

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 910

INTRODUCER: Senator Collins

SUBJECT: Veterans' Benefits Assistance

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Proctor	MS	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 910 creates s. 501.9741, F.S., to govern the payment of fees by a veteran to an unaccredited person for advising, assisting, or consulting in securing federal benefits.

The bill authorizes compensation for advising, assisting, or consulting with an individual regarding any preparation, presentation, or prosecution of a veteran's claim, or a claim by any other individual under the laws and regulations administered by the Florida Department of Veterans' Affairs (FDVA) or the United States Department of Veterans Affairs (VA) if, before rendering services, a written agreement is executed. Compensation for such services is contingent upon securing an increase in benefits awarded and may not exceed five times the amount of the monthly increase in benefits awarded based on the claim.

The bill prohibits a person from guaranteeing, either directly or by implication, a successful outcome or that an individual is certain to receive specific veterans' benefits or a specific level, percentage, or amount of veterans' benefits. In addition, the bill prohibits compensation for referring an individual to another person who will advise, assist, or consult with the individual regarding any preparation, presentation, or prosecution of a veteran's claim.

A violation of the provisions of the bill is a violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

The bill may not be construed as applying to, limiting, or expanding the requirements imposed on agents or employees of the FDVA or agents or attorneys accredited by the VA.

The bill may have an indeterminate fiscal impact on state government. *See* Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Veterans in Florida

Other than California and Texas, Florida has the third largest population of veterans.¹ More than 1.4 million veterans reside in the state, which is 12 percent of the state's population of adults aged 18 and over.² Additionally, Florida has the second largest population of veterans who are women, at more than 168,000. Veterans who are women is one of the fastest growing groups among the veterans' population.³

State Benefits for Veterans

In addition to federal benefits, veterans in the state have access to a multitude of benefits. The FDVA educates and assists veterans to help them access services and benefits in housing, health care, disability claims, education, burial benefits, and employment including veterans' preference.⁴

The FDVA also annually produces the Florida Veterans' Benefits Guide, to connect veterans and their families with earned federal and state benefits, services, and support. The guide provides a comprehensive listing of services and benefits for veterans in the state.⁵

Veterans Claims Examiners

The FDVA oversees and operates as part of its jurisdiction the Division of Veterans' Benefits and Assistance. A bureau within the division is the Bureau of Veteran Claim Services.⁶ Through the Bureau, veterans' claims examiners assist veterans in securing earned services, benefits, and support.

The FDVA houses claims examiner offices throughout the state, including at the VA Regional Office in Bay Pine, each VA Medical Center, and many VA Outpatient Clinics.⁷ Claims assistance is provided at no cost and covers all state and federal veterans' programs.⁸

¹ Dep't of Veterans' Affairs, *Our Veterans*, available at <https://www.floridavets.org/our-veterans/> (last visited March 12, 2025).

² *Id.*

³ Dep't of Veterans' Affairs, *Women Veterans*, available at <https://floridavets.org/our-veterans/women-veterans/> (last visited March 12, 2025).

⁴ Dep't of Veterans' Affairs, *Benefits & Services*, available at <https://www.floridavets.org/benefits-services/> (last visited March 12, 2025).

⁵ Dep't of Veterans' Affairs, *Florida Veterans' Benefits Guide*, available at <https://floridavets.org/resources/va-benefits-guide/> (last visited March 12, 2025).

⁶ Section 20.37(2), F.S.

⁷ Dep't of Veterans' Affairs, *Benefits & Services, Claims*, available at <https://www.floridavets.org/benefits-services/claims/> (last visited March 12, 2025).

⁸ *Id.* and Dep't of Veterans' Affairs, *Florida Veterans' Benefits Guide 2025*, p. 8, available at <https://floridavets.org/wp-content/uploads/2012/08/FDVA-Benefits-Guide.pdf?v=2025b> (last visited March 14, 2025).

City and County Veteran Service Officers

City and county veteran service officers are hired locally, respectively by their local municipality or the board of county commissioners.⁹ To qualify, an applicant must be a veteran who:

- Served in the active military, naval, or air service; and
- Was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.^{10,11}

The applicant must additionally have a minimum of a 2-year degree from an accredited university, college, or community college or a high school degree or its equivalent and 4 years of administrative experience.¹² A surviving spouse of a veteran may be hired if the veteran spouse meets these qualifications.¹³

The FDVA provides required training for county and city veteran service officers to assist veterans,¹⁴ and every county or city veteran service officer must additionally successfully pass a test administered by the FDVA. In addition, the FDVA establishes periodic training refresher courses, with completion a condition of continuing employment.¹⁵

1-Year Presumptive Period

The "1-year presumptive period" for veterans refers to a period within one year of their discharge from active service where the VA presumes certain chronic conditions,¹⁶ like hypertension, arthritis, or diabetes, to be service-related, simplifying the process of obtaining disability compensation.¹⁷

Some illnesses may be covered even if they appear after the 1-year presumptive period, such as:

- Hansen's disease can appear within 3 years after discharge.
- Tuberculosis can appear within 3 years after discharge.
- Multiple sclerosis can appear within 7 years after discharge.
- Amyotrophic lateral sclerosis, also known as Lou Gehrig's, can appear any time after discharge.¹⁸

Federal Law on Paid Services for Benefit Assistance of Veterans

Accreditation means the authority granted by the VA to assist claimants in the preparation, presentation, and prosecution of claims for benefits.¹⁹ Unaccredited individuals may provide

⁹ Section 292.11(1), F.S.

¹⁰ *Id.*

¹¹ Section 1.01(14), F.S.

¹² Section 292.11(1), F.S.

¹³ *Id.*

¹⁴ Section 292.11(4), F.S.

¹⁵ *Id.*

¹⁶ 38 CFR s.3.309 (Disease subject to presumptive service connection.).

¹⁷ U.S. Department of Veterans Affairs, *Disabilities that appear within 1 year after discharge*, available at <https://www.va.gov/disability/eligibility/illnesses-within-one-year-of-discharge/#content> (last visited March 17, 2025).

¹⁸ *Id.* and 38 CFR s. 3.309.

¹⁹ 38 CFR s. 14.627(a).

other services to veterans; however, federal law prohibits unaccredited individuals from assisting in the preparation, presentation, and prosecution of claims and applications for VA benefits.^{20,21}

Maine,²² Utah²³ and New Jersey²⁴ have passed laws limiting for-profit consultants in VA benefit matters, and similar bills have been introduced in New York²⁵ and 17 other states.²⁶ In 2024, Louisiana enacted a law²⁷ to allow unaccredited consultants to charge up to \$12,500 for directing veterans on how to fill out their disability forms.²⁸

Federal law governs the payment of fees by a veteran to an accredited agent or attorney for representation in all proceedings in securing federal benefits.²⁹ Pursuant to federal law, only an accredited attorney or agent may receive fees for representation before an agency of original jurisdiction or the Board of Veterans' Appeals, subject to limitation.³⁰

An accredited attorney or a claims agent may never charge a claimant or receive a fee or a gift from a claimant for assistance with preparing and filing an initial VA benefits claim. ("[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.")³¹ Charging a fee or accepting a gift on an initial claim - including charging for assistance with gathering necessary documents and filling out forms - is a violation of the VA Standards of Conduct,³² and grounds for cancellation of VA accreditation. However, once a claimant receives an initial decision on a claim or claims, an accredited attorney or a claims agent may charge a fee for assisting a claimant in seeking review of those claims.³³

Fee Agreement

Federal law requires that a fee agreement include:

- The name of the veteran;
- The name of the claimant or appellant if other than the veteran;

²⁰ U.S. Department of Veterans Affairs, *Office of General Counsel, Accreditation Frequently Asked Questions*, available at https://www.va.gov/ogc/accred_faqs.asp (last visited March 12, 2025).

²¹ See 38 USC s. 5901 (stating that "no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any" VA claim unless the individual has been accredited by the Secretary [of Veteran Affairs]).

²² Maine SP 976 (2024).

²³ Utah HB 248 (2025).

²⁴ New Jersey S 3292 (2023).

²⁵ New York S 1176 (2025).

²⁶ Anna Claire Vollers, *States go after 'claim sharks' that charge vets for help with disability claims*, Missouri Independent, Dec. 9, 2024, available at <https://missouriindependent.com/2024/12/09/states-go-after-claim-sharks-that-charge-vets-for-help-with-disability-claims/> (last visited March 12, 2025).

²⁷ Louisiana SB 159 (2024).

²⁸ Wes Muller, *Louisiana enacts law to let consultants profit off disabled veterans' benefit claims*, Alabama Reflector, June 7, 2024, available at <https://alabamareflector.com/2024/06/07/louisiana-enacts-law-to-let-consultants-profit-off-disabled-veterans-benefit-claims/> (last visited March 12, 2025).

²⁹ 38 CFR s. 14.636.

³⁰ *Id.*

³¹ 38 USC 5904(c)(1).

³² 38 CFR ss. 14.632(c)(5) and (6).

³³ 38 CFR s. 14.636(c) and U.S. Department of Veterans Affairs, *Tips on Fee Agreements for Veterans Claims*, available at <https://www.va.gov/OGC/docs/Accred/TipsonFeeAgreementsforVeteransClaims.pdf> (last visited March 17, 2025).

- The name of any disinterested third-party payer and their relationship with the veteran, claimant, or appellant;
- The VA file number;
- Specific terms under which the amount to be paid for services is determined; and
- If the VA is to pay the agent or attorney directly out of past due benefits.³⁴

A fee agreement must also include the following statement, signed by the provider:

“I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.”³⁵

Amount of Fees

Federal law requires that a fee charged for services must be reasonable, based on:

- The extent and type of services performed;
- The complexity of the case;
- The level of skill and competence required in giving the services;
- The amount of time spent on the case;
- The results achieved, including the amount of benefits recovered;
- The level of review to which the claim was taken and the representative retained;
- Rates charged by other representatives for similar services;
- Whether, and to what extent, the payment of fees is contingent upon the results achieved; and
- If applicable, why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits.³⁶

Further, a presumption of reasonableness applies if a fee does not exceed 20 percent of a past-due benefit and the representative provided service through the date of the decision awarding benefits. If a fee exceeds 33 and 1/3 percent of a past-due benefit, it is considered unreasonable. Each presumption is rebuttable upon a showing of clear and convincing evidence.³⁷

Filing of a Notice of Disagreement

A Notice of Disagreement is a filing by a claimant who disagrees with the decision made by the VA on a disability compensation claim.³⁸ Although the claim decision by the VA becomes certified after 30 days, it is not final until one year after the date of the decision. Therefore, the claimant can file a Notice of Disagreement at any time up to one year from the date of decision.³⁹

³⁴ 38 CFR s. 14.636(g).

³⁵ 38 CFR s. 14.636(d)(2)(iii).

³⁶ 38 CFR s. 14.636(e).

³⁷ 38 CFR s. 14.636(f).

³⁸ U.S. Department of Veterans Affairs, *VA News, How to File a Notice of Disagreement on your VA Compensation Claim*, available at <https://news.va.gov/33909/> (last visited March 12, 2025).

³⁹ *Id.*

Standards of Conduct for VA Accredited Attorneys, Agents, and Representatives

VA accredited individuals providing VA claims assistance must:

- Faithfully execute their duties on behalf of a VA claimant.
- Be truthful in their dealings with claimants and VA.
- Provide claimants with competent representation before VA.
- Act with reasonable diligence and promptness in representing claimants.⁴⁰

VA accredited individuals may not:

- Violate the standards of conduct as described in 38 CFR s. 14.632.
- Circumvent the rules of conduct through the actions of another.
- Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty.
- Violate one or more of the provisions of Title 38 of the United States Code or Title 38 of the U.S. Code of Federal Regulations.
- Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation.
- Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision.
- Delay, without good cause, the processing of a claim at any stage of the administrative process.
- Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA.
- Engage in, or counsel or advise a claimant to engage in, acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.
- Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.
- Engage in any other unlawful or unethical conduct.⁴¹

In addition, in providing representation to a claimant before the VA, VA accredited attorneys may not engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which they are licensed to practice law.⁴²

If the VA determines that an individual has violated the standards of conduct, the VA may suspend or cancel the individual's accreditation. The VA is authorized to report the suspension or cancellation to any bar association, court, or agency to which the individual is admitted. In addition, the VA may collaborate with state and federal enforcement authorities if it is suspected that an individual's actions may have implications under state or other federal laws.⁴³

⁴⁰ 38 CFR ss. 14.632(a) & (b).

⁴¹ 38 CFR s. 14.632(c).

⁴² 38 CFR s. 14.632(d).

⁴³ U.S. Department of Veterans Affairs, *Office of General Counsel, Standards of Conduct for VA Accredited Attorneys, Agents, and Representatives*, available at <https://www.va.gov/OGC/docs/Accred/StandardsofConduct.pdf> (last visited March 12, 2025).

Background Screening

Florida provides standard procedures for screening a prospective employee⁴⁴ where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.⁴⁵ Chapter 435, F.S., establishes procedures for criminal history background screening of prospective employees and outlines the screening requirements. There are two levels of background screening: level 1 and level 2.

- Level 1 screening includes, at a minimum, employment history checks, statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE), and a check of the Dru Sjodin National Sex Offender Public Website,⁴⁶ and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through FDLE's website, which provides immediate results.⁴⁷
- Level 2 screening includes, at a minimum, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁴⁸

Public Law (Pub. L.) 92-544 authorizes the FBI to exchange criminal history record information with state and local governmental agencies' officials for licensing and employment purposes. Criteria established under Pub. L. 92-544 for state statutes seeking access to FBI criminal history record information for licensing and employment purposes are as follows:

- The statute must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth;
- It must not be against public policy; and
- It may not authorize receipt of the criminal history record information by a private entity.

Pub. L. 92-544 requires state statutes to designate an authorized governmental agency to be responsible for receiving and screening the results of the criminal history record information to then determine an applicant's suitability for employment or licensing. For Level 2 screening, the FDLE is this state's authorized governmental agency given the responsibility to perform a criminal history record check of its records and request that the FBI perform a national criminal history record check of its records for each employee for whom the request is made.⁴⁹

⁴⁴ Section 435.02(2), F.S., defines "employee" to mean any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.

⁴⁵ Chapter 435, F.S.

⁴⁶ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at www.nsopw.gov (last visited Jan. 25, 2024).

⁴⁷ Florida Department of Law Enforcement, *State of Florida Criminal History Records Check*, available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Jan. 25, 2024).

⁴⁸ Section 435.04, F.S.

⁴⁹ Chapter 435, F.S.

Florida law authorizes and outlines specific elements required for Level 1 and Level 2 background screening and establishes requirements for determining whether an individual passes a screening regarding an individual's criminal history. All individuals subject to background screening must be confirmed to have not been arrested for and waiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent, and the record has not been sealed or expunged for, any of 52 offenses prohibited under Florida law, or similar law of another jurisdiction:⁵⁰

- Section 39.205, F.S., relating to the failure to report child abuse, abandonment, or neglect.
- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 414.39, F.S., relating to fraud, if the offense was a felony.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.021, F.S., relating to aggravated assault.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 784.045, F.S., relating to aggravated battery.
- Section 784.075, F.S., relating to battery on staff of a detention or commitment facility or on a juvenile probation officer.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 787.06, F.S., relating to human trafficking.
- Section 787.07, F.S., relating to human smuggling.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.

⁵⁰ Section 435.04(2), F.S.

- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Section 794.08, F.S., relating to female genital mutilation.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure and offenses against students by authority figures.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to digital voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 831.311, F.S., relating to the unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.
- Section 836.10, F.S., relating to written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 859.01, F.S., relating to poisoning food or water.
- Section 873.01, F.S., relating to the prohibition on the purchase or sale of human organs and tissue.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.

- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

Exemptions

Should a person be disqualified from employment due to failing a background screening, he or she may apply to the head of the appropriate agency for an exemption. Current law allows the head of the agency to exempt applicants from disqualification under certain circumstances including:

- Felonies for which at least 2 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the cited statutes or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, this exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.⁵¹

Receiving an exemption allows that individual to be employed in a profession or workplace where background screening is statutorily required despite the disqualifying offense in that person's past. Certain criminal backgrounds, however, render a person ineligible for an exemption; a person who is considered a sexual predator,⁵² career offender,⁵³ or registered sexual offender⁵⁴ is not eligible for exemption.⁵⁵

⁵¹ Section 435.07, F.S.

⁵² Section 775.21, F.S.

⁵³ Section 775.261, F.S.

⁵⁴ Section 943.0435, F.S.

⁵⁵ Section 435.07(4)(b), F.S.

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose

The FDUTPA became law in 1973.⁵⁶ The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.⁵⁷ The FDUTPA is based on federal law, and specifically Section 5 of the Federal Trade Commission Act.⁵⁸

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.⁵⁹ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.⁶⁰ The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.⁶¹ Consumers may also file suit through private actions.⁶²

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, have available the following remedies:

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to \$10,000 per willful violation.⁶³

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction if a person is aggrieved by a FDUTPA violation.
- Actual damages, attorney fees, and court costs if a person has suffered a loss due to a FDUTPA violation.⁶⁴

Violations Involving a Military Servicemember

Section 501.2077, F.S., sets out penalties for violations of FDUTPA which involve a military servicemember or the spouse or dependent child of a military servicemember. A person who is willfully using, or has willfully used, a method, act, or practice in violation of FDUTPA directed at a military servicemember or the spouse or dependent child of a military servicemember is

⁵⁶ Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

⁵⁷ Sections 501.202 and 501.203(8), F.S. Trade or commerce includes the advertising, soliciting, or providing of a good or service.

⁵⁸ 15 USC s. 45; s. 501.204(2), F.S.

⁵⁹ Sections 501.203(2), 501.206, and 501.207, F.S.

⁶⁰ Section 501.203(2), F.S.

⁶¹ *Id.*

⁶² Section 501.211, F.S.

⁶³ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue.

Section 501.2075, F.S. Enforcing authorities may also request attorney fees and costs of investigation or litigation.

Section 501.2105, F.S.

⁶⁴ Section 501.211(1) and (2), F.S.

liable for a civil penalty of not more than \$15,000 for each violation if the person knew or should have known that her or his conduct was unfair or deceptive. An order of restitution or reimbursement under this section takes priority over other civil penalties imposed under FDUPTA for other violations.

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC) unfair and deceptive trade practices regulations prohibit unfair⁶⁵ or deceptive⁶⁶ acts or practices in or affecting commerce.⁶⁷ The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and when appropriate, backed by scientific evidence.⁶⁸ To enforce these regulations, the FTC may take law enforcement action.⁶⁹

III. Effect of Proposed Changes:

SB 910 creates s. 501.9741, F.S., assisting in veterans' benefits matters.

The bill defines as:

- Compensation - payment of any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered.
- Veteran - a person who served in the active military, naval, or air service.
- Veterans' benefits matter - the preparation, presentation, or prosecution of a veteran's claim, or a claim by the veteran's spouse, dependent child, or any other individual eligible for any benefit, program, service, commodity, function, status, or entitlement under the laws and regulations administered by the FDVA or the VA.

Referral of a Veteran's Benefits Matter

The bill prohibits a person from being compensated for referring an individual to another person who will advise, assist, or consult with the individual regarding any veterans' benefits matter.

Claims with After-Duty Presumptive Period

The bill authorizes a person to receive compensation for services rendered in connection with a claim filed within the 1-year presumptive period after active-duty release as determined by the VA only if the veteran acknowledges, by signing a waiver, that he or she is within the presumptive period and is choosing to deny the free services available to him or her.

⁶⁵ A practice is "unfair" if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. s. 45(n).

⁶⁶ A practice is "deceptive" if there is a "representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." Federal Trade Commission, *FTC Policy Statement on Deception* (Oct. 14, 1983), available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014_deceptionstmt.pdf (last visited March 12, 2025).

⁶⁷ 15 U.S.C. s. 45(a)(1).

⁶⁸ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited March 12, 2025).

⁶⁹ Federal Trade Commission, *Protecting Consumers*, available at <https://www.ftc.gov/news-events/topics/truth-advertising/protecting-consumers> (last visited March 12, 2025).

Compensation for Advising, Assisting, or Consulting on a Veterans' Benefits Matter

A person⁷⁰ seeking compensation for advising, assisting, or consulting with an individual regarding any veterans' benefits matter must, before rendering services, enter into a written agreement signed by both parties, which:

- Memorializes the specific terms under which the compensation will be determined.
- Provides that compensation for such services is contingent upon securing an increase in benefits awarded. The compensation cannot exceed five times the amount of the monthly increase in benefits awarded based on the claim.
- Provides the specific terms for how any compensation will be paid out.

A person who advises, assists, or consults on veterans' benefits matters for compensation must provide the following written disclosure before entering into a business relationship with an individual:

This business is not sponsored by or affiliated with the Florida Department of Veterans' Affairs, the United States Department of Veterans Affairs, or any other federally chartered veterans' service organization. Other organizations, including, but not limited to, the Florida Department of Veterans' Affairs, a local veterans' service organization, and other federally chartered veterans' service organizations, may be able to provide you with this service free of charge. Products or services offered by this business are not necessarily endorsed by any of these organizations. You may qualify for other veterans' benefits beyond the benefits for which you are receiving services here.

Further, the written disclosure must appear in a font size of at least 12 points in an easily identifiable place in the person's agreement with the individual seeking services and must be signed by the individual to signify that he or she understands the written disclosure's provisions. The person offering services must retain a copy of the written disclosure while providing veterans' benefits services to the individual for compensation and for at least 1 year after the date on which the service relations terminate.

Veteran Claimant Death

If a veteran claimant dies before a claim is processed:

- Any expected compensation must be waived and a charge, fee, or debt may not be collected; and
- Any payment plan for services rendered must be terminated immediately.

⁷⁰ Section 1.01(3), F.S., defines a "person" as including individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Prohibitions

The bill provides that a person:

- May not guarantee, either directly or by implication, a successful outcome or that an individual is certain to receive specific veterans' benefits or a specific level, percentage, or amount of veterans' benefits.
- Who advises, assists, or consults on veterans' benefits matters for compensation:
 - May not charge an initial or nonrefundable fee or interest on any payment plan agreed to by the parties.
 - May not use an international call center or data center to process a veteran's personal information;
 - May not use a veteran's personal log-in, username, or password information to access that veteran's medical, financial, or government benefits information; and
 - Must ensure that *an individual* undergoes a background check before being granted access to a veteran's medical or financial information. The background check must be conducted by a reputable source and must include identity verification and a criminal records check.

A violation of s. 501.9741, F.S., constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. Violators may be subject to penalties provided under FDUPTA, including s. 501.2077, F.S., for violations against a military servicemember or his or her spouse or dependent child.

The bill provides that the newly created section may not be construed as applying to, limiting, or expanding the requirements imposed on agents or employees of the FDVA or agents or attorneys accredited and regulated by the VA.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate negative fiscal impact on a person seeking compensation for advising, assisting, or consulting with an individual regarding any veterans' benefits matter who is required to submit to a background screening pursuant to the bill's provisions.

If applicants are required to undergo a Florida (state-only) criminal history record check (i.e., level 1 background screening), the total fiscal impact to the private sector for a statewide criminal history record check is \$24.⁷¹

However, if applicants are required to undergo a fingerprint-based, state and national criminal history record check (i.e., level 2 background screening), the total fiscal impact to the private sector is \$36.⁷²

There may be an indeterminate positive fiscal impact on any Livescan Service Provider due to any additional fees they would charge to submit a fingerprint-based criminal history record check for an applicant, if an applicant utilized such a service.⁷³

C. Government Sector Impact:

To the extent that the bill creates a new violation of the FDUTPA, Offices of the State Attorney and the Department of Legal Affairs may incur enforcement costs, which are indeterminate.

If a state-only or state and national record check is conducted through the FDLE, the total fiscal revenue for the state portion of a state and national criminal history record check is \$24, which goes into the FDLE's Operating Trust Fund. The number of individuals who would be screened under this bill is indeterminate.⁷⁴

⁷¹ Florida Department of Law Enforcement, *Agency Analysis for SB 910* (March 3, 2025) (on file with the Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

The impact of the bill does not appear to necessitate additional FTE and other resources; however, the bill, in combination with additional criminal history record check, could rise to the level of requiring additional staffing and other resources.⁷⁵

VI. Technical Deficiencies:

According to FDLE, for lines 120-124 of the bill, it is unclear how the term “background check” is defined. If it is the intent of the bill to require applicants to undergo a fingerprint-based, state and national criminal history record check (i.e., level 2 background screening) pursuant to s. 501.9741, F.S., the FDLE recommends including language in the bill to ensure compliance with federal law and the United States Department of Justice established criteria for the submission of fingerprints to the FBI Criminal Justice Information Services Division for a national criminal history background check. In addition, the bill must define the governmental agency responsible for receiving the state and national fingerprint-based criminal history record checks.⁷⁶

The FDLE advised that a statute cannot be approved for access to FBI criminal history record information unless all criterion specified within Pub. L. 92-544 are satisfied, which includes a review of whether the population(s) (i.e., categories of individuals) being screened is clearly defined and the state agency responsible for conducting the fingerprint-based background check and receiving the criminal history record information from the FBI is identified within the statute(s). The FDLE has stated that “as written, the FBI will likely deny the request for fingerprint-based access to national criminal history record check information.”⁷⁷

According to the FDVA, for lines 50 to 56 of the bill, the language “appears to allow compensation to be paid to unaccredited individuals for advising, assisting, or consulting with veterans regarding veterans’ benefit matters, arguably in direct violation of federal law which provides that only accredited agents and attorneys may receive fees for their services in connection with representation under 38 CFR ss.14.636(a) and (b).”⁷⁸

VII. Related Issues:

The FDLE recommended the following language related to fees for background screening: “Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).”⁷⁹

The FDVA General Counsel’s Office review noted the following:

- “Fees for initial claims are not addressed.”
- “No agency [is] described as under a duty to review background check.”

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Florida Dep’t of Veterans’ Affairs, *Agency Analysis for SB 910* (March 12, 2025) (on file with the Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁷⁹ Florida Dep’t of Law Enforcement, *Agency Analysis for SB 910* (March 3, 2025) (on file with the Committee on Military and Veterans Affairs, Space, and Domestic Security).

- “Nothing [is] included for licensing/regulation/competence provisions to ensure adequate representation of veterans.”
- “Additional protections meant to ensure quality of representation provided by VA accreditation process, and/or fiduciary responsibilities under attorney engagement agreements, powers of attorney and agency agreements could be undermined by recognizing this type of representation.”⁸⁰

VIII. Statutes Affected:

This bill creates section 501.9741 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

⁸⁰ Florida Dep’t of Veterans’ Affairs, *Agency Analysis for SB 910* (March 12, 2025) (on file with the Committee on Military and Veterans Affairs, Space, and Domestic Security).