

109TH CONGRESS  
1ST SESSION

# H. R. 458

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. 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

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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:

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 1980s  
15          due to its excessive sales charges and the emergence  
16          of low-cost products. A 50-percent sales commission  
17          is typically assessed against the first year of con-  
18          tributions made under a contractual plan, even  
19          though the average commission on other securities  
20          products such as mutual funds is less than 6 percent  
21          on each sale.

22          (5) The excessive sales charge of the contrac-  
23          tual plan makes it susceptible to abusive and mis-  
24          leading sales practices.

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

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

12 **SEC. 3. PROHIBITION ON FUTURE SALES OF PERIODIC PAY-**  
 13 **MENT PLANS.**

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

17          “(j) TERMINATION OF SALES.—

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

22                         “(A) for any registered investment com-  
 23                         pany to issue any periodic payment plan certifi-  
 24                         cate; or

1           “(B) for such company, or any depositor of  
2           or underwriter for any such company, or any  
3           other person, to sell such a certificate.

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

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

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

20           (1) any measures taken by a broker or dealer  
21           registered with the Securities and Exchange Com-  
22           mission pursuant to section 15(b) of the Securities  
23           Exchange Act of 1934 (15 U.S.C. 78o(b)) to volun-  
24           tarily refund payments made by military service

1 members on any periodic payment plan certificate,  
2 and the amounts of such refunds;

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

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

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

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

22 “(i) OBLIGATION TO MAINTAIN REGISTRATION, DIS-  
23 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.

○