



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

September 8, 2009

Legal Unit
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REPORT ON Section Ins 6.90, Wis. Adm. Code, relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Clearinghouse Rule No. CR09-038
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

The purpose of this regulation 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.

(b) Summary of the public comments and the agency's responses to those comments:

Comment: Wisconsin Council of Life Insurers suggested that the definition of "advertisement" under s. 6.90 (4) (a) be expressed only as a reference to s. Ins. 2.16 (3) (a), and that the text not be reproduced in its entirety.

Response: To the extent that changes may be made to either section in the future, those changes may not be applicable to both sections. The definition of "advertisement" should include the text in its entirety.

Comment: The International Foundation of Employee Benefit Plans expressed concerns that the designations it uses internally to qualify its members such as Certified Employee Benefit Specialist, Retirement Plans Specialist and Group Benefits Associate, would fall under scrutiny by the OCI according to this rule. The International Foundation requested a safe harbor provision in the rule for these designations.

Response: The proposed rule would not affect any member of the International Foundation unless that member also possesses an insurance license. The extent to which any person would fall under the jurisdiction of the OCI, and the extent to which designations would be in compliance with the proposed rule would be considered on a case by case basis. The OCI would not give safe harbor provisions for any particular designation.

Comment: The National Association of Insurance and Financial Advisors expressed concerns that the words “or restrain competition unreasonably” would invoke anti-trust concerns, and requests that the language be deleted. s. Ins 6.90(1)

Response: The OCI does not believe that this language raises anti-trust concerns and is consistent with the NAIC model.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

None

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

Connie O’Connell
Susan Linck

Appearances against:

None

Appearances for information:

None

Registrations for:

None

Registrations against:

None

Registrations neither for nor against:

Linda Bielski

Letters received:

None

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

None

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with and corrected except the following:

In s. Ins. 6.90 (4) (c) 3, the words “in accordance therewith” was not deleted because it is consistent with the NAIC model language.

s. Ins 6.90 (5) (b) was not modified because it is consistent with the NAIC model language and with the intent of the drafters.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations