

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 390

INTRODUCER: Military Affairs, Space, and Domestic Security and Senator Dean

SUBJECT: Veterans' Organizations

DATE: February 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Fav/CS
2.	Clodfelter	Cannon	CJ	Pre-meeting
3.			JU	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 390 allows a veterans' organization to sue a business entity that holds itself out as a veterans' organization if it has reason to believe that the business entity does not operate primarily for the financial benefit and moral support of veterans and their families. The bill gives the business entity the burden of proof of showing, by clear and convincing evidence, that it does operate primarily for the financial benefit and moral support of veterans and their families.

Upon an adverse adjudication, the court may order the business entity to cease and desist its business practices while holding itself out as a veterans' organization. In addition, the court may impose a civil penalty of up to \$500 and require payment of court costs and reasonable attorney fees incurred by the plaintiff.

The bill also provides that a business entity that unlawfully holds itself out as a veterans' organization commits a misdemeanor of the first degree.

The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans, while also providing opportunities for veterans to get involved with the larger community. Their particular roles and activities vary. While the term "veterans' organization" is not defined in Florida Statutes in a broad context, these organizations are treated in much the same way as other charitable and non-profit organizations.

Congressionally-Chartered Veterans' Organizations

Title 36 of the U.S. Code lists national or patriotic non-profit corporations who have been granted corporate charters by act of Congress and whose primary purpose is to promote patriotic, charitable, educational, or other eleemosynary activities.¹ Many of these organizations are military veteran services oriented organizations. The corporations listed in Title 36 are not agencies of the United States, and the charter does not assign any governmental attributes.² The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to the extent, it may provide them prestige and indirect financial benefit.

Currently, federal supervision of congressionally chartered non-profit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II,³ are required to have independent audits annually, and to have the reports of the audits submitted to Congress.⁴ Such organizations are also required to submit annual reports of their activities to Congress.

Nationally Recognized Veterans' Organizations

The U.S. Department of Veterans Affairs (USDVA) is authorized to recognize certain veterans' organizations as national organizations for the purpose of assisting claimants for USDVA benefits in the preparation, presentation, and prosecution of their claims.⁵ A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

- Has a primary purpose of serving veterans;
- Demonstrates a substantial service to veterans;
- Commits a significant portion of its assets to veterans' services and has adequate funding to properly perform those services; and
- Maintains capability of providing complete claims service to each claimant requesting representation.⁶

¹ These entities are referred to as "Title 36 corporations" because they are found in Title 36 of the U.S. Code.

² CRS Report for Congress, Congressionally Charters Non-profit Organizations ("Title 36 Corporations"): What They Are and how Congress Treats Them; Updated April 8, 2004; Ronald C. Moe, Consultant in American National Government. page 5.

³ 36 U.S.C. Subtitle II

⁴ 36 U.S.C. s. 10101

⁵ 38 U.S.C. s. 5902

⁶ 38 CFR s. 14.628

In addition, a nationally recognized organization must have the capability and resources to provide representation to a sizeable number of claimants, must be geographically diversified (i.e., one or more posts in at least 10 states), and in the case of membership organizations, must maintain a membership of 2,000 or more persons.⁷

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.⁸ This directory also includes other congressionally chartered and non-chartered veterans' organizations that are not recognized by the USDVA as national organizations, but which represent the interest of American veterans.

Annual Registration with Department of Agriculture and Consumer Services

Veterans' organizations that intend to solicit donations in Florida must register with the Florida Department of Agriculture and Consumer Services (DACS). Florida's Solicitation of Contributions Act requires charitable organizations that engage in solicitation activities in Florida to register with the DACS and provide certain financial and background information as well as pay initial and annual renewal fees.⁹ Registration statements must contain prescribed information¹⁰ and be accompanied by the appropriate fee.¹¹ Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.¹²

While the DACS does not oversee the activities of the organizations that are required to register with the DACS, it does monitor an organization's activities to ensure compliance with the requirements in the Solicitation of Contributions Act. In addition, the DACS provides information to the public on the organizations registered to solicit contributions in Florida via the DACS's Gift Givers' Guide.¹³

Federal and State Tax Exemptions for Veterans' Organizations

Depending on its organization or purpose, a veterans' organization may be recognized as tax exempt from federal income tax under the following sections of the Internal Revenue Code:

- 501(c)(19) – veterans' organizations
- 501(c)(4) – social welfare organizations
- 501(c)(7) – social clubs
- 501(c)(8) – fraternal beneficiary societies
- 501(c)(10) – domestic fraternal societies

⁷ *Id.*

⁸ U.S. Department of Veterans Affairs. *Veterans and Military Service Organizations (Directory)*. Available at: http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf

⁹ Chapter 496, F.S.

¹⁰ Section 496.405(2), F.S.

¹¹ Section 496.405(4)(a), F.S.

¹² Section 496.406(3), F.S.

¹³ Florida Department of Agriculture and Consumer Services. *Florida Charities Gift Givers' Guide*. Available at: <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx>

- 501(c)(2) – title holding corporations¹⁴
Veterans’ organizations have to meet specified criteria in order to be granted tax exempt status under the Internal Revenue Code. For example, section 501(c)(19), I.R.C., provides for an exemption from federal income tax for an organization of past or present members of the United States Armed Forces if:
 - It is organized in the United States;
 - At least 75% of its members are past or present members of the U.S. Armed Forces;
 - Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
 - No part of the net earnings of which inures to the benefit of any private shareholder or individual.

Florida law exempts qualified veterans’ organizations from tax on sales and leases, when used in carrying out customary veterans’ organization activities.¹⁵ Veterans’ organizations that qualify for this exemption are those that are nationally chartered or nationally recognized as a veterans’ organization, which holds a current exemption under s. 501(c)(4) or (19) of the Internal Revenue Code. Additionally, under s. 220.22(4), F.S, certain veterans’ organizations are exempt from state corporate income tax in Florida.

Civil and Criminal Actions

Organizations that solicit contributions for charitable purposes, including veterans’ organizations, are subject to the requirements of chapters 496 and 501, F.S. Chapter 496, F.S., specifically governs solicitation of funds. Section 496.419, F.S., gives the DACS authority to investigate violations of chapter 496, F.S., and to bring administrative action against individuals and entities that violate the solicitation requirements. The DACS can issue cease and desist orders and assess fines of up to \$500 per act or omission for 501(c)(3) organizations and up to \$1000 per act or omission for other individuals or entities. In addition, the DACS is required to report criminal violations of Chapter 496, F.S., to the prosecuting authority. Willful and knowing violation of ss. 496.401-495.424, F.S., is a third degree felony for the first offense and a second degree felony for subsequent offenses.¹⁶

Section 496.416, F.S., provides that violation of any provision of ss. 496.401-495.424, F.S., is also an unfair or deceptive act or practice or an unfair method of competition in violation of chapter 501, part II of the Florida Statutes (the “Florida Deceptive and Unfair Trade Practices Act”). Violations of the Florida Deceptive and Unfair Trade Practices Act are enforced by either the appropriate state attorney or the Department of Legal Affairs (Attorney General’s Office). Available civil remedies include cease and desist orders and civil penalties of up to \$10,000 per violation.¹⁷

¹⁴ Internal Revenue Service. *Tax Guide: Veterans’ Organizations*. Available at: <http://www.irs.gov/pub/irs-pdf/p3386.pdf>

¹⁵ Section 212.08(7)(n), F.S.

¹⁶ Section 496.417, F.S.

¹⁷ Section 501.2077, F.S., provides for an enhanced civil penalty of up to \$15,000 per violation if the illegal practice victimized senior citizens or handicapped persons.

In addition to action taken by an enforcing authority, s. 501.211, F.S., authorizes anyone who has been aggrieved by a practice that is in violation of the Florida Deceptive and Unfair Trade Practices Act to bring a civil action against the violator. In such an action, the aggrieved party can obtain injunctive relief, recover any actual damages, and be awarded attorney fees and court costs. However, the defendant may be awarded attorney fees and court costs if it prevails in defending the claim.

III. Effect of Proposed Changes:

The bill allows a veterans' organization that has reason to believe that a business entity holding itself out as a veterans' organization does not in fact operate primarily for the financial benefit and moral support of veterans and their families to bring a civil action against the business entity. The bill places the burden on the business entity to show by clear and convincing evidence that it does in fact operate primarily for the financial benefit and moral support of veterans and their families.

Upon an adverse adjudication, the business entity must cease and desist its business practices while holding itself out as a veterans' organization. The court may also impose a civil penalty of up to \$500 and award court costs and reasonable attorney's fees to the plaintiff.

In many cases, actions that are proscribed in the bill would also violate chapters 496 or 501, F.S., but the violation might not prompt action by government entities charged with enforcing those chapters. It is also not clear that a veterans' organization would be an "aggrieved party" which could bring an individual action under s. 501.211, F.S. The bill provides a legal mechanism for legitimate veterans' organizations to stop misrepresentation and solicitation by purported veterans' organizations.

The bill also provides that it is a first degree misdemeanor for a business entity to hold itself out as a veterans' organization if it does not in fact operate primarily for the financial benefit and moral support of veterans and their families. First degree misdemeanors are punishable by a fine of up to \$1000 and, if the defendant is a natural person, imprisonment for up to one year. Arguably, addition of this specific offense could prevent prosecution of these entities for existing third degree felonies under chapter 496, F.S.¹⁸

The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ See *State v. Maloy*, 823 So.2d 815 (Fla. 1st Dist. 2002), which recognized "the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions."

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Organizations that misrepresent themselves as operating primarily for the benefit of veterans and their families are subject to a civil penalty of up to \$500 and payment of the plaintiff's attorney's fees and court costs. If found guilty of the newly created first-degree misdemeanor offense, they are subject to a potential fine of up to \$1,000.

C. Government Sector Impact:

The Office of the State Courts Administrator notes a probable, though indeterminate, increase in judicial time and court workload associated with the new civil and criminal processes.¹⁹

VI. Technical Deficiencies:

As worded, action could not be brought against an offending business entity unless its membership is limited to veterans and their families or it holds itself out as having such limited membership. This would preclude action under the bill against an organization falsely holding itself out as being primarily for the benefit of veterans and their families if the organization's membership includes other persons and it makes no false representations to the contrary.

The bill is subject to conflicting interpretations as to whether the new civil and criminal remedies created by the bill are intended to be additional to existing statutory remedies, or whether they are intended to replace existing remedies. It is recommended that language be added to clarify the intent of the bill.

The new misdemeanor offense that is created in section 1, subsection (3) of the bill does not clearly describe what conduct is criminal. It is recommended that the criminal conduct be set forth in subsection (3) rather than incorporated by reference to subsection (2).

VII. Related Issues:

None.

¹⁹ Office of State Courts Administrator. 2013 Judicial Impact Statement for SB 390.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military Affairs, Space, and Domestic Security on February 6, 2013:
The Committee Substitute reorganizes and modifies the bill to address technical issues.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
