

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 1692

INTRODUCER: Judiciary Committee and Senator Altman

SUBJECT: Reimbursement of Assessments

DATE: February 24, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1692 prohibits an agent or attorney from requesting or obtaining reimbursement of an assessment imposed by the United States Department of Veterans Affairs (VA).

Under federal law, the VA may impose the assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent. Under the bill, an agent or attorney who requests or obtains reimbursement of the assessment from the claimant commits a second degree misdemeanor.

The bill does not have a fiscal impact.

The bill has an effective date of October 1, 2016.

**II. Present Situation:**

**Background**

The United States Department of Veterans Affairs (VA) provides veterans with various benefits including disability, pension, health care, and life insurance. The purpose of the VA is to administer the laws providing benefits and other services to veterans and the dependents and the

beneficiaries of veterans.<sup>1</sup> The Secretary of the United State Department of Veterans Affairs is responsible for the proper execution and administration of all laws administered by the VA and for the control, direction, and management of the VA.<sup>2</sup>

An administrative dispute system was implemented in which the agency has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered. The authority includes: prescribing regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws; the forms of application by claimants under such laws; the methods of making investigations and medical examinations; and the manner and form of adjudications and awards.<sup>3</sup> Decisions administered by the agency are subject to judicial review in the United States Court of Appeals for the Federal Circuit.<sup>4</sup>

### **Accredited Agent or Attorney**

The VA determines who is qualified to represent or assist veterans in their claim for benefits. A person must apply and be approved by the VA in order to advise or assist a veteran who is bringing a claim for benefits.<sup>5</sup> A person may not assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by the VA for such purpose.<sup>6</sup> A person does not have to be an attorney to become accredited as an agent. An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim.<sup>7</sup>

### **Accredited Agent or Attorney Fees**

The VA may prescribe reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim.<sup>8</sup> A fee that does not exceed 20 percent of the past-due amount of benefits awarded on a claim is presumed to be reasonable. A fee that exceeds 33 1/3 percent of any past-due benefits awarded is presumed to be unreasonable.<sup>9</sup>

The fee agreement between the veteran and the agent or attorney may provide for the VA to pay the representation fee directly to the accredited agent or attorney out of the benefit award if the fee is 20 percent or less of the total benefit award.<sup>10</sup> For making a direct payment of the agent or attorney's fee, an assessment may be charged and collected against an accredited agent or attorney in any case where the accredited agent or attorney is paid from past-due benefits owed

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<sup>1</sup> 38 U.S.C. § 301(b).

<sup>2</sup> 38 U.S.C. § 303.

<sup>3</sup> 38 U.S.C. § 501(a).

<sup>4</sup> 38 U.S.C. § 502.

<sup>5</sup> 38 U.S.C. §§ 5901-04; 38 C.F.R. § 14.629(b)(1).

<sup>6</sup> 38 U.S.C. § 5901; 38 C.F.R. § 14.629(b)(1).

<sup>7</sup> 38 U.S.C. § 5904(a)(2); 38 C.F.R. § 14.629(b)(2).

<sup>8</sup> 38 U.S.C. § 5904(a)(5); 38 C.F.R. § 14.636(f).

<sup>9</sup> 38 C.F.R. § 14.636(f).

<sup>10</sup> 38 C.F.R. § 14.636(h)(1).

to the veteran claimant.<sup>11</sup> The amount of the assessment is equal to 5 percent of the amount of the fee required to be paid to the accredited agent or attorney, and may not exceed \$100.<sup>12</sup> The assessment collected is deposited in an account available for administrative expenses to administer veterans' benefits programs.<sup>13</sup>

An accredited agent or attorney, who is charged an assessment for making a direct payment, may not directly or indirectly request or receive reimbursement for the assessment from the veteran he or she represents.<sup>14</sup> The United States Code provides, "[w]hoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both."<sup>15</sup> Therefore, it is possible that an accredited agent or attorney can face criminal penalties under federal law if he or she directly or indirectly requests or receives reimbursement from the veteran claimant for the assessment imposed.

### **Board of Veterans Appeals Case Load**

The Board of Veterans Appeals handles a large volume of claims for veteran's benefits. In 2014, the board received 137,766 notices of disagreement.<sup>16</sup> In the same year, the board rendered 55,532 decisions. This figure is up from the amount of notices received in 2013 which was 118,053 and the figure for decisions rendered was 41,910. The Department of Veterans Affairs estimates that the number of notices received in 2015 is 146,032, and the figure for decisions rendered will reach 57,600.

### **III. Effect of Proposed Changes:**

Under federal law, the United States Department of Veterans Affairs may impose an assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent.

The bill prohibits an agent or attorney from requesting or obtaining reimbursement of the assessment from the claimant. An agent or attorney who violates the prohibition commits a second degree misdemeanor, punishable by up to 60 days in jail, a \$500 fine, or both.<sup>17</sup>

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>11</sup> 38 U.S.C. § 5904(a)(6)(A); 38 C.F.R. § 14.636(h)(1).

<sup>12</sup> 38 U.S.C. § 5904(a)(6)(B); 38 C.F.R. § 14.636(h)(1).

<sup>13</sup> 38 U.S.C. § 5904(a)(6)(E).

<sup>14</sup> 38 U.S.C. § 5904 (a)(6)(D).

<sup>15</sup> 38 U.S.C. § 5905.

<sup>16</sup> U.S. Dept. of Veterans Affairs, *Board of Veteran's Appeals Annual Report Fiscal Year 2014*, (July 2015).

<sup>17</sup> Sections 775.082(4)(b), 775.083(1)(e0), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article V, section 15 of the Florida Constitution vests the power to discipline lawyers in the Florida Supreme Court, and Florida Bar Rule 4-1.5(a) prohibits fees that are illegal. Because charging the claimant the fee described in the bill is already illegal under federal law, The Florida Bar rules regulate this conduct. A court may find that this law is an indirect attempt to discipline a lawyer for what is otherwise an unethical billing practice that subjects the attorney to professional discipline. If so, the court could find the statute to violate the court's exclusive jurisdiction to discipline attorneys.

However, the law is applied evenly to individuals who are not attorneys. An accredited representative does not have to be an attorney, and therefore, the law also regulates conduct by non-attorneys. Additionally, the law does not speak to whether or not an attorney found guilty of charging the administrative fee must be professionally disciplined. Therefore, a court may find that the law does not regulate attorneys at all.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

To the extent that CS/SB 1692 results in additional enforcement actions against agents and attorneys, judicial workloads will increase. However, the bill is not expected to have a fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 295.24 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Judiciary on February 9, 2016:**

Reduces the criminal penalty an agent or attorney may face for a violation of this section from a third degree felony to a second degree misdemeanor.

- B. **Amendments:**

None.