

109TH CONGRESS  
1ST SESSION

# H. R. 461

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

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## 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

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## 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.

○