

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

Form #3

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2009 JUL 17 PM 3:46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §§33-2-10 and 33-12-35

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

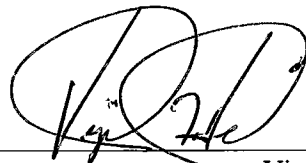
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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 Designation in the  
Sale of Life Insurance and Annuities

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Virgil T. Helton  
Cabinet Secretary  
West Virginia Department of Revenue

#460

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.

## QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

**DATE:**

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** OFFICE OF THE INSURANCE COMMISSIONER  
ATTN: Legal Division  
1124 Smith Street  
Post Office Box 50540  
Charleston, West Virginia 25305-0540

**LEGISLATIVE RULE TITLE:** Use of Senior-Specific Certifications  
and Professional Designations in the  
Sale of Life Insurance and Annuities ,  
Title 114, Seris 89

1. **Authorizing statute(s) citation:**

W. Va. Code §§33-2-10 and 33-12-35.

2. **a. Date filed in State Register with Notice of Hearing or Public Comment Period:**

May 26, 2009 - Comment Period.

**b. What other notice, including advertising, did you give of the hearing?**

N/A

**c. Date of Public Hearing(s) or Public Comment Period ended:**

June 25, 2009 - End of Comment Period.

**d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.**

Attached   X   No comments received           

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**

Insurance Commissioner  
Title 114, Series 89

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Timothy R. Murphy, Associate Counsel  
West Virginia Insurance Commission  
Legal Division  
P.O. Box 50540  
Charleston, WV 25305-0540  
Phone: (304) 558-6279, Ext. 1210  
Fax: (304) 558-1362  
E-mail: timothy.murphy@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

N/A

**Timothy Murphy**

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**From:** Leah Walters [LeahWalters@acli.com]  
**Sent:** Thursday, June 25, 2009 6:38 PM  
**To:** Victor Mullins  
**Cc:** Timothy Murphy  
**Subject:** Legislative Rules

Mr. Mullins, these comments are submitted on behalf of the American Council of Life Insurers, a national trade association representing 340 member companies operating in the United States which account for 93% of total life insurance company assets, 94% of the life insurance premiums, and 94% of annuity considerations.

The ACLI commends and thanks the WV Insurance Department for proposing the following legislative rules: Rule 114-89 (Use of Senior-Specific Certification and Designations); Rule 114-11E (Annuity Disclosure) and Rule 114-11D (Variable Life Insurance).

In 2005, ACLI's Board of Directors committed to improving the annuity environment. Part of that process was to start encouraging all states to adopt the NAIC Annuity Disclosure Model Regulation. When this Model is adopted in conjunction with the NAIC Suitability Model Regulation and the NAIC Senior Specific Certification and Designation Model Regulation, consumers are offered the greatest protections and disclosures when considering the purchase of an annuity product.

Again, ACLI commends the WV Insurance Department for proposing these NAIC Model Regulations and we also appreciate that the Department is adopting these model regulations word for word. Uniformity among the states is critical to both insurers and producers as they offer these products to consumers.

Thank you for the opportunity to provide comments on these very important consumer protection rules.

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**Leah J. Walters**  
**American Council of Life Insurers** | Financial Security. For Life.  
Regional Vice President, State Relations  
(202) 624-2131 t (202) 572-4871 f  
leahwalters@acli.com

www.acli.com  
101 Constitution Ave., NW, Suite 700  
Washington, DC 20001-2133

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Insurance Commissioner  
Title 114, Series 89

ATTACHEMENT TO QUESTION 2 (d):

Only one comment was received by The American Council of Life Insurers (ACLI). ACLI commended and thanked the Insurance Commissioner for amending the rule to track the NAIC model and thereby bringing West Virginia into conformity with a majority of states. No changes to the proposed rule were suggested.

***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:  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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	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

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.

**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.

**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**

**§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 3<sup>rd</sup> 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.

**Title 114, Series 89**  
**Legislative Rule**  
**Insurance Commission**

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.