

March 10, 2025

Testimony of Leslie Ross, Opposing North Dakota House Bill 1169

-A BILL for an Act to create an enact a new section to chapter 37-14 of the North Dakota century code, relating to compensation for veterans' benefits; and to provide a penalty.

Dear Chairman Luick, and Members of the Senate Agriculture & Veterans Affairs Committee,

My name is Leslie Ross, I am an Air Force retiree, a disabled veteran, former County Veterans Service Officer (CVSO) and currently a VA Accredited Claims Agent. I also hold a Certificate in Military and Veterans Health, Policy and Advocacy from William and Mary Law School in Williamsburg, VA. I am fast approaching my 17th year of preparing, presenting and prosecuting claims before the VA and the Board of Veterans Appeals (BVA). I am a staunch advocate for continuing law education (CLE), training at all levels, competent representation and oversight. I also believe that veterans deserve and are entitled to free services provided by VA accredited representatives. Veterans are also entitled to choose a VA accredited attorney or claims agent at any stage in the claim but predominantly during the appeals process up to and including the U.S. Court of Appeals for Veterans Claims (CAVC).

My perspective isn't unique, it is educated, researched and based on current law and policy. I have no conflict of interest in providing my testimony since I would not benefit financially or professionally by the outcome. I represent my clients in all types of benefit claims without remuneration of any kind.

As a grateful nation, it is our responsibility to provide our veterans with the quality healthcare, housing, employment, and benefits that they have undoubtedly earned and absolutely deserve; however, there is nothing more egregious than to take advantage of veterans and their families through deception. This I believe we can all agree upon.

VA accreditation is required of anyone assisting veterans who indicate an intent to seek benefits.

Individuals and companies supporting this bill either have not researched this bill on a national level, have not noted the big six Veterans Service Organizations who oppose this bill, read the bill for intended and unintended consequences or are out of state bad actors who continue to bilk our veterans. The bad actors intentionally choose not to: become accredited, not sign their name to any VA form, not have access legally to VA claims files, not abide by the very strict representation process, contract process, and fee structure. Most importantly they operate outside the arm of the VA Office of General Counsel. This robs veterans of appellant opportunities regarding unreasonable fees and violations of the standards of conduct that ALL VA accredited representatives are held accountable to.

Here is a brief list of the Claim Shark companies that are making millions of dollars off our Veterans, and several have offered testimony in favor of this bill.

National Association of Veterans Rights (NAVR), Veterans Guardian, Veterans Benefits Guide, VA Claims Insider, Trajectory, Patriot Benefits Consulting, Veterans Valor to name a few. If they are not on the VA Office of General Counsel Website, they are Claim Sharks.

This bill will not stop those who seek to profit off the backs of veterans.

HR 1822, Preserving Lawful Utilization of Services for Veterans Act of 2023 or PLUS Act was introduced in the 118th Congress and not supported by our delegation or nationally by the big six veterans' service organizations (VSO's). HB 1169 replicates some significant language from the PLUS Act. This bill is an almost word for word replica of a Louisiana Senate Bill #159 entitled the Preserving lawful utilization of services for veterans. (PLUS Act), Arizona HB 2612, Hawaii HB 2225, Georgia HB 108, and Kentucky HB 39.

HB 1169 intends to circumvent and reinvent that which is already required in Federal Law 38 USC Chapter 59 with the application of this federal code in 38 CFR Part 14.626-636 which defines the following:

- VA's recognition of Organizations for Accreditation.
- Requirements for VA Accreditation for VSO's, Agents and Attorneys, known as POA's.
- Authorization for an individual a one-time opportunity to represent a claimant.
- POA disclosure of claimant information.
- Standards of Conduct
- Payment of Fees.

History:

The reason for the proliferation of bad actors or "Claim Sharks" is due to the passing of the PACT Act which created the largest benefit expansion in generations, resulting in the explosion of fraudsters. The VFW in their December 6, 2023, Action Alert: Stop Claim Sharks Now defined the Shark. These Claim Sharks are not VA accredited and use predatory practices such as charging fees to "assist and consult, deception, fraudulent and misleading advise, guaranteeing ratings, percentages, expedited VA decisions, requesting logins to VA.gov all to file VA benefits claims. This practice is already illegal!

Specific issues with HB 1169

1. This bill is unconstitutional because it is preempted by federal law.

- a. Federal law governs the administration of federal veterans' benefits. When a federal law occupies the entirety of a space and evidences intent to regulate that space, it "preempts" state law that conflicts with it. As a simple, if not imperfect, example: if a Federal Law said that all shirts must be green, and a state passed a law that said shirts can be green or blue, the state law is preempted by federal law, and you can't wear a blue shirt.
- b. In this case, this bill purports to legalize something that federal law has expressly prohibited. And because the administration of a federal benefits program is wholly within the purview of the federal government, it would be preempted.

2. This bill could open the State up to costly litigation

- a. This bill is *near* identical to similar bills in, Arizona, Hawaii, Georgia, Kentucky and Louisiana and the latter is currently being sued for this bill.
- b. If this bill passes, in its current form, and is not vetoed, it *will* cause expensive federal litigation (even assuming the NDAG defends the law, which is unlikely since he was one of 46 attorneys general who supported the GUARD ACT), which will harm taxpayers.
- c. Governor Armstrong, while a congressman was a cosponsor of the GUARD ACT as well.

3. This bill does NOT require claims sharks to disclose their lack of accreditation or the fact that federal law requires accreditation to charge a fee for service.

- a. If this bill *must* pass, I urge you to consider adding mandatory disclosure language which puts Veterans on notice that these companies are not accredited by the VA and that they are violating federal law.

4. The bill incentivizes claims sharks to commit fraud.

- a. This bill ties fees to benefits being increased. This creates an inarguable conflict of interest between the interests of the claims shark (who accepts no responsibility for representation) and a Veteran's interest in not committing fraud.
- b. Further, it encourages claims sharks to continue to provide inadequate representation by only tying their compensation to an "increase" in benefits. This evidences a bit of a misnomer with VA benefits. For example, a winning motion to revise a 2005 decision that gave the client an earlier effective date for their 100% rating. This did not "increase" their benefits, but it resulted in substantial retroactive pay for them. These issues would not only be entirely missed by claims sharks (because of their lack of expertise in VA law and their inability to access a claims file) but they would have no incentive to do so.

5. The bill provides no ethical oversight or standards

- a. We are dealing with folks making claims to the government for monetary benefits. The VA benefits system is (supposed) to be extremely pro-claimant, but the propensity for fraud or unethical behavior is rampant.
- b. There *must* be ethical standards and oversight.

6. The bill provides no dispute process for the challenging of an illegal fee.

- a. Claim Sharks use auto dialers to query a VA system to obtain protected information about a Veteran's disability payments. They then use this information to generate a bill – even if the Veteran has long fired them, did not use their services, and retained accredited representation.
- b. Veterans, therefore, find themselves getting invoices, collection notices, and threats of a lawsuit from these companies, months, if not years, after the Veteran has parted ways.

7. The bill says something about a "one-year presumptive period"

- a. This just highlights the Sharks' ignorance of VA law.
- b. There is no "one-year presumptive period".
- c. Under 38 C.F.R. 3.309(a), *certain* conditions, *if manifested* within one year of leaving active duty *may* be presumptive. But these conditions are limited. Simply put, it is a rampant misconception that "anything claimed within a year of discharge is automatically service connected". That is untrue.

Current ND Laws and Federal Laws:

NDCC 51-15 already defines what misrepresentation or misleading consumers in the procurement of services and the authority of the ND Attorney General to investigate and enforce said rules.

In the following I will print the items in the bill and the current laws in place to prevent or enforce the position.

HB 1169 is a SHARK in a dolphin's skin. The SHARK lies in item 6 of this Bill:

6. A person seeking to receive compensation for advising or assisting a veteran in connection with an initial claim for benefits *may not*:

38 U.S.C. 5904(c)(1) (“[A] fee may not be charged, allowed, or paid for services of agents and attorneys . . . provided before the date on which a claimant is provided notice of [VA]'s initial decision . . . with respect to the case.”).

a. Receive any compensation for any services rendered in connection with any claim filed within a one - year presumptive period of active-duty release, unless the veteran acknowledges by signing a waiver that the veteran is within this period and chooses to deny free services available to the veteran.

There is no one year presumptive period for filing of claims. This entire paragraph is false.

38 U.S.C. 5904(c)(1) this would be an initial claim, and a fee cannot be charged.

b. Receive compensation that is not purely contingent on an increase in benefits awarded or which exceeds five times the amount of the monthly benefits awarded.

38 CFR § 14.636(b) - Payment of fees for representation by

Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation.

38 CFR § 14.636 (e) Fees permitted. Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases.

38 CFR § 14.636 (f)(1) Fees which do not exceed 20 percent of any past-due benefits awarded... shall be presumed to be reasonable

c. Receive initial or nonrefundable fees.

38 CFR § 14.637 Payment of the expenses of agents and attorneys

(b) **General.** Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA.

d. Use international call centers or data centers for processing veterans' personal information.

e. Use a veteran's personal login, username, or password information to access a veteran's medical, financial, or government benefits information.

The Privacy Act of 1974 and HIPAA regulations protect the privacy of veterans' benefits information. These laws cover how the Department of Veterans Affairs (VA) collects, uses, and discloses personal information.

f. Allow an individual access to a veteran's medical or financial information until the individual successfully completes a background check. The background check must be conducted by a reputable source and include identity verification and a criminal records check.

The Privacy Act of 1974 and HIPAA regulations apply here.

The background check must be conducted by a reputable source and include identity verification and a criminal records check in item f, **is a red herring.**

If you are accredited by the VA you have gone through background checks, fingerprinting, VA privacy training, and the entire accreditation process. In addition, Agents must complete an application, provide three references, go through an attorney character and fitness exam by the VA Office of General Counsel, pass a competency examination and prove continuing law education, to be and maintain VA accreditation.

I am limited to 5 files for testimony, so I am submitting the Arizona, Louisiana, Georgia and Hawaii bills for your reference and comparison to each other, to ND HB1169 and U. S. HB 1822 PLUS Act. With just a cursory look over the bills, you will note a few ministerial differences; however, the content is almost identical. The only bill that can ensure the proper oversight, appellant powers, and penalties for violating Federal Law is the GUARD Act. This is not the GUARD Act. **HB 1169 does not address the victimization of veterans; it gives the green light to continue to charge exorbitant fees in item 6b.** "Receive compensation that is not purely contingent on an increase in benefits awarded or which exceeds five times the amount of the monthly benefits awarded." and more importantly it does not require these "Claim Sharks" to become accredited by the VA.

I urge you not to pass HB 1169. It is a SHARK in a dolphin's skin, supported by the sharks themselves to continue frenzied feeding on veterans.

Thank you for your time and attention.

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