

1 AN ACT relating to the protection of veterans' benefits.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 40 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Accreditation" means the authority granted by the United States*
7 *Department of Veterans Affairs to representatives, agents, and attorneys to*
8 *assist claimants in the preparation, presentation, and prosecution of claims*
9 *for Veterans Affairs benefits;*

10 *(b) "Agent" means a person who has met the standards and qualifications for*
11 *accreditation pursuant to 38 C.F.R. sec. 14.629;*

12 *(c) "Attorney" means a member in good standing of a state bar who has met*
13 *the standards and qualifications for accreditation pursuant to 38 C.F.R. sec.*
14 *14.629;*

15 *(d) "Benefits" means the benefits provided under Title 38 of the United States*
16 *Code or the laws and administrative regulations administered by the*
17 *Kentucky Department of Veterans' Affairs;*

18 *(e) "Claimant" means a person who has filed or has expressed to a*
19 *representative, agent, or attorney an intention to file a written application*
20 *for determination of entitlement to benefits;*

21 *(f) "Compensation" means any money, thing of value, or economic benefit*
22 *conferred on or received by any person in return for services rendered, or to*
23 *be rendered, by himself, herself, or another;*

24 *(g) "Person" means any natural person, agent, attorney, consulting agent,*
25 *consulting firm, consulting business, representative, business trust, estate,*
26 *corporation, trust, partnership, limited liability company, joint venture,*
27 *public corporation, government or governmental subdivision, agency or*

1 instrumentality, incorporated or unincorporated association, or any other
2 legal entity;

3 (h) "Represent" means the acts associated with representing a claimant in a
4 proceeding before Veterans Affairs pursuant to a properly executed and
5 filed VA Form 21-22, Appointment of Veterans Service Organization as
6 Claimant's Representative, or VA Form 21-22a, Appointment of Individual
7 as Claimant's Representative;

8 (i) "Representative" means a person who has been recommended by a
9 recognized organization and accredited by Veterans Affairs;

10 (j) "Veterans Affairs" means the United States Department of Veterans
11 Affairs; and

12 (k) "Veterans' benefits matter" means the preparation, presentation, or
13 prosecution of any claim affecting any person who has filed or expressed an
14 intent to file a claim for any benefit, program, service, commodity, function,
15 status, or entitlement to which is determined to pertain to veterans, veterans'
16 dependents or survivors, or any other individual eligible for benefits.

17 (2) A person shall not receive any compensation for referring any individual to
18 another person to advise, assist, represent, or consult the individual with any
19 veterans' benefits matter.

20 (3) A person shall not receive any compensation for any services rendered in
21 connection with any claim filed within the one (1) year presumptive period of
22 active duty release.

23 (4) A person seeking to receive compensation for advising, assisting, representing, or
24 consulting any individual with any veterans' benefits matter shall be accredited
25 and, before rendering any services, memorialize all terms regarding the
26 individual's payment of fees for services rendered in a written agreement signed
27 by both parties that specifies:

- 1 (a) An initial or nonrefundable fee shall not be charged;
- 2 (b) Fees for services are contingent upon a successful outcome and shall not
- 3 exceed the lesser of three (3) times the one (1) month increase in benefits or
- 4 eleven thousand dollars (\$11,000); and
- 5 (c) Notwithstanding paragraph (b) of this subsection, an attorney and the
- 6 attorney's firm shall be governed by the limitations set forth in 38 C.F.R.
- 7 sec. 14.636.
- 8 (5) A person seeking to receive compensation for advising, assisting, representing, or
- 9 consulting any individual with any veterans' benefits matter or engaging in the
- 10 preparation of an initial claim for a fee shall not:
- 11 (a) Utilize international call centers or data centers for processing any
- 12 veteran's personal information;
- 13 (b) Aggressively or directly solicit business regarding any veterans' benefits
- 14 matter; or
- 15 (c) Gain direct access to any personal medical, financial, or government
- 16 benefits login, username, or password information.
- 17 (6) (a) A person seeking to receive compensation for advising, assisting,
- 18 representing, or consulting any individual with any veterans' benefits
- 19 matter shall not utilize a medical professional with whom the person has an
- 20 employment or business relationship for a secondary medical exam.
- 21 (b) Paragraph (a) of this subsection does not apply to an attorney or an
- 22 attorney's firm governed by and operating in accordance with 38 C.F.R. sec.
- 23 14.636.
- 24 (7) A person shall not advertise or guarantee, either directly or by implication, that
- 25 any individual is certain to receive specific benefits or that any individual is
- 26 certain to receive a specific level, percentage, or amount of benefits.
- 27 (8) (a) A person shall not advise, assist, represent, or consult for compensation any

1 individual concerning any veterans' benefits matter without clearly
2 providing at the outset of the business relationship the following disclosure,
3 both orally and in writing:

4 "This business is not sponsored by or affiliated with the United States
5 Department of Veterans Affairs, the Kentucky Department of Veterans'
6 Affairs, or any federally chartered veterans' service organization. Other
7 organizations, including but not limited to the Kentucky Department of
8 Veterans' Affairs, a local veterans' service organization, and federally
9 chartered veterans' service organizations may be able to provide you with
10 this service free of charge. Products or services offered by this business are
11 not necessarily endorsed by any of these organizations. You may qualify for
12 other veterans' benefits beyond the benefits for which you are receiving
13 services here."

14 (b) The written disclosure in paragraph (a) of this subsection shall appear in at
15 least twelve (12) point font and shall appear in a readily noticeable and
16 identifiable place in the person's agreement with the individual seeking
17 services. The individual shall verbally acknowledge understanding of the
18 oral disclosure and sign the document in which the written disclosure
19 appears to represent understanding of the disclosed provisions. The person
20 offering services shall retain a copy of the written disclosure while
21 providing benefits services for compensation to the individual and for at
22 least one (1) year after the date on which the service relations terminate.

23 (9) A violation of this section shall constitute an unfair, false, misleading, or
24 deceptive act or practice in the conduct of trade or commerce under KRS 367.170,
25 and the person in violation shall be fined:

26 (a) Five hundred dollars (\$500) for the initial offense; and

27 (b) Two thousand five hundred dollars (\$2,500) for each subsequent offense.

1 *(10) Notwithstanding KRS 431.100, any fine assessed under subsection (9) of this*
2 *section shall be transferred by the circuit clerk and deposited with and used in the*
3 *same manner as provided in KRS 186.1722.*

4 *(11) All of the remedies, powers, and duties delegated to the Attorney General by KRS*
5 *367.110 to 367.300, and the penalties provided in KRS 367.990, pertaining to acts*
6 *and practices declared unlawful by KRS 367.170, shall be applied to acts and*
7 *practices declared unlawful in this section.*

8 *(12) This section shall not be construed to restrict the exercise of powers or the*
9 *performance of the duties of the Attorney General, which he or she is authorized*
10 *to exercise or perform by law.*

11 *(13) The Attorney General shall have the authority to promulgate administrative*
12 *regulations in accordance with KRS Chapter 13A to implement and enforce this*
13 *section.*

14 ➔Section 2. If any provision of this Act or the application thereof to any person
15 or circumstance is held invalid, the invalidity shall not affect other provisions or
16 application of the Act that can be given effect without the invalid provision of
17 application, and to this end the provisions of this Act are severable.

18 ➔Section 3. Whereas the protection of veterans' benefits is of the utmost
19 importance to the citizens of the Commonwealth, and our heroic veterans deserve the
20 state's protection from bad actors who would take advantage of this treasured population
21 in their time of need, an emergency is declared to exist, and this Act takes effect upon its
22 passage and approval by the Governor or upon its otherwise becoming a law.