

Union Calendar No. 445

108TH CONGRESS
2D SESSION

H. R. 5011

[Report No. 108-725]

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2004

Mr. BURNS (for himself, Mr. SIMPSON, Mr. EDWARDS, Mr. NORWOOD, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Financial Services

OCTOBER 5, 2004

Additional sponsors: Mr. BACHUS, Mr. CARTER, Ms. GINNY BROWN-WAITE of Florida, and Mr. RYUN of Kansas

OCTOBER 5, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 7, 2004]

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

5 *The Congress finds the following:*

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

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

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

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

1 “(A) establish and maintain a system for
2 collecting and retaining registration informa-
3 tion;

4 “(B) establish and maintain a toll-free tele-
5 phone listing, and a readily accessible electronic
6 or other process, to receive and promptly respond
7 to inquiries regarding—

8 “(i) registration information on its
9 members and their associated persons; and

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

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

23 “(2) RECOVERY OF COSTS.—Such an association
24 may charge persons making inquiries, other than in-

1 *dividual investors, reasonable fees for responses to*
2 *such inquiries.*

3 “(3) *PROCESS FOR DISPUTED INFORMATION.*—

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

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

15 “(5) *DEFINITION.*—*For purposes of this sub-*
16 *section, the term ‘registration information’ means the*
17 *information reported in connection with the registra-*
18 *tion or licensing of brokers and dealers and their as-*
19 *sociated persons, including disciplinary actions, regu-*
20 *latory, judicial, and arbitration proceedings, and*
21 *other information required by law, or exchange or as-*
22 *sociation rule, and the source and status of such in-*
23 *formation.’.*”

1 **SEC. 5. FILING DEPOSITORIES FOR INVESTMENT ADVISERS.**

2 (a) *AMENDMENT.*—Section 204 of the Investment Ad-
3 visers Act of 1940 (15 U.S.C. 80b-4) is amended—

4 (1) by striking “Every investment” and insert-
5 ing the following: “(a) *IN GENERAL.*—Every invest-
6 ment”; and

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

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

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

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

18 “(c) *ACCESS TO DISCIPLINARY AND OTHER INFORMA-*
19 *TION.*—

20 “(1) *MAINTENANCE OF SYSTEM TO RESPOND TO*
21 *INQUIRIES.*—The Commission shall require the entity
22 designated by the Commission under subsection (b)(1)
23 to establish and maintain a toll-free telephone listing,
24 or a readily accessible electronic or other process, to
25 receive and promptly respond to inquiries regarding
26 registration information (including disciplinary ac-

1 *tions, regulatory, judicial, and arbitration pro-*
2 *ceedings, and other information required by law or*
3 *rule to be reported) involving investment advisers and*
4 *persons associated with investment advisers.*

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

10 *“(3) LIMITATION ON LIABILITY.—An entity des-*
11 *ignated by the Commission under subsection (b)(1)*
12 *shall not have any liability to any person for any ac-*
13 *tions taken or omitted in good faith under this sub-*
14 *section.”.*

15 *(b) CONFORMING AMENDMENTS.—*

16 *(1) Section 203A of the Investment Advisers Act*
17 *of 1940 (15 U.S.C. 80b-3a) is amended—*

18 *(A) by striking subsection (d); and*

19 *(B) by redesignating subsection (e) as sub-*
20 *section (d).*

21 *(2) Section 306 of the National Securities Mar-*
22 *kets Improvement Act of 1996 (15 U.S.C. 80b-10,*
23 *note; P.L. 104–290; 110 Stat. 3439) is repealed.*

1 **SEC. 6. STATE INSURANCE JURISDICTION ON MILITARY IN-**
2 **STALLATIONS.**

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

9 (1) *directly conflicts with any applicable Federal*
10 *law, regulation, or authorized directive; or*

11 (2) *would not apply if such activity were con-*
12 *ducted on State land.*

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

19 (1) *the State within which the Federal land or*
20 *facility is located; or*

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

23 (A) *in the case of an individual engaged in*
24 *the business of insurance, such individual has*
25 *been issued a resident license; or*

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

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

6 (a) *STATE STANDARDS.*—The Congress intends that—

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

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

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

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

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

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

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

14 (2) *states that the United States Government has*
15 *in no way sanctioned, recommended, or encouraged*
16 *the sale of the product being offered;*

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

20 (4) *with respect to a sale or solicitation on Fed-*
21 *eral land or facilities located outside of the United*
22 *States by an individual or entity engaged in the busi-*
23 *ness of insurance, except to the extent otherwise spe-*
24 *cifically provided by the laws of such State in ref-*
25 *erence to this Act, lists the address and phone number*
26 *where consumer complaints are received by the State*

1 *insurance commissioner for the State in which the in-*
2 *dividual has been issued a resident license or the enti-*
3 *ty is domiciled, as applicable.*

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

11 *(1) with respect to existing policies; and*

12 *(2) to the extent required by the Federal Govern-*
13 *ment pursuant to previous commitments.*

14 *(d) EXCEPTIONS.—*

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

18 *(A) specifically contracted by or through the*
19 *Federal Government or any State government; or*

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

24 *(2) UNIFORM STATE STANDARDS.—If a majority*
25 *of the States have adopted, in materially identical*

1 *the Committee on Financial Services of the House of Rep-*
2 *resentatives and the Committee on Banking, Housing, and*
3 *Urban Affairs of the Senate on ways of improving the qual-*
4 *ity of and sale of life insurance products sold by insurers*
5 *and producers on military installations of the United*
6 *States, which may include limiting sales authority to com-*
7 *panies and producers that are certified as meeting appro-*
8 *priate best practices procedures or creating standards for*
9 *products specifically designed for members of the Armed*
10 *Forces regardless of the sales location.*

11 *(b) CONDITIONAL GAO REPORT.—If the NAIC does*
12 *not submit the report to the committees as described in sub-*
13 *section (a), the Comptroller General of the United States*
14 *shall study any proposals that have been made to improve*
15 *the quality and sale of life insurance products sold by insur-*
16 *ers and producers on military installations of the United*
17 *States and report to the Committee on Financial Services*
18 *of the House of Representatives and the Committee on*
19 *Banking, Housing, and Urban Affairs of the Senate on such*
20 *proposals within 6 months after the expiration of the period*
21 *referred to in subsection (a).*

22 **SEC. 10. REQUIRED REPORTING OF DISCIPLINED INSUR-**
23 **ANCE AGENTS.**

24 *(a) REPORTING BY INSURERS.—After the expiration of*
25 *the 2-year period beginning on the date of the enactment*

1 *of this Act, no insurer may enter into or renew a contrac-*
2 *tual relationship with a producer that solicits or sells life*
3 *insurance on military installations of the United States un-*
4 *less the insurer has implemented a system to report, to the*
5 *State insurance commissioner of the State of the domicile*
6 *of the insurer and the State of residence of the insurance*
7 *producer, disciplinary actions taken against the producer*
8 *with respect to the producer's sales or solicitation of insur-*
9 *ance on a military installation of the United States, as fol-*
10 *lows:*

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

13 (2) *Any significant disciplinary action taken by*
14 *the insurer.*

15 (b) *REPORTING BY STATES.*—*It is the sense of the Con-*
16 *gress that within 2 years after the date of the enactment*
17 *of this Act, the States should collectively implement a sys-*
18 *tem to—*

19 (1) *receive reports of disciplinary actions taken*
20 *against insurance producers by insurers or govern-*
21 *ment entities with respect to the producers' sale or so-*
22 *licitation of insurance on a military installation; and*

23 (2) *disseminate such information to all other*
24 *States and to the Secretary of Defense.*

1 **SEC. 11. REGISTRY OF BARRED INSURANCE AGENTS AND**
2 **FINANCIAL ADVISORS.**

3 (a) *ESTABLISHMENT.*—*The Secretary of Defense shall*
4 *establish a registry of insurance agents and financial advi-*
5 *sors that have been barred or banned from doing business*
6 *on any or all military installations of the United States.*
7 *The registry shall be operational not later than the expira-*
8 *tion of the 90-day period beginning on the date of the enact-*
9 *ment of this Act.*

10 (b) *UPDATING.*—*The Secretary shall update and*
11 *maintain such registry in a manner that ensures the reg-*
12 *istry is at all times current and accessible.*

13 (c) *REGISTRY.*—*The registry established under this*
14 *section shall—*

15 (1) *include the name, address, and other identi-*
16 *fying information of each insurance agent or finan-*
17 *cial advisor that, at such time, is barred, banned, or*
18 *otherwise limited in any manner that is not generally*
19 *applicable to all such agents or advisors with respect*
20 *to doing business on any or all military installations*
21 *of the United States; and*

22 (2) *be easily accessible and searchable by—*

23 (A) *appropriate personnel for purposes of*
24 *enforcing any such bar, ban, or limitation; and*

1 (B) appropriate Federal and State agencies
2 responsible for financial and insurance regula-
3 tion.

4 (d) NOTICE TO FINANCIAL REGULATORS.—The Sec-
5 retary shall promptly notify the appropriate Federal and
6 State agencies responsible for financial and insurance regu-
7 lation, upon the inclusion or removal of an insurance agent
8 or financial advisor in or from the registry established
9 under this section, of such inclusion or removal, respec-
10 tively.

11 (e) APPEALS.—The Secretary shall provide for any
12 such agent or advisor to appeal to the Secretary their erro-
13 neous inclusion in such registry and for a prompt deter-
14 mination of any such appeal.

15 (f) REGULATIONS.—

16 (1) IN GENERAL.—The Secretary shall issue regu-
17 lations in accordance with this subsection providing
18 for—

19 (A) the establishment and maintenance of
20 the registry under this section; and

21 (B) the establishment and operation of the
22 procedure for appeals under subsection (e).

23 (2) PROPOSED REGULATIONS AND SUBMISSION
24 TO CONGRESS.—Not later than the expiration of the
25 30-day period beginning on the date of the enactment

1 *of this Act, the Secretary shall prepare and submit to*
2 *the appropriate Committees a copy of the regulations*
3 *under this subsection that are proposed to be pub-*
4 *lished for comment. The Secretary may not publish*
5 *such regulations for comment in the Federal Register*
6 *until the expiration of the 15-day period beginning*
7 *upon such submission to the appropriate Committees.*

8 (3) *FINAL REGULATIONS.—Not later than 60*
9 *days after the date of the enactment of this Act, the*
10 *Secretary shall submit to the appropriate Committees*
11 *a copy of the regulations under this section to be pub-*
12 *lished as final, which shall become effective upon the*
13 *expiration of the 30-day period beginning upon sub-*
14 *mission to the appropriate Committees.*

15 (g) *DEFINITIONS.—For purposes of this section:*

16 (1) *APPROPRIATE COMMITTEES.—The term “ap-*
17 *propriate Committees” means—*

18 (A) *the Committee on Financial Services*
19 *and the Committee on Armed Services of the*
20 *House of Representatives; and*

21 (B) *the Committee on Banking, Housing,*
22 *and Urban Affairs and the Committee on Armed*
23 *Services of the Senate.*

1 (2) *MILITARY INSTALLATION.*—*The term “mili-*
2 *tary installation of the United States” includes in-*
3 *stallations located outside of the United States.*

4 (3) *SECRETARY.*—*The term “Secretary” means*
5 *the Secretary of Defense.*

6 **SEC. 12. SENSE OF CONGRESS.**

7 *It is the sense of the Congress that the Federal and*
8 *State agencies responsible for insurance and securities regu-*
9 *lation should provide advice to the appropriate Federal en-*
10 *tities to consider—*

11 (1) *significantly increasing the life insurance*
12 *coverage made available through the Federal Govern-*
13 *ment to members of the Armed Forces;*

14 (2) *implementing appropriate procedures to en-*
15 *courage members of the Armed Forces to improve*
16 *their financial literacy and obtain objective financial*
17 *counseling before purchasing additional life insurance*
18 *coverage or investments beyond those provided by the*
19 *Federal Government; and*

20 (3) *improving the benefits and matching con-*
21 *tributions provided under the Thrift Savings Plan to*
22 *members of the Armed Forces.*

23 **SEC. 13. DEFINITIONS.**

24 *For purposes of this Act, the following definitions shall*
25 *apply:*

1 (1) *ENTITY*.—The term “entity” includes insur-
2 *ers*.

3 (2) *INDIVIDUAL*.—The term “individual” in-
4 *cludes insurance agents and producers*.

5 (3) *NAIC*.—The term “NAIC” means the Na-
6 *tional Association of Insurance Commissioners*.

7 (4) *STATE INSURANCE COMMISSIONER*.—The
8 term “State insurance commissioner” means, with re-
9 spect to a State, the officer, agency, or other entity of
10 the State that has primary regulatory authority over
11 the business of insurance and over any person en-
12 gaged in the business of insurance, to the extent of
13 such business activities, in such State.

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