

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 684

(Senator Kramer, *et al.*)

Judicial Proceedings

Economic Matters

Senior Investment Protection Act

This emergency bill makes it unlawful under the Maryland Securities Act for any person to use a senior or retiree credential or designation in a misleading way in connection with (1) the offer, sale, or purchase of securities; (2) receiving any consideration from another person for advice as to the value of securities or their purchase or sale; or (3) acting as a broker-dealer, agent, investment adviser, or investment adviser representative. The bill further requires the Securities Commissioner to define what constitutes a misleading use of a senior or retiree credential or designation. It also establishes an enhanced criminal penalty for any willful violation of the bill's provisions regarding senior or retiree credentials or designations.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Any violation of a rule pertaining to the misleading use of a senior or retiree credential or designation promulgated by the commissioner constitutes a dishonest or unethical practice under related sections of the Maryland Securities Act. The bill also allows the commissioner to provide exceptions to the bill's provisions that are consistent

with the public interest. A person who willfully violates the bill's provisions regarding senior or retiree credentials or designations, upon conviction, is subject to a fine of up to \$100,000, imprisonment for up to five years, or both.

Current Law: Under the Maryland Securities Act, it is unlawful for any person, in connection with the offer, sale, or purchase of any security to:

- employ any device, scheme, or artifice to defraud;
- make any untrue statement of a material fact or omission thereof; or
- engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person.

Investment advisers may not employ any fraudulent scheme or device; engage in any fraudulent or deceitful act, practice, or course of business; engage in dishonest or unethical practices as defined by the Securities Commissioner; or engage in certain transactions as principal or agent without fully disclosing to the client the capacity in which the person is acting and obtaining the client's consent prior to the transaction. It is unlawful for any investment adviser or investment representative to knowingly make an untrue statement of a material fact, or an omission thereof in the solicitation of advisory clients.

A person who violates the Maryland Securities Act is subject to administrative, civil, and criminal penalties, including denial, suspension, or revocation of the person's registration to do business in the State. A willful violation of the Securities Act subjects a person to a fine of up to \$50,000, imprisonment for up to three years, or both.

Background: In April 2008, the North American Securities Administrators Association (NASAA) approved a model rule that prohibits the misleading use of senior-specific certifications or professional designations. The Maryland Securities Commissioner chaired a NASAA task force that addressed the growing use of senior certifications that misleadingly imply expertise in financial planning or investing. According to the Securities Commissioner, investors often have insufficient information when trying to determine whether so-called "senior designations" represent meaningful educational achievement by the salesperson or are merely marketing tools.

In 2007, the Massachusetts State Securities Division adopted the nation's first regulation that prohibits broker-dealer agents from using a purported credential or professional designation that implies special certification in advising or servicing senior investors, unless such credential or professional designation has been accredited by an approved organization. Colorado, New Hampshire, North Dakota, Virginia, and Washington have proposed similar legislation.

Additional Information

Prior Introductions: None.

Cross File: HB 571 (Delegate Kramer, *et al.*) - Economic Matters.

Information Source(s): North American Securities Administrators Association; *Investment News*; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Aging; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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