

# STATE OF NEW YORK

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7799

2017-2018 Regular Sessions

## IN ASSEMBLY

May 15, 2017

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Introduced by M. of A. MOSLEY, DenDEKKER -- (at request of the Division of Veterans Affairs) -- read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the general business law, in relation to preventing financial deception and harmful practices affecting veterans and their family members

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section  
2 349-f to read as follows:

3 § 349-f. Pension poaching prevention act. 1. Legislative findings and  
4 intent. Nationally, veterans and their family members are often subject  
5 to a practice commonly called "pension poaching". This troubling prac-  
6 tice, as described in recent reports from the federal trade commission,  
7 the federal government accountability office, the United States depart-  
8 ment of veterans affairs, and several other entities, generally target  
9 elderly or disabled veterans and their family members. Pension poaching  
10 involves dishonest financial planners, insurance agents, and other  
11 professionals luring veterans and their family members to pay substan-  
12 tial funds for veterans' benefits services that the offering entity is  
13 unqualified to provide and that can detrimentally impact the future  
14 financial situations of the veteran and his or her dependents.

15 Entities engaging in pension poaching tend to use high-pressure sales  
16 tactics directed toward potential customers, falsely guaranteeing bene-  
17 fits for veterans and their families even when the advertising entity  
18 lacks the federal accreditation required by law to file such claims and  
19 appeals for federal veterans' benefits. Often, they persuade veterans  
20 and their family members to abruptly move most or all of their assets to  
21 potentially qualify for certain federal veterans' benefits, frequently  
22 causing veterans and their family members to unwittingly lose control  
23 over their assets and adversely affecting the ability of veterans and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 their families to qualify for medicaid and other important benefits in  
2 the future. These entities frequently charge extremely high fees for  
3 these services, even in matters where federal law expressly prohibits  
4 such fees.

5 Through this section, the legislature intends to restrain this harmful  
6 and deceptive practice within the state, providing necessary protections  
7 to the men and women of this state who courageously served in our  
8 nation's armed forces.

9 2. Definitions. As used in this section:

10 (a) "Veteran" means any person who served in the United States army,  
11 navy, air force, marine corps or coast guard, or in any of the reserve  
12 components of any branch of the armed forces of the United States, or in  
13 the national guard, and who received a discharge or separation therefrom  
14 under conditions other than dishonorable.

15 (b) "Veterans' benefits matter" means the preparation, presentation,  
16 or prosecution of any claim affecting any person who has filed or  
17 expressed an intent to file a claim for any benefit, program, service,  
18 commodity, function or status, entitlement to which is determined under  
19 the laws and regulations administered by the United States Department of  
20 Veterans Affairs or the Division of Veterans' Affairs pertaining to  
21 veterans, their dependents, their survivors, and any other party eligi-  
22 ble for such benefits.

23 (c) "Compensation" means money, property or anything else of value.

24 (d) "Entity" includes, but is not limited to, any natural person,  
25 corporation, trust, partnership, limited liability company, alliance or  
26 unincorporated association.

27 3. Limits on representation and compensation. (a) No entity shall  
28 receive compensation for advising or assisting any party with any veter-  
29 ans' benefits matter, except as permitted under title 38 of the United  
30 States code and corresponding provisions within title 38 of the United  
31 States code of federal regulations.

32 (b) No entity shall receive compensation for referring any party to  
33 another individual to advise or assist this party with any veterans'  
34 benefits matter.

35 (c) Any entity seeking to receive compensation for advising or assist-  
36 ing any party with any veterans' benefits matter shall, before rendering  
37 any services, memorialize all terms regarding the party's payment of  
38 fees for services rendered in a written agreement, signed by both  
39 parties, that adheres to all criteria specified within title 38, section  
40 14.636, of the United States Code of Federal Regulations.

41 (d) No entity shall receive any fees for any services rendered before  
42 the date on which a notice of disagreement is filed with respect to the  
43 veteran's case.

44 (e) No entity shall guarantee, either directly or by implication, that  
45 any party is certain to receive specific veterans' benefits or that any  
46 party is certain to receive a specific level, percentage or amount of  
47 veterans' benefits.

48 (f) No entity shall receive excessive or unreasonable fees as compen-  
49 sation for advising or assisting any party with any veterans' benefits  
50 matter. The factors articulated within title 38, section 14.636 of the  
51 code of federal regulations shall govern determinations of whether a fee  
52 is excessive or unreasonable.

53 4. Required disclosure. (a) No entity shall advise or assist for  
54 compensation any party with any veterans' benefits matter without clear-  
55 ly providing, at the outset of this business relationship, the following  
56 disclosure, both orally and in writing: "This business is not sponsored

1 by, or affiliated with, the United States Department of Veterans  
2 Affairs, the New York State Division of Veterans' Affairs, or any other  
3 congressionally chartered veterans service organization, other organiza-  
4 tions, including but not limited to the New York state Division of  
5 Veterans' Affairs, your local county veterans service agency and other  
6 congressionally chartered veterans service organizations, may be able to  
7 provide you with this service free of charge. Products or services  
8 offered by this business are not necessarily endorsed by any of these  
9 organizations. You may qualify for other veterans' benefits beyond the  
10 benefits for which you are receiving services here." The written disclo-  
11 sure shall appear in at least twelve-point font, and shall appear in a  
12 readily noticeable and identifiable place in the entity's agreement with  
13 the party seeking services. The party shall verbally acknowledge under-  
14 standing of the oral disclosure, and shall provide his or her signature  
15 to represent understanding of these provisions on the document in which  
16 the written disclosure appears. The entity offering services shall  
17 retain a copy of the written disclosure while providing veterans' bene-  
18 fits services for compensation to the party and for at least one year  
19 after the date on which this service relationship terminates.

20 (b) No entity shall advertise for compensation services in veterans'  
21 benefits matters without including the following discloser: "This busi-  
22 ness is not sponsored by, or affiliated with, the United States Depart-  
23 ment of Veterans Affairs, the New York State Division of Veterans'  
24 Affairs, or any other congressionally chartered veterans service organ-  
25 ization. Other organizations, including but not limited to the New York  
26 State Division of Veterans' Affairs, your local county veterans service  
27 agency, and other congressionally chartered veterans service organiza-  
28 tions, may be able to provide you with these services free of charge.  
29 Products or services offered by this business are not necessarily  
30 endorsed by any of these organizations. You may qualify for other veter-  
31 ans' benefits beyond the services that this business offers." If the  
32 advertisement is printed, including but not limited to advertisements  
33 visible to internet users, the disclosure must appear in a readily visi-  
34 ble place on the advertisement. If the advertisement is verbal, the  
35 spoken statement of the disclosure must be clear and intelligible.

36 5. Right of action. (a) Any violation of this section shall constitute  
37 a deceptive act in the conduct of business, trade or commerce, and shall  
38 be subject to the provisions of section three hundred forty-nine of this  
39 article, including any right of action and corresponding penalties  
40 described within such section.

41 (b) If an entity's violation of this section concerns a party who is  
42 sixty-five years of age or older, it may be liable for supplemental  
43 civil penalties as established within, and subject to the terms of,  
44 section three hundred forty-nine-c of this article.

45 6. Severability. If any provision of this section or its application  
46 to any person or circumstance is ever held invalid, the remainder of  
47 this section or the application of its provisions to other persons or  
48 circumstances remains unaffected.

49 § 2. This act shall take effect on the one hundred twentieth day after  
50 it shall have become a law.