

Title 3. Commerce, Community, and Economic Development.

Chapter 26. Trade Practices.

3 AAC 26 is amended by adding new sections to read:

Article 3. Military Sales Practices.

Section

430. Applicability

435. Unfair or deceptive practices on a military installation

440. Unfair or deceptive practices regardless of location

449. Definitions

3 AAC 26.430. Applicability. (a) The provisions of 3 AAC 26.430 - 3 AAC 26.449 apply to a solicitation or sale of a life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States armed forces, except for a solicitation or sale involving

(1) consumer credit insurance; in this paragraph, “consumer credit insurance” has the meaning given in AS 21.57.160;

(2) a group life insurance policy or group annuity contract

(A) in which in-person, face-to-face solicitation of individuals by an insurance producer does not take place; or

(B) if the contract or certificate does not include a side fund;

(3) an application to an insurer that issued an existing life insurance policy or annuity contract to

- (A) exercise a contractual change or conversion privilege;
- (B) replace the existing policy or contract by the same insurer under a program filed with and approved by the director; or
- (C) exercise a term conversion privilege among corporate affiliates;
- (4) an individual stand-alone health insurance policy, including a disability income policy;
- (5) a contract offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. 1965 – 1980A;
- (6) a life insurance contract offered through or by a nonprofit military association qualifying under 26 U.S.C 501(c)(23) (Internal Revenue Code) and that is not underwritten by an insurer; or
- (7) a life insurance policy or annuity contract that is used to fund
 - (A) an employee pension or welfare benefit plan covered under 29 U.S.C. 1001 – 1461 (Employee Retirement Income Security Act of 1974);
 - (B) a plan described in 26 U.S.C. 401(a) or (k), 26. U.S.C. 403(b), or 26 U.S.C. 408(k) or (p) (Internal Revenue Code), if the plan is established or maintained by an employer;
 - (C) a governmental or church plan defined in 26 U.S.C. 414 (Internal Revenue Code), including a governmental or church welfare benefit plan;
 - (D) a deferred compensation plan of a state or local government or tax-exempt organization under 26 U.S.C. 457 (Internal Revenue Code);

(E) a nonqualified deferred compensation arrangement under 26 U.S.C. 409A (Internal Revenue Code) established or maintained by an employer or plan sponsor;

(F) a settlement of or assumption of liabilities associated with personal injury litigation or a dispute or claim resolution process; or

(G) a formal prepaid funeral contract.

(b) Nothing in 3 AAC 26.430 - 3 AAC 26.449 abrogates the ability of an organization to educate members of the United States armed forces in accordance with the United States Department of Defense's *DoD Instruction 1344.07 - Personal Commercial Solicitation on DoD Installations* or successor directive.

(c) Except as provided in (d) of this section, for purposes of 3 AAC 26.430 - 3 AAC 26.449, solicitation does not include

(1) a general advertisement;

(2) direct mail;

(3) Internet marketing; or

(4) telephone marketing, if the caller explicitly and conspicuously discloses that the subject matter of the call is life insurance and does not make a statement that avoids a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(d) Notwithstanding (c) of this section, and for purposes of 3 AAC 26.430 - 3 AAC 26.449, a solicitation includes an in-person, face-to-face meeting established by an insurer or insurance producer using one or more of the methods listed in (c) of this section. (Eff.

12/28/2008, Register 188)

Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050

AS 21.36.020

AS 21.36.040

AS 21.36.150

3 AAC 26.435. Unfair or deceptive acts or practices on a military installation. An insurer or insurance producer engages in an unfair or deceptive act or practice if the insurer or insurance producer conducts on a military installation an in-person, face-to-face solicitation of life insurance for which the insurer or insurance producer

- (1) knowingly solicits the purchase of a life insurance product door-to-door, or does not establish a specific appointment before each meeting with a prospective purchaser;
- (2) solicits service members in a required group gathering;
- (3) knowingly makes appointments with or solicits service members during the members' normally scheduled duty hours;
- (4) makes appointments with or solicits service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation;
- (5) solicits the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
- (6) posts unauthorized bulletins, notices, or advertisements;
- (7) fails to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to solicited service members or encourages solicited service members not to complete or submit DD Form 2885;
- (8) knowingly accepts an application for life insurance or issues a policy of life insurance on the life of an enlisted member of the United States armed forces without first

obtaining and retaining in the insurer's or insurance producer's files a completed copy of any form required by regulations, directives, or rules of the United States Department of Defense or a branch of the United States armed forces that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance;

(9) uses United States Department of Defense personnel to act as representatives or agents in an official or business capacity with respect to the solicitation or sale of life insurance to service members; or

(10) participates in a United States armed forces-sponsored education or orientation program. (Eff. 12/28/2008, Register 188)

Authority:	AS 21.06.090	AS 21.36.030	AS 21.36.050
	AS 21.36.020	AS 21.36.040	AS 21.36.150

3 AAC 26.440. Unfair or deceptive acts or practices regardless of location. An insurer or insurance producer engages in an unfair or deceptive act or practice if the insurer or insurance producer

(1) submits, processes, or assists in the submission or processing of an allotment form or similar device used by the United States armed forces in order to direct a service member's pay to a third party for the purchase of life insurance, including using or assisting in using a service member's MyPay account or other similar Internet or electronic medium for those purposes, except for assisting a service member by providing insurer or premium information necessary to complete an allotment form;

(2) knowingly receives money from a service member for the payment of premium from a depository institution with which the service member does not have a formal banking relationship; for purposes of this paragraph, a formal banking relationship is established when the depository institution

(A) provides the service member a deposit agreement and periodic statements and makes the disclosures required by 12 U.S.C. 4301 – 4313 (Truth in Savings Act); and

(B) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(3) employs a device or method or enters into an agreement in which money received from a service member by allotment for the payment of insurance premiums is identified on the service member's *Leave and Earnings Statement* or equivalent or successor form as "savings" or "checking" and for which the service member has no formal banking relationship as described in (2) of this section;

(4) enters into an agreement with a depository institution for the purpose of receiving money from a service member in which the depository institution agrees to accept direct deposits from a service member with whom it does not have a formal banking relationship as described in (2) of this section;

(5) uses United States Department of Defense personnel to act as representatives or agents in a solicitation or sale of life insurance to a service member who is junior in rank or grade or to a family member of the service member;

(6) offers or gives anything of value to United States Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member;

(7) knowingly offers or gives anything of value to a service member in a pay grade of E-4 or below to attend an event where an application for life insurance is solicited;

(8) advises a service member in a pay grade of E-4 or below to change the service member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance;

(9) makes a representation, or uses a device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member to believe that the insurer, insurance producer, or insurance product offered is affiliated, connected, or associated with, or endorsed, sponsored, sanctioned, or recommended by the United States government, the United States armed forces, a state or federal agency, or a government entity; the use of 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 is permissible;

(10) through the use of or in conjunction with a third party organization that promotes the welfare of or assists members of the United States armed forces, solicits the purchase of a life insurance product in a manner that has the tendency or capacity to confuse or mislead a service member to believe that the insurer, insurance producer, or insurance product offered is affiliated, connected, or associated with, or endorsed, sponsored, sanctioned, or recommended by the United States government or the United States armed forces;

(11) uses or describes 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;

(12) except for individually issued annuities, misrepresents the mortality costs of a life insurance product, including stating or implying that the product is free;

(13) makes a representation that is false, misleading, or deceptive regarding the availability, suitability, amount, or cost of, or exclusions or limitations to coverage provided to a service member or a service member's dependents by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance;

(14) makes a representation that is false, misleading, or deceptive regarding conversion requirements, including the costs of coverage or exclusions or limitations to coverage, of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance;

(15) suggests, recommends, or encourages a service member to cancel or terminate the service member's Servicemembers' Group Life Insurance policy or issues a life insurance policy that replaces an existing Servicemembers' Group Life Insurance policy unless the replacement policy will take effect on or after the service member's separation from the United States armed forces;

(16) deploys, uses, or contracts for lead-generating materials that are designed exclusively for use with service members, and that do not clearly and conspicuously disclose, if true, that the recipient will be contacted by an insurance producer for the purpose of soliciting the purchase of life insurance;

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

(18) except for individually issued annuities, fails to clearly and conspicuously disclose that the product being sold is life insurance;

(19) fails to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by sec. 10, P.L. 109-290 (Military Personnel Financial Services Protection Act);

(20) except for individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, at the time the application is taken, fails to provide the service member

(A) an explanation of a free look period with instructions on how to cancel if a policy is issued; and

(B) either a copy of the application or a written disclosure that clearly and concisely describes the type of life insurance, the death benefit applied for, and its expected first year cost; a basic illustration that complies with the requirements of 3 AAC 28.820 meets the requirement for a written disclosure in this subparagraph;

(21) except for individually issued annuities, recommends the purchase of a life insurance product that includes a side fund to a service member in a pay grade of E-4 or below unless the insurer has reasonable grounds to believe that the life insurance death benefit, on its own, is suitable;

(22) offers for sale or sells a life insurance product that includes a side fund to a service member in a pay grade of E-4 or below who is currently enrolled in Servicemembers' Group Life Insurance, unless, after the completion of a needs assessment, the insurer or insurance producer demonstrates that the service member's Servicemembers' Group Life Insurance death benefit, together with other military survivor benefits, savings, investments, survivor income, and other life insurance are insufficient to meet the service member's insurable needs for life insurance; for purposes of this paragraph,

(A) "insurable needs" are the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the service member's estate, survivors, and dependents; and

(B) "other military survivor benefits" include

- (i) a death gratuity under 10 U.S.C 1475;
- (ii) funeral reimbursement under 10 U.S.C 1482 or 38 U.S.C. 2301 - 2308;
- (iii) transition assistance;
- (iv) survivor and dependents' educational assistance under 38 U.S.C. 3500 - 3566;
- (v) dependency and indemnity compensation under 38 U.S.C. 1301 - 1323;
- (vi) TRICARE health care benefits under 10 U.S.C. 1071 - 1110 for survivors;
- (vii) survivor housing benefits and allowances;

(viii) federal income tax forgiveness; and

(ix) social security survivor benefits under 42 U.S.C. 401 - 434;

(23) except for individually issued annuities, offers for sale or sells a life insurance contract that includes a side fund

(A) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(B) unless the insurer or insurance producer provides the service member a schedule of effective rates of return, based upon cash flows of the combined product in which the effective rate of return includes 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; the insurer or insurance producer must provide a schedule for each year of the first 10 policy years and every fifth policy year thereafter ending at age 100, policy maturity, or final expiration, whichever occurs last; and

(C) that, by default, diverts or transfers money accumulated in the side fund to pay, reduce, or offset any premium due;

(24) except for individually issued annuities, offers for sale or sells a life insurance contract that, after considering all policy benefits, including endowment, and return of premium, does not comply with AS 21.45.300 (standard nonforfeiture law for life insurance);

(25) sells, to an individual known to be a service member, a life insurance product that excludes coverage if the insured's death is related to declared or undeclared war or

an act related to military service, except for accidental death coverage. (Eff. 12/28/2008, Register 188)

Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050
 AS 21.36.020 AS 21.36.040 AS 21.36.150

3 AAC 26.449. Definitions. In 3 AAC 26.430 - 3 AAC 26.449, unless the context requires otherwise,

(1) “active duty” means full-time duty in the active military service of the United States and includes members of the reserve component while serving under published orders for active duty or full-time training; “active duty” 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 fewer than 31 calendar days;

(2) “United States Department of Defense personnel” means all active duty service members and all civilian employees, including non-appropriated fund employees and special government employees, of the United States Department of Defense;

(3) “door-to-door” means a solicitation or sales method in which an insurer or insurance producer proceeds randomly or selectively from household to household without a prior specific appointment;

(4) “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 insurance producer;

(5) “known” or “knowingly” means that the insurer or insurance producer had actual awareness, or in the exercise of ordinary care should have been aware at the time of the act or practice that the person solicited was

(A) a service member; or

(B) a service member in a pay grade of E-4 or below;

(6) “life insurance” has the meaning given in AS 21.12.040 and, unless specifically excluded, includes an annuity as defined in AS 21.12.055 that is individually issued;

(7) “military installation” means a federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty; “military installation” includes barracks, transient housing, and family quarters;

(8) “MyPay” means the Defense Finance and Accounting Service Internet-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms;

(9) “service member” means

(A) an active duty commissioned or warrant officer of the United States armed forces; or

(B) an active duty enlisted member of the United States armed forces;

(10) “service member in a pay grade of E-4 or below” means

(A) for the Air Force, a rank of senior airman or lower enlisted rank;

(B) for the Army, a rank of corporal or specialist or lower enlisted rank;

(C) for the Marines, a rank of corporal or lower enlisted rank; and

(D) for the Navy and Coast Guard, a rank of petty officer third class or lower enlisted rank;

(11) “Servicemembers’ Group Life Insurance” means the group life insurance authorized under 38 U.S.C. 1965 – 1980A for service members;

(12) “side fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy by a rider, endorsement, or other mechanism that accumulates premium or deposits with interest or by other means; “side fund” does not include

(A) a fund or reserve within the meaning given in this paragraph but part of or otherwise attached to an individually issued annuity;

(B) accumulated value, cash value, or secondary guarantees provided by a universal life policy;

(C) cash values provided by a whole life policy that are subject to AS 21.45.300 (standard nonforfeiture law for life insurance); or

(D) a premium deposit fund that

(i) contains only premiums paid in advance that accumulate at interest;

(ii) does not impose a penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a paid or calculated commission;

(13) “specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time;

(14) “United States armed forces” means all components of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard;

(15) “Veterans’ Group Life Insurance” means the group life insurance authorized under 38 U.S.C. 1965 – 1980A for veterans. (Eff. 12/28/2008, Register 188)

Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050
 AS 21.36.020 AS 21.36.040 AS 21.36.150