

VETERANS' BENEFIT SERVICES UNDER THE MICHIGAN CONSUMER PROTECTION ACT

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Senate Bill 1103 as passed by the Senate
Sponsor: Sen. Sylvia A. Santana
House Committee: Government Operations [Discharged]
Senate Committee: Veterans and Emergency Services
Complete to 12-19-24

SUMMARY:

Senate Bill 1103 would amend the Michigan Consumer Protection Act, which among other things prohibits a person engaged in trade or commerce from providing or offering to provide a *veterans' benefit service* to a veteran or a veteran's family member unless the person is employed by a government agency authorized to do so, is an accredited individual under applicable federal laws and regulations, or is an employee or representative of a recognized veterans' services organization.

Veterans' benefit service means the preparation, presentation, or prosecution of a claim (or advice or representation concerning the preparation, presentation, or prosecution of a claim) affecting an individual who has filed or has expressed an intention to file an application for veteran, dependent, or survivor pension, or medical, or disability benefits under laws administered by the U.S. Department of Veterans Affairs or the Department of Military and Veterans Affairs pertaining to veterans, dependents, and survivors.

The bill would amend the above provisions to newly allow an individual who is *not* accredited under the federal laws and regulations applicable to the administration of veterans' benefits to provide only those veterans' benefit services that do not include representing a veteran or a veteran's family member as an agent or attorney.

In addition, the act now prohibits a person from being compensated for providing or offering to provide a veterans' benefit service to a veteran or veteran's family member unless certain conditions (such as required disclosures) are met. The bill would newly require, among these conditions, that a person seeking to receive compensation for a veterans' benefit service in connection with an initial claim for disability benefits must do all of the following:

- Memorialize the specific terms under which the amount to be paid must be determined in a written agreement signed by both parties.
- Receive only compensation that is purely contingent upon an increase in benefits awarded, and does not exceed five times the amount of the monthly increase in benefits awarded based on the claim. (An initial or nonrefundable fee could not be charged.)
- Receive no compensation for any services rendered in connection with any claim filed within the one-year presumptive period of active-duty release, unless the veteran acknowledges by signing a waiver that they are within this period and are choosing to deny free services that are available to them.
- Ensure that no international call centers or data centers are used for processing veterans' personal information.

- Ensure that a veteran's personal log-in, username, or password information is not used to access that veteran's medical, financial, or government benefits information.
- Ensure that any individual who has access to veterans' medical or financial information undergoes a background check prior to having access to that information. The background check would have to be conducted by a reputable source and include identity verification and a criminal records check.

However, the above condition would not apply to agents or attorneys who are accredited and regulated by the United States Department of Veterans Affairs.

Finally, the bill would amend the definition of the term veterans' benefit service (shown above) to additionally apply to disability benefits.

A violation of the bill's provisions would be an unfair trade practice under the act and subject to remedies as described in **Background**, below. (Violation of the act's current provisions regarding veterans' benefit services is also an unfair trade practice under the act.)

MCL 445.1103

BACKGROUND:

Remedies

A person who suffers a loss due to a violation of the Michigan Consumer Protection Act can sue to recover \$250 or actual damages, whichever is greater, along with reasonable attorney fees. Any person can sue for a declaratory judgment that an act or practice is unlawful under the act or for an injunction against someone engaging or about to engage in such conduct. In addition, the attorney general or a prosecuting attorney can bring an action to permanently enjoin a person from engaging in an unlawful act or practice, and a court may assess a fine of up to \$25,000 if the conduct is found to be unlawful. The act also allows for a class action to be brought under certain circumstances.

Applicability

Section 4(1)(a) of the Michigan Consumer Protection Act exempts a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under state or federal law. The Michigan Supreme Court has held that this exemption applies when “the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.”¹ That is, rather than a business practice being exempt from the act if it is specifically authorized by law, the court ruled that a practice whose legality under the act is in dispute is exempt from the act if the general activity being engaged in is authorized and regulated under law. For example, if a business is an industry regulated under a state or federal law and the transaction or conduct alleged to be deceptive is within the regulatory scheme of that industry, the exemption under section 4(1)(a) would likely apply and a person could not—under the Michigan Consumer Protection Act—sue for damages or petition to have the business stop engaging in the conduct alleged to be deceptive.

¹ *Smith v Globe Life Insurance Company*, 460 Mich 446 (1999). The court affirmed *Smith* in *Liss v Lewiston-Richards, Inc.*, 478 Mich 203 (2007).

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.