

Report From Agency

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create Ins 2.19, Wis. Adm. Code,

Relating to sales of life insurance and annuities to the military and affecting small business.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 628.34, 628.347, Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34, 628.347, Stats.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

This proposed rule defines practices relating to the sale of life insurance and annuities to the military that are misleading and unfair trade practices. Accordingly it is authorized by s. 628.34, Stats, which permits OCI to define unfair trade practices.

4. Related statutes or rules:

Section 628.34, Stats., prohibits misrepresentation or unfair practices in the business of insurance. In addition ss. Ins 2.14 to 2.17, Wis. Adm. Code, govern specific practices relating to the sales of annuities and life insurance.

5. The plain language analysis and summary of the proposed rule:

Congress on September 29, 2006, enacted the *Military Personnel Financial Services Protection Act*, Pub. L. No. 109-290 (2006) (the "*Federal Act*"). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that 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."

The Federal Act asks that 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." The Federal Act calls on the National Association of Insurance Commissioners ("NAIC") to, in coordination with the Secretary, create standards for products specifically designed to meet the particular needs of members of the Armed Forces, regardless of the sales location.

The NAIC developed the Military Sales Practices Model Regulation (“Model”) to address the Federal Act request. The Model specifically prohibits certain acts and practices as false, misleading, deceptive or unfair under Wisconsin’s unfair trade practices statute (s. 628.34, Stats.). Many of the provisions incorporate Department of Defense (“DoD”) solicitation rules. For example by tracking DoD regulations the Model prohibits the practice of soliciting the sales of life insurance in barracks, day rooms and other restricted areas.

The Model also addresses Congressional concerns regarding suitability and product standards. In this regard, the Model prohibits recommending the purchase of any life insurance product which includes a “side fund” to junior enlisted service members in pay grades E- 4 and below, unless the insurer has reasonable grounds for believing that the life insurance portion of the product, standing alone, is suitable.

The proposed rule conforms to the recommended NAIC Model.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

See paragraph 5. The Model tracks or incorporates relevant DoD solicitation regulations in DoD Instruction 1344.07: *Personal Commercial Solicitation on DoD Installations*, and Army Regulation 210-7: *Commercial Solicitation on Army Installations*. These regulations identify prohibited sales practices directed at active duty service members.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: The Illinois Insurance Department is currently in the process of promulgating the Model.

Iowa: The Iowa Insurance Department is currently in the process of promulgating the Model.

Michigan: The Michigan Insurance Department is currently in the process of promulgating the Model.

Minnesota: The Minnesota Insurance Department is currently in the process of promulgating the Model.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The proposed rule is based on a review of complaints, enforcement investigations conducted by other state insurance departments and the recommendations and analysis prepared and shared by the NAIC.

9. Any analysis and supporting documentation that OCI used in support of OCI’s determination of the rule’s effect on small businesses under s. 227.114:

The proposed rule solely requires appropriate sales practices. As such it will not impose any additional costs relating to those practices. The specific requirements included in the rule are consistent with the more general requirements already applicable to such sales. While use of appropriate life and annuity sales practices with active duty military is an important topic, such sales are not a material portion of insurance business in this state. This is

confirmed by the few complaints OCI has received on the topic and also by DoD information that shows only a small number of active duty military personnel resident in Wisconsin.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses. It will not have a significant impact on small business. It will not require bookkeeping procedures or professional skills beyond those currently required. Moreover Wisconsin has a very small population of active duty military so the proposed rule will apply to a very limited number of transactions.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

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The proposed rule changes are:

SECTION 1. Ins 2.19 is created to read:

Ins 2.19 **Military sales practices.** (1) PURPOSE.

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

(b) This section does not create or imply a private cause of action for a violation of this section.

(2) SCOPE. This section shall apply 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.

(3) AUTHORITY. This section is issued under the authority of ss. 601.41 (3), 628.34 and 628.347, Stats.

(4) EXEMPTIONS.

(a) This section does not apply to solicitations or sales involving any of the following:

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 a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates.
4. Individual stand-alone health policies, including disability income policies.
5. Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. Section 1965 *et seq.*
6. Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code, and which are not underwritten by an insurer.
7. Contracts used to fund any of the following:
 - a. An employee pension or welfare benefit plan that is covered by 29 U.S.C. ch. 18.
 - b. A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer.
 - c. A government or church plan defined in Section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.
 - f. Prearranged funeral contracts.

(b) Nothing in this section shall be construed to abrogate the ability of nonprofit organizations or other organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or a successor directive.

(c) For purposes of this section, general advertisements, direct mail and internet marketing does not constitute solicitation. Telephone marketing shall not constitute solicitation provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Nothing in this paragraph shall be construed to exempt an insurer or insurance producer from this section in any in-person, face-to-face meeting established as a result of the solicitation exemptions identified in this paragraph.

(5) DEFINITIONS. In this section:

- (a) “Active duty” means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.
- (b) “Department of Defense personnel” means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the U.S. Department of Defense.
- (c) “Door to door” means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
- (d) “General advertisement” means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.
- (e) “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.
- (f) “Insurer” means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.
- (g) “Known” or “knowingly” means, depending on its use in this section, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited is any of the following:
1. A service member.
 2. A pay grade of E-4 or below.
- (h) “Life insurance” means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

- (i) “Military installation” means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.
- (j) “MyPay” means a Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
- (k) “Service member” means any active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.
- (l) “Side fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include any of the following:
 - 1. Cumulated value or cash value or secondary guarantees provided by a universal life policy.
 - 2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance.
 - 3. A premium deposit fund which complies with all of the following:
 - a. Contains only premiums paid in advance which accumulate at interest.
 - b. Imposes no penalty for withdrawal.
 - c. Does not permit funding beyond future required premiums.
 - d. Is not marketed or intended as an investment.
 - e. Does not carry a commission, either paid or calculated.
- (m) “Specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time.
- (n) “United States Armed Forces” means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (6) PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE OR UNFAIR ON A MILITARY INSTALLATION OR USING MILITARY PERSONNEL OR PROGRAMS.
 - (a) No insurer or insurance producer may engage in any of the following acts or practices on a military installation with respect to the in-person, face-to-face solicitation of life insurance:

1. Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.
2. Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.
3. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
4. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or in other areas where the installation commander has prohibited solicitation.
5. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.
6. Posting unauthorized bulletins, notices or advertisements.
7. Fail to present Department of Defense Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a Department of Defense Form 2885.
8. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the Department of Defense or any branch of the United States Armed Forces.

(b) No insurer or insurance producer may do any of the following:

1. Use Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.
2. Participate in any United States Armed Forces sponsored education or orientation program for the purpose of solicitation of the sale of life insurance to service members.

(7) PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE OR UNFAIR REGARDLESS OF LOCATION. No insurer or insurance producer may do any of the following regardless of location:

- (a) Submit, process or assist in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. This includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes. This subdivision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receive funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of subsection, a formal banking relationship is established when the depository institution does all of the following:

1. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by 12 U.S.C. § 4301 *et seq.* and the regulations promulgated thereunder.

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

(c) Employ any device or method or enter into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as savings or checking and where the service member has no formal banking relationship as defined in par. (b).

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

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

(f) Offer or give anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offer or give anything of value to a service member with a pay grade of E-4 or below for his or her attendance at any event where an application for life insurance is solicited.

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

(i) Make any representation, or use any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity, including, but not limited to, use of any of the following titles: "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or

Nothing in this subdivision shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning, including, but are not limited to, Chartered Life Underwriter, Chartered Financial Consultant, Certified Financial Planner, Master of Science in Financial Services, and Masters of Science of Financial Planning.

(j) Solicit the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government or the United States Armed Forces.

(k) Use or describe the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(L) Excluding individually issued annuities, misrepresent the mortality costs of a life insurance product, including stating or implying that the product costs nothing or is free.

(m) Make any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents of a service member by Servicemembers’ Group Life Insurance or Veterans’ Group Life Insurance, which is false, misleading or deceptive.

(n) Make any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of Servicemembers’ Group Life Insurance or Veterans’ Group Life Insurance to private insurers which is false, misleading or deceptive.

(o) Suggest, recommend or encourage a service member to cancel or terminate his or her Servicemembers’ Group Life Insurance or issue a life insurance policy which replaces an existing Servicemembers’ Group Life Insurance policy unless the replacement will take effect upon or after the service member’s separation from the United States Armed Forces.

(p) Deploy, use or contract for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(p) Fail to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(r) Excluding individually issued annuities, fail to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(s) Fail to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by 10 U.S.C. 992 note § 10.

(t) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, fail to provide the applicant at the time the application is taken all of the following:

1. An explanation of any free look period with instructions on how to cancel if a policy is issued.
2. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of s. Ins 2.17 shall be deemed sufficient to meet this requirement for a written disclosure.

(u) Excluding individually issued annuities, recommend the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer and insurance producer have reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable. The offer for sale, or sale, of a life insurance product which includes a side fund to a service member in pay grades E-4 or below who is currently enrolled in Servicemembers' Group Life Insurance is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's Servicemembers' Group Life Insurance death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For the purpose of this paragraph:

1. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors or dependents.
2. "Other military survivor benefits" include: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare Benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(v) Excluding individually issued annuities, offer for sale or sell any life insurance contract which includes a side fund to an individual known to be a service member:

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

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

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

(w) Excluding individually issued annuities, offer for sale or sell any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

(x) Sell any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, including a double indemnity, which may be excluded.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to sales that are solicited on the effective date of this rule.

SECTION 3. ENFORCEMENT. This rule may be enforced under ss. 601.41, 601.64, 601.65, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 4. EFFECTIVE DATE. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this _____ day of _____, 2008.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 2.19 relating to sales of life insurance and annuities to the military and affecting small business and affecting small business

This rule change will have no significant effect on the private sector regulated by OCI for the reasons outlined in the analysis.

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 2.19

Subject
sales of life insurance and annuities to the military and affecting small business and affecting small business

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>		<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>		\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>		\$ <u>None 0</u>

Prepared by: Fred Nepple	Telephone No. (608) 266-7726	Agency Insurance
Authorized Signature: Kimberly Shaul:	Telephone No.	Date (mm/dd/ccyy)

FISCAL ESTIMATE

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 2.19

Subject
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Fiscal Effect
State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs
1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory
5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected Affected Chapter 20 Appropriations
 GPR FED PRO PRS SEG SEG-S

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None

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Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)