

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2009 MAY 26 PM 3: 13
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §33-2-10 & 33-12-35

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

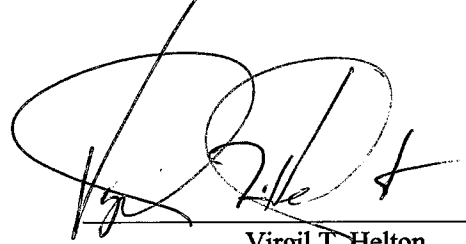
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 89

TITLE OF RULE BEING PROPOSED: Use of Senior-Specific Certifications and Professional Designations
in the Sale of Life Insurance and Annuities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 6/25/09 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540
Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 89

**USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES**

TITLE 114, SERIES 89

BRIEF SUMMARY OF RULE

This rule makes it a specific violation of the insurance laws for an insurance agent who is attempting to sell life insurance or an annuity to a senior citizen to claim that such agent has a professional certification that would indicate that he or she has special expertise in advising seniors. The rule would apply to the use of a "[s]enior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product." The rule provides that certifications from certain organizations, e.g. American National Standards Institute (ANSI), are presumed to be valid, although this presumption may be rebutted.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 89

**USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES**

TITLE 114, SERIES 89

STATEMENT OF CIRCUMSTANCES

In response to the increasing problems with insurance agents attempting to sell products to senior citizens by claiming that the agent has a particular expertise in advising seniors, the National Association of Insurance Commissioners adopted a model rule in the fall of 2008 that would make such practices subject to an adopting state's Unfair Trade Practices Act (this model rule was suggested by a Senate committee examining abuses in the sale of such products to seniors). The WV Insurance Commissioner has determined that, along with numerous states, the suggested solution - deeming such a practice a specific violation of the insurance laws - should be adopted to protect seniors.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Use of Senior-Specific Certifications and Professional Designations in the
Sale of Life Insurance and Annuities (Series 114-Title 89)

Type of Rule: X Legislative Interpretive Procedural Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: timothy.murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact on state government, the proposed rule simply changes the manner in which insurance companies calculate whether they are able to request approval from the Offices of the Insurance Commissioner to implement certain cost containment measures.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (Series 114-Title 89)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

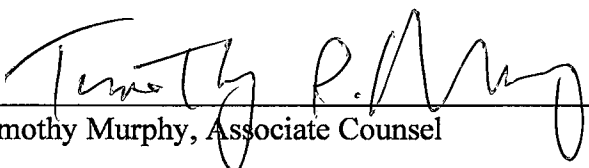
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed rule (which adds details to statutory changes made in response to recent changes in federal law) simply changes the manner in which insurance companies calculate whether they are able to request approval from the Offices of the Insurance Commissioner to implement certain cost containment measures. It is not anticipated that these changes will lead to any such requests.

Date: May 26, 2009

Signature of Agency Head or Authorized Representative



Timothy Murphy, Associate Counsel

**TITLE 114
LEGISLATIVE RULE
OFFICE OF THE INSURANCE COMMISSIONER**

**SERIES 89
USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES**

Section

- 114-89-1. General.
- 114-89-2. Definition.
- 114-89-3. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

FILED

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TITLE 114
LEGISLATIVE RULE
OFFICE OF THE INSURANCE COMMISSIONER

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 89
USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES

§114-89-1. General.

1.1. Purpose. -- The purpose of this rule is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

1.2. Scope. -- This rule applies to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer. The rule is based on the "Model Regulation on the Use of Senior Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (#278)," as adopted by the National Association of Insurance Commissioners in the 3rd quarter of 2008.

1.3. Authority. -- W. Va. Code §§33-2-10 and 33-12-35.

1.4. Filing Date. --

1.4. Effective Date. --

§114-89-2. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

2.1. No producer may use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

2.2. The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

a. Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

b. Use of a nonexistent or self-conferred certification or professional designation;

Title 114, Series 89
Legislative Rule
Insurance Commission

c. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

d. Use of a certification or professional designation that was obtained from a certifying or designating organization that:

1. Is primarily engaged in the business of instruction in sales or marketing;
2. Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
3. Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
4. Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

2.3. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision d, subsection 2.2 of this rule when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

- a. The American National Standards Institute (ANSI);
- b. The National Commission for Certifying Agencies; or
- c. Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

2.4. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

- a. Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- b. The manner in which those words are combined.

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2.5. a. For purposes of this rule, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency, is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

b. For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.