

HOUSE BILL No. 2646

By Committee on Veterans and Military

Requested by Jim Karleskint on behalf of the Veterans of Foreign Wars

2-3

1 AN ACT concerning veterans and military; relating to veterans benefits;
2 prohibiting certain conduct and improper collection of veterans benefit
3 fees; requiring mandatory counseling concerning the benefit claims
4 process; requiring that violations be considered under the Kansas
5 consumer protection act.

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7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) As used in this act:

9 (1) "Veterans benefits matter" means the preparation, presentation or
10 prosecution of any claim affecting any person who has filed or expressed
11 an intent to file a claim for any benefit, program, service, commodity,
12 function or status to which entitlement is determined under the laws and
13 regulations administered by the United States department of veterans
14 affairs, the United States department of defense or the Kansas office of
15 veterans services pertaining to veterans, their dependents or survivors or
16 any other individual eligible for such benefit, program, service,
17 commodity, function or status.

18 (b) Except as permitted under federal law, no person shall receive
19 compensation for preparing, presenting, prosecuting, advising, consulting
20 or assisting any individual with regard to any veterans benefits matter
21 before the United States department of veterans affairs, the United States
22 department of defense or the Kansas office of veterans services.

23 (c) No person shall receive compensation for referring any individual
24 to another person to prepare, present, prosecute, advise, consult or assist
25 regarding any veterans benefits matter before the United States department
26 of veterans affairs, the United States department of defense or the Kansas
27 office of veterans services.

28 (d) Nothing in this section shall be construed to prohibit a division of
29 fees between attorneys that is otherwise proper under Kansas law and the
30 Kansas rules of professional conduct.

31 (e) A veterans benefit matter contract with a currently serving service
32 member of the uniformed services, a former servicemember of the
33 uniformed services, the survivor of a deceased former service member of
34 the uniform services or a beneficiary's fiduciary appointed under 38 C.F.R.
35 § 13.10 shall not contain provisions to:

1 (1) Require the release of access credentials, including, but not
2 limited to, a user name, password or any other authentication technology
3 or method for government computer systems to another party or affiliate of
4 such contract;

5 (2) require the release of access credentials, including, but not limited
6 to, a user name, password or other authentication technology or method to
7 a consumer's banking or financial services to another party or affiliate of
8 such contract;

9 (3) waive any rights under the Kansas consumer protection act; or
10 (4) waive any rights under federal law.

11 (f) If a veterans benefit matter contract contains any of the prohibited
12 provisions pursuant to subsection (e), then such provision shall constitute
13 prima facie evidence of an unconscionable act under the Kansas consumer
14 protection act.

15 (g) A violation of this section shall be a violation of the Kansas
16 consumer protection act pursuant to K.S.A. 50-623 et seq., and
17 amendments thereto.

18 (h) Any person who received compensation for preparing, presenting,
19 prosecuting, advising, consulting or assisting an individual with regard to
20 any veterans benefits matter before the United States department of
21 veterans affairs, the United States department of defense or the Kansas
22 office of veterans services shall be held to the same ethical standards as an
23 attorney under the Kansas rules of professional conduct in the following
24 practices:

25 (1) Advertising;
26 (2) solicitation of new clients;
27 (3) confidentiality;
28 (4) duty of care;
29 (5) duty of honesty; and
30 (6) duty to zealously pursue what is in the best interest of the client.

31 Sec. 2. (a) The Kansas office of veterans services shall offer
32 mandatory counseling to any potential claimant concerning the process to
33 claim benefits under 38 C.F.R. §§ 3.3 through 3.5.

34 (b) Mandatory counseling provided by the Kansas office of veterans
35 services shall not apply to claimants seeking burial and memorial benefits,
36 career and employment benefits, healthcare, education and training
37 benefits, housing assistance benefits or life insurance benefits from the
38 United States department of veterans affairs.

39 (c) A veterans benefit matter contract with a currently serving
40 servicemember of the uniformed services, a former servicemember of the
41 uniformed services or the survivor of a deceased former servicemember of
42 the uniformed services shall not be deemed valid unless the claimant has
43 completed such mandatory counseling pursuant to subsection (a). If a

1 potential claimant has a fiduciary appointed pursuant to 38 C.F.R. § 13.10,
2 such fiduciary shall seek mandatory counseling on behalf of the potential
3 claimant before accepting the terms of any veterans benefit matter
4 contract.

5 (d) If a for-profit veterans benefits matter claims service provider
6 fails to ensure that a potential claimant or fiduciary of such potential
7 claimant completes mandatory counseling pursuant to subsection (a), then
8 a contract between such for-profit veterans benefits matter claims service
9 provider and a potential claimant shall be rendered void and shall be
10 considered *prima facia* evidence of an unconscionable act under the
11 Kansas consumer protection act.

12 Sec. 3. The provisions of this act are severable. If any portion of this
13 act is held by a court to be unconstitutional or invalid, or the application of
14 any portion of this act to any person or circumstance is held by a court to
15 be unconstitutional or invalid, the invalidity shall not affect other portions
16 of this act that can be given effect without the invalid portion or
17 application and the applicability of such other portions of this act to any
18 person or circumstance remains valid and enforceable.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the Kansas register.