

118TH CONGRESS
1ST SESSION

S. 1789

To amend title 38, United States Code, to improve the review of claims for benefits under laws administered by the Secretary of Veterans Affairs.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2023

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the review of claims for benefits under laws administered by the Secretary of Veterans Affairs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Lawful Uti-
5 lization of Services for Veterans Act of 2023” or the
6 “PLUS for Veterans Act of 2023”.

1 **SEC. 2. CLARIFICATION OF PREPARATION, PRESENTATION,**
 2 **OR PROSECUTION OF A CLAIM UNDER A LAW**
 3 **ADMINISTERED BY SECRETARY OF VET-**
 4 **ERANS AFFAIRS.**

5 Section 5901 of title 38, United States Code, is
 6 amended—

7 (1) by striking “Except” and inserting the fol-
 8 lowing:

9 “(a) IN GENERAL.—Except”; and

10 (2) by adding at the end the following new sub-
 11 section:

12 “(b) EXCLUSION.—The administration of a medical
 13 examination, or the writing of a report based on such ex-
 14 amination, described in section 5125 of this title, does not
 15 constitute the preparation, presentation, or prosecution of
 16 a claim described in subsection (a).”.

17 **SEC. 3. AGENTS AND ATTORNEYS IN CLAIMS UNDER LAWS**
 18 **ADMINISTERED BY SECRETARY OF VET-**
 19 **ERANS AFFAIRS: RECOGNITION; SUSPENSION.**

20 Section 5904 of title 38, United States Code, is
 21 amended—

22 (1) in subsection (a)(1)—

23 (A) by inserting “(A)” before “Except”;

24 and

25 (B) by adding at the end the following new
 26 subparagraphs:

1 “(B)(i) The Secretary shall determine whether to rec-
2 ognize under subparagraph (A) an agent or attorney who
3 applies for such recognition not later than 90 days after
4 the Secretary receives such application.

5 “(ii) If the Secretary cannot verify whether the agent
6 or attorney meets the qualifications and standards pre-
7 scribed under paragraph (2) before the end of such 90
8 days, the Secretary shall recognize the agent or attorney
9 under such subparagraph.

10 “(C) The Secretary may not refuse to recognize
11 under subparagraph (A) an agent or attorney solely on
12 the basis that such agent or attorney charges a claimant
13 a fee for services rendered in the preparation, presen-
14 tation, or prosecution of a claim.

15 “(D) The Secretary may suspend under subsection
16 (b) an agent or attorney described in subparagraph (E)
17 without regard to the notice and opportunity for a hearing
18 under such subsection.

19 “(E) An agent or attorney described in this subpara-
20 graph is an agent or attorney—

21 “(i) recognized pursuant to subparagraph
22 (B)(ii); and

23 “(ii) whom the Secretary determines, after the
24 90-day period described in such subparagraph, does

1 not meet the qualifications and standards prescribed
2 under paragraph (2).”; and

3 (2) in subsection (b)—

4 (A) by redesignating paragraphs (1)
5 through (9) as subparagraphs (A) through (I),
6 respectively;

7 (B) in the matter preceding subparagraph
8 (A), as redesignated, by inserting “(1)” before
9 “The Secretary”; and

10 (C) by adding at the end the following new
11 paragraph:

12 “(2) Not later than one year after the date of the
13 enactment of the Preserving Lawful Utilization of Services
14 for Veterans Act of 2023 and annually thereafter, the Sec-
15 retary shall submit to the Committee on Veterans’ Affairs
16 of the Senate and the Committee on Veterans’ Affairs of
17 the House of Representatives a report regarding the num-
18 ber of individuals suspended under this subsection or de-
19 nied recognition under subsection (a), disaggregated by
20 the reasons for such suspension or denial and whether the
21 individual is—

22 “(A) a representative of an organization recog-
23 nized under section 5902 of this title;

24 “(B) an agent; or

25 “(C) an attorney.”.

1 **SEC. 4. FEES ALLOWABLE FOR REPRESENTATION OF VET-**
 2 **ERANS FOR CLAIMS UNDER LAWS ADMINIS-**
 3 **TERED BY SECRETARY OF VETERANS AF-**
 4 **FAIRS.**

5 (a) FEES.—Section 5904 of title 38, United States
 6 Code, as amended by section 3, is further amended—

7 (1) in subsection (a)(5), by striking “prepara-
 8 tion, presentation, and prosecution of a claim before
 9 the Department” and inserting “course of represen-
 10 tation described in subsection (c)(2)”;

11 (2) in subsection (c)—

12 (A) in the subsection heading, by inserting
 13 “FLAT FEE AGREEMENTS.—” after “(c)”;

14 (B) by amending paragraph (1) to read as
 15 follows:

16 “(1)(A) In a case other than a case described in para-
 17 graph (2), a fee agreement between a claimant and an
 18 agent or attorney, with respect to the preparation, presen-
 19 tation, or prosecution of a claim under a law administered
 20 by the Secretary, shall be a fee agreement under—

21 “(i) this paragraph, using a standard agree-
 22 ment form prescribed by the Secretary;

23 “(ii) subsection (d); or

24 “(iii) subsection (e).

1 “(B) A fee agreement under this paragraph is one
2 under which the total amount payable by the claimant to
3 the agent or attorney with respect to the claim—

4 “(i) may not exceed \$12,500 (as adjusted from
5 time to time under subparagraph (C)); and

6 “(ii) is contingent on whether the claim is re-
7 solved in a manner favorable to the claimant.

8 “(C) Effective on October 1 of each year (beginning
9 in the first fiscal year after the date of the enactment of
10 the Preserving Lawful Utilization of Services for Veterans
11 Act of 2023), the Secretary shall increase the dollar
12 amount in effect under clause (i) of subparagraph (B) by
13 a percentage equal to the percentage by which the Con-
14 sumer Price Index for all urban consumers (U.S. city aver-
15 age) increased during the 12-month period ending with
16 the last month for which Consumer Price Index data is
17 available. In the event that such Consumer Price Index
18 does not increase during such period, the Secretary shall
19 maintain the dollar amount in effect under such clause
20 during the previous fiscal year.

21 “(D) The limitation under subparagraph (B)(i) does
22 not apply to any fee charged, allowed, or paid for services
23 provided with respect to proceedings before a court.

24 “(E) For purposes of subparagraph (B)(ii), a claim
25 shall be considered to have been resolved in a manner fa-

1 vorable to the claimant if all or any part of the relief
 2 sought is granted.

3 “(F) The form prescribed by the Secretary under
 4 subparagraph (A)(i) shall include the following notifica-
 5 tions to the claimant:

6 “(i) That organizations recognized under sec-
 7 tion 5902 of this title furnish services concerning
 8 claims under laws administered by the Secretary, at
 9 no cost to claimants.

10 “(ii) That the claimant may select a private
 11 physician for a medical examination described in sec-
 12 tion 5125 of this title regarding the claim.

13 “(iii) That such agent or attorney may not
 14 refer the claimant to a private physician described in
 15 clause (ii) with whom the agent or attorney has a
 16 business relationship regarding the claim.”;

17 (C) in paragraph (2), by striking “referred
 18 to in paragraph (1) of this subsection” and in-
 19 serting “regarding a claim under a law adminis-
 20 tered by the Secretary”;

21 (D) in paragraph (3)(A), by striking “to
 22 paragraph (2)” and inserting “to paragraph (1)
 23 or (2)”;

24 (E) by striking paragraph (4); and

1 (3) by adding at the end the following new sub-
2 section:

3 “(e) PAYMENT OF FEES OUT OF AN AWARD OR IN-
4 CREASED AWARD.—(1) When a claimant and an agent or
5 attorney have entered into a fee agreement described in
6 paragraph (2), the total fee payable to the agent or attor-
7 ney (including all ancillary fees) may not exceed the
8 amount that is equal to the product of five and the amount
9 of the monthly increase of benefits awarded on the basis
10 of the claim.

11 “(2) A fee agreement referred to in paragraph (1)
12 is one under which the total amount of the fee payable
13 to the agent or attorney—

14 “(A) is to be paid to the agent or attorney by
15 the claimant, after commencement of the monthly
16 period of payment of monetary benefits based on an
17 award or increased award (as defined in section
18 5111(d) of this title); and

19 “(B) is contingent on whether the matter is re-
20 solved in a manner favorable to the claimant.

21 “(3) For the purposes of this subsection, a claim shall
22 be considered to have been resolved in a manner favorable
23 to the claimant if all or any part of the relief sought is
24 granted.”.

1 (b) REGULATIONS.—Not later than 180 days after
 2 the date of the enactment of this Act, the Secretary shall
 3 prescribe regulations to carry out the amendments made
 4 by this section.

5 **SEC. 5. REINSTATEMENT OF PENALTIES FOR CHARGING**
 6 **VETERANS UNAUTHORIZED FEES RELATING**
 7 **TO CLAIMS UNDER LAWS ADMINISTERED BY**
 8 **THE SECRETARY OF VETERANS AFFAIRS.**

9 (a) IN GENERAL.—Section 5905 of title 38, United
 10 States Code, is amended—

11 (1) in the section heading, by striking “**Pen-**
 12 **alty**” and inserting “**Penalties**”;

13 (2) by striking “Whoever” and inserting the fol-
 14 lowing:

15 “(a) WITHHOLDING OF BENEFITS.—Whoever”; and

16 (3) by adding at the end the following new sub-
 17 section:

18 “(b) CHARGING OF UNAUTHORIZED FEES.—Except
 19 as provided in sections 5904 or 1984 of this title, whoever
 20 directly or indirectly solicits, contracts for, charges, or re-
 21 ceives, or attempts to solicit, contract for, charge, or re-
 22 ceive, any fee or compensation with respect to the prepara-
 23 tion, presentation, or prosecution of any claim for benefits
 24 under a law administered by the Secretary shall be fined

1 as provided in title 18, or imprisoned not more than one
2 year, or both.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 59 of such title is amended
5 by striking the item relating to section 5905 and inserting
6 the following new item:

“5905. Penalties for certain acts.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect one year after the date of
9 the enactment of this Act.

