

SENATE BILL No. 433

By Committee on Federal and State Affairs

2-2

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 with regard to any veterans benefits matter before the United States
26 department of veterans affairs, the United States department of defense or
27 the Kansas 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
32 servicemember of the uniformed services, a former servicemember of the
33 uniformed services, the survivor of a deceased former servicemember of
34 the uniform services or a beneficiary's fiduciary appointed under 38 C.F.R.
35 § 13.10 shall not contain provisions to:

36 (1) Require the release of access credentials, including, but not

1 limited to, a user name, password or any other authentication technology
2 or method for government computer systems to another party or affiliate of
3 such contract;

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

8 (3) waive any rights under the Kansas consumer protection act; or

9 (4) waive any rights under federal law.

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

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

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

24 (1) Advertising;

25 (2) solicitation of new clients;

26 (3) confidentiality;

27 (4) duty of care;

28 (5) duty of honesty; and

29 (6) duty to zealously pursue what is in the best interest of the client.

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

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

38 (c) A veterans benefit matter contract with a currently serving
39 servicemember of the uniformed services, a former servicemember of the
40 uniformed services or the survivor of a deceased former servicemember of
41 the uniformed services shall not be deemed valid unless the claimant has
42 completed such mandatory counseling pursuant to subsection (a). If a
43 potential claimant has a fiduciary appointed pursuant to 38 C.F.R. § 13.10,

1 such fiduciary shall seek mandatory counseling on behalf of the potential
2 claimant before accepting the terms of any veterans benefit matter
3 contract.

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

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

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