

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 773\*  
Senate Commerce, Small Business and Entrepreneurship Committee Substitute  
Adopted 7/23/07  
Third Edition Engrossed 7/24/07

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

(Public)

Sponsors:

Referred to:

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 only to the solicitation or sale of any life insurance or annuity  
product by an insurer or insurance producer to an active duty service member of the  
United States armed forces.

**"§ 58-58-330. Exemptions.**

(a) This Part does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities where there is no in-person,  
face-to-face solicitation of individuals by an insurance producer or  
where the contract or certificate does not include a side fund.

(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, as authorized by 38 U.S.C. § 1965, et  
6           seq.

7           (5) Individual stand-alone health policies, including disability income  
8           policies.

9           (6) Life insurance contracts offered through or by a nonprofit military  
10           association, qualifying under section 501(c)(23) of the Internal  
11           Revenue Code (IRC), and that are not underwritten by an insurer.

12           (7) Contracts used to fund:

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

15           b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or  
16           408(p) of the Internal Revenue Code, if established or  
17           maintained by an employer.

18           c. A government or church plan defined in section 414 of the  
19           Internal Revenue Code, a government or church welfare benefit  
20           plan, or a deferred compensation plan of a state or local  
21           government or tax exempt organization under section 457 of the  
22           Internal Revenue Code.

23           d. A nonqualified deferred compensation arrangement established  
24           or maintained by an employer or plan sponsor.

25           e. Settlements of or assumptions of liabilities associated with  
26           personal injury litigation or any dispute or claim resolution  
27           process.

28           F Prearranged funeral contracts.

29           (b) Nothing in this Part shall be construed to abrogate the ability of nonprofit  
30           organizations (and/or other organizations) to educate members of the United States  
31           armed forces in accordance with Department of Defense DoD Instruction 1344.07 –  
32           PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

33           (c) For purposes of this Part, general advertisements, direct mail, and Internet  
34           marketing do not constitute "solicitation." Telephone marketing does not constitute  
35           "solicitation," provided the caller explicitly and conspicuously discloses that the product  
36           concerned is life insurance and makes no statements that avoid a clear and unequivocal  
37           statement that life insurance is the subject matter of the solicitation. Provided, however,  
38           nothing in this subsection shall be construed to exempt an insurer or insurance producer  
39           from this Part in any in-person, face-to-face meeting established as a result of the  
40           "solicitation" exemptions identified in this subsection.

41           **§ 58-58-335. Definitions.**

42           As used in this Part:

43           (1) "Active duty" means full-time duty in the active military service of the  
44           United States and includes members of the reserve component

- 1                   (National Guard and Reserve) while serving under published orders for  
2                   active duty or full-time training. "Active duty" does not include  
3                   members of the reserve component who are performing active duty or  
4                   active duty for training under military calls or orders specifying  
5                   periods of less than 31 calendar days.
- 6                   (2)   "Department of Defense personnel" means all active duty service  
7                   members and all civilian employees, including nonappropriated fund  
8                   employees and special government employees, of the Department of  
9                   Defense.
- 10                  (3)   "Door to door" means a solicitation or sales method whereby an  
11                  insurance producer proceeds randomly or selectively from household  
12                  to household without prior specific appointment.
- 13                  (4)   "General advertisement" means an advertisement having as its sole  
14                  purpose the promotion of the reader's or viewer's interest in the  
15                  concept of insurance or the promotion of the insurer or the insurance  
16                  producer.
- 17                  (5)   "Insurance producer" means a person required to be licensed under  
18                  Article 33 of this Chapter to sell, solicit, or negotiate life insurance,  
19                  including annuities.
- 20                  (6)   "Insurer" means an insurance company required to be licensed under  
21                  this Chapter to provide life insurance products, including annuities.
- 22                  (7)   "Known" or "knowingly" means, depending on its use in this Part, the  
23                  insurance producer or insurer had actual awareness, or in the exercise  
24                  of ordinary care should have known, at the time of the act or practice  
25                  complained of, that the person solicited is or was:
- 26                    a.   A service member; or  
27                    b.   A service member with a pay grade of E-4 or below.
- 28                  (8)   "Life insurance" means insurance coverage on human lives, including  
29                  benefits of endowment and annuities, and may include benefits in the  
30                  event of death or dismemberment by accident and benefits for  
31                  disability income; and unless otherwise specifically excluded, includes  
32                  individually issued annuities.
- 33                  (9)   "Military installation" means any federally owned, leased, or operated  
34                  base, reservation, post, camp, building, or other facility to which  
35                  service members are assigned for duty, including barracks, transient  
36                  housing, and family quarters.
- 37                  (10) "MyPay" means the Defense Finance and Accounting Service (DFAS)  
38                  Web-based system that enables service members to process certain  
39                  discretionary pay transactions or provide updates to personal  
40                  information data elements without using paper forms.
- 41                  (11) "Service member" means any active duty commissioned officer, any  
42                  active duty warrant officer, or any active duty enlisted member of the  
43                  armed forces.

- 1           (12) "SGLI" means Servicemembers' Group Life Insurance, as authorized  
2           by 38 U.S.C. § 1965, et seq.
- 3           (13) "Side fund" means a fund or reserve that is part of or otherwise  
4           attached to a life insurance policy (excluding individually issued  
5           annuities) by rider, endorsement, or other mechanism that accumulates  
6           premium or deposits with interest or by other means. "Side fund" does  
7           not include:
- 8           a. Accumulated value or cash value or secondary guarantees  
9           provided by a universal life policy;
- 10          b. Cash values provided by a whole life policy which are subject  
11          to standard nonforfeiture law for life insurance; or
- 12          c. A premium deposit fund that:
- 13           1. Contains only premiums paid in advance that accumulate  
14           at interest.
- 15           2. Imposes no penalty for withdrawal.
- 16           3. Does not permit funding beyond future required  
17           premiums.
- 18           4. Is not marketed or intended as an investment.
- 19           5. Does not carry a commission, either paid or calculated.
- 20          (14) "Specific appointment" means a prearranged appointment agreed upon  
21          by both parties and definite as to place and time.
- 22          (15) "United States armed forces" or "armed forces" means all components  
23          of the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- 24          (16) "VGLI" means Veterans' Group Life Insurance, as authorized by 38  
25          U.S.C. § 1965 et seq.

26 **"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair on a**  
27 **military installation.**

28       (a) The following acts or practices when committed on a military installation by  
29 an insurer or insurance producer with respect to the in-person, face-to-face solicitation  
30 of life insurance are declared to be false, misleading, deceptive, or unfair:

- 31           (1) Knowingly soliciting the purchase of any life insurance product "door  
32           to door" or without first establishing a specific appointment for each  
33           meeting with the prospective purchaser.
- 34           (2) Soliciting service members in a group or "mass" audience or in a  
35           "captive" audience where attendance is not voluntary.
- 36           (3) Knowingly making appointments with or soliciting service members  
37           during their normally scheduled duty hours.
- 38           (4) Making appointments with or soliciting service members in barracks,  
39           day rooms, unit areas, or transient personnel housing or other areas  
40           where the installation commander has prohibited solicitation.
- 41           (5) Soliciting the sale of life insurance without first obtaining permission  
42           from the installation commander or the commander's designee.
- 43           (6) Posting unauthorized bulletins, notices, or advertisements.

1           (7) Failing to present DD Form 2885, *Personal Commercial Solicitation*  
2           *Evaluation*, to service members solicited or encouraging service  
3           members solicited not to complete or submit a DD Form 2885.

4           (8) Knowingly accepting an application for life insurance or issuing a  
5           policy of life insurance on the life of an enlisted member of the armed  
6           forces without first obtaining for the insurer's files a completed copy of  
7           any required form that confirms that the applicant has received  
8           counseling or fulfilled any other similar requirement for the sale of life  
9           insurance established by regulations, directives, or rules of the  
10           Department of Defense or any branch of the armed forces.

11           (b) The following acts or practices when committed on a military installation by  
12           an insurer or insurance producer constitute corrupt practices, improper influences or  
13           inducements and are declared to be false, misleading, deceptive, or unfair:

14           (1) Using Department of Defense personnel, directly or indirectly, as a  
15           representative or agent in any official or business capacity with or  
16           without compensation with respect to the solicitation or sale of life  
17           insurance to service members.

18           (2) Using an insurance producer to participate in any armed forces  
19           sponsored education or orientation program.

20           **"§ 58-58-345. Practices declared false, misleading, deceptive, or unfair regardless**  
21           **of location.**

22           (a) The following acts or practices by an insurer or insurance producer constitute  
23           corrupt practices, improper influences or inducements and are declared to be false,  
24           misleading, deceptive, or unfair:

25           (1) Submitting, processing, or assisting in the submission or processing of  
26           any allotment form or similar device used by the United States armed  
27           forces to direct a service member's pay to a third party for the purchase  
28           of life insurance. The foregoing includes, but is not limited to, using or  
29           assisting in using a service member's MyPay account or other similar  
30           Internet or electronic medium for such purposes. This subdivision does  
31           not prohibit assisting a service member by providing insurer or  
32           premium information necessary to complete any allotment form.

33           (2) Knowingly receiving funds from a service member for the payment of  
34           premium from a depository institution with which the service member  
35           has no formal banking relationship. For purposes of this section, a  
36           formal banking relationship is established when the depository  
37           institution:

38           a. Provides the service member a deposit agreement and periodic  
39           statements and makes the disclosures required by the Truth in  
40           Savings Act, 12 U.S.C. § 4301, et seq. and the regulations  
41           promulgated thereunder; and

42           b. Permits the service member to make deposits and withdrawals  
43           unrelated to the payment or processing of insurance premiums.

- 1           (3)   Employing any device or method or entering into any agreement  
2           whereby funds received from a service member by allotment for the  
3           payment of insurance premiums are identified on the service member's  
4           Leave and Earnings Statement or equivalent or successor form as  
5           "Savings" or "Checking" and where the service member has no formal  
6           banking relationship as defined in subdivision (a)(2) of this section.
- 7           (4)   Entering into any agreement with a depository institution for the  
8           purpose of receiving funds from a service member whereby the  
9           depository institution, with or without compensation, agrees to accept  
10          direct deposits from a service member with whom it has no formal  
11          banking relationship.
- 12          (5)   Using Department of Defense personnel, directly or indirectly, as a  
13          representative or agent in any official or unofficial capacity with or  
14          without compensation with respect to the solicitation or sale of life  
15          insurance to service members who are junior in rank or grade or to the  
16          family members of such personnel.
- 17          (6)   Offering or giving anything of value, directly or indirectly, to  
18          Department of Defense personnel to procure their assistance in  
19          encouraging, assisting, or facilitating the solicitation or sale of life  
20          insurance to another service member.
- 21          (7)   Knowingly offering or giving anything of value to a service member  
22          with a pay grade of E-4 or below for his or her attendance to any event  
23          where an application for life insurance is solicited.
- 24          (8)   Advising a service member with a pay grade of E-4 or below to change  
25          his or her income tax withholding or state of legal residence for the  
26          sole purpose of increasing disposable income to purchase life  
27          insurance.
- 28          (b)   The following acts or practices by an insurer or insurance producer lead to  
29          confusion regarding source, sponsorship, approval, or affiliation and are declared to be  
30          false, misleading, deceptive, or unfair:
- 31               (1)   Making any representation, or using any device, title, descriptive  
32               name, or identifier that has the tendency or capacity to confuse or  
33               mislead a service member into believing that the insurer, insurance  
34               producer, or product offered is affiliated, connected or associated with,  
35               endorsed, sponsored, sanctioned, or recommended by the U.S.  
36               Government, the United States armed forces, or any state or federal  
37               agency or government entity. Examples of prohibited insurance  
38               producer titles include, but are not limited to, "Battalion Insurance  
39               Counselor," "Unit Insurance Advisor," "Servicemen's Group Life  
40               Insurance Conversion Consultant," or "Veteran's Benefits Counselor."  
41               Nothing in this subdivision prohibits a person from using a  
42               professional designation awarded after the successful completion of a  
43               course of instruction in the business of insurance by an accredited  
44               institution of higher learning. Those designations include, but are not

1 limited to, Chartered Life Underwriter (CLU), Chartered Financial  
2 Consultant, (ChFC), Certified Financial Planner (CFP), Master of  
3 Science in Financial Services (MSFS), or Masters of Science Financial  
4 Planning (MS).

5 (2) Soliciting the purchase of any life insurance product through the use of  
6 or in conjunction with any third party organization that promotes the  
7 welfare of or assists members of the United States armed forces in a  
8 manner that has the tendency or capacity to confuse or mislead a  
9 service member into believing that either the insurer, insurance  
10 producer, or insurance product is affiliated, connected or associated  
11 with, endorsed, sponsored, sanctioned, or recommended by the U.S.  
12 Government or the United States armed forces.

13 (c) The following acts or practices by an insurer or insurance producer lead to  
14 confusion regarding premiums, costs, or investment returns and are declared to be false,  
15 misleading, deceptive, or unfair:

16 (1) Using or describing the credited interest rate on a life insurance policy  
17 in a manner that implies that the credited interest rate is a net return on  
18 premium paid.

19 (2) Excluding individually issued annuities, misrepresenting the mortality  
20 costs of a life insurance product, including stating or implying that the  
21 product "costs nothing" or is "free."

22 (d) The following acts or practices by an insurer or insurance producer regarding  
23 SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

24 (1) Making any representation regarding the availability, suitability,  
25 amount, cost, exclusions, or limitations to coverage provided to a  
26 service member or dependents by SGLI or VGLI that is false,  
27 misleading, or deceptive.

28 (2) Making any representation regarding conversion requirements,  
29 including the costs of coverage, or exclusions or limitations to  
30 coverage of SGLI or VGLI to private insurers that is false, misleading,  
31 or deceptive.

32 (3) Suggesting, recommending, or encouraging a service member to  
33 cancel or terminate his or her SGLI policy or issuing a life insurance  
34 policy that replaces an existing SGLI policy unless the replacement  
35 shall take effect upon or after the service member's separation from the  
36 armed forces.

37 (e) The following acts or practices by an insurer and/or insurance producer  
38 regarding disclosure are declared to be false, misleading, deceptive, or unfair:

39 (1) Deploying, using, or contracting for any lead generating materials  
40 designed exclusively for use with service members that do not clearly  
41 and conspicuously disclose that the recipient will be contacted by an  
42 insurance producer, if that is the case, for the purpose of soliciting the  
43 purchase of life insurance.

- 1           (2)    Failing to disclose that a solicitation for the sale of life insurance will  
2           be made when establishing a specific appointment for an in-person,  
3           face-to-face meeting with a prospective purchaser.
- 4           (3)    Excluding individually issued annuities, failing to clearly and  
5           conspicuously disclose the fact that the product being sold is life  
6           insurance.
- 7           (4)    Failing to make, at the time of sale or offer to an individual known to  
8           be a service member, the written disclosures required by section 10 of  
9           the Military Personnel Financial Services Protection Act, Pub. L. No.  
10          109-290, p.16.
- 11          (5)    Excluding individually issued annuities, when the sale is conducted  
12          in-person, face-to-face with an individual known to be a service  
13          member, failing to provide the applicant at the time the application is  
14          taken:
- 15           a.     An explanation of any free look period with instructions on how  
16           to cancel if a policy is issued; and
- 17           b.     Either a copy of the application or a written disclosure. The  
18           copy of the application or the written disclosure shall clearly  
19           and concisely set out the type of life insurance, the death benefit  
20           applied for, and its expected first year cost. A basic illustration  
21           that meets the requirements of rules adopted by the  
22           Commissioner concerning life insurance illustrations are  
23           sufficient to meet this requirement for a written disclosure.
- 24          (f)    The following acts or practices by an insurer or insurance producer with  
25          respect to the sale of certain life insurance products are declared to be false, misleading,  
26          deceptive, or unfair:
- 27           (1)    Excluding individually issued annuities, recommending the purchase  
28           of any life insurance product which includes a side fund to a service  
29           member in pay grades E-4 and below unless the insurer has reasonable  
30           grounds for believing that the life insurance death benefit, standing  
31           alone, is suitable.
- 32           (2)    Offering for sale or selling a life insurance product which includes a  
33           side fund to a service member in pay grades E-4 and below who is  
34           currently enrolled in SGLI is presumed unsuitable unless, after the  
35           completion of a needs assessment, the insurer demonstrates that the  
36           applicant's SGLI death benefit, together with any other military  
37           survivor benefits, savings and investments, survivor income, and other  
38           life insurance are insufficient to meet the applicant's insurable needs  
39           for life insurance. As used in this subdivision, "insurable needs" are  
40           the risks associated with premature death taking into consideration the  
41           financial obligations and immediate and future cash needs of the  
42           applicant's estate and/or survivors or dependents; and "other military  
43           survivor benefits" include, but are not limited to: the Death Gratuity,  
44           Funeral Reimbursement, Transition Assistance, Survivor and

1 Dependents' Educational Assistance, Dependency and Indemnity  
2 Compensation, TRICARE Healthcare Benefits, Survivor Housing  
3 Benefits and Allowances, Federal Income Tax Forgiveness, and Social  
4 Security Survivor Benefits.

5 (3) Excluding individually issued annuities, offering for sale or selling any  
6 life insurance contract which includes a side fund:

7 a. Unless interest credited accrues from the date of deposit to the  
8 date of withdrawal and permits withdrawals without limit or  
9 penalty;

10 b. Unless the applicant has been provided with a schedule of  
11 effective rates of return based upon cash flows of the combined  
12 product. For this disclosure, the effective rate of return will  
13 consider all premiums and cash contributions made by the  
14 policyholder and all cash accumulations and cash surrender  
15 values available to the policyholder in addition to life insurance  
16 coverage. This schedule will be provided for at least each policy  
17 year from one to 10 and for every fifth policy year thereafter  
18 ending at age 100, policy maturity, or final expiration; and

19 c. Which by default diverts or transfers funds accumulated in the  
20 side fund to pay, reduce, or offset any premiums due.

21 (4) Excluding individually issued annuities, offering for sale or selling any  
22 life insurance contract which after considering all policy benefits,  
23 including, but not limited to, endowment, return of premium, or  
24 persistence, does not comply with standard nonforfeiture law for life  
25 insurance.

26 (5) Selling any life insurance product to an individual known to be a  
27 service member that excludes coverage if the insured's death is related  
28 to war, declared or undeclared, or any act related to military service  
29 except for an accidental death coverage, e.g., double indemnity, which  
30 may be excluded.

31 **§ 58-58-350. Procedures and sanctions.**

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

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

37 **SECTION 2.** This act becomes effective January 1, 2008, and applies to acts  
38 or offenses committed on or after that date.