

CHAPTER 41

AN ACT concerning sales of securities and supplementing P.L.1967, c.93 (C.49:3-47 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.49:3-52.2 Sales of securities, misleading use of senior-specific certifications.

1. a. A person who uses a certification or professional designation to indicate or imply that the user has special training in advising or servicing senior citizens or retirees (hereinafter, a “senior-specific certification or professional designation”), in such a way as to mislead any person, in connection with the offer, sale, or purchase of a security, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling a security, either directly or indirectly or through a publication or a writing, or by issuing or promulgating an analysis or report relating to a security shall have engaged in a dishonest or unethical practice pursuant to subparagraph (vii) of paragraph (2) of subsection (a) of section 11 of P.L.1967, c.93 (C.49:3-58).

b. Uses of a senior-specific certification or professional designation that shall be a dishonest or unethical practice pursuant to subsection a. of this section shall include, but shall not be limited to, the use of:

(1) a certification or professional designation by a person who has not actually earned or who is otherwise ineligible to use that certification or professional designation;

(2) a nonexistent or self-conferred certification or professional designation;

(3) a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(4) a certification or professional designation that was obtained from a certifying or designating organization that:

(a) is primarily engaged in the business of instruction in sales or marketing;

(b) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(c) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(d) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

c. A rebuttable presumption that a certifying or designating organization is not included as an organization to which paragraph (4) of subsection b. of this section is applicable shall exist, if the organization has been accredited by:

(1) the American National Standards Institute;

(2) the National Commission for Certifying Agencies; or

(3) an organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the certification or professional designation issued by the organization does not primarily apply to sales or marketing.

d. In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a senior-specific certification or professional designation, factors to be considered shall include:

(1) 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,” “adviser,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

e. For purposes of this section, a senior-specific certification or professional designation shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, if that job title:

(1) indicates seniority or standing within the organization; or

(2) specifies an individual's area of specialization within the organization.

For purposes of this subsection, "financial services regulatory agency" shall include, but shall not be limited to, an agency that regulates brokers, dealers, investment advisers, or investment companies as defined pursuant to the federal "Investment Advisers Act of 1940" (15 U.S.C. s.80b-1 et seq.) or the federal "Investment Company Act of 1940" (15 U.S.C. s.80a-1 et seq.).

f. Nothing in this section shall limit the bureau chief's enforcement authority under the law.

2. This act shall take effect immediately.

Approved July 2, 2010.