

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-252

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-252. Use of Senior-Specific Certifications and Professional Designations
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Penalties and Enforcement Date sections, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-23a-402	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	

Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		03/31/2023
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

9. This rule change MAY become effective on:	04/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/08/2023

R590. Insurance, Administration.

R590-252. Use of Senior-Specific Certifications and Professional Designations.

R590-252-1. Authority.

This rule is promulgated by the commissioner pursuant to:

- ~~_____ (1) Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A; and~~
- ~~_____ (2) Subsection 31A-23a-402(8)(a) that authorizes the commissioner to define by rule unfair methods of competition and unfair or deceptive acts or practices in the business of insurance] Sections 31A-2-201 and 31A-23a-402.~~

R590-252-2. Purpose and Scope.

(1) The purpose of this rule is to ~~set forth~~ establish standards to protect consumers from misleading or fraudulent marketing practices ~~[with respect to]~~ concerning the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product.

~~_____ (2) This rule applies to a producer or consultant offering a solicitation, sale, purchase, or advice in connection with an annuity, accident and health, or life insurance product.~~

~~**[R590-252-3. Scope.**~~

~~_____ This rule shall apply to any solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product by an insurance producer or consultant.]~~

~~**R590-252-3. Definitions.**~~

~~_____ Terms used in this rule are defined in Section 31A-1-301.~~

R590-252-4. Findings.

The commissioner finds that ~~[the acts]~~ an act prohibited by this rule ~~[are]~~ is unfair, misleading, and deceptive within the meaning of Section 31A-23a-402.

R590-252-5. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

~~_____ (1)(a) An insurance producer or consultant may not 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 or consultant has special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of any annuity, accident and health, or life insurance product or in the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to an annuity, accident and health, or life insurance product.]~~

(1)(a) A producer or consultant may not use a senior-specific certification or professional designation that indicates or implies, in a way that misleads a consumer, that the producer or consultant has special certification or training in:

(i) advising or servicing seniors in connection with the solicitation, sale, or purchase of any annuity, accident and health, or life insurance product; or

(ii) the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product.

(b) The prohibited use of senior-specific certifications or professional designations may not be provided:

(i) either directly or indirectly;

(ii) through a publication or writing; or

(iii) by issuing or promulgating an analysis or report related to an annuity, accident and health, or life insurance product.

~~(b)~~(c) The prohibited use of senior-specific certifications or professional designations includes~~[- but is not limited to, the following]:~~

(i) use of a certification or professional designation by ~~[an insurance]~~ a producer or consultant who has not ~~[actually]~~ earned or is otherwise ineligible to use ~~[such]~~ the certification or designation;

(ii) use of a nonexistent or self-conferred certification or professional designation;

(iii) use of a certification or professional designation that indicates or implies a level of occupational qualification[s] obtained through education, training, or experience that the ~~[insurance]~~ producer or consultant using the certification or designation does not have; and

(iv) use of 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.

(2) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of ~~[subsection (1)(b)(iv)]~~ Subsection (1)(c)(iv) 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."

(3) 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,"]~~ senior, retirement, elder or like words combined with one or more words such as ~~["certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner,"]~~ 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.

(4)(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:

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

(ii) 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, insurance consultants, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

~~R590-252-6. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R590-252-7. Enforcement Date.~~

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

~~R590-252-8. Severability.~~

~~[If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.]~~ If any provision of this rule, Rule R590-252, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: senior-specific insurance designations

Date of Enactment or Last Substantive Amendment: February 25, 2009

Notice of Continuation: February 11, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402