

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 773*

Short Title: Protect Military Personnel/Life Insurance.-AB (Public)

Sponsors: Representatives Martin, Glazier, Dickson, Lucas (Primary Sponsors); Alexander, Brisson, Church, England, Faison, Farmer-Butterfield, Folwell, Grady, Gulley, J. Harrell, Harrison, Holliman, McGee, Pierce, Ross, Tarleton, Underhill, and Wainwright.

Referred to: Homeland Security, Military and Veterans Affairs, if favorable, Judiciary I.

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO PROTECT MEMBERS OF THE UNITED STATES ARMED FORCES
FROM DISHONEST AND PREDATORY LIFE INSURANCE AND ANNUITY
SALES PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 6. Dishonest and Predatory Sales to Military Personnel.

"§ 58-58-320. Purpose.

(a) The purpose of this Part is to set forth standards to protect service members of the Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part.

"§ 58-58-325. Scope.

This Part applies to the solicitation or sale of any life or annuity product by an insurer or insurance producer to a member of the Armed Forces, wherever located.

"§ 58-58-330. Exemptions.

This Part does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.

(3) An application to the existing insurer that issued the existing policy or contract when (i) a contractual change or a conversion privilege is being exercised, (ii) the existing policy or contract is being replaced by

1 the same insurer pursuant to a program filed with and approved by the
2 Commissioner, or (iii) a term conversion privilege is exercised among
3 corporate affiliates.

4 (4) Contracts offered by Servicemembers' Group Life Insurance or
5 Veterans' Group Life Insurance.

6 (5) Contracts used to fund:

7 a. An employee pension or welfare benefit plan that is covered by
8 the Employee Retirement and Income Security Act (ERISA).

9 b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or
10 408(p) of the Internal Revenue Code, if established or
11 maintained by an employer.

12 c. A government or church plan defined in section 414 of the
13 Internal Revenue Code, a government or church welfare benefit
14 plan, or a deferred compensation plan of a state or local
15 government or tax exempt organization under section 457 of the
16 Internal Revenue Code.

17 d. A nonqualified deferred compensation arrangement established
18 or maintained by an employer or plan sponsor.

19 e. Settlements of or assumptions of liabilities associated with
20 personal injury litigation or any dispute or claim resolution
21 process.

22 f. Prearranged funeral contracts.

23 **"§ 58-58-335. Definitions.**

24 As used in this Part:

25 (1) "Armed Forces" means all components of the United States Army,
26 Navy, Air Force, Marine Corps, and Coast Guard and their reserve
27 components.

28 (2) "Department of Defense personnel" means any service member and all
29 civilian employees, including nonappropriated fund employees and
30 special government employees, of the United States Department of
31 Defense, or its successor agency.

32 (3) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).

33 (4) "Life insurance" means insurance coverage on human lives, including
34 benefits of endowment and annuities, and may include benefits in the
35 event of death or dismemberment by accident and benefits for
36 disability income; and unless otherwise specifically excluded, includes
37 annuities.

38 (5) "Military installation" means any federally owned, leased, or operated
39 base, reservation, post, camp, building, or other facility to which
40 service members are assigned for duty, including barracks, transient
41 housing, and family quarters.

42 (6) "Service member" means any active duty commissioned officer, any
43 active duty warrant officer, or any enlisted member of the Armed
44 Forces.

1 (7) "Side fund" means a fund or reserve that is part of or otherwise
2 attached to a life insurance policy, excluding annuities, by rider, by
3 endorsement, or other mechanism that accumulates premium or
4 deposits at interest, or by other means. "Side fund" does not include
5 accumulated or cash value or secondary guarantees provided by a
6 universal life policy nor does it include cash values provided by a
7 whole life policy that are subject to the standard nonforfeiture law for
8 life insurance.

9 (8) "Specific appointment" means a prearranged appointment agreed upon
10 by both parties and definite as to place and time.

11 **"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair.**

12 The following acts or practices are declared to be false, misleading, deceptive, or
13 unfair:

14 (1) Possessing, completing, submitting, or processing or assisting in the
15 submission or processing of, any form or device used by the Armed
16 Forces to direct a service member's pay to a third party, including
17 using or assisting in using a service member's "MyPay" account or
18 other similar Internet medium, for the purpose of establishing a direct
19 deposit for the purchase of life insurance.

20 (2) Establishing any account or fictitious account in the name of an
21 applicant or insured service member at a depository institution for the
22 purpose of receiving funds for the payment of premium or receiving
23 any funds directly or indirectly through the use of Treasury Form
24 1199A, "Direct Deposit Sign-Up Form", or its equivalent.

25 (3) Using Department of Defense personnel, directly or indirectly, as a
26 representative or agent in any official or business capacity with or
27 without compensation.

28 (4) Offering or giving anything of value, directly or indirectly, to
29 Department of Defense personnel to procure their assistance in
30 encouraging, assisting, or facilitating the solicitation or sale of life
31 insurance to another service member.

32 (5) Participating in or assisting in any Armed Forces sponsored education
33 or orientation program.

34 (6) Offering or giving anything of value, directly or indirectly, greater
35 than five dollars (\$5.00) in any 12-month period, or in an amount
36 specified by Department of Defense regulations, to any service
37 member who has direct command authority over or direct
38 responsibility for service members with a pay grade of E-1 through
39 E-4.

40 (7) Offering or giving anything with a value greater than five dollars
41 (\$5.00) to a service member for the service member's attendance at any
42 event involving the solicitation or sale of life insurance.

- 1 (8) Soliciting the purchase of any life insurance product on a military
2 installation randomly or selectively from household to household
3 without prior specific appointment or invitation.
- 4 (9) Soliciting service members in a group or "mass" audience or in a
5 "captive" audience where attendance is not voluntary.
- 6 (10) Making appointments with, or soliciting service members during, their
7 duty hours.
- 8 (11) Making appointments with or soliciting service members on a military
9 installation in barracks, day rooms, unit areas, or transient personnel
10 housing.
- 11 (12) Making any representation, or using any device, that has the tendency
12 or capacity to confuse or mislead a service member into believing that
13 the insurer, insurance producer, or product offered is affiliated,
14 connected, or associated with, endorsed, sponsored, sanctioned,
15 recommended by the United States government, the Armed Forces, or
16 any state or federal agency, or any government entity.
- 17 (13) Using any title, descriptive name, or identifier, other than titles that
18 identify the insurance producer as a producer or agent for the insurer.
19 Examples include, "Battalion Insurance Counselor", "Unit Insurance
20 Advisor", "Servicemen's Group Life Insurance Conversion
21 Consultant", or "Veteran's Benefits Counselor".
- 22 (14) Soliciting the purchase of any life insurance product through the use of
23 or in conjunction with any third-party eleemosynary or charitable
24 organization that promotes the welfare of, or assists members of, the
25 Armed Forces in a manner that has the tendency or capacity to confuse
26 or mislead a service member into believing that the organization is
27 affiliated, connected, or associated with, or endorsed, sponsored,
28 sanctioned, or recommended by the United States Government or the
29 Armed Forces.
- 30 (15) Using or describing the credited interest rate on a life insurance policy
31 in a manner that implies that the credited interest rate is a net return on
32 premium paid.
- 33 (16) Excluding annuities, representing that the life insurance product costs
34 "nothing" or is "free", or otherwise misrepresenting the mortality costs
35 for the product.
- 36 (17) Making any representation regarding the availability, amount, cost,
37 exclusions, or limitations to coverage provided to a service member or
38 dependents by Servicemembers' Group Life Insurance or Veterans'
39 Group Life Insurance that is false, misleading, or deceptive.
- 40 (18) Making any representation about conversion requirements, including
41 the costs of coverage, or exclusions or limitations to coverage, of
42 Servicemembers' Group Life Insurance or Veterans' Group Life
43 Insurance to private insurers that is false, misleading, or deceptive.

- 1 (19) Deploying, using, or contracting for any lead generating materials that
2 do not clearly and conspicuously disclose that the recipient will be
3 contacted by an insurance producer for the purpose of soliciting the
4 purchase of life insurance. For the purposes of this subdivision,
5 "clearly and conspicuously" requires a type size of at least 16 points.
6 (20) Failing to disclose that a solicitation for the sale of life insurance will
7 be made when establishing a specific appointment for a meeting with a
8 prospective purchaser.
9 (21) Excluding annuities, failing to disclose in a clear and conspicuous
10 manner the fact that the product being sold is life insurance, the
11 amount of coverage, and the cost of the coverage.
12 (22) Failing to make, at the time of sale or offer, the written disclosures
13 required by the "Military Personnel Financial Services Protection Act",
14 P.L. 109-290.
15 (23) Failing to provide the applicant at the time a policy is applied for (i) a
16 copy of the application, (ii) a written disclosure that clearly and
17 concisely sets out the coverage provided and the cost of the coverage,
18 and (iii) an explanation of any free-look period with instructions on
19 how to cancel.
20 (24) Excluding annuities, recommending the purchase of any life insurance
21 product that includes a side fund to service members in pay grades E-1
22 through E-4, unless the insurer has reasonable grounds for believing
23 that the life insurance, standing alone, is suitable. Sale of a life
24 insurance product that includes a side fund to a service member in pay
25 grades E-1 through E-4 or their equivalents, who is currently enrolled
26 in Servicemembers' Group Life Insurance, is presumed unsuitable.
27 (25) Excluding annuities, offering for sale or selling any life insurance
28 contract that includes a side fund unless interest credited accrues from
29 the date of deposit to the date of withdrawal and permits withdrawals
30 without limit or penalty.
31 (26) Excluding annuities, offering for sale or selling any life insurance
32 contract that includes a side fund, unless the applicant has been
33 provided with a schedule of effective rates of return based upon cash
34 flows of the combined product. For this disclosure, the effective rate of
35 return will consider all premiums or cash contributions made by the
36 policyholder and all cash accumulations or cash surrender values
37 available to the policyholder in addition to life insurance coverage.
38 (27) Excluding annuities, offering for sale or selling any life insurance
39 contract that includes a side fund that by default diverts or transfers
40 accumulated funds to pay, reduce, or offset any premiums due, unless
41 the applicant, in writing, affirmatively chooses that option.
42 (28) Excluding annuities, offering for sale or selling any life insurance
43 contract that, after considering all policy benefits, including

1 endowment, return of premium, or persistency, does not comply with
2 the standard nonforfeiture law for life insurance.

3 (29) Offering for sale or selling any life insurance product that excludes
4 coverage if the insured's death is related to war, declared or
5 undeclared, or any act related to military service except for accidental
6 death coverage, which may be excluded.

7 (30) Suggesting, recommending, or encouraging a service member to
8 cancel or terminate the service member's Servicemembers' Group Life
9 Insurance policy or issuing a life insurance policy that replaces an
10 existing Servicemembers' Group Life Insurance policy.

11 (31) Accepting an application for life insurance or issuing a policy of life
12 insurance on the life of an enlisted member of the United States Army
13 with the pay grade of E-1, E-2, or E-3 without first obtaining for the
14 Company's files a completed copy of DA Form 2056, "Commercial
15 Insurance Solicitation Record", or its equivalent, which confirms that
16 the applicant has received counseling as required by Army Regulation
17 210-7 or its equivalent.

18 **"§ 58-58-345. Overcoming the presumption of unsuitability.**

19 (a) The presumption of unsuitability regarding the sale of life insurance contracts
20 that include a side fund to service members in pay grades E-1 through E-4 may be
21 overcome if, after the completion of a needs assessment, the insurer demonstrates that
22 the applicant's Servicemembers' Group Life Insurance death benefit, together with any
23 other military survivors benefits, savings, and investments, survivors income, and other
24 life insurance, are insufficient to meet the applicant's insurable needs for life insurance.

25 (b) As used in this section, "insurable needs" are the risks associated with
26 premature death, taking into consideration the financial obligations and immediate and
27 future cash needs of the applicant's estate or survivors, or both.

28 (c) Other military survivor's benefits provided by the federal government that
29 must be included in a service member's needs assessment include the Death Gratuity,
30 Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational
31 Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits,
32 Survivor's Housing Benefits and Allowances, and Federal Income Tax Forgiveness.

33 **"§ 58-58-350. Procedures and sanctions.**

34 (a) The provisions of G.S. 58-63-20, 58-63-25, 58-63-32, 58-63-35, 58-63-50,
35 and 58-63-60 apply to this Part and are incorporated into this Part by reference.

36 (b) A violation of this Part is a ground for license suspension, probation,
37 revocation, nonrenewal, or denial under G.S. 58-33-46 and subjects the violator to
38 G.S. 58-2-70."

39 **SECTION 2.** This act becomes effective October 1, 2007, and applies to acts
40 or offenses committed on or after that date.