

109TH CONGRESS
1ST SESSION

S. 418

To protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2005

Mr. ENZI (for himself, Mrs. CLINTON, Mr. HAGEL, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

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 Congress finds the following:

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

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

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

12 (4) One securities product being offered to our
13 service members, the contractual plan, has largely
14 disappeared from the civilian market since the
15 1980s, due to its excessive sales charges. A 50 per-
16 cent sales commission is assessed against the first
17 year of contributions, even though the average com-
18 mission on other securities products such as mutual
19 funds is less than 6 percent on each sale.

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

23 (6) Certain life insurance products being of-
24 fered to our service members are being improperly
25 marketed as investment products. These products

1 provide very low death benefits for very high pre-
 2 miums that are front-loaded in the first few years,
 3 making them completely inappropriate for most mili-
 4 tary personnel.

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

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

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

14 “(j) TERMINATION OF SALES.—

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

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

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

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

7 (b) TECHNICAL AMENDMENT.—Section 27(i)(2)(B)
 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-
 9 27(i)(2)(B)) is amended by striking “section 26(e)” each
 10 place that term appears and inserting “section 26(f)”.

11 (c) REPORT ON REFUNDS, SALES PRACTICES, AND
 12 REVENUES FROM PERIODIC PAYMENT PLANS.—Not later
 13 than 6 months after the date of enactment of this Act,
 14 the Securities and Exchange Commission shall submit to
 15 the Committee on Financial Services of the House of Rep-
 16 resentatives and the Committee on Banking, Housing, and
 17 Urban Affairs of the Senate, a report describing—

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

1 (2) after such consultation with the Secretary
 2 of Defense, as the Commission considers appro-
 3 priate, the sales practices of such brokers or dealers
 4 on military installations over the past 5 years and
 5 any legislative or regulatory recommendations to im-
 6 prove such practices; and

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

13 **SEC. 4. METHOD OF MAINTAINING BROKER AND DEALER**
 14 **REGISTRATION, DISCIPLINARY, AND OTHER**
 15 **DATA.**

16 Section 15A(i) of the Securities Exchange Act of
 17 1934 (15 U.S.C. 78o-3(i)) is amended to read as follows:

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

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

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

1 “(B) establish and maintain a toll-free
2 telephone listing, and a readily accessible elec-
3 tronic or other process, to receive and promptly
4 respond to inquiries regarding—

5 “(i) registration information on its
6 members and their associated persons; and

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

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

20 “(2) RECOVERY OF COSTS.—A registered secu-
21 rities association may charge persons making inquir-
22 ies described in paragraph (1)(B), other than indi-
23 vidual investors, reasonable fees for responses to
24 such inquiries.

1 “(3) PROCESS FOR DISPUTED INFORMATION.—

2 Each registered securities association shall adopt
3 rules establishing an administrative process for dis-
4 puting the accuracy of information provided in re-
5 sponse to inquiries under this subsection in consulta-
6 tion with any registered national securities exchange
7 providing information pursuant to paragraph
8 (1)(B)(ii).

9 “(4) LIMITATION ON LIABILITY.—A registered
10 securities association, or an exchange reporting in-
11 formation to such an association, shall not have any
12 liability to any person for any actions taken or omit-
13 ted in good faith under this subsection.

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

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

3 (a) INVESTMENT ADVISERS.—Section 204 of the In-
 4 vestment Advisers Act of 1940 (15 U.S.C. 80b-4) is
 5 amended—

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

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

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

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

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

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

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

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

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

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

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

18 (b) CONFORMING AMENDMENTS.—

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

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

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

1 (2) Section 306 of the National Securities Mar-
2 kets Improvement Act of 1996 (15 U.S.C. 80b–10,
3 note) is repealed.

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

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

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

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

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

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

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

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

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

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

11 (a) STATE STANDARDS.—Congress intends that—

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

19 (2) each State identify its role in promoting the
20 standards described in paragraph (1) in a uniform
21 manner, not later than 12 months after the date of
22 enactment of this Act.

23 (b) STATE REPORT.—It is the sense of Congress that
24 the NAIC should, after consultation with the Secretary of
25 Defense and, not later than 12 months after the date of

1 enactment of this Act, conduct a study to determine the
2 extent to which the States have met the requirement of
3 subsection (a), and report the results of such study to the
4 Committee on Financial Services of the House of Rep-
5 resentatives and the Committee on Banking, Housing, and
6 Urban Affairs of the Senate.

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

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

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

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

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

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

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

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

21 (1) with respect to existing policies; and

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

24 (d) EXCEPTIONS.—

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

4 (A) specifically contracted by or through
5 the Federal Government or any State govern-
6 ment; or

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

11 (2) UNIFORM STATE STANDARDS.—If a major-
12 ity of the States have adopted, in materially iden-
13 tical form, a standard setting forth the disclosures
14 required under this section that apply to insurance
15 solicitations and sales to military personnel on mili-
16 tary installations of the United States, after the ex-
17 piration of the 2-year period beginning on the date
18 of such majority adoption, such standard shall apply
19 in lieu of the requirements of this section to all in-
20 surance solicitations and sales to military personnel
21 on military installations, with respect to such States,
22 to the extent that such standards do not directly
23 conflict with any applicable authorized Federal regu-
24 lation or directive.

1 (3) MATERIALLY IDENTICAL FORM.—For pur-
2 poses of this subsection, standards adopted by more
3 than one State shall be considered to have materially
4 identical form to the extent that such standards re-
5 quire or prohibit identical conduct with respect to
6 the same activity, notwithstanding that the stand-
7 ards may differ with respect to conduct required or
8 prohibited with respect to other activities.

9 **SEC. 9. IMPROVING LIFE INSURANCE PRODUCT STAND-**
10 **ARDS.**

11 (a) IN GENERAL.—It is the sense of Congress that
12 the NAIC should, after consultation with the Secretary of
13 Defense, and not later than 12 months after the date of
14 enactment of this Act, conduct a study and submit a re-
15 port to the Committee on Financial Services of the House
16 of Representatives and the Committee on Banking, Hous-
17 ing, and Urban Affairs of the Senate on ways of improving
18 the quality of and sale of life insurance products sold by
19 insurers and producers on military installations of the
20 United States, which may include limiting sales authority
21 to companies and producers that are certified as meeting
22 appropriate best practices procedures or creating stand-
23 ards for products specifically designed for members of the
24 Armed Forces regardless of the sales location.

1 (b) CONDITIONAL GAO REPORT.—If the NAIC does
2 not submit the report as described in subsection (a), the
3 Comptroller General of the United States shall study any
4 proposals that have been made to improve the quality and
5 sale of life insurance products sold by insurers and pro-
6 ducers on military installations of the United States and
7 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 such pro-
10 posals not later than 6 months after the expiration of the
11 period referred to in subsection (a).

12 **SEC. 10. REQUIRED REPORTING OF DISCIPLINED INSUR-**
13 **ANCE AGENTS.**

14 (a) REPORTING BY INSURERS.—After the expiration
15 of the 2-year period beginning on the date of enactment
16 of this Act, no insurer may enter into or renew a contrac-
17 tual relationship with a producer that solicits or sells life
18 insurance on military installations of the United States,
19 unless the insurer has implemented a system to report,
20 to the State insurance commissioner of the State of the
21 domicile of the insurer and the State of residence of the
22 insurance producer, disciplinary actions taken against the
23 producer with respect to the producer’s sales or solicita-
24 tion of insurance on a military installation of the United
25 States, as follows:

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

4 (2) Any significant disciplinary action taken by
5 the insurer.

6 (b) REPORTING BY STATES.—It is the sense of Con-
7 gress that, not later than 2 years after the date of enact-
8 ment of this Act, the States should collectively implement
9 a system to—

10 (1) receive reports of disciplinary actions taken
11 against insurance producers by insurers or govern-
12 ment entities with respect to the producers' sale or
13 solicitation of insurance on a military installation;
14 and

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

17 **SEC. 11. REPORTING BARRED PERSONS SELLING INSUR-**
18 **ANCE OR SECURITIES.**

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

1 (b) NOTICE AND ACCESS.—The Secretary of Defense
2 shall ensure that—

3 (1) the appropriate Federal and State agencies
4 responsible for securities and insurance regulation
5 are promptly notified upon the inclusion in or re-
6 moval from the list required by subsection (a) of a
7 person under such agencies' jurisdiction; and

8 (2) the list is kept current and easily acces-
9 sible—

10 (A) for use by such agencies; and

11 (B) for purposes of enforcing or consid-
12 ering any such bar, ban, or limitation by the
13 appropriate Federal personnel, including com-
14 manders of military installations.

15 (c) REGULATIONS.—

16 (1) IN GENERAL.—The Secretary of Defense
17 shall issue regulations in accordance with this sub-
18 section to provide for the establishment and mainte-
19 nance of the list required by this section, including
20 appropriate due process considerations.

21 (2) TIMING.—

22 (A) PROPOSED REGULATIONS.—Not later
23 than the expiration of the 60-day period begin-
24 ning on the date of enactment of this Act, the
25 Secretary of Defense shall prepare and submit

1 to the appropriate Committees a copy of the
2 regulations under this subsection that are pro-
3 posed to be published for comment. The Sec-
4 retary may not publish such regulations for
5 comment in the Federal Register until the expi-
6 ration of the 15-day period beginning on the
7 date of such submission to the appropriate
8 Committees.

9 (B) FINAL REGULATIONS.—Not later than
10 90 days after the date of enactment of this Act,
11 the Secretary of Defense shall submit to the ap-
12 propriate Committees a copy of the regulations
13 under this section to be published in final form.

14 (C) EFFECTIVE DATE.—Such regulations
15 shall become effective upon the expiration of the
16 30-day period beginning on the date of such
17 submission to the appropriate Committees.

18 (d) DEFINITION.—For purposes of this section, the
19 term “appropriate Committees” means—

20 (1) the Committee on Financial Services and
21 the Committee on Armed Services of the House of
22 Representatives; and

23 (2) the Committee on Banking, Housing, and
24 Urban Affairs and the Committee on Armed Serv-
25 ices of the Senate.

1 **SEC. 12. SENSE OF CONGRESS.**

2 It is the sense of the Congress that the Federal and
3 State agencies responsible for insurance and securities
4 regulation should provide advice to the appropriate Fed-
5 eral entities to consider—

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

9 (2) implementing appropriate procedures to en-
10 courage members of the Armed Forces to improve
11 their financial literacy objectives; and

12 (3) improving the benefits and matching con-
13 tributions provided under the Federal Thrift Savings
14 Plan (established under section 8437 of title 5,
15 United States Code) to members of the Armed
16 Forces.

17 **SEC. 13. DEFINITIONS.**

18 For purposes of this Act, the following definitions
19 shall apply:

20 (1) ENTITY.—The term “entity” includes insur-
21 ers.

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

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

1 (4) STATE INSURANCE COMMISSIONER.—The
2 term “State insurance commissioner” means, with
3 respect to a State, the officer, agency, or other enti-
4 ty of the State that has primary regulatory authority
5 over the business of insurance and over any person
6 engaged in the business of insurance, to the extent
7 of such business activities, in such State.

○