

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 554

By Senators Oliverio, Jeffries, Weld, Woelfel,

Maroney, and Grady

[Introduced January 25, 2024; referred
to the Committee on the Military; and then to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
 2 designated §46A-2-140, relating to defining veterans benefits matters; identifying actions
 3 that constitute representation and compensation for representing a person seeking
 4 veterans benefits; requiring any such representation comply with federal law; and
 5 providing that a violation of this section is an unlawful practice and a violation of the West
 6 Virginia Consumer Credit and Protection Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-140. Veterans benefits matter; representation or compensation subject to federal law; fraudulent, deceptive or misleading representations; violation of West Virginia Consumer Credit and Protection Act.

1 (a) As used in this section:

2 "Compensation" means payment of any money, thing of value, or financial benefit.

3 "Person" means an individual, corporation, business trust, estate, trust, partnership,
 4 limited liability company, association, joint venture, public corporation, government or
 5 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

6 "Veterans benefits matter" means the preparation, presentation, or prosecution of any
 7 claim affecting any person who has filed or expressed an intent to file a claim for any benefit,
 8 program, service, commodity, function, status, or entitlement to which is determined under the
 9 laws and regulations administered by the United States Department of Veterans Affairs or the
 10 West Virginia Department of Military and Veterans Affairs pertaining to veterans, their dependents,
 11 their survivors, and any other individual eligible for such benefits.

12 (b) No person may:

13 (1) Receive compensation for advising or assisting any individual with regard to any
 14 veterans benefits matter, except as permitted under federal law; or

15 (2) Receive compensation for referring any individual to another person to advise or assist

16 this individual with any veterans benefits matter; or

17 (3) Receive any compensation for any services rendered before the date on which a notice
18 of disagreement is filed with respect to the individual's case; or

19 (4) Guarantee, either directly or by implication, that any individual is certain to receive
20 specific veterans benefits or that any individual is certain to receive a specific level, percentage, or
21 amount of veterans benefits; or

22 (5) Receive excessive or unreasonable fees as compensation for advising or assisting any
23 individual with any veterans benefits matter. The factors articulated within 38 C.F.R. s.14.636 shall
24 govern determinations of whether a fee is excessive or unreasonable; or

25 (6) Advise or assist for compensation any individual concerning any veterans benefits
26 matter without clearly providing, at the outset of the business relationship, the following disclosure,
27 both orally and in writing:

28 "This business is not sponsored by, or affiliated with, the United States Department of
29 Veterans Affairs or the West Virginia Department of Military and Veterans Affairs, or any other
30 federally chartered veterans service organization. Other organizations, including but not limited to
31 the West Virginia Department of Military and Veterans Affairs, your local county veterans service
32 agency, and other federally chartered veterans service organizations, may be able to provide you
33 with this service free of charge. Products or services offered by this business are not necessarily
34 endorsed by any of these organizations. You may qualify for other veterans benefits beyond the
35 benefits for which you are receiving services here."

36 The written disclosure shall appear in at least twelve-point font and shall appear in a readily
37 noticeable and identifiable place in the person's agreement with the individual seeking services.

38 The individual shall verbally acknowledge understanding of the oral disclosure and shall sign the
39 document in which the written disclosure appears, to represent understanding of these provisions.

40 The person offering services shall retain a copy of the written disclosure while providing veterans
41 benefits services for compensation to the individual and for at least one year after the date on

42 which the service relationship terminates; or

43 (7) Advertise for-compensation services in veterans benefits matters without including the
44 following disclosure:

45 "This business is not sponsored by, or affiliated with, the United States Department of
46 Veterans Affairs or the West Virginia Department of Military and Veterans Affairs, or any other
47 federally chartered veterans service organization. other organizations, including but not limited to
48 the West Virginia Department of Military and Veterans Affairs, your local county veterans service
49 agency, and other federally chartered veterans service organizations, may be able to provide you
50 with these services free of charge. Products or services offered by this business are not
51 necessarily endorsed by any of these organizations. You may qualify for other veterans benefits
52 beyond the services that this business offers." If the advertisement is printed, including but not
53 limited to advertisements visible to internet users, the disclosure shall appear in a readily visible
54 place on the advertisement. If the advertisement is verbal, the spoken statement of the disclosure
55 shall be clear and intelligible.

56 (c) A person seeking to receive compensation for advising or assisting any individual with
57 any veterans benefits matter shall, before rendering any services, memorialize all terms regarding
58 the individual's payment of fees for services rendered in a written agreement, signed by both
59 parties, that adheres to all criteria specified within 38 C.F.R. s.14.636.

60 (d) No debt collector shall use any fraudulent, deceptive or misleading representation or
61 means to collect or attempt to collect claims or to obtain information concerning consumers.
62 Without limiting the general application of the foregoing, the following conduct is considered a
63 violation of this section:

64 (1) The use of any business, company or organization name while engaged in the
65 collection of claims, other than the true name of the debt collector's business, company or
66 organization;

67 (2) Any false representation that the debt collector has in his or her possession information

68 or something of value for the consumer that is made to solicit or discover information about the
69 consumer;

70 (3) The failure to clearly disclose the name and full business address of the person to
71 whom the claim has been assigned for collection, or to whom the claim is owed, at the time of
72 making any demand for money;

73 (4) Any false representation or implication of the character, extent or amount of a claim
74 against a consumer, or of its status in any legal proceeding;

75 (5) Any false representation or false implication that any debt collector is vouched for,
76 bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the
77 federal, state or local government;

78 (6) The use or distribution or sale of any written communication which simulates or is
79 falsely represented to be a document authorized, issued or approved by a court, an official or any
80 other legally constituted or authorized authority, or which creates a false impression about its
81 source, authorization or approval;

82 (7) Any representation that an existing obligation of the consumer may be increased by the
83 addition of attorney's fees, investigation fees, service fees or any other fees or charges when in
84 fact such fees or charges may not legally be added to the existing obligation; and

85 (8) Any false representation or false impression about the status or true nature of or the
86 services rendered by the debt collector or his or her business

87 (e) A violation of this section is an unlawful practice and a violation of West Virginia
88 Consumer Credit and Protection Act.

NOTE: The purpose of this bill is to define veterans benefits matters and identify actions that constitute representation and compensation for representing a person seeking veterans benefits. The bill requires that any such representation comply with federal law; that a violation of this section is an unlawful practice and a violation of West Virginia Consumer Credit and Protection Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.