

Union Calendar No. 21

109TH CONGRESS
1ST SESSION

H. R. 458

[Report No. 109–40]

To prevent the sale of abusive insurance and investment products to military personnel.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2005

Mr. DAVIS of Kentucky (for himself, Mr. BAKER, Mr. SHIMKUS, Mr. GERLACH, Mr. FITZPATRICK of Pennsylvania, Mr. NORWOOD, Mr. RYUN of Kansas, and Mr. SHADEGG) introduced the following bill; which was referred to the Committee on Financial Services

APRIL 13, 2005

Additional sponsors: Mr. GILLMOR, Mr. PICKERING, Mr. NEUGEBAUER, Mr. ROGERS of Kentucky, Mr. FOLEY, Mrs. CAPITO, Mr. EDWARDS, Mr. CARTER, Ms. MOORE of Wisconsin, Ms. BEAN, Mr. LEWIS of Kentucky, and Mr. POMEROY

APRIL 13, 2005

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To prevent the sale of abusive insurance and investment products to military personnel.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Military Personnel Fi-
3 nancial Services Protection Act”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds the following:

6 (1) Our military personnel perform great sac-
7 rifices in protecting our Nation in the War on Ter-
8 ror and promoting democracy abroad.

9 (2) Our brave men and women in uniform de-
10 serve to be offered first-rate financial products in
11 order to provide for their families and to save and
12 invest for retirement.

13 (3) Our military personnel are being offered
14 high-cost securities and life insurance products by
15 some financial services companies engaging in abu-
16 sive and misleading sales practices.

17 (4) One securities product being offered to our
18 service members, the contractual plan, has largely
19 disappeared from the civilian market since the 1980s
20 due to its excessive sales charges and the emergence
21 of low-cost products. A 50-percent sales commission
22 is typically assessed against the first year of con-
23 tributions made under a contractual plan, even
24 though the average commission on other securities
25 products such as mutual funds is less than 6 percent
26 on each sale.

1 (5) The excessive sales charge of the contrac-
2 tual plan makes it susceptible to abusive and mis-
3 leading sales practices.

4 (6) Certain life insurance products being of-
5 fered to our service members are being improperly
6 marketed as investment products. These products
7 provide very low death benefits for very high pre-
8 miums that are front-loaded in the first few years,
9 making them completely inappropriate for most mili-
10 tary personnel.

11 (7) Regulation of these securities and life insur-
12 ance products and their sale on military bases has
13 been clearly inadequate and requires Congressional
14 legislation to address.

15 **SEC. 3. PROHIBITION ON FUTURE SALES OF PERIODIC PAY-**
16 **MENT PLANS.**

17 (a) AMENDMENT.—Section 27 of the Investment
18 Company Act of 1940 (15 U.S.C. 80a–27) is amended by
19 adding at the end the following new subsection:

20 “(j) TERMINATION OF SALES.—

21 “(1) TERMINATION.—Effective 30 days after
22 the date of enactment of the Military Personnel Fi-
23 nancial Services Protection Act, it shall be unlawful,
24 subject to subsection (i)—

1 “(A) for any registered investment com-
2 pany to issue any periodic payment plan certifi-
3 cate; or

4 “(B) for such company, or any depositor of
5 or underwriter for any such company, or any
6 other person, to sell such a certificate.

7 “(2) NO INVALIDATION OF EXISTING CERTIFI-
8 CATES.—Paragraph (1) shall not be construed to
9 alter, invalidate, or otherwise affect any rights or ob-
10 ligations, including rights of redemption, under any
11 periodic payment plan certificate issued and sold be-
12 fore 30 days after such date of enactment.”.

13 (b) TECHNICAL AMENDMENT.—Section 27(i)(2)(B)
14 of such Act is amended by striking “section 26(e)” each
15 place it appears and inserting “section 26(f)”.

16 (c) REPORT ON REFUNDS, SALES PRACTICES, AND
17 REVENUES FROM PERIODIC PAYMENT PLANS.—Within 6
18 months after the date of enactment of this Act, the Securi-
19 ties and Exchange Commission shall submit to the Com-
20 mittee on Financial Services of the House of Representa-
21 tives and the Committee on Banking, Housing, and Urban
22 Affairs of the Senate, a report describing—

23 (1) any measures taken by a broker or dealer
24 registered with the Securities and Exchange Com-
25 mission pursuant to section 15(b) of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78o(b)) to volun-
2 tarily refund payments made by military service
3 members on any periodic payment plan certificate,
4 and the amounts of such refunds;

5 (2) after such consultation with the Secretary
6 of Defense as the Commission considers appropriate,
7 the sales practices of such brokers or dealers on
8 military installations over the past 5 years and any
9 legislative or regulatory recommendations to improve
10 such practices; and

11 (3) the revenues generated by such brokers or
12 dealers in the sales of periodic payment plan certifi-
13 cates over the past 5 years and what products such
14 brokers or dealers market to replace the revenue
15 generated from the sales of periodic payment plan
16 certificates prohibited under subsection (a) of this
17 section.

18 **SEC. 4. METHOD OF MAINTAINING BROKER/DEALER REG-**
19 **ISTRATION, DISCIPLINARY, AND OTHER**
20 **DATA.**

21 Subsection (i) of section 15A of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78o–3(i)) is amended to
23 read as follows:

24 “(i) OBLIGATION TO MAINTAIN REGISTRATION, DIS-
25 CIPLINARY AND OTHER DATA.—

1 “(1) MAINTENANCE OF SYSTEM TO RESPOND
2 TO INQUIRIES.—A registered securities association
3 shall—

4 “(A) establish and maintain a system for
5 collecting and retaining registration informa-
6 tion;

7 “(B) establish and maintain a toll-free
8 telephone listing, and a readily accessible elec-
9 tronic or other process, to receive and promptly
10 respond to inquiries regarding—

11 “(i) registration information on its
12 members and their associated persons; and

13 “(ii) registration information on the
14 members and their associated persons of
15 any registered national securities exchange
16 that uses the system described in subpara-
17 graph (A) for the registration of its mem-
18 bers and their associated persons; and

19 “(C) adopt rules governing the process for
20 making inquiries and the type, scope, and pres-
21 entation of information to be provided in re-
22 sponse to such inquiries in consultation with
23 any registered national securities exchange pro-
24 viding information pursuant to subparagraph
25 (B)(ii).

1 “(2) RECOVERY OF COSTS.—Such an associa-
2 tion may charge persons making inquiries, other
3 than individual investors, reasonable fees for re-
4 sponses to such inquiries.

5 “(3) PROCESS FOR DISPUTED INFORMATION.—
6 Such an association shall adopt rules establishing an
7 administrative process for disputing the accuracy of
8 information provided in response to inquiries under
9 this subsection in consultation with any registered
10 national securities exchange providing information
11 pursuant to paragraph (1)(B)(ii).

12 “(4) LIMITATION OF LIABILITY.—Such an asso-
13 ciation, or an exchange reporting information to
14 such an association, shall not have any liability to
15 any person for any actions taken or omitted in good
16 faith under this subsection.

17 “(5) DEFINITION.—For purposes of this sub-
18 section, the term ‘registration information’ means
19 the information reported in connection with the reg-
20 istration or licensing of brokers and dealers and
21 their associated persons, including disciplinary ac-
22 tions, regulatory, judicial, and arbitration pro-
23 ceedings, and other information required by law, or
24 exchange or association rule, and the source and sta-
25 tus of such information.”.

1 **SEC. 5. FILING DEPOSITORIES FOR INVESTMENT ADVIS-**
2 **ERS.**

3 (a) AMENDMENT.—Section 204 of the Investment
4 Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

5 (1) by striking “Every investment” and insert-
6 ing the following:

7 “(a) IN GENERAL.—Every investment”; and

8 (2) by adding at the end the following:

9 “(b) FILING DEPOSITORIES.—The Commission may,
10 by rule, require an investment adviser—

11 “(1) to file with the Commission any fee, appli-
12 cation, report, or notice required to be filed by this
13 title or the rules issued under this title through any
14 entity designated by the Commission for that pur-
15 pose; and

16 “(2) to pay the reasonable costs associated with
17 such filing and the establishment and maintenance
18 of the systems required by subsection (c).

19 “(c) ACCESS TO DISCIPLINARY AND OTHER INFOR-
20 MATION.—

21 “(1) MAINTENANCE OF SYSTEM TO RESPOND
22 TO INQUIRIES.—The Commission shall require the
23 entity designated by the Commission under sub-
24 section (b)(1) to establish and maintain a toll-free
25 telephone listing, or a readily accessible electronic or
26 other process, to receive and promptly respond to in-

1 inquiries regarding registration information (including
 2 disciplinary actions, regulatory, judicial, and arbitra-
 3 tion proceedings, and other information required by
 4 law or rule to be reported) involving investment ad-
 5 visers and persons associated with investment advis-
 6 ers.

7 “(2) RECOVERY OF COSTS.—An entity des-
 8 ignated by the Commission under subsection (b)(1)
 9 may charge persons making inquiries, other than in-
 10 dividual investors, reasonable fees for responses to
 11 inquiries made under paragraph (1).

12 “(3) LIMITATION ON LIABILITY.—An entity
 13 designated by the Commission under subsection
 14 (b)(1) shall not have any liability to any person for
 15 any actions taken or omitted in good faith under
 16 this subsection.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 203A of the Investment Advisers
 19 Act of 1940 (15 U.S.C. 80b–3a) is amended—

20 (A) by striking subsection (d); and

21 (B) by redesignating subsection (e) as sub-
 22 section (d).

23 (2) Section 306 of the National Securities Mar-
 24 kets Improvement Act of 1996 (15 U.S.C. 80b–10,

1 note; Public Law 104–290; 110 Stat. 3439) is re-
2 pealed.

3 **SEC. 6. STATE INSURANCE JURISDICTION ON MILITARY IN-**
4 **STALLATIONS.**

5 (a) CLARIFICATION OF JURISDICTION.—Any law,
6 regulation, or order of a State with respect to regulating
7 the business of insurance shall apply to insurance activi-
8 ties conducted on Federal land or facilities in the United
9 States and abroad, including military installations, except
10 to the extent that such law, regulation, or order—

11 (1) directly conflicts with any applicable Fed-
12 eral law, regulation, or authorized directive; or

13 (2) would not apply if such activity were con-
14 ducted on State land.

15 (b) PRIMARY STATE JURISDICTION.—To the extent
16 that multiple State laws would otherwise apply pursuant
17 to subsection (a) to an insurance activity of an individual
18 or entity on Federal land or facilities, the State having
19 the primary duty to regulate such activity and whose laws
20 shall apply to such activity in the case of a conflict shall
21 be—

22 (1) the State within which the Federal land or
23 facility is located; or

24 (2) if the Federal land or facility is located out-
25 side of the United States, the State in which—

1 (A) in the case of an individual engaged in
2 the business of insurance, such individual has
3 been issued a resident license; or

4 (B) in the case of an entity engaged in the
5 business of insurance, such entity is domiciled.

6 **SEC. 7. REQUIRED DEVELOPMENT OF MILITARY PER-**
7 **SONNEL PROTECTION STANDARDS REGARD-**
8 **ING INSURANCE SALES.**

9 (a) STATE STANDARDS.—The Congress intends
10 that—

11 (1) the States collectively work with the Sec-
12 retary of Defense to ensure implementation of ap-
13 propriate standards to protect members of the
14 Armed Forces from dishonest and predatory insur-
15 ance sales practices while on a military installation
16 of the United States (including installations located
17 outside of the United States); and

18 (2) each State identify its role in promoting the
19 standards described in paragraph (1) in a uniform
20 manner within 12 months after the date of the en-
21 actment of this Act.

22 (b) STATE REPORT.—It is the sense of the Congress
23 that the NAIC should, after consultation with the Sec-
24 retary of Defense and within 12 months after the date
25 of the enactment of this Act, conduct a study to determine

1 the extent to which the States have met the requirement
2 of subsection (a) and report such study to the Committee
3 on Financial Services of the House of Representatives and
4 the Committee on Banking, Housing, and Urban Affairs
5 of the Senate.

6 **SEC. 8. REQUIRED DISCLOSURES REGARDING LIFE INSUR-**
7 **ANCE.**

8 (a) REQUIREMENT.—Except as provided in sub-
9 section (d), no insurer or producer may sell or solicit, in
10 person, any life insurance product to any member of the
11 Armed Forces on a military installation of the United
12 States unless a disclosure in accordance with this section
13 is provided to such member before the sale of such insur-
14 ance.

15 (b) DISCLOSURE.—A disclosure in accordance with
16 this section is a written disclosure that—

17 (1) states that subsidized life insurance may be
18 available to the member of the Armed Forces from
19 the Federal Government;

20 (2) states that the United States Government
21 has in no way sanctioned, recommended, or encour-
22 aged the sale of the product being offered;

23 (3) is made in plain and readily understandable
24 language and in a type font at least as large as the
25 font used for the majority of the policy; and

1 (4) with respect to a sale or solicitation on Fed-
2 eral land or facilities located outside of the United
3 States by an individual or entity engaged in the
4 business of insurance, except to the extent otherwise
5 specifically provided by the laws of such State in ref-
6 erence to this Act, lists the address and phone num-
7 ber where consumer complaints are received by the
8 State insurance commissioner for the State in which
9 the individual has been issued a resident license or
10 the entity is domiciled, as applicable.

11 (c) ENFORCEMENT.—If it is determined by a State
12 or Federal agency, or in a final court proceeding, that any
13 individual or entity has intentionally failed to provide a
14 disclosure required by this section, such individual or enti-
15 ty shall be prohibited from further engaging in the busi-
16 ness of insurance with respect to employees of the Federal
17 Government on Federal land, except—

18 (1) with respect to existing policies; and

19 (2) to the extent required by the Federal Gov-
20 ernment pursuant to previous commitments.

21 (d) EXCEPTIONS.—

22 (1) FEDERAL AND STATE INSURANCE ACTIV-
23 ITY.—This section shall not apply to insurance ac-
24 tivities—

1 (A) specifically contracted by or through
2 the Federal Government or any State govern-
3 ment; or

4 (B) specifically exempted from the applica-
5 bility of this Act by a Federal or State law, reg-
6 ulation, or order that specifically refers to this
7 paragraph.

8 (2) UNIFORM STATE STANDARDS.—If a major-
9 ity of the States have adopted, in materially iden-
10 tical form, a standard setting forth the disclosures
11 required under this section that apply to insurance
12 solicitations and sales to military personnel on mili-
13 tary installations of the United States, after the ex-
14 piration of the 2-year period beginning on such ma-
15 jority adoption, such standard shall apply in lieu of
16 the requirements of this section to all insurance so-
17 licitations and sales to military personnel on military
18 installations, with respect to such States, to the ex-
19 tent that such standards do not directly conflict with
20 any applicable authorized Federal regulation or di-
21 rective.

22 (3) MATERIALLY IDENTICAL FORM.—For pur-
23 poses of this subsection, standards adopted by more
24 than one State shall be considered to have materially
25 identical form to the extent that such standards re-

1 quire or prohibit identical conduct with respect to
2 the same activity, notwithstanding that the stand-
3 ards may differ with respect to conduct required or
4 prohibited with respect to other activities.

5 **SEC. 9. IMPROVING LIFE INSURANCE PRODUCT STAND-**
6 **ARDS.**

7 (a) IN GENERAL.—It is the sense of the Congress
8 that the NAIC should, after consultation with the Sec-
9 retary of Defense and within 12 months after the date
10 of the enactment of this Act, conduct a study and submit
11 a report to the Committee on Financial Services of the
12 House of Representatives and the Committee on Banking,
13 Housing, and Urban Affairs of the Senate on ways of im-
14 proving the quality of and sale of life insurance products
15 sold by insurers and producers on military installations
16 of the United States, which may include limiting sales au-
17 thority to companies and producers that are certified as
18 meeting appropriate best practices procedures or creating
19 standards for products specifically designed for members
20 of the Armed Forces regardless of the sales location.

21 (b) CONDITIONAL GAO REPORT.—If the NAIC does
22 not submit the report to the committees as described in
23 subsection (a), the Comptroller General of the United
24 States shall study any proposals that have been made to
25 improve the quality and sale of life insurance products sold

1 by insurers and producers on military installations of the
2 United States and report to the Committee on Financial
3 Services of the House of Representatives and the Com-
4 mittee on Banking, Housing, and Urban Affairs of the
5 Senate on such proposals within 6 months after the expi-
6 ration of the period referred to in subsection (a).

7 **SEC. 10. REQUIRED REPORTING OF DISCIPLINED INSUR-**
8 **ANCE AGENTS.**

9 (a) REPORTING BY INSURERS.—After the expiration
10 of the 2-year period beginning on the date of the enact-
11 ment of this Act, no insurer may enter into or renew a
12 contractual relationship with a producer that solicits or
13 sells life insurance on military installations of the United
14 States unless the insurer has implemented a system to re-
15 port, to the State insurance commissioner of the State of
16 the domicile of the insurer and the State of residence of
17 the insurance producer, disciplinary actions taken against
18 the producer with respect to the producer's sales or solici-
19 tation of insurance on a military installation of the United
20 States, as follows:

21 (1) Any disciplinary action taken by any gov-
22 ernment entity that the insurer knows has been
23 taken.

24 (2) Any significant disciplinary action taken by
25 the insurer.

1 (b) REPORTING BY STATES.—It is the sense of the
2 Congress that within 2 years after the date of the enact-
3 ment of this Act, the States should collectively implement
4 a system to—

- 5 (1) receive reports of disciplinary actions taken
6 against insurance producers by insurers or govern-
7 ment entities with respect to the producers' sale or
8 solicitation of insurance on a military installation;
9 and
10 (2) disseminate such information to all other
11 States and to the Secretary of Defense.

12 **SEC. 11. REPORTING BARRED PERSONS SELLING INSUR-**
13 **ANCE OR SECURITIES.**

14 (a) ESTABLISHMENT.—The Secretary of Defense
15 shall maintain a list of the name, address, and other ap-
16 propriate information of persons engaged in the business
17 of securities or insurance that have been barred, banned,
18 or otherwise limited in any manner that is not generally
19 applicable to all such type of persons, from any or all mili-
20 tary installations of the United States.

21 (b) NOTICE AND ACCESS.—The Secretary shall en-
22 sure that—

- 23 (1) the appropriate Federal and State agencies
24 responsible for securities and insurance regulation

1 are promptly notified upon the inclusion or removal
2 of a person under such agencies' jurisdiction; and

3 (2) the list is kept current and easily acces-
4 sible—

5 (A) for use by such agencies; and

6 (B) for purposes of enforcing or consid-
7 ering any such bar, ban, or limitation by the
8 appropriate Federal personnel, including com-
9 manders of military installations.

10 (c) REGULATIONS.—

11 (1) IN GENERAL.—The Secretary shall issue
12 regulations in accordance with this subsection to
13 provide for the establishment and maintenance of
14 the list under this section, including appropriate due
15 process considerations.

16 (2) TIMING.—

17 (A) PROPOSED REGULATIONS.—Not later
18 than the expiration of the 60-day period begin-
19 ning on the date of the enactment of this Act,
20 the Secretary shall prepare and submit to the
21 appropriate Committees a copy of the regula-
22 tions under this subsection that are proposed to
23 be published for comment. The Secretary may
24 not publish such regulations for comment in the
25 Federal Register until the expiration of the 15-

1 day period beginning upon such submission to
2 the appropriate Committees.

3 (B) FINAL REGULATIONS.—Not later than
4 90 days after the date of the enactment of this
5 Act, the Secretary shall submit to the appro-
6 priate Committees a copy of the regulations
7 under this section to be published as final.

8 (C) EFFECTIVE DATE.—Such regulations
9 shall become effective upon the expiration of the
10 30-day period beginning upon such submission
11 to the appropriate Committees.

12 (3) DEFINITION.—For the purposes of this sec-
13 tion, the term “appropriate Committees” means—

14 (A) the Committee on Financial Services
15 and the Committee on Armed Services of the
16 House of Representatives; and

17 (B) the Committee on Banking, Housing,
18 and Urban Affairs and the Committee on
19 Armed Services of the Senate.

20 **SEC. 12. SENSE OF CONGRESS.**

21 It is the sense of the Congress that the Federal and
22 State agencies responsible for insurance and securities
23 regulation should provide advice to the appropriate Fed-
24 eral entities to consider—

1 (1) significantly increasing the life insurance
2 coverage made available through the Federal Gov-
3 ernment to members of the Armed Forces;

4 (2) implementing appropriate procedures to en-
5 courage members of the Armed Forces to improve
6 their financial literacy and obtain objective financial
7 counseling before purchasing additional life insur-
8 ance coverage or investments beyond those provided
9 by the Federal Government; and

10 (3) improving the benefits and matching con-
11 tributions provided under the Thrift Savings Plan to
12 members of the Armed Forces.

13 **SEC. 13. DEFINITIONS.**

14 For purposes of this Act, the following definitions
15 shall apply:

16 (1) ENTITY.—The term “entity” includes insur-
17 ers.

18 (2) INDIVIDUAL.—The term “individual” in-
19 cludes insurance agents and producers.

20 (3) NAIC.—The term “NAIC” means the Na-
21 tional Association of Insurance Commissioners.

22 (4) STATE INSURANCE COMMISSIONER.—The
23 term “State insurance commissioner” means, with
24 respect to a State, the officer, agency, or other enti-
25 ty of the State that has primary regulatory authority

1 over the business of insurance and over any person
2 engaged in the business of insurance, to the extent
3 of such business activities, in such State.

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