BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 2
DATE 3-23-07
BILL No. HB 764

Public Law 109–290
109th Congress

An Act

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

Sept. 29, 2006
[S. 418]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Military Personnel Financial Services Protection Act. 10 USC 992 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Military Personnel Financial Services Protection Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Congressional findings.
Sec. 3. Definitions.
Sec. 4. Prohibition on future sales of periodic payment plans.
Sec. 5. Required disclosures regarding offers or sales of securities on military installations.
Sec. 6. Method of maintaining broker and dealer registration, disciplinary, and other data.
Sec. 7. Filing depositories for investment advisers.
Sec. 8. State insurance and securities jurisdiction on military installations.
Sec. 9. Required development of military personnel protection standards regarding insurance sales; administrative coordination.
Sec. 10. Required disclosures regarding life insurance products.
Sec. 11. Improving life insurance product standards.
Sec. 12. Required reporting of disciplinary actions.
Sec. 13. Reporting barred persons selling insurance or securities.
Sec. 14. Study and reports by Inspector General of the Department of Defense.

SEC. 2. CONGRESSIONAL FINDINGS. 10 USC 992 note.

Congress finds that—

(1) members of the Armed Forces perform great sacrifices in protecting our Nation in the War on Terror;

(2) the brave men and women in uniform deserve to be offered first-rate financial products in order to provide for their families and to save and invest for retirement;

(3) members of the Armed Forces are being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices;

(4) one securities product offered to service members, known as the "mutual fund contractual plan", largely disappeared from the civilian market in the 1980s, due to excessive sales charges;

(5) with respect to a mutual fund contractual plan, a 50 percent sales commission is assessed against the first year of contributions, despite an average commission on other securities products of less than 6 percent on each sale;

(6) excessive sales charges allow abusive and misleading sales practices in connection with mutual fund contractual plan;

(7) certain life insurance products being offered to members of the Armed Forces are improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel; and

(8) the need for regulation of the marketing and sale of securities and life insurance products on military bases necessitates Congressional action.

10 USC 992 note.

SEC. 3. DEFINITIONS.

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

(1) LIFE INSURANCE PRODUCT.—

(A) IN GENERAL.—The term "life insurance product" means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

(B) INCLUDED INSURANCE.—The term "life insurance product" includes the granting of—

(i) endowment benefits;

(ii) additional benefits in the event of death by accident or accidental means;

(iii) disability income benefits;

(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value, or special benefit in the event of total and permanent disability;

(v) benefits that provide payment or reimbursement for long-term home health care, or long-term care in a nursing home or other related facility;

(vi) burial insurance; and

(vii) optional modes of settlement or proceeds of life insurance.

(C) EXCLUSIONS.—Such term does not include workers compensation insurance, medical indemnity health insurance, or property and casualty insurance.

(2) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners (or any successor thereto).

10 USC 992 note.

SEC. 4. PROHIBITION ON FUTURE SALES OF PERIODIC PAYMENT PLANS.

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

"(j) TERMINATION OF SALES.—

"(1) TERMINATION.—Effective 30 days after the date of enactment of the Military Personnel Financial Services Protection Act, it shall be unlawful, subject to subsection (i)—

"(A) for any registered investment company to issue any periodic payment plan certificate; or

"(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

"(2) NO INVALIDATION OF EXISTING CERTIFICATES.—Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after such date of enactment.".

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

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

(1) any measures taken by a broker or dealer registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) to voluntarily refund payments made by military service members on any periodic payment plan certificate, and the amounts of such refunds;

(2) after such consultation with the Secretary of Defense, as the Commission considers appropriate, the sales practices of such brokers or dealers on military installations over the 5 years preceding the date of submission of the report and any legislative or regulatory recommendations to improve such practices; and

(3) the revenues generated by such brokers or dealers in the sales of periodic payment plan certificates over the 5 years preceding the date of submission of the report, and the products marketed by such brokers or dealers to replace the revenue generated from the sales of periodic payment plan certificates prohibited under subsection (a).

SEC. 5. REQUIRED DISCLOSURES REGARDING OFFERS OR SALES OF SECURITIES ON MILITARY INSTALLATIONS. 10 USC 992 note.

Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is amended by inserting immediately after paragraph (13) the following:

"(14) The rules of the association include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof, which rules require—

"(A) the broker or dealer performing brokerage services to clearly and conspicuously disclose to potential investors—

"(i) that the securities offered are not being offered or provided by the broker or dealer on behalf of the Federal Government, and that its offer is not sanctioned, recommended, or encouraged by the Federal Government; and

"(ii) the identity of the registered broker-dealer offering the securities;

"(B) such broker or dealer to perform an appropriate suitability determination, including consideration of costs

and knowledge about securities, prior to making a recommendation of a security to a member of the Armed Forces or a dependent thereof; and

"(C) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker or dealer and is qualified pursuant to the rules of a self-regulatory organization.".

10 USC 992 note.

SEC. 6. METHOD OF MAINTAINING BROKER AND DEALER REGISTRATION, DISCIPLINARY, AND OTHER DATA.

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

"(i) OBLIGATION TO MAINTAIN REGISTRATION, DISCIPLINARY, AND OTHER DATA.—

"(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—A registered securities association shall—

"(A) establish and maintain a system for collecting and retaining registration information;

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"(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

"(i) registration information on its members and their associated persons; and

"(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

Regulations.

"(C) adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

"(2) RECOVERY OF COSTS.—A registered securities association may charge persons making inquiries described in paragraph (1)(B), other than individual investors, reasonable fees for responses to such inquiries.

Regulations.

"(3) PROCESS FOR DISPUTED INFORMATION.—Each registered securities association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

"(4) LIMITATION ON LIABILITY.—A registered securities association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

"(5) DEFINITION.—For purposes of this subsection, the term 'registration information' means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.".

SEC. 7. FILING DEPOSITORIES FOR INVESTMENT ADVISERS. 10 USC 992 note.

(a) INVESTMENT ADVISERS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by striking "Every investment" and inserting the following:

"(a) IN GENERAL.—Every investment"; and

(2) by adding at the end the following:

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

"(1) to file with the Commission any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the Commission for that purpose; and

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

"(c) ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

"(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—

"(A) IN GENERAL.—The Commission shall require the entity designated by the Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers. Communication and telecommunications.

"(B) APPLICABILITY.—This subsection shall apply to any investment adviser (and the persons associated with that adviser), whether the investment adviser is registered with the Commission under section 203 or regulated solely by a State, as described in section 203A.

"(2) RECOVERY OF COSTS.—An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual investors, reasonable fees for responses to inquiries described in paragraph (1).

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

(b) CONFORMING AMENDMENTS.—

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

(A) by striking subsection (d); and

(B) by redesignating subsection (e) as subsection (d).

(2) NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.—Section 306 of the National Securities Markets Improvement Act of 1996 (15 U.S.C. 80b–10, note) is repealed.

SEC. 8. STATE INSURANCE AND SECURITIES JURISDICTION ON MILITARY INSTALLATIONS. 10 USC 992 note.

(a) CLARIFICATION OF JURISDICTION.—Any provision of law, regulation, or order of a State with respect to regulating the business of insurance or securities shall apply to insurance or securities activities conducted on Federal land or facilities in the United Applicability.

States and abroad, including military installations, except to the extent that such law, regulation, or order—

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

(2) would not apply if such activity were conducted on State land.

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

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

(2) if the Federal land or facility is located outside of the United States, the State in which—

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

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

(C) in the case of an individual engaged in the offer or sale (or both) of securities, such individual is registered or required to be registered to do business or the person solicited by such individual resides; or

(D) in the case of an entity engaged in the offer or sale (or both) of securities, such entity is registered or is required to be registered to do business or the person solicited by such entity resides.

10 USC 992 note.

SEC. 9. REQUIRED DEVELOPMENT OF MILITARY PERSONNEL PROTECTION STANDARDS REGARDING INSURANCE SALES; ADMINISTRATIVE COORDINATION.

(a) STATE STANDARDS.—Congress intends that—

(1) the States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States (including installations located outside of the United States); and

Deadline.

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

(b) STATE REPORT.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense and, not later than 12 months after the date of enactment of this Act, conduct a study to determine the extent to which the States have met the requirement of subsection (a), and report the results of such study to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) ADMINISTRATIVE COORDINATION; SENSE OF CONGRESS.—It is the sense of the Congress that senior representatives of the Secretary of Defense, the Securities and Exchange Commission, and the NAIC should meet not less frequently than twice a year to coordinate their activities to implement this Act and monitor

the enforcement of relevant regulations relating to the sale of financial products on military installations of the United States.

SEC. 10. REQUIRED DISCLOSURES REGARDING LIFE INSURANCE PRODUCTS. 10 USC 992 note.

(a) REQUIREMENT.—Except as provided in subsection (e), no person may sell, or offer for sale, any life insurance product to any member of the Armed Forces or a dependent thereof on a military installation of the United States, unless a disclosure in accordance with this section is provided to such member or dependent at the time of the sale or offer.

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

(1) states that subsidized life insurance is available to the member of the Armed Forces from the Federal Government under the Servicemembers' Group Life Insurance program (also referred to as "SGLI"), under subchapter III of chapter 19 of title 38, United States Code;

(2) states the amount of insurance coverage available under the SGLI program, together with the costs to the member of the Armed Forces for such coverage;

(3) states that the life insurance product that is the subject of the disclosure is not offered or provided by the Federal Government, and that the Federal Government has in no way sanctioned, recommended, or encouraged the sale of the life insurance product being offered;

(4) fully discloses any terms and circumstances under which amounts accumulated in a savings fund or savings feature under the life insurance product that is the subject of the disclosure may be diverted to pay, or reduced to offset, premiums due for continuation of coverage under such product;

(5) states that no person has received any referral fee or incentive compensation in connection with the offer or sale of the life insurance product, unless such person is a licensed agent of the person engaged in the business of insurance that is issuing such product;

(6) is made in plain and readily understandable language and in a type font at least as large as the font used for the majority of the solicitation material used with respect to or relating to the life insurance product; and

(7) with respect to a sale or solicitation on Federal land or facilities located outside of the United States, lists the address and phone number at which consumer complaints are received by the State insurance commissioner for the State having the primary jurisdiction and duty to regulate the sale of such life insurance products pursuant to section 8.

(c) VOIDABILITY.—The sale of a life insurance product in violation of this section shall be voidable from its inception, at the sole option of the member of the Armed Forces, or dependent thereof, as applicable, to whom the product was sold.

(d) ENFORCEMENT.—If it is determined by a Federal or State agency, or in a final court proceeding, that any person has intentionally violated, or willfully disregarded the provisions of, this section, in addition to any other penalty under applicable Federal or State law, such person shall be prohibited from further engaging in the business of insurance with respect to employees of the Federal Government on Federal land, except—

(1) with respect to existing policies; and

(2) to the extent required by the Federal Government pursuant to previous commitments.

(e) EXCEPTIONS.—This section shall not apply to any life insurance product specifically contracted by or through the Federal Government.

SEC. 11. IMPROVING LIFE INSURANCE PRODUCT STANDARDS.

Deadline.
10 USC 992 note.

(a) IN GENERAL.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense, and not later than 6 months after the date of enactment of this Act, conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on—

(1) ways of improving the quality of and sale of life insurance products sold on military installations of the United States, which may include—

(A) limiting such sales authority to persons that are certified as meeting appropriate best practices procedures; and

(B) creating standards for products specifically designed to meet the particular needs of members of the Armed Forces, regardless of the sales location; and

(2) the extent to which life insurance products marketed to members of the Armed Forces comply with otherwise applicable provisions of State law.

(b) CONDITIONAL GAO REPORT.—If the NAIC does not submit the report as described in subsection (a), the Comptroller General of the United States shall—

(1) study any proposals that have been made to improve the quality of and sale of life insurance products sold on military installations of the United States; and

(2) not later than 6 months after the expiration of the period referred to in subsection (a), submit a report on such proposals to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

10 USC 992 note.

SEC. 12. REQUIRED REPORTING OF DISCIPLINARY ACTIONS.

Effective date.

(a) REPORTING BY INSURERS.—Beginning 1 year after the date of enactment of this Act, no insurer may enter into or renew a contractual relationship with any other person that sells or solicits the sale of any life insurance product on any military installation of the United States, unless the insurer has implemented a system to report to the State insurance commissioner of the State of domicile of the insurer and the State of residence of that other person—

(1) any disciplinary action taken by any Federal or State government entity with respect to sales or solicitations of life insurance products on a military installation that the insurer knows, or in the exercise of due diligence should have known, to have been taken; and

(2) any significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products on a military installation of the United States.

(b) REPORTING BY STATES.—It is the sense of Congress that, not later than 1 year after the date of enactment of this Act, the States should collectively implement a system to—

(1) receive reports of disciplinary actions taken against persons that sell or solicit the sale of any life insurance product on any military installation of the United States by insurers or Federal or State government entities with respect to such sales or solicitations; and

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

(c) DEFINITION.—As used in this section, the term "insurer" means a person engaged in the business of insurance.

SEC. 13. REPORTING BARRED PERSONS SELLING INSURANCE OR SECURITIES.

Records.
10 USC 992 note.

(a) ESTABLISHMENT.—The Secretary of Defense shall maintain a list of the name, address, and other appropriate information relating to persons engaged in the business of securities or insurance that have been barred or otherwise limited in any manner that is not generally applicable to all such type of persons, from any or all military installations of the United States, or that have engaged in any transaction that is prohibited by this Act.

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

(1) the appropriate Federal and State agencies responsible for securities and insurance regulation are promptly notified upon the inclusion in or removal from the list required by subsection (a) of a person under the jurisdiction of one or more of such agencies; and

(2) the list is kept current and easily accessible—

(A) for use by such agencies; and

(B) for purposes of enforcing or considering any such bar or limitation by the appropriate Federal personnel, including commanders of military installations.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall issue regulations in accordance with this subsection to provide for the establishment and maintenance of the list required by this section, including appropriate due process considerations.

(2) TIMING.—

(A) PROPOSED REGULATIONS.—Not later than the expiration of the 60-day period beginning on the date of enactment of this Act, the Secretary of Defense shall prepare and submit to the appropriate Committees of Congress a copy of the regulations required by this subsection that are proposed to be published for comment. The Secretary may not publish such regulations for comment in the Federal Register until the expiration of the 15-day period beginning on the date of such submission to the appropriate Committees of Congress.

Deadline.

Federal Register, publication.

(B) FINAL REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall submit to the appropriate Committees of Congress a copy of the regulations under this section to be published in final form.

Deadline.

(C) EFFECTIVE DATE.—Final regulations under this paragraph shall become effective 30 days after the date of their submission to the appropriate Committees of Congress under subparagraph (B).

(d) DEFINITION.—For purposes of this section, the term "appropriate Committees of Congress" means—

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

(2) the Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

10 USC 992 note.

SEC. 14. STUDY AND REPORTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

(a) STUDY.—The Inspector General of the Department of Defense shall conduct a study on the impact of Department of Defense Instruction 1344.07 (as in effect on the date of enactment of this Act) and the reforms included in this Act on the quality and suitability of sales of securities and insurance products marketed or otherwise offered to members of the Armed Forces.

(b) REPORTS.—Not later than 12 months after the date of enactment of this Act, the Inspector General of the Department of Defense shall submit an initial report on the results of the study conducted under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and shall submit followup reports to those committees on December 31, 2008 and December 31, 2010.

Approved September 29, 2006.

LEGISLATIVE HISTORY—S. 418 (H.R. 458):

SENATE REPORTS: No. 109–282 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 152 (2006):

July 19, considered and passed Senate.

Sept. 20, 21, considered and passed House.

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