

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

2

HOUSE BILL 773\*

Senate Commerce, Small Business and Entrepreneurship Committee Substitute  
Adopted 7/23/07

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 the same insurer pursuant to a program filed with and approved by the

- 1           Commissioner, or (iii) a term conversion privilege is exercised among  
2           corporate affiliates.
- 3           (4) Contracts offered by Servicemembers' Group Life Insurance or  
4           Veterans' Group Life Insurance, as authorized by 38 U.S.C. § 1965, et  
5           seq.
- 6           (5) Individual stand-alone health policies, including disability income  
7           policies.
- 8           (6) Life insurance contracts offered through or by a nonprofit military  
9           association, qualifying under section 501(c)(23) of the Internal  
10          Revenue Code (IRC), and that are not underwritten by an insurer.
- 11          (7) Contracts used to fund:
- 12           a. An employee pension or welfare benefit plan that is covered by  
13           the Employee Retirement and Income Security Act (ERISA).
- 14           b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or  
15           408(p) of the Internal Revenue Code, if established or  
16           maintained by an employer.
- 17           c. A government or church plan defined in section 414 of the  
18           Internal Revenue Code, a government or church welfare benefit  
19           plan, or a deferred compensation plan of a state or local  
20           government or tax exempt organization under section 457 of the  
21           Internal Revenue Code.
- 22           d. A nonqualified deferred compensation arrangement established  
23           or maintained by an employer or plan sponsor.
- 24           e. Settlements of or assumptions of liabilities associated with  
25           personal injury litigation or any dispute or claim resolution  
26           process.
- 27          F   Prearranged funeral contracts.
- 28          (b) Nothing in this Part shall be construed to abrogate the ability of nonprofit  
29          organizations (and/or other organizations) to educate members of the United States  
30          armed forces in accordance with Department of Defense DoD Instruction 1344.07 –  
31          PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.
- 32          (c) For purposes of this Part, general advertisements, direct mail, and Internet  
33          marketing do not constitute "solicitation." Telephone marketing does not constitute  
34          "solicitation," provided the caller explicitly and conspicuously discloses that the product  
35          concerned is life insurance and makes no statements that avoid a clear and unequivocal  
36          statement that life insurance is the subject matter of the solicitation. Provided, however,  
37          nothing in this subsection shall be construed to exempt an insurer or insurance producer  
38          from this Part in any in-person, face-to-face meeting established as a result of the  
39          "solicitation" exemptions identified in this subsection.
- 40          **§ 58-58-335. Definitions.**
- 41           As used in this Part:
- 42           (1) "Active duty" means full-time duty in the active military service of the  
43           United States and includes members of the reserve component  
44           (National Guard and Reserve) while serving under published orders for

- 1           active duty or full-time training. "Active duty" does not include  
2           members of the reserve component who are performing active duty or  
3           active duty for training under military calls or orders specifying  
4           periods of less than 31 calendar days.
- 5           (2)   "Department of Defense personnel" means all active duty service  
6           members and all civilian employees, including nonappropriated fund  
7           employees and special government employees, of the Department of  
8           Defense.
- 9           (3)   "Door to door" means a solicitation or sales method whereby an  
10          insurance producer proceeds randomly or selectively from household  
11          to household without prior specific appointment.
- 12          (4)   "General advertisement" means an advertisement having as its sole  
13          purpose the promotion of the reader's or viewer's interest in the  
14          concept of insurance or the promotion of the insurer or the insurance  
15          producer.
- 16          (5)   "Insurance producer" means a person required to be licensed under  
17          Article 33 of this Chapter to sell, solicit, or negotiate life insurance,  
18          including annuities.
- 19          (6)   "Insurer" means an insurance company required to be licensed under  
20          this Chapter to provide life insurance products, including annuities.
- 21          (7)   "Known" or "knowingly" means, depending on its use in this Part, the  
22          insurance producer or insurer had actual awareness, or in the exercise  
23          of ordinary care should have known, at the time of the act or practice  
24          complained of, that the person solicited is or was:
- 25                a.    A service member; or  
26                b.    A service member with a pay grade of E-4 or below.
- 27          (8)   "Life insurance" means insurance coverage on human lives, including  
28          benefits of endowment and annuities, and may include benefits in the  
29          event of death or dismemberment by accident and benefits for  
30          disability income; and unless otherwise specifically excluded, includes  
31          individually issued annuities.
- 32          (9)   "Military installation" means any federally owned, leased, or operated  
33          base, reservation, post, camp, building, or other facility to which  
34          service members are assigned for duty, including barracks, transient  
35          housing, and family quarters.
- 36          (10)  "MyPay" means the Defense Finance and Accounting Service (DFAS)  
37          Web-based system that enables service members to process certain  
38          discretionary pay transactions or provide updates to personal  
39          information data elements without using paper forms.
- 40          (11)  "Service member" means any active duty commissioned officer, any  
41          active duty warrant officer, or any active duty enlisted member of the  
42          armed forces.
- 43          (12)  "SGLI" means Servicemembers' Group Life Insurance, as authorized  
44          by 38 U.S.C. § 1965, et seq.

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

24 **"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair on a**  
25 **military installation.**

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

- 29       (1) Knowingly soliciting the purchase of any life insurance product "door  
30 to door" or without first establishing a specific appointment for each  
31 meeting with the prospective purchaser.  
32       (2) Soliciting service members in a group or "mass" audience or in a  
33 "captive" audience where attendance is not voluntary.  
34       (3) Knowingly making appointments with or soliciting service members  
35 during their normally scheduled duty hours.  
36       (4) Making appointments with or soliciting service members in barracks,  
37 day rooms, unit areas, or transient personnel housing or other areas  
38 where the installation commander has prohibited solicitation.  
39       (5) Soliciting the sale of life insurance without first obtaining permission  
40 from the installation commander or the commander's designee.  
41       (6) Posting unauthorized bulletins, notices, or advertisements.  
42       (7) Failing to present DD Form 2885, *Personal Commercial Solicitation*  
43 *Evaluation*, to service members solicited or encouraging service  
44 members solicited not to complete or submit a DD Form 2885.

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

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

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

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

17 **§ 58-58-345. Practices declared false, misleading, deceptive, or unfair regardless**  
18 **of location.**

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

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

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

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

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

41           (3) Employing any device or method or entering into any agreement  
42 whereby funds received from a service member by allotment for the  
43 payment of insurance premiums are identified on the service member's  
44 Leave and Earnings Statement or equivalent or successor form as

1                   "Savings" or "Checking" and where the service member has no formal  
2                   banking relationship as defined in subdivision (a)(2) of this section.

3           (4)       Entering into any agreement with a depository institution for the  
4           purpose of receiving funds from a service member whereby the  
5           depository institution, with or without compensation, agrees to accept  
6           direct deposits from a service member with whom it has no formal  
7           banking relationship.

8           (5)       Using Department of Defense personnel, directly or indirectly, as a  
9           representative or agent in any official or unofficial capacity with or  
10           without compensation with respect to the solicitation or sale of life  
11           insurance to service members who are junior in rank or grade or to the  
12           family members of such personnel.

13           (6)       Offering or giving anything of value, directly or indirectly, to  
14           Department of Defense personnel to procure their assistance in  
15           encouraging, assisting, or facilitating the solicitation or sale of life  
16           insurance to another service member.

17           (7)       Knowingly offering or giving anything of value to a service member  
18           with a pay grade of E-4 or below for his or her attendance to any event  
19           where an application for life insurance is solicited.

20           (8)       Advising a service member with a pay grade of E-4 or below to change  
21           his or her income tax withholding or state of legal residence for the  
22           sole purpose of increasing disposable income to purchase life  
23           insurance.

24           (b)       The following acts or practices by an insurer or insurance producer lead to  
25           confusion regarding source, sponsorship, approval, or affiliation and are declared to be  
26           false, misleading, deceptive, or unfair:

27           (1)       Making any representation, or using any device, title, descriptive  
28           name, or identifier that has the tendency or capacity to confuse or  
29           mislead a service member into believing that the insurer, insurance  
30           producer, or product offered is affiliated, connected or associated with,  
31           endorsed, sponsored, sanctioned, or recommended by the U.S.  
32           Government, the United States armed forces, or any state or federal  
33           agency or government entity. Examples of prohibited insurance  
34           producer titles include, but are not limited to, "Battalion Insurance  
35           Counselor," "Unit Insurance Advisor," "Servicemen's Group Life  
36           Insurance Conversion Consultant," or "Veteran's Benefits Counselor."  
37           Nothing in this subdivision prohibits a person from using a  
38           professional designation awarded after the successful completion of a  
39           course of instruction in the business of insurance by an accredited  
40           institution of higher learning. Those designations include, but are not  
41           limited to, Chartered Life Underwriter (CLU), Chartered Financial  
42           Consultant, (ChFC), Certified Financial Planner (CFP), Master of  
43           Science in Financial Services (MSFS), or Masters of Science Financial  
44           Planning (MS).

- 1           (2)   Soliciting the purchase of any life insurance product through the use of  
2           or in conjunction with any third party organization that promotes the  
3           welfare of or assists members of the United States armed forces in a  
4           manner that has the tendency or capacity to confuse or mislead a  
5           service member into believing that either the insurer, insurance  
6           producer, or insurance product is affiliated, connected or associated  
7           with, endorsed, sponsored, sanctioned, or recommended by the U.S.  
8           Government or the United States armed forces.
- 9           (c)   The following acts or practices by an insurer or insurance producer lead to  
10          confusion regarding premiums, costs, or investment returns and are declared to be false,  
11          misleading, deceptive, or unfair:
- 12           (1)   Using or describing the credited interest rate on a life insurance policy  
13           in a manner that implies that the credited interest rate is a net return on  
14           premium paid.
- 15           (2)   Excluding individually issued annuities, misrepresenting the mortality  
16           costs of a life insurance product, including stating or implying that the  
17           product "costs nothing" or is "free."
- 18           (d)   The following acts or practices by an insurer or insurance producer regarding  
19          SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:
- 20           (1)   Making any representation regarding the availability, suitability,  
21           amount, cost, exclusions, or limitations to coverage provided to a  
22           service member or dependents by SGLI or VGLI that is false,  
23           misleading, or deceptive.
- 24           (2)   Making any representation regarding conversion requirements,  
25           including the costs of coverage, or exclusions or limitations to  
26           coverage of SGLI or VGLI to private insurers that is false, misleading,  
27           or deceptive.
- 28           (3)   Suggesting, recommending, or encouraging a service member to  
29           cancel or terminate his or her SGLI policy or issuing a life insurance  
30           policy that replaces an existing SGLI policy unless the replacement  
31           shall take effect upon or after the service member's separation from the  
32           armed forces.
- 33           (e)   The following acts or practices by an insurer and/or insurance producer  
34          regarding disclosure are declared to be false, misleading, deceptive, or unfair:
- 35           (1)   Deploying, using, or contracting for any lead generating materials  
36           designed exclusively for use with service members that do not clearly  
37           and conspicuously disclose that the recipient will be contacted by an  
38           insurance producer, if that is the case, for the purpose of soliciting the  
39           purchase of life insurance.
- 40           (2)   Failing to disclose that a solicitation for the sale of life insurance will  
41           be made when establishing a specific appointment for an in-person,  
42           face-to-face meeting with a prospective purchaser.

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

1 Benefits and Allowances, Federal Income Tax Forgiveness, and Social  
2 Security Survivor Benefits.

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

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

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

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

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

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

29 **"§ 58-58-350. Procedures and sanctions.**

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

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

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