

# STATE OF NEW YORK

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4807

2019-2020 Regular Sessions

## IN SENATE

March 26, 2019

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Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the pension poaching prevention act

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

1 Section 1. This act shall be known and may be cited as the "pension  
2 poaching prevention act".

3 § 2. Legislative findings and intent. Nationally, veterans and their  
4 family members are often subject to a practice commonly called pension  
5 poaching. This troubling practice, as described in recent reports from  
6 the Federal Trade Commission, the Federal Government Accountability  
7 Office, the United States Department of Veterans Affairs, and several  
8 other entities, generally target elderly or disabled veterans and their  
9 family members. Pension poaching involves dishonest financial planners,  
10 insurance agents, and other professionals luring veterans and their  
11 family members to pay substantial funds for veterans' benefits services  
12 that the offering entity is unqualified to provide and that can detri-  
13 mentally impact the future financial situations of the veteran and his  
14 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  
24 their families to qualify for Medicaid and other important benefits in  
25 the future. These entities frequently charge extremely high fees for

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

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1 these services, even in matters where federal law expressly prohibits  
2 such fees.

3 Through this legislation, the legislature intends to restrain this  
4 harmful and deceptive practice within New York State, providing neces-  
5 sary protections to the men and women of this state who courageously  
6 served in our nation's armed forces.

7 § 3. The general business law is amended by adding a new section 349-f  
8 to read as follows:

9 § 349-f. Pension poaching prevention. 1. For purposes of this section:

10 (a) The term "veterans' benefits matter" means the preparation, pres-  
11 entation, or prosecution of any claim affecting any person who has filed  
12 or expressed an intent to file a claim for any benefit, program,  
13 service, commodity, function, or status, entitlement which is determined  
14 under the laws and regulations administered by the United States depart-  
15 ment of veterans affairs or the New York state division of veterans'  
16 affairs pertaining to veterans, their dependents, their survivors, and  
17 any other party eligible for such benefits.

18 (b) The term "compensation" means money, property, or anything else of  
19 value.

20 (c) The term "entity" includes, but is not limited to, any natural  
21 person, corporation, trust, partnership, alliance, or unincorporated  
22 association.

23 2. (a) No entity shall receive compensation for advising or assisting  
24 any party with any veterans' benefits matter, except as permitted under  
25 title 38 of the United States code and the corresponding provisions  
26 within title 38 of the United States code of federal regulations.

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

30 (c) Any entity seeking to receive compensation for advising or assist-  
31 ing any party with any veterans' benefits matter shall, before rendering  
32 any services, memorialize all terms regarding the party's payment of  
33 fees for services rendered in a written agreement, signed by both  
34 parties, that adheres to all criteria specified within title 38, section  
35 14.636, of the United States code of federal regulations.

36 (d) No entity shall receive any fees for any services rendered before  
37 the date on which a notice of disagreement is filed with respect to the  
38 party's case.

39 (e) No entity shall guarantee, either directly or by implication, that  
40 any party is certain to receive specific veterans' benefits or that any  
41 party is certain to receive a specific level, percentage, or amount of  
42 veterans' benefits.

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

48 3. (a) No entity shall advise or assist for compensation any party  
49 with any veterans' benefits matter without clearly providing, at the  
50 outset of this business relationship, the following disclosure, both  
51 orally and in writing: "this business is not sponsored by, or affiliated  
52 with, the United States department of veterans affairs, the New York  
53 state division of veterans' affairs, or any other congressionally char-  
54 tered veterans service organization. Other organizations, including but  
55 not limited to the New York state division of veterans' affairs, your  
56 local county veterans service agency, and other congressionally char-

1 tered veterans service organizations, may be able to provide you with  
2 this service free of charge. Products or services offered by this busi-  
3 ness are not necessarily endorsed by any of these organizations. You  
4 may qualify for other veterans' benefits beyond the benefits for which  
5 you are receiving services here." The written disclosure must appear in  
6 at least twelve-point font and must appear in a readily noticeable and  
7 identifiable place in the entity's agreement with the party seeking  
8 services. The party must verbally acknowledge understanding of the oral  
9 disclosure and must provide his or her signature to represent under-  
10 standing of these provisions on the document in which the written  
11 disclosure appears. The entity offering services must retain a copy of  
12 the written disclosure while providing veterans' benefits services for  
13 compensation to the party and for at least one year after the date on  
14 which this service relationship terminates.

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

31 4. (a) Any violation of this section shall constitute a deceptive act  
32 in the conduct of business, trade, or commerce, and shall be subject to  
33 the provisions of section three hundred forty nine of this article,  
34 including any right of action and corresponding penalties described  
35 within such section.

36 (b) If an entity's violation of this section concerns a party who is  
37 sixty-five years of age or older, said entity may be liable for supple-  
38 mental civil penalties as established within, and subject of the terms  
39 of, section three hundred forty-nine-c of this article.

40 5. If any clause, sentence, paragraph or part of this section or the  
41 application thereof shall be adjudged by any court of competent juris-  
42 isdiction to be invalid, such judgment shall not affect, impair, or inval-  
43 idate the remainder thereof, but shall be confined in its operation to  
44 the clause, sentence, paragraph or part thereof directly involved in the  
45 controversy in which such judgment shall have been rendered.

46 § 4. This act shall take effect on the one hundred twentieth day after  
47 it shall have become a law.