

HB 1111

2012

1 A bill to be entitled  
2 An act relating to veterans affairs; creating s.  
3 295.189, F.S.; providing a short title; creating the  
4 "Veterans Protection Act"; providing definitions;  
5 prohibiting a person from acting as a representative,  
6 agent, or attorney in the preparation, presentation,  
7 or prosecution of any claim on behalf of a veteran of  
8 the United States Armed Forces under any law  
9 administered by the United States Department of  
10 Veterans Affairs unless such person has been issued  
11 proper credentials or accredited for such purposes;  
12 prohibiting a person from soliciting, contracting for,  
13 charging, or receiving any fee or compensation in the  
14 preparation, presentation, or prosecution of any claim  
15 on behalf of a veteran of the United States Armed  
16 Forces under any law administered by the United States  
17 Department of Veterans Affairs without proper  
18 credentials or accreditation; prohibiting failure to  
19 abide by any provision of an assurance of voluntary  
20 compliance entered into under the act; providing  
21 powers and duties of the Department of Veterans'  
22 Affairs; providing enforcement powers; requiring the  
23 department to adopt rules establishing civil  
24 penalties; providing that a notice of violation issued  
25 under the act shall provide the respondent with a  
26 reasonable time in which to enter into an assurance of  
27 voluntary compliance with the department and pay  
28 amounts required under the assurance of voluntary

HB 1111

2012

29 compliance; providing procedures and requirements with  
30 respect to assurances of voluntary compliance;  
31 providing for issuance of a notice of violation by a  
32 department investigator; providing procedures and  
33 requirements with respect to notices of violation;  
34 providing that respondents to a notice of violation  
35 may request a hearing before a hearing officer to  
36 contest the violation and any penalties imposed;  
37 providing procedures and requirements with respect to  
38 such hearings; requiring the department to adopt rules  
39 for the selection, appointment, and duties of hearing  
40 officers and for procedures with respect to hearings  
41 on violations; providing that the department or a  
42 respondent may appeal an order of a hearing officer;  
43 providing a penalty for violation of the act;  
44 providing construction with respect to federal law;  
45 specifying controlling provisions with respect to  
46 conflicts between the act and federal law; providing  
47 severability; providing an effective date.

48  
49 WHEREAS, the Legislature recognizes that veterans  
50 throughout the state have served their country and community  
51 selflessly, without regard to personal safety, and

52 WHEREAS, the Legislature further recognizes that there is  
53 an increased prevalence of individuals who engage in  
54 unscrupulous conduct with respect to veterans, particularly  
55 senior veterans, by assisting them in connection with filing  
56 claims with the United States Department of Veterans Affairs

HB 1111

2012

57 | without possessing the required accreditation or credentials  
 58 | from the department, or by charging fees to veterans for filing  
 59 | their claims in violation of applicable federal law, and

60 |         WHEREAS, currently, federal law does not provide a civil or  
 61 | criminal enforcement remedy against those individuals who  
 62 | violate federal law in this manner, and

63 |         WHEREAS, the Legislature recognizes that this type of  
 64 | unscrupulous conduct has negative consequences for Florida's  
 65 | veterans and their spouses and family members in that it  
 66 | undermines the system of federal benefits to which veterans are  
 67 | entitled and upon which many rely, and

68 |         WHEREAS, the Legislature recognizes the need to protect the  
 69 | residents of our state from these unscrupulous practices, and

70 |         WHEREAS, the Legislature recognizes that the public health,  
 71 | safety, and welfare of the state will best be served by enacting  
 72 | a Veterans Protection Act that provides penalties for persons  
 73 | who violate federal law by assisting veterans who are claiming  
 74 | benefits without possessing proper accreditation or credentials  
 75 | from the United States Department of Veterans Affairs and who  
 76 | charge fees for providing assistance with the filing of claims  
 77 | for veterans in violation of federal law, NOW, THEREFORE,

78 |

79 | Be It Enacted by the Legislature of the State of Florida:

80 |

81 |         Section 1. Section 295.189, Florida Statutes, is created  
 82 | to read:

83 |         295.189 Veterans Protection Act.—

84           (1) SHORT TITLE.—This section may be cited as the  
 85 "Veterans Protection Act."

86           (2) DEFINITIONS.—As used in this section, the term:

87           (a) "Authorized person" means a person who has been  
 88 authorized by the Secretary of the United States Department of  
 89 Veterans Affairs pursuant to 38 U.S.C. s. 5902, s. 5903, or s.  
 90 5904, and the regulations promulgated thereunder, to act as a  
 91 representative, agent, or attorney in the preparation,  
 92 presentation, or prosecution of any claim under any law  
 93 administered by the secretary.

94           (b) "Assurance of voluntary compliance" means a written  
 95 agreement between the department and a respondent, entered into  
 96 willingly by each party with the assistance, supervision, or  
 97 oversight of an investigator, as provided for in subsection (5).

98           (c) "Complainant" means any individual, regardless of  
 99 whether he or she is a veteran, who witnesses or who is  
 100 subjected to an unlawful practice or conduct in violation of  
 101 this section and who files a written complaint with the  
 102 department stating the name and address, if known, of the person  
 103 or persons alleged to have committed the violation complained of  
 104 and the particulars thereof, and such other information as may  
 105 be requested by the department.

106           (d) "Department" means the Department of Veterans'  
 107 Affairs.

108           (e) "Hearing procedures" means the procedures adopted by  
 109 the department governing noticing, scheduling, and conducting  
 110 hearings of violations of this section before a hearing officer.

111 (f) "Hearing officer" means the individual or individuals  
 112 appointed pursuant to subsection (7) to fulfill the duties of  
 113 hearing officers under this section.

114 (g) "Investigator" means a person performing services in  
 115 an official capacity for the department.

116 (h) "Notice of violation" means a written notice of an  
 117 alleged violation of this section issued to a respondent by an  
 118 investigator, as described in subsection (6).

119 (i) "Person or persons" means any individual, including a  
 120 minor child, firm, association, joint venture, partnership,  
 121 estate, trust, business trust, syndicate, fiduciary,  
 122 corporation, and any other groups or combination thereof.

123 (j) "Repeat violation" means any violation of this section  
 124 by a respondent committed within 5 years after:

125 1. The respondent has entered into an assurance of  
 126 voluntary compliance with respect to a violation of any  
 127 provision of this section;

128 2. The respondent has been found by a hearing officer to  
 129 have violated any provision of this section;

130 3. The respondent has been convicted of, or pled guilty or  
 131 nolo contendere to, a violation of any provision of this section  
 132 in a criminal court;

133 4. The respondent has admitted violating any provision of  
 134 this section; or

135 5. A failure by a respondent to abide by any provision of  
 136 an assurance of voluntary compliance entered into by the  
 137 respondent.

138 (k) "Respondent" means any person the department  
 139 reasonably believes upon investigation to have violated this  
 140 section.

141 (1) "Secretary" means the Secretary of the United States  
 142 Department of Veterans Affairs.

143 (3) PROHIBITED CONDUCT.—

144 (a) A person may not:

145 1. Act as a representative, agent, or attorney in the  
 146 preparation, presentation, or prosecution of any claim on behalf  
 147 of a veteran of the United States Armed Forces under any law  
 148 administered by the secretary unless such person has been issued  
 149 proper credentials or accredited for such purposes by the  
 150 secretary pursuant to 38 U.S.C. s. 5902, s. 5903, or s. 5904 and  
 151 the regulations promulgated thereunder.

152 2. Directly or indirectly solicit, contract for, charge,  
 153 or receive, or attempt to solicit, contract for, charge, or  
 154 receive, any fee or compensation in the preparation,  
 155 presentation, or prosecution of any claim on behalf of a veteran  
 156 of the United States Armed Forces, under any law administered by  
 157 the secretary, unless:

158 a. Such person possesses proper credentials under, or has  
 159 been accredited for such purposes pursuant to, 38 U.S.C. s. 5904  
 160 and the regulations promulgated thereunder; and

161 b. Any such charge, fee, or compensation is permitted by  
 162 38 U.S.C. s. 5904 and the regulations promulgated thereunder.

163 3. Fail to abide by any provision of an assurance of  
 164 voluntary compliance entered into under this section by such  
 165 person.

HB 1111

2012

166        (b) If the respondent fails to abide by more than one  
167 provision of an assurance of voluntary compliance, each failure  
168 constitutes a separate violation of this section.

169        (c) A repeat violation of this section by a respondent  
170 constitutes evidence of a continued pattern of illegal activity  
171 by a respondent and is deemed to be a serious threat to public  
172 safety and welfare.

173        (4) POWERS AND DUTIES OF THE DEPARTMENT; ENFORCEMENT  
174 POWERS.—

175        (a) Any person who witnesses or is subjected to an  
176 unlawful practice or conduct in violation of this section may  
177 file a written complaint with the department stating the name  
178 and address, if known, of the person alleged to have committed  
179 the violation complained of and the particulars thereof, and  
180 such other information as may be required by the department.

181        (b) The department shall evaluate received complaints of  
182 violations of this section, investigate such complaints, and  
183 take such action as it deems appropriate with respect thereto,  
184 as provided for in this section.

185        (c) The department may initiate an investigation into any  
186 suspected violation of this section and, when warranted, take  
187 such action as it deems appropriate with respect thereto, as  
188 provided in this section.

189        (d) If upon investigation the department determines that  
190 there is reasonable cause to believe that a person who is not an  
191 authorized person has committed one or more violations of this  
192 section, the department may take one or more of the following  
193 actions:

HB 1111

2012

194 1. Issue a notice of violation to the respondent.

195 2. Attempt to conciliate the matter through conferences  
196 with all interested parties and such representatives as the  
197 parties may choose to assist them.

198 3. Negotiate and enter into an assurance of voluntary  
199 compliance with a respondent in accordance with subsection (5),  
200 and impose the civil penalty provided therein, if applicable.

201 4. Utilize county, state, and federal agencies in an  
202 effort to resolve complaints filed under this section;

203 5. Request a hearing before a hearing officer and prepare  
204 and present cases involving violations of this section to a  
205 hearing officer.

206 6. Request a hearing officer to issue subpoenas in  
207 accordance with the hearing procedures.

208 7. Seek injunctive relief or other relief as a means of  
209 enforcing this section, which may include, but is not limited  
210 to:

211 a. A cease and desist order prohibiting the respondent  
212 from engaging in conduct in violation of this section.

213 b. An order requiring compliance with the order of a  
214 hearing officer.

215 c. Investigative costs, attorney fees, and restitution on  
216 behalf of the aggrieved complainant.

217 8. Refer the matter to appropriate federal agencies for  
218 criminal prosecution or administrative action and file such  
219 criminal or administrative complaints with federal agencies as  
220 may be required.



HB 1111

2012

221 (e) If upon investigation the department determines that  
222 the person who allegedly violated this section is an authorized  
223 person, then:

224 1. If the alleged violation is of subparagraph (3)(a)1. or  
225 subparagraph (3)(a)2., the department shall refer the matter to  
226 the United States Department of Veterans Affairs; or

227 2. If the alleged violation is of subparagraph (3)(a)3.,  
228 the department may take any enforcement action provided in  
229 paragraph (d), if the department determines there is reasonable  
230 cause to believe such violation has occurred.

231 (f) The department shall adopt rules establishing civil  
232 penalties to be imposed under this section.

233 (5) ASSURANCE OF VOLUNTARY COMPLIANCE.—

234 (a) A notice of violation issued to a respondent shall  
235 provide the respondent with a reasonable time, not to exceed 30  
236 days, to enter into an assurance of voluntary compliance with  
237 the department and pay all amounts required therein, if the  
238 violation cited in the notice of violation is not a repeat  
239 violation. A notice of violation issued to a respondent for a  
240 repeat violation may also provide the respondent with a  
241 reasonable time, not to exceed 30 days, to enter into an  
242 assurance of voluntary compliance with the department and pay  
243 all amounts required therein, including, but not limited to, the  
244 amount of the civil penalty imposed therein by the department.  
245 Pursuant to the terms of an assurance of voluntary compliance,  
246 the respondent shall agree, among other things, to immediately  
247 cease and desist from committing any current or future  
248 violations of this section.

HB 1111

2012

249 (b) An assurance of voluntary compliance shall be executed  
250 by:

251 1. The individual, if the respondent is an individual.

252 2. The owner of a sole proprietorship, if the respondent  
253 is a sole proprietorship.

254 3. A general partner of the partnership, or the president,  
255 vice president, or chief executive officer of the corporation,  
256 if the respondent is a partnership or corporation.

257 4. A person who has signature authority to bind the entity  
258 if the respondent is a form of entity other than an entity  
259 described in subparagraph 2. or subparagraph 3.

260 (c) If upon investigation the agency determines that a  
261 violation of subparagraph (3) (a)2. has occurred, any assurance  
262 of voluntary compliance must require the respondent to repay all  
263 such fees or compensation received or charged by the respondent  
264 to the party who has paid such fees or compensation. The  
265 respondent shall make repayment by certified check or cashier's  
266 check and the check must be delivered to the agency along with  
267 the assurance of voluntary compliance signed by or on behalf of  
268 the respondent.

269 (d) If within the time period provided in the notice of  
270 violation a respondent fails to enter into an assurance of  
271 voluntary compliance and pay all amounts and penalties required  
272 to be paid within the time period stated therein, the department  
273 may seek a hearing on the violation before a hearing officer, or  
274 may take any action provided in paragraph (4) (d).

275 (e) If the respondent violates any terms of an assurance  
276 of voluntary compliance, including, but not limited to, any

277 repayment or payment requirement included therein, the  
 278 underlying violation shall be deemed to be uncorrected and  
 279 continuing and the violation of the assurance of voluntary  
 280 compliance shall be deemed to be a repeat violation of this  
 281 section. The department may request a hearing before the hearing  
 282 officer on both the underlying violation and the violation of  
 283 the assurance of voluntary compliance.

284 (f) The department may, at its discretion, enter into an  
 285 assurance of voluntary compliance with the respondent at any  
 286 time prior to the commencement of a hearing on the violations  
 287 cited in the notice of violation. The penalty, if any, imposed  
 288 in the assurance of voluntary compliance shall be as provided by  
 289 rule of the department pursuant to subsection (4). After a  
 290 hearing has commenced on the violation cited in a notice of  
 291 violation, the department and the respondent may enter into an  
 292 assurance of voluntary compliance, provided it is approved by  
 293 the hearing officer.

294 (6) NOTICE OF VIOLATION AND REQUEST FOR HEARING.—

295 (a) An investigator who has reasonable cause to believe  
 296 that a respondent has violated this section may issue the  
 297 respondent a notice of violation in accordance with subsection  
 298 (4).

299 (b) If the violation cited in a notice of violation is not  
 300 a repeat violation, the notice shall include a reasonable time,  
 301 not to exceed 30 days, for the respondent to enter into an  
 302 assurance of voluntary compliance and pay all amounts required  
 303 therein as provided in subsection (5).

304 (c) If the agency issues a notice of violation for a

HB 1111

2012

305 repeat violation, the notice may include a reasonable time, not  
306 to exceed 30 days, for the respondent to enter into an assurance  
307 of voluntary compliance and pay all required amounts, including,  
308 but not limited to, the stated civil penalty imposed therein. If  
309 the notice of violation cites a repeat violation of this section  
310 but does not provide the respondent with an opportunity to enter  
311 into an assurance of voluntary compliance, then the notice of  
312 violation shall include a statement that the department is  
313 seeking a hearing before a hearing officer on the violations  
314 cited in the notice.

315 (d) Each notice of violation issued shall state the  
316 following:

317 1. The name and business or personal address of the  
318 respondent.

319 2. The location of the offense.

320 3. The date and approximate time the violation was  
321 committed.

322 4. The date and time of issuance of the notice.

323 5. The facts constituting reasonable cause for the  
324 violation.

325 6. Citation to the specific provisions of the section  
326 violated.

327 7. The name and title of the investigator issuing the  
328 notice.

329 8. The period of time available to the respondent to enter  
330 into an assurance of voluntary compliance, if applicable, and  
331 pay all amounts required therein, including, but not limited to,  
332 any civil penalty imposed.

HB 1111

2012

333 9. A statement, if applicable, that if the respondent  
334 fails to enter into an assurance of voluntary compliance and  
335 make such payments within the stated time period, the department  
336 may request a hearing before a hearing officer on the violation  
337 cited in the notice of violation.

338 10. The maximum amount of the civil penalty which may be  
339 imposed by the hearing officer, if the department or the  
340 respondent seeks a hearing on the matter before a hearing  
341 officer and the agency prevails at the hearing.

342 (e) Each notice of violation shall include a statement  
343 that the respondent may request a hearing before a hearing  
344 officer to contest the violation cited therein and any penalties  
345 imposed by the notice of violation by filing a written request  
346 for such hearing with the department within 15 calendar days  
347 after the date of delivery of the notice. A written copy of the  
348 procedures a respondent must follow to request such a hearing  
349 shall be included with the notice of violation.

350 (f) Each notice of violation shall contain a statement  
351 that if either the department or the respondent requests a  
352 hearing on the violation cited in the notice and the respondent  
353 fails to timely appear before the hearing officer, the  
354 respondent is deemed to have waived his or her right to contest  
355 the violation cited in the notice and a judgment may be entered  
356 against the respondent for up to the maximum amount of the civil  
357 penalty allowed.

358 (g) If a respondent refuses to accept a notice of  
359 violation, the department may take any action provided under  
360 subsection (4), including, but not limited to, proceeding to a

361 hearing on the violations cited in the notice of violation. If  
 362 the department proceeds to a hearing on the matter, the  
 363 following shall apply:

364 1. The respondent shall be deemed to have waived his or  
 365 her right to contest the violation cited in the notice of  
 366 violation; and

367 2. A judgment may be entered against the respondent by the  
 368 hearing officer on the violation cited in the notice of  
 369 violation, up to the maximum amount of the civil penalty  
 370 allowed.

371 (h) Multiple violations of this section may be cited  
 372 within a single notice of violation form.

373 (i) Service of a notice of violation to a respondent shall  
 374 be in writing and shall be sent in accordance with the hearing  
 375 procedures.

376 (j) This section may not be deemed to require the  
 377 department to issue a respondent a notice of violation prior to  
 378 referring the matter to the appropriate federal or state agency  
 379 for criminal prosecution or administrative action or filing such  
 380 criminal or administrative complaints with state or federal  
 381 agencies as may be required.

382 (7) APPOINTMENT OF HEARING OFFICERS.—The department shall  
 383 adopt rules for the selection, appointment, and duties of  
 384 hearing officers who shall have jurisdiction to conduct hearings  
 385 on violations of this section.

386 (8) HEARINGS.—

387 (a) The department shall adopt rules for procedures of  
 388 hearings on violations of this section, which shall include, but

HB 1111

2012

389 are not limited to, rules governing the scheduling, notice, and  
390 conduct of such hearings.

391 (b) The notice of violation shall serve as the  
392 department's complaint in a hearing before a hearing officer on  
393 a violation of this section.

394 (c) The department may not change or amend an order of the  
395 hearing officer.

396 (d) If a respondent fails to abide by an order issued by a  
397 hearing officer, the department may seek enforcement of the  
398 order in the circuit court.

399 (9) APPEALS.—Either the department or a respondent may  
400 appeal an order of the hearing officer to the circuit court  
401 within 30 days following the issuance of the order. The  
402 responsibility for, and the costs associated with, preserving a  
403 written record of the hearing for appeal and providing such  
404 written record to the circuit court shall rest with the party  
405 appealing the order.

406 (10) CRIMINAL VIOLATIONS; PENALTIES.—A violation of this  
407 section is a misdemeanor of the second degree, punishable by a  
408 term of imprisonment not exceeding 60 days or a fine not  
409 exceeding \$500, or both.

410 (11) OTHER RIGHTS AND REMEDIES.—This section does not  
411 prevent any person from exercising any right or seeking any  
412 private remedy or redress to which one might otherwise be  
413 entitled, or from filing any complaint with any other agency.

414 (12) COMPLIANCE WITH FEDERAL LAW.—This section may not be  
415 construed to exempt or limit compliance by any person with  
416 federal laws, rules, and regulations related to veterans.

HB 1111

2012

417 Violation of such laws, rules, and regulations may be prosecuted  
418 as applicable.

419 (13) CONFLICT OF LAWS.—In all instances where federal law  
420 mandates standards or requirements that are stricter than the  
421 provisions of this section, or where a matter is addressed by  
422 federal law that is not addressed by this section, then federal  
423 law shall govern. In situations where this section addresses a  
424 matter in a manner that is more stringent than that of federal  
425 law, the provisions of this section shall control.

426 (14) SEVERABILITY.—If any provision of this section or its  
427 application to any person or circumstance is held invalid, the  
428 invalidity does not affect other provisions or applications of  
429 the section which can be given effect without the invalid  
430 provision or application, and to this end the provisions of this  
431 section are severable.

432 Section 2. This act shall take effect upon becoming a law.