

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 886\*

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

(Public)

Sponsors: Senator Rand.

Referred to: Commerce, Small Business and Entrepreneurship.

March 19, 2007

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

5 The General Assembly of North Carolina enacts:

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

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

9 **"§ 58-58-320. Purpose.**

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

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

15 **"§ 58-58-325. Scope.**

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

18 **"§ 58-58-330. Exemptions.**

19 This Part does not apply to solicitations or sales involving:

20 (1) Credit insurance.

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

23 (3) An application to the existing insurer that issued the existing policy or  
24 contract when (i) a contractual change or a conversion privilege is  
25 being exercised, (ii) the existing policy or contract is being replaced by  
26 the same insurer pursuant to a program filed with and approved by the  
27 Commissioner, or (iii) a term conversion privilege is exercised among  
28 corporate affiliates.

- 1           (4) Contracts offered by Servicemembers' Group Life Insurance or  
2           Veterans' Group Life Insurance.
- 3           (5) Contracts used to fund:
- 4           a. An employee pension or welfare benefit plan that is covered by  
5           the Employee Retirement and Income Security Act (ERISA).
- 6           b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or  
7           408(p) of the Internal Revenue Code, if established or  
8           maintained by an employer.
- 9           c. A government or church plan defined in section 414 of the  
10           Internal Revenue Code, a government or church welfare benefit  
11           plan, or a deferred compensation plan of a state or local  
12           government or tax exempt organization under section 457 of the  
13           Internal Revenue Code.
- 14           d. A nonqualified deferred compensation arrangement established  
15           or maintained by an employer or plan sponsor.
- 16           e. Settlements of or assumptions of liabilities associated with  
17           personal injury litigation or any dispute or claim resolution  
18           process.
- 19           f. Prearranged funeral contracts.

20 **"§ 58-58-335. Definitions.**

21 As used in this Part:

- 22           (1) "Armed Forces" means all components of the United States Army,  
23           Navy, Air Force, Marine Corps, and Coast Guard and their reserve  
24           components.
- 25           (2) "Department of Defense personnel" means any service member and all  
26           civilian employees, including nonappropriated fund employees and  
27           special government employees, of the United States Department of  
28           Defense, or its successor agency.
- 29           (3) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).
- 30           (4) "Life insurance" means insurance coverage on human lives, including  
31           benefits of endowment and annuities, and may include benefits in the  
32           event of death or dismemberment by accident and benefits for  
33           disability income; and unless otherwise specifically excluded, includes  
34           annuities.
- 35           (5) "Military installation" means any federally owned, leased, or operated  
36           base, reservation, post, camp, building, or other facility to which  
37           service members are assigned for duty, including barracks, transient  
38           housing, and family quarters.
- 39           (6) "Service member" means any active duty commissioned officer, any  
40           active duty warrant officer, or any enlisted member of the Armed  
41           Forces.
- 42           (7) "Side fund" means a fund or reserve that is part of or otherwise  
43           attached to a life insurance policy, excluding annuities, by rider, by  
44           endorsement, or other mechanism that accumulates premium or

1 deposits at interest, or by other means. "Side fund" does not include  
2 accumulated or cash value or secondary guarantees provided by a  
3 universal life policy nor does it include cash values provided by a  
4 whole life policy that are subject to the standard nonforfeiture law for  
5 life insurance.

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

8 **"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair.**

9 The following acts or practices are declared to be false, misleading, deceptive, or  
10 unfair:

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

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

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

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

29 (5) Participating in or assisting in any Armed Forces sponsored education  
30 or orientation program.

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

37 (7) Offering or giving anything with a value greater than five dollars  
38 (\$5.00) to a service member for the service member's attendance at any  
39 event involving the solicitation or sale of life insurance.

40 (8) Soliciting the purchase of any life insurance product on a military  
41 installation randomly or selectively from household to household  
42 without prior specific appointment or invitation.

43 (9) Soliciting service members in a group or "mass" audience or in a  
44 "captive" audience where attendance is not voluntary.

- 1           (10) Making appointments with, or soliciting service members during, their  
2           duty hours.
- 3           (11) Making appointments with or soliciting service members on a military  
4           installation in barracks, day rooms, unit areas, or transient personnel  
5           housing.
- 6           (12) Making any representation, or using any device, that has the tendency  
7           or capacity to confuse or mislead a service member into believing that  
8           the insurer, insurance producer, or product offered is affiliated,  
9           connected, or associated with, endorsed, sponsored, sanctioned,  
10          recommended by the United States government, the Armed Forces, or  
11          any state or federal agency, or any government entity.
- 12          (13) Using any title, descriptive name, or identifier, other than titles that  
13          identify the insurance producer as a producer or agent for the insurer.  
14          Examples include, "Battalion Insurance Counselor", "Unit Insurance  
15          Advisor", "Servicemen's Group Life Insurance Conversion  
16          Consultant", or "Veteran's Benefits Counselor".
- 17          (14) Soliciting the purchase of any life insurance product through the use of  
18          or in conjunction with any third-party eleemosynary or charitable  
19          organization that promotes the welfare of, or assists members of, the  
20          Armed Forces in a manner that has the tendency or capacity to confuse  
21          or mislead a service member into believing that the organization is  
22          affiliated, connected, or associated with, or endorsed, sponsored,  
23          sanctioned, or recommended by the United States Government or the  
24          Armed Forces.
- 25          (15) Using or describing the credited interest rate on a life insurance policy  
26          in a manner that implies that the credited interest rate is a net return on  
27          premium paid.
- 28          (16) Excluding annuities, representing that the life insurance product costs  
29          "nothing" or is "free", or otherwise misrepresenting the mortality costs  
30          for the product.
- 31          (17) Making any representation regarding the availability, amount, cost,  
32          exclusions, or limitations to coverage provided to a service member or  
33          dependents by Servicemembers' Group Life Insurance or Veterans'  
34          Group Life Insurance that is false, misleading, or deceptive.
- 35          (18) Making any representation about conversion requirements, including  
36          the costs of coverage, or exclusions or limitations to coverage, of  
37          Servicemembers' Group Life Insurance or Veterans' Group Life  
38          Insurance to private insurers that is false, misleading, or deceptive.
- 39          (19) Deploying, using, or contracting for any lead generating materials that  
40          do not clearly and conspicuously disclose that the recipient will be  
41          contacted by an insurance producer for the purpose of soliciting the  
42          purchase of life insurance. For the purposes of this subdivision,  
43          "clearly and conspicuously" requires a type size of at least 16 points.

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

1           (30) Suggesting, recommending, or encouraging a service member to  
2           cancel or terminate the service member's Servicemembers' Group Life  
3           Insurance policy or issuing a life insurance policy that replaces an  
4           existing Servicemembers' Group Life Insurance policy.

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

12 **"§ 58-58-345. Overcoming the presumption of unsuitability.**

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

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

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

27 **"§ 58-58-350. Procedures and sanctions.**

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

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

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