

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1124 (Menjivar)  
Version: February 13, 2024  
Hearing Date: April 9, 2024  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Deceptive practices: service members and veterans

**DIGEST**

This bill provides additional protections for veterans in California in connection with fees charged for assistance applying for veterans' benefits and the privacy of their information. The bill requires persons to be federally accredited before preparing, presenting, or prosecuting a veteran's claim for benefits under federal law.

**EXECUTIVE SUMMARY**

Veterans' benefits are a crucial support system for those who have served this country in the armed forces. As with other government benefits, applicants may need assistance in applying for these critical benefits. To meet this need, federal law establishes a process for organizations, attorneys, and additional claims agents to become accredited to assist veterans in applying for, preparing, presenting, and prosecuting their claims for federal benefits.

Concerns about unaccredited organizations and individuals charging veterans for these services, with sometimes exorbitant rates, has continued to persist despite previous legislation. This bill seeks to ensure that veterans are not charged unreasonable fees and that only federally accredited individuals and organizations are able to carry out this important work.

The bill is co-sponsored by Attorney General Rob Bonta and the Veterans of Foreign Wars (VFW) Department of California. It is supported by a variety of veterans groups. It is opposed by several unaccredited businesses that provide veteran's benefits services, including Veteran Benefit Guide (VBG). If this bill passes out of Committee, it will next be heard in the Senate Military and Veterans Affairs Committee.

**PROPOSED CHANGES TO THE LAW**

Existing federal law:

- 1) Prohibits any individual from acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Department of Veterans Affairs (VA) unless such individual has been recognized for such purposes by the Secretary of the VA (Secretary), except as provided. (38 U.S.C. § 5901.)
- 2) Authorizes the Secretary to recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of benefits claims. No fees may be charged in connection with services rendered hereby. (38 U.S.C. § 5902.)
- 3) Authorizes the Secretary to recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary and provides that the Secretary shall promulgate regulations laying out the necessary qualifications and standards of conduct. (38 U.S.C. § 5904.) Those attendant regulations lay out the accreditation process, continuing legal education requirements, and parameters on reasonable fees. (38 C.F.R. § 14.626 et seq.)
- 4) Prohibits a fee from being charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a claimant is provided notice of the agency of original jurisdiction's initial decision. (38 U.S.C. § 5904.)

Existing state law:

- 5) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. (Civ. Code § 1750 et seq.)
- 6) Designates specified practices as unfair methods of competition and unfair or deceptive acts or practices, including charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services, including veterans benefits, as provided. (Civ. Code § 1770.)

- 7) Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following:
  - a) actual damages, but in no case shall the total award of damages in a class action be less than \$1,000;
  - b) an order enjoining the methods, acts, or practices;
  - c) restitution of property;
  - d) punitive damages;
  - e) court costs and attorney's fees to a prevailing plaintiff. However, reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith; and
  - f) any other relief that the court deems proper. (Civ. Code § 1780(a), (e).)
- 8) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)
- 9) Prohibits a person, in connection with any transaction or any sale of goods or services, from electronically accessing a Common Access Card (CAC) issued to a service member, placing or requiring the placement of such a CAC in a smart card reader, requesting or requesting entry of the personal identification number (PIN) associated with such a CAC, or requiring a service member to log in to any Department of Defense or, in the case of a member of the Coast Guard, Department of Homeland Security computer system. A transaction or sale entered into in violation of this subdivision is void. (Mil. & Vets. Code § 401(d).)

This bill:

- 1) Expands the CLRA prohibition to other veterans benefits and provides that a fee charged with respect to federal veterans benefits that exceeds the amount that could be charged for those services by an attorney or claims agent accredited by the United States Department of Veterans Affairs is unreasonable.
- 2) Prohibits a person, in connection with any transaction or any sale of goods or services, from requiring a service member to share their credentials for accessing specified government computer systems; accessing such systems with another person's credentials; and requiring entry of a veteran's PIN associated with a CAC.
- 3) Prohibits persons from directly or indirectly soliciting, contracting for, charging, or receiving, or attempting to solicit, contract for, charge, or receive, any fee or

compensation with respect to the preparation, presentation, or prosecution of any claim for benefits under the laws administered by the VA except as provided under federal law.

### COMMENTS

1. Federal law establishes who may prepare, present, or prosecute veterans' benefits claims

Federal law prohibits anyone from acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under the laws administered by the VA unless such individual has been recognized for such purposes by the VA Secretary, except as provided. The law provides for the recognition of certain organizations for these purposes, such as the VFW, the American Legion, and the American National Red Cross. However, these organizations are restricted from charging fees for these services. The law also authorizes the Secretary to provide for the accreditation of agents and attorneys and directs the Secretary to prescribe in regulations the various requirements and parameters for providing such services.

The VA describes the process on their website:

The VA accreditation program exists to ensure that Veterans and their family members receive appropriate representation on their VA benefits claims. VA accreditation is for the sole and limited purpose of preparing, presenting, and prosecuting claims before VA.

...

An individual generally must first be accredited by VA to assist a claimant in the preparation, presentation, and prosecution of a claim for VA benefits—even without charge. VA accredits three types of individuals for this purpose: - Representatives of VA-recognized veterans service organizations (VSO) - Attorneys (accredited in their individual capacity, not through a law firm) - Claims agents (accredited in their individual capacity, not through an organization).<sup>1</sup>

Here in California, the California Department of Veterans Affairs (CalVet) has a network of VSOs:

County Veteran Service Offices (CVSO) are the key agencies in providing California's veterans with assistance and connection to benefits and services in local communities throughout the state. CalVet's relationship

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<sup>1</sup> *VA Accreditation Program*, United States Department of Veterans Affairs, <https://www.va.gov/OGC/docs/Accred/HowtoApplyforAccreditation.pdf>. All internet citations are current as of March 23, 2024.

with CVSOs ensures veterans and their families are served and represented by trained and accredited professionals. CVSOs are a critical component in the state's efforts to work directly with individual veterans and their families to ensure our Veterans receive benefits they earned through their service to our Nation. CVSOs are on the front lines for this important mission and play the key role in ensuring that veterans and their families are aware of their benefits, and in fact apply for and receive them. Together, the CVSOs, through claims initiation and development, and CalVet, through claims development and representation with appeals, provide assistance to veterans and their families in preparing and submitting claims and in representing claimants before the federal, state and local agencies providing veterans benefits.<sup>2</sup>

The CVSOs reported in 2023 that their officers were able to serve over 600,000 veterans and their families and secured \$485 million in claims awards.<sup>3</sup>

The federal regulations governing the accreditation program provide: "The purpose of the regulation of representatives, agents, attorneys, and other individuals is to ensure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits." (38 C.F.R. § 14.626 et seq.) The regulations lay out the application process and detail the necessary qualifications.

To ensure accredited attorneys and claims agents are best suited to assist with claims, the regulations impose a continuing legal education requirement. The regulations also govern the fees available, providing that only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations are not permitted to receive fees. Agents and attorneys may only charge claimants or appellants for representation provided after an agency of original jurisdiction has issued notice of an initial decision on the claim or claims, except as provided. Fees are required to be reasonable. The regulations establish a rebuttable presumption that any fee that does not exceed 20 percent of past-due benefits awarded is reasonable and that any fee that exceeds 33 1/3 percent of such benefits is unreasonable.

## 2. Concerns with unaccredited organizations

After a softening of the penalties for acting as an agent or attorney in the preparation, presentation, or prosecution of a claim for veterans benefits without accreditation, the industry for unaccredited claims representatives expanded:

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<sup>2</sup> *County Veterans Service Offices, CalVet*, <https://www.calvet.ca.gov/VetServices/Pages/County-Veteran-Service-Organization.aspx>.

<sup>3</sup> *2023 Annual Report, California Association of County Veterans Service Officers*, <https://www.cacvso.org/wp-content/uploads/2024/02/Veterans-Annual-Report-2023.pdf>.

For decades, federal law penalized unaccredited actors who charged veterans for “preparing, presenting, or prosecuting claims before the VA.” While regulations still prohibit such behavior, all criminal penalties were removed from federal statutes in 2006, leaving the VA essentially toothless to go after bad actors. (Accredited representatives, however, remain liable to be investigated and, if appropriate, disbarred when a veteran complains.)<sup>4</sup>

These unaccredited companies and representatives are not subject to the accountability measures laid out in federal law or the oversight of the VA.

A subcommittee of the House Committee on Veterans’ Affairs held a hearing on the VA Accreditation Program in 2022, emphasizing concerns about this unregulated industry. Congressman Chris Pappas, Chair of the Oversight and Investigations Subcommittee of the House Committee on Veterans,’ Affairs squarely addressed the issue:

For decades, federal law has prohibited anyone from helping a veteran prepare or present a VA benefit claim without accreditation. Despite this black-letter law, there’s been an explosion in the number of unaccredited, for-profit companies who say they’re not preparing or presenting claims . . . However, if you read the fine print, they also charge veterans hundreds, if not thousands, of dollars. . . . there are many other veterans who have complained about exorbitant costs, hidden fees, difficulties canceling a contract, aggressive marketing emails, rampant collection calls, and other predatory practices that many unaccredited companies employ. Some companies even solicit veterans’ eBenefits usernames and passwords, or try to gain direct access to people’s bank accounts...Some veterans may be willing to pay a fee if the services they receive are worthwhile and a company’s business practices are above board. But without adequate oversight through the accreditation process, we cannot be assured that this is case.<sup>5</sup>

### 3. Consumer Legal Remedies Act (CLRA)

The Legislature has long considered consumer protection to be a matter of high importance. State law is replete with statutes aimed at protecting California consumers from unfair, dishonest, or harmful market practices. These consumer-protection laws

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<sup>4</sup> Jasper Craven, *As veteran disability claims soar, unaccredited coaches profit off frustration with VA system* (July 5, 2023) Texas Tribune, <https://www.texastribune.org/2023/07/05/veterans-disability-benefits-brian-reese-va-claims-insider/>.

<sup>5</sup> Press Release, *Pappas Chairs Joint Hearing on Predatory Claim Sharks Targeting Veterans’ Benefits, Questions VA Efforts to Protect Veterans* (April 28, 2022) website of Congressman Chris Pappas, <https://pappas.house.gov/media/press-releases/pappas-chairs-joint-hearing-predatory-claim-sharks-targeting-veterans-benefits>.

authorize consumers to enforce their own rights and seek remedies to make them whole.

The CLRA was enacted “to protect the statute’s beneficiaries from deceptive and unfair business practices,” and to provide aggrieved consumers with “strong remedial provisions for violations of the statute.” (*Am. Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11.) The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer,” (Civ. Code § 1770(a)), and prohibits conduct “likely to mislead a reasonable consumer,” (*Colgan v. Leatherman Tool Grp., Inc.* (2006) 135 Cal. App. 4th 663, 680; internal quotation marks omitted.)

Among other things, the CLRA prohibits merchants from “representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law,” or representing that goods “are of a particular standard, quality, or grade” when they are of another. (Civ. Code § 1770.) Consumers who are harmed by specified unlawful practices have a right of action under the CLRA to recover damages and other remedies, including actual damages; an order to enjoin the unlawful act; restitution; punitive damages; or any other relief that the court deems proper. (Civ. Code § 1780.) Additionally, the statute authorizes courts to award attorney’s fees to prevailing plaintiffs and contains mechanisms for securing remedies on a class wide basis. (Civ. Code §§ 1780, 1781.) Consumers who are over the age of 65 are eligible to additionally seek and be awarded, in addition to the above remedies, up to \$5,000 where the trier of fact finds certain circumstances are met.

#### 4. Protecting veterans by capping fees and requiring accreditation

Relevant here, the CLRA prohibits charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services. “Public social services” is defined to mean those activities and functions of state and local government administered or supervised by specified state departments, and involved in providing aid or services, or both, including health care services, and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them. “Unreasonable fee” is defined to mean a fee that is exorbitant and disproportionate to the services performed. The section lays out a number of factors to be considered in determining reasonableness.

In response to prior concerns about unscrupulous companies preying on veterans, SB 180 (Corbett, Ch. 79, Stats. 2011) expanded the definition of public social services to explicitly include “activities and functions administered or supervised by the United States Department of Veterans Affairs or the California Department of Veterans Affairs involved in providing aid or services, or both, to veterans, including pension benefits.”

This bill expands this prohibition by ensuring that “other veterans benefits” are included within that definition, but more importantly, it deems as unreasonable a fee charged in connection with federal veterans benefits that exceeds the amount that could be charged by an accredited agent or attorney.

The bill also codifies in state law the federal prohibition on preparing, presenting, or prosecuting claims for benefits unless accredited pursuant to federal law. Specifically, the law states that, except “as provided in Sections 1984 and 5904 of Title 38 of the United States Code, a person shall not directly or indirectly solicit, contract for, charge, or receive, or attempt to solicit, contract for, charge, or receive, any fee or compensation with respect to the preparation, presentation, or prosecution of any claim for benefits under the laws administered by the United States Department of Veterans Affairs.”

It should be noted that federal law does not allow for the charging of fees, even for accredited agents and lawyers, for the preparation of initial claims for benefits.

The bill also bolsters existing protections for veterans by prohibiting a person, in connection with any transaction or any sale of goods or services, from requiring a service member to share their credentials for accessing specified government computer systems and from accessing such systems with another person’s credentials.

According to the author:

Veterans bravely serve and often times sacrifice their wellbeing for our country. Those living with the consequences of their selfless service deserve a smooth process in accessing the benefits they have earned. However, that process can be daunting and leaves veterans vulnerable to bad actors. Therefore, we must ensure we have accredited advocates working on their case to ensure oversight, accountability, and the proper dispersal of funds. That is why I introduced SB 1124, in collaboration with Attorney General Bonta, to tackle this very important but often overlooked issue. SB 1124 specifically prohibits unaccredited caseworkers and lawyers from processing VA disability claims, protects veterans from exorbitant fees, and makes it a crime to obtain unauthorized access to the Veterans Affairs claims system using a veterans’ login information. We must protect the personal information, financial interests, and health of the veterans who have sacrificed to protect us.

##### 5. Stakeholder positions

Attorney General Rob Bonta, the sponsor of the bill, writes:

The VA accreditation program exists to ensure that veterans receive competent and fair representation on their VA benefits claims. In addition



to CVSO and nonprofit VSOs, which provide assistance free of charge, the VA also accredits attorneys and claims agents to represent veterans and assist with benefit claims. Accredited attorneys and claims agents cannot charge money for assistance with an initial claim for veteran's benefits, but, subject to limits set and enforced by the VA, they can charge for other services.

In 2006, Congress amended federal law in a way that eliminated prohibitions that made it a crime to assist veterans with benefits claims without being accredited. This had the unintentional effect of driving the creation of a cottage industry of businesses that charge veterans for assistance with benefits claims without being accredited. Some of these businesses are well intentioned, but operate without the protections provided by VA accreditation and oversight, including fee caps. Others, often referred to as "claims sharks", are predators that provide worthless services or get veterans to agree to exorbitant fee agreements, sometimes including contingent fees that would be patently illegal if charged by an accredited attorney or agent.

Because unaccredited claims representatives are not subject to the VA's rules and oversight, they pose an unacceptable consumer risk to veterans. To address this problem, SB 1124 would strengthen several state law protections for veterans, including by: (1) prohibiting any person not accredited by the VA from charging a veteran for help with a benefits claim; (2) increasing penalties for persons that obtain unauthorized access to veterans' data on VA computer systems; and (3) prohibiting the charging of fees that exceed what a VA-accredited attorney or claims agent could legally charge to assist a veteran with a benefits claim.

The VFW Department of California, a cosponsor of the bill, writes:

SB 1124 addresses a critical gap in the current legal framework that has allowed unaccredited claims representatives to exploit veterans seeking assistance with their benefits claims. Unaccredited claims representatives are not required to adhere to the well-established professional and ethical standards of the Department of Veterans Affairs (VA) accreditation, so their advice can often be misleading or even fraudulent. By strengthening state law to prohibit such practices, this bill ensures that only those accredited by the VA can offer these crucial services.

Some of the predatory practices include promising or guaranteeing an increased disability rating, expedited VA claims decisions, and using confusing tactics or ambiguous language to mislead claimants or coerce them into signing a contract. Veterans face numerous challenges upon

returning to civilian life, and navigating the complexities of VA benefits process is difficult enough. SB 1124 not only protects veterans from predatory practices, but also honors their service by ensuring they have access to fair and competent representation.

This legislation is crucial in safeguarding veterans from exploitation and ensuring veterans receive the benefits they have earned through their service. . . . This bill will protect those who bear the visible and invisible scars of war.

Several organizations providing support to veterans in their application for federal benefits outside of the accreditation process are in opposition to the bill. They argue that this bill will eliminate their ability to provide much-needed services to veterans. VBG, one of these organizations, writes in opposition:

**In its current form, SB 1124 would prohibit California Veterans from hiring honorable for-profit companies like VBG. This would take away Veterans' choice, make it harder for Veterans to receive accurate disability ratings and benefits in a timely manner and worsen the VA's claims backlog.**

There exists an inaccurate insinuation that organizations such as ours choose not to be accredited. That is false. VBG would welcome the opportunity to become accredited with the VA, but cannot because current Federal law prohibits accredited entities from charging a fee for representation of Veterans on the initial claim. VBG's personnel, medical service provider network and procedures already meet standards required of VA-accredited agents and would meet any reasonable threshold for accreditation set by the VA.

It is also claimed that private services like VBG are violating the law. That is also false. Federal law states that "no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary" without first being accredited. I would like to state for the record that:

- We **DO NOT** practice law
- We **DO NOT** act as the Veteran's agent of record
- We **DO NOT** present before the VA

Veterans Guardian VA Claim Consulting, LLC, another such company, argues that existing services are not enough:

Unfortunately, the VSOs are incapable of meeting the demands of the veterans of this state. According to the VA's publicly available data on

accredited service officers and agents, the entire state of **California has only 501 VSO representatives to provide assistance to the over 1,500,000 veterans** who currently reside in the state. This equates to **each representative being responsible for handling the affairs of 3,063 veterans**. Even the hardest working and most efficient volunteer would be pressed to give the best possible service to that many veterans. This further demonstrates how harmful SB 1124 will be by forcing California's veterans to rely on a system that is already overloaded and ineffective.

### SUPPORT

Attorney General Rob Bonta (sponsor)

Veterans of Foreign Wars Department of California (sponsor)

AARP

American Legion, Department of California

AMVETS, Department of California

California Association of County Veterans Service Officers

California State Commanders Veterans Council

California Teamsters Public Affairs Council

Consumer Attorneys of California

County of Kern

Military Officers Association of America, California Council of Chapters

### OPPOSITION

National Association for Veterans Rights

Veteran Benefits Guide

Veterans Guardian VA Claim Consulting, LLC

### RELATED LEGISLATION

Pending Legislation: AB 2736 (Juan Carrillo, 2024) repeals the prohibition on a dependent of a veteran from receiving veterans educational benefits during the time the dependent is entitled to receive specified federal educational benefits or duplicate assistance from any other government source. AB 2736 is currently in the Assembly Military and Veterans Affairs Committee.

Prior Legislation:

AB 684 (Ta, 2023) would have, upon appropriation by the Legislature, provided a stipend to counties that host an active United States military base for the purposes of maintaining a county veterans service officer, at least part time, at each such base, subject to base approval. This bill died in the Assembly Appropriations Committee.

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SB 180 (Corbett, Ch. 79, Stats. 2011) *See* Comment 4.

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