STATE OF NEW YORK

4807

2019-2020 Regular Sessions

IN SENATE

March 26, 2019

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:

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

§ 2. Legislative findings and intent. Nationally, veterans and their family members are often subject to a practice commonly called pension poaching. This troubling practice, as described in recent reports from the Federal Trade Commission, the Federal Government Accountability Office, the United States Department of Veterans Affairs, and several other entities, generally target elderly or disabled veterans and their family members. Pension poaching involves dishonest financial planners, insurance agents, and other professionals luring veterans and their family members to pay substantial funds for veterans' benefits services that the offering entity is unqualified to provide and that can detrimentally impact the future financial situations of the veteran and his or her dependents.

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

LBD10329-01-9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) No entity shall advertise for-compensation services in veterans benefits matters without including the following disclosure: "this business is not sponsored by, or affiliated with, the United States department of veterans affairs, the New York state division of veterans' affairs, or any other congressionally chartered veterans service organization. Other organizations, including but not limited to the New York state division of veterans' affairs, your local county veterans service agency, and other congressionally chartered veterans service organizations, may be able to provide you with these services free of charge. Products or services offered by this business are not necessarily endorsed by any of these organizations. You may qualify for other veterans' benefits beyond the services that this business offers." If the advertisement is printed, including but not limited to advertisements visible to internet users, the disclosure must appear in a readily visible place on the advertisement. If the advertisement is verbal, the spoken statement of the disclosure must be clear and intelligible.

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

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

5. If any clause, sentence, paragraph or part of this section or the application thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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