

109TH CONGRESS
1ST SESSION

H. R. 461

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2005

Mr. EMANUEL (for himself and Mr. EDWARDS) introduced the following bill;
which was referred to the Committee on Financial Services

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds the following:

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

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

5 (3) Our military personnel are being offered
6 high-cost securities and life insurance products by
7 some financial services companies engaging in abu-
8 sive and misleading sales practices.

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

19 (5) The excessive sales charge of the contrac-
20 tual plan makes it susceptible to abusive and mis-
21 leading sales practices.

22 (6) Certain life insurance products being of-
23 fered to our service members are being improperly
24 marketed as investment products. These products
25 provide very low death benefits for very high pre-

1 miums that are front-loaded in the first few years,
2 making them completely inappropriate for most mili-
3 tary personnel.

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

8 **SEC. 3. PROHIBITION ON FUTURE SALES OF PERIODIC PAY-**
9 **MENT PLANS.**

10 (a) AMENDMENT.—Section 27 of the Investment
11 Company Act of 1940 (15 U.S.C. 80a-27) is amended by
12 adding at the end the following new subsection:

13 “(j) TERMINATION OF SALES.—

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

18 “(A) for any registered investment com-
19 pany to issue any periodic payment plan certifi-
20 cate; or

21 “(B) for such company, or any depositor of
22 or underwriter for any such company, or any
23 other person, to sell such a certificate.

24 “(2) NO INVALIDATION OF EXISTING CERTIFI-
25 CATES.—Paragraph (1) shall not be construed to

1 alter, invalidate, or otherwise affect any rights or ob-
2 ligations, including rights of redemption, under any
3 periodic payment plan certificate issued and sold be-
4 fore 30 days after such date of enactment.”.

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

8 (c) REPORT ON REFUNDS, SALES PRACTICES, AND
9 REVENUES FROM PERIODIC PAYMENT PLANS.—Within 6
10 months after the date of enactment of this Act, the Securi-
11 ties and Exchange Commission shall submit to the Com-
12 mittee on Financial Services of the House of Representa-
13 tives and the Committee on Banking, Housing, and Urban
14 Affairs of the Senate, a report describing—

15 (1) any measures taken by a broker or dealer
16 registered with the Securities and Exchange Com-
17 mission pursuant to section 15(b) of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78o(b)) to volun-
19 tarily refund payments made by military service
20 members on any periodic payment plan certificate,
21 and the amounts of such refunds;

22 (2) after such consultation with the Secretary
23 of Defense as the Commission considers appropriate,
24 the sales practices of such brokers or dealers on
25 military installations over the past 5 years and any

1 legislative or regulatory recommendations to improve
2 such practices; and

3 (3) the revenues generated by such brokers or
4 dealers in the sales of periodic payment plan certifi-
5 cates over the past 5 years and what products such
6 brokers or dealers market to replace the revenue
7 generated from the sales of periodic payment plan
8 certificates prohibited under subsection (a) of this
9 section.

10 **SEC. 4. METHOD OF MAINTAINING BROKER/DEALER REG-**
11 **ISTRATION, DISCIPLINARY, AND OTHER**
12 **DATA.**

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

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

18 “(1) MAINTENANCE OF SYSTEM TO RESPOND
19 TO INQUIRIES.—A registered securities association
20 shall—

21 “(A) establish and maintain a system for
22 collecting and retaining registration informa-
23 tion;

24 “(B) establish and maintain a toll-free
25 telephone listing, and a readily accessible elec-

1 tronic or other process, to receive and promptly
2 respond to inquiries regarding—

3 “(i) registration information on its
4 members and their associated persons; and

5 “(ii) registration information on the
6 members and their associated persons of
7 any registered national securities exchange
8 that uses the system described in subpara-
9 graph (A) for the registration of its mem-
10 bers and their associated persons; and

11 “(C) adopt rules governing the process for
12 making inquiries and the type, scope, and pres-
13 entation of information to be provided in re-
14 sponse to such inquiries in consultation with
15 any registered national securities exchange pro-
16 viding information pursuant to subparagraph
17 (B)(ii).

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

22 “(3) PROCESS FOR DISPUTED INFORMATION.—
23 Such an association shall adopt rules establishing an
24 administrative process for disputing the accuracy of
25 information provided in response to inquiries under

1 this subsection in consultation with any registered
2 national securities exchange providing information
3 pursuant to paragraph (1)(B)(ii).

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

9 “(5) DEFINITION.—For purposes of this sub-
10 section, the term ‘registration information’ means
11 the information reported in connection with the reg-
12 istration or licensing of brokers and dealers and
13 their associated persons, including disciplinary ac-
14 tions, regulatory, judicial, and arbitration pro-
15 ceedings, and other information required by law, or
16 exchange or association rule, and the source and sta-
17 tus of such information.”.

18 **SEC. 5. FILING DEPOSITORIES FOR INVESTMENT ADVIS-**
19 **ERS.**

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

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

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

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

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

3 “(1) to file with the Commission any fee, appli-
4 cation, report, or notice required to be filed by this
5 title or the rules issued under this title through any
6 entity designated by the Commission for that pur-
7 pose; and

8 “(2) to pay the reasonable costs associated with
9 such filing and the establishment and maintenance
10 of the systems required by subsection (c).

11 “(c) ACCESS TO DISCIPLINARY AND OTHER INFOR-
12 MATION.—

13 “(1) MAINTENANCE OF SYSTEM TO RESPOND
14 TO INQUIRIES.—The Commission shall require the
15 entity designated by the Commission under sub-
16 section (b)(1) to establish and maintain a toll-free
17 telephone listing, or a readily accessible electronic or
18 other process, to receive and promptly respond to in-
19 quires regarding registration information (including
20 disciplinary actions, regulatory, judicial, and arbitra-
21 tion proceedings, and other information required by
22 law or rule to be reported) involving investment ad-
23 visers and persons associated with investment advis-
24 ers.

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

6 “(3) LIMITATION ON LIABILITY.—An entity
7 designated by the Commission under subsection
8 (b)(1) shall not have any liability to any person for
9 any actions taken or omitted in good faith under
10 this subsection.”.

11 (b) CONFORMING AMENDMENTS.—

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

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

15 (B) by redesignating subsection (e) as sub-
16 section (d).

17 (2) Section 306 of the National Securities Mar-
18 kets Improvement Act of 1996 (15 U.S.C. 80b–10,
19 note; Public Law 104–290; 110 Stat. 3439) is re-
20 pealed.

21 **SEC. 6. STATE INSURANCE JURISDICTION ON MILITARY IN-**
22 **STALLATIONS.**

23 (a) CLARIFICATION OF JURISDICTION.—Any law,
24 regulation, or order of a State with respect to regulating
25 the business of insurance shall apply to insurance activi-

1 ties conducted on Federal land or facilities in the United
2 States and abroad, including military installations, except
3 to the extent that such law, regulation, or order—

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

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

8 (b) PRIMARY STATE JURISDICTION.—To the extent
9 that multiple State laws would otherwise apply pursuant
10 to subsection (a) to an insurance activity of an individual
11 or entity on Federal land or facilities, the State having
12 the primary duty to regulate such activity and whose laws
13 shall apply to such activity in the case of a conflict shall
14 be—

15 (1) the State within which the Federal land or
16 facility is located; or

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

19 (A) in the case of an individual engaged in
20 the business of insurance, such individual has
21 been issued a resident license; or

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

1 **SEC. 7. REQUIRED DEVELOPMENT OF MILITARY PER-**
2 **SONNEL PROTECTION STANDARDS REGARD-**
3 **ING INSURANCE SALES.**

4 (a) STATE STANDARDS.—The Congress intends
5 that—

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

13 (2) each State identify its role in promoting the
14 standards described in paragraph (1) in a uniform
15 manner within 12 months after the date of the en-
16 actment of this Act.

17 (b) STATE REPORT.—It is the sense of the Congress
18 that the NAIC should, after consultation with the Sec-
19 retary of Defense and within 12 months after the date
20 of the enactment of this Act, conduct a study to determine
21 the extent to which the States have met the requirement
22 of subsection (a) and report such study to the Committee
23 on Financial Services of the House of Representatives and
24 the Committee on Banking, Housing, and Urban Affairs
25 of the Senate.

1 **SEC. 8. REQUIRED DISCLOSURES REGARDING LIFE INSUR-**
2 **ANCE.**

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

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

12 (1) states that subsidized life insurance may be
13 available to the member of the Armed Forces from
14 the Federal Government;

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

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

21 (4) with respect to a sale or solicitation on Fed-
22 eral land or facilities located outside of the United
23 States by an individual or entity engaged in the
24 business of insurance, except to the extent otherwise
25 specifically provided by the laws of such State in ref-
26 erence to this Act, lists the address and phone num-

1 ber where consumer complaints are received by the
2 State insurance commissioner for the State in which
3 the individual has been issued a resident license or
4 the entity is domiciled, as applicable.

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

12 (1) with respect to existing policies; and

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

15 (d) EXCEPTIONS.—

16 (1) FEDERAL AND STATE INSURANCE ACTIV-
17 ITY.—This section shall not apply to insurance ac-
18 tivities—

19 (A) specifically contracted by or through
20 the Federal Government or any State govern-
21 ment; or

22 (B) specifically exempted from the applica-
23 bility of this Act by a Federal or State law, reg-
24 ulation, or order that specifically refers to this
25 paragraph.

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

15 (3) MATERIALLY IDENTICAL FORM.—For pur-
16 poses of this subsection, standards adopted by more
17 than one State shall be considered to have materially
18 identical form to the extent that such standards re-
19 quire or prohibit identical conduct with respect to
20 the same activity, notwithstanding that the stand-
21 ards may differ with respect to conduct required or
22 prohibited with respect to other activities.

1 **SEC. 9. IMPROVING LIFE INSURANCE PRODUCT STAND-**
2 **ARDS.**

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

17 (b) CONDITIONAL GAO REPORT.—If the NAIC does
18 not submit the report to the committees as described in
19 subsection (a), the Comptroller General of the United
20 States shall study any proposals that have been made to
21 improve the quality and sale of life insurance products sold
22 by insurers and producers on military installations of the
23 United States and report to the Committee on Financial
24 Services of the House of Representatives and the Com-
25 mittee on Banking, Housing, and Urban Affairs of the

1 Senate on such proposals within 6 months after the expi-
2 ration of the period referred to in subsection (a).

3 **SEC. 10. REQUIRED REPORTING OF DISCIPLINED INSUR-**
4 **ANCE AGENTS.**

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

17 (1) Any disciplinary action taken by any gov-
18 ernment entity that the insurer knows has been
19 taken.

20 (2) Any significant disciplinary action taken by
21 the insurer.

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

1 (1) receive reports of disciplinary actions taken
2 against insurance producers by insurers or govern-
3 ment entities with respect to the producers' sale or
4 solicitation of insurance on a military installation;
5 and

6 (2) disseminate such information to all other
7 States and to the Secretary of Defense.

8 **SEC. 11. REPORTING BARRED PERSONS SELLING INSUR-**
9 **ANCE OR SECURITIES.**

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

17 (b) **NOTICE AND ACCESS.**—The Secretary shall en-
18 sure that—

19 (1) the appropriate Federal and State agencies
20 responsible for securities and insurance regulation
21 are promptly notified upon the inclusion or removal
22 of a person under such agencies' jurisdiction; and

23 (2) the list is kept current and easily acces-
24 sible—

25 (A) for use by such agencies; and

1 (B) for purposes of enforcing or consid-
2 ering any such bar, ban, or limitation by the
3 appropriate Federal personnel, including com-
4 manders of military installations.

5 (c) REGULATIONS.—

6 (1) IN GENERAL.—The Secretary shall issue
7 regulations in accordance with this subsection to
8 provide for the establishment and maintenance of
9 the list under this section, including appropriate due
10 process considerations.

11 (2) TIMING.—

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

23 (B) FINAL REGULATIONS.—Not later than
24 90 days after the date of the enactment of this
25 Act, the Secretary shall submit to the appro-

1 appropriate Committees a copy of the regulations
2 under this section to be published as final.

3 (C) EFFECTIVE DATE.—Such regulations
4 shall become effective upon the expiration of the
5 30-day period beginning upon such submission
6 to the appropriate Committees.

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

9 (A) the Committee on Financial Services
10 and the Committee on Armed Services of the
11 House of Representatives; and

12 (B) the Committee on Banking, Housing,
13 and Urban Affairs and the Committee on
14 Armed Services of the Senate.

15 **SEC. 12. SENSE OF CONGRESS.**

16 It is the sense of the Congress that the Federal and
17 State agencies responsible for insurance and securities
18 regulation should provide advice to the appropriate Fed-
19 eral entities to consider—

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

23 (2) implementing appropriate procedures to en-
24 courage members of the Armed Forces to improve
25 their financial literacy and obtain objective financial

1 counseling before purchasing additional life insur-
2 ance coverage or investments beyond those provided
3 by the Federal Government; and

4 (3) improving the benefits and matching con-
5 tributions provided under the Thrift Savings Plan to
6 members of the Armed Forces.

7 **SEC. 13. DEFINITIONS.**

8 For purposes of this Act, the following definitions
9 shall apply:

10 (1) ENTITY.—The term “entity” includes insur-
11 ers.

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

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

16 (4) STATE INSURANCE COMMISSIONER.—The
17 term “State insurance commissioner” means, with
18 respect to a State, the officer, agency, or other enti-
19 ty of the State that has primary regulatory authority
20 over the business of insurance and over any person
21 engaged in the business of insurance, to the extent
22 of such business activities, in such State.

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