 5
28 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code, as if the approval were a license, and
30 the commissioner shall have all of the powers granted therein.