

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: CS/SB 1452

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Torres

SUBJECT: Compensation for Advising or Assisting in Veterans' Benefits

DATE: January 29, 2024 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Proctor</u>	<u>MS</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1452 creates the Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act to regulate the practice of providing paid services for advising or assisting an individual as a claimant for veterans' benefits, in addition to limitations set in federal law.

A person who advertises paid services must include in a readily visible location on the print or electronic advertisement a specified disclosure. The bill requires the provider and client to enter a written agreement before assistance is rendered containing a nearly identical disclosure to the advertising disclosure. The written agreement must specify terms of payment, comply with federal law, and be signed by both parties.

The bill prohibits a provider from guaranteeing an outcome, receiving excessive or unreasonable fees, or being compensated for a referral.

If a client files a notice of disagreement on a federal claim decision, the provider may not receive compensation for services provided prior to the date on which the notice is filed.

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

The bill takes effect upon becoming 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 among the veterans' population.³

State Benefits for Veterans

In addition to federal benefits, veterans in the state have available a multitude of benefits. The Florida Department of Veterans' Affairs (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 U.S. Department of Veterans Affairs (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 Jan. 19, 2024).

² *Id.*

³ Dep't of Veterans' Affairs, *Women Veterans*, available at <https://floridavets.org/our-veterans/women-veterans/> (last visited Jan. 19, 2024).

⁴ Dep't of Veterans' Affairs, *Benefits & Services*, available at <https://www.floridavets.org/benefits-services/> (last visited Jan. 19, 2024).

⁵ Dep't of Veterans' Affairs, *Florida Veterans' Benefits Guide*, available at <https://floridavets.org/resources/va-benefits-guide/> (last visited Jan. 18, 2024).

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 Jan. 19, 2024).

⁸ *Id.*

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

The applicant must additionally have a minimum of a 2-year degree from an accredited institute of higher education or a high school degree or its equivalent and 4 years of administrative experience.¹¹

A surviving spouse may instead be hired if the veteran spouse meets those qualifications.¹²

The FDVA provides required training for county and city veteran service officers to assist veterans,¹³ 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.¹⁴

Federal Law on Paid Services for Benefit Assistance of Veterans

Federal law governs the payment of fees by a veteran to an accredited agent or attorney for representation in securing federal benefits.¹⁵ Pursuant to federal law, an accredited attorney or an agent may receive fees for representation before an agency of original jurisdiction or the Board of Veterans' Appeals, subject to limitation.¹⁶

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;
- 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.¹⁷

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

⁹ Section 292.11(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 291.11(4), F.S.

¹⁴ *Id.*

¹⁵ 38 CFR s. 14.636

¹⁶ *Id.*

¹⁷ 38 CFR s. 14.636(g)

“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.”¹⁸

Amount of Fees

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.¹⁹

Further, a presumption of reasonableness applies if a fee does not exceed 20 percent of a past-due benefit if 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.²⁰

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.²¹ Although the claim decision by the VA becomes certified after 30 days, it isn't 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.

Florida Deceptive and Unfair Trade Practices Act

History and Purpose

The FDUTPA became law in 1973.²² 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.²³ The FDUTPA is based on federal law, and specifically section 5 of the Federal Trade Commission Act.²⁴

¹⁸ 38 CFR s. 14.636(d)(2)(iii)

¹⁹ 38 CFR s. 14.636(e)

²⁰ 38 CFR 14.636(f)

²¹ Veterans Administration, *VA News, How to File a Notice of Disagreement on your VA Compensation Claim*, available at <https://news.va.gov/33909/> (last visited Jan. 22, 2024).

²² Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

²³ Sections 501.202 and 501.203(8), F.S. Trade or commerce includes the advertising, soliciting, or providing of a good or service.

²⁴ 15 USC s. 45; s. 501.204(2), F.S.

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.²⁵ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.²⁶ 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.²⁷ Consumers may also file suit through private actions.²⁸

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.²⁹

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation.
- Actual damages, attorney fees, and court costs, where a person has suffered a loss due to a FDUTPA violation.³⁰

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC) unfair and deceptive trade practices regulations prohibit unfair³¹ or deceptive³² acts or practices in or affecting commerce.³³ The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and when appropriate, backed by scientific evidence.³⁴ To enforce these regulations, the FTC may take law enforcement action.³⁵

²⁵ Sections 501.203(2), 501.206, and 501.207, F.S.

²⁶ Section 501.203(2), F.S.

²⁷ *Id.*

²⁸ Section 501.211, F.S.

²⁹ 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.

³⁰ Section 501.211(1) and (2), F.S.

³¹ 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).

³² 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/410531/831014deceptionstmt.pdf; (last visited Jan. 23, 2024).

³³ 15 U.S.C. s. 45(a)(1).

³⁴ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited Jan. 23, 2024).

³⁵ Federal Trade Commission, *Protecting Consumers*, available at <https://www.ftc.gov/news-events/topics/truth-advertising/protecting-consumers> (last visited Jan. 23, 2024).

III. Effect of Proposed Changes:

CS/SB 1452 creates s. 295.225, F.S., to be cited as the Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act.

The bill defines as:

- Compensation – payment of money, a thing of value, or financial benefit.
- A person – an individual, corporation, business trust, estate, trust, partnership, limited liability company, joint venture, public corporation, or any other legal or for-profit commercial entity.
- A veterans' benefits matter – the preparation, presentation, or prosecution of a claim affecting a person who has filed or expressed an intent to file a claim for a benefit, program, service, commodity, function, or status the entitlement to which is determined under the laws and regulations administered by the FDVA or the VA for veterans and their family members.

The bill prohibits a person from being compensated for advising or assisting an individual with a veterans' benefits matter except pursuant to federal law and according to the limitations of the GUARD VA Benefits Act.

Regarding advertising for paid services to assist veterans with benefits, the provider of services must include a disclosure that reads:

This business is not sponsored by or affiliated with the United States Department of Veterans Affairs, the Florida 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, your county or city veteran service office, and other federally chartered veterans' service organizations, may be able to provide you with these services 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 services that this business offers.

Further, the disclosure, provided in print or electronically, must appear in a readily visible location on the advertisement. If conveyed orally, the spoken disclosure must be clear and intelligible.

In addition to the advertising disclosure, the provider must enter into a written agreement with the claimant which specifies the terms of payment of fees for services provided, complies with federal law in 38 C.F.R. s. 14.636, and is signed by both parties.

The following disclosure is required to be conveyed, both orally and in writing, as contained in the agreement:

This business is not sponsored by or affiliated with the United States Department of Veterans Affairs, the Florida 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, your county or city veteran service office, 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.

Compliance with the written disclosure requires that the:

- Disclosure appear in at least 12-point font;
- Disclosure be included in a readily noticeable and identifiable part of the agreement;
- Client verbally acknowledge understanding of the oral disclosure; and
- Client sign the document in which the written disclosure is contained.

The bill prohibits a provider from:

- Guaranteeing, directly or by implication, that a client will receive certain benefits or of a specified level, percentage, or amount of veterans' benefits.
- Receiving excessive or unreasonable fees as compensation, as determined in 38 C.F.R. s. 14.636.
- Being compensated for referring a person to another person to advise or assist them on a veterans' benefits matter.

If a person who sought services for compensation files a notice of disagreement pursuant to Title 38 C.F.R., the provider may not receive compensation for services provided prior to the date on which the notice is filed.

A violation of this act is a deceptive and unfair trade practice and a violation of part II, chapter 501, of the Florida Deceptive and Unfair Trade Practices Act.

The bill takes effect upon becoming 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 requirement on advertising may result in an indeterminate negative fiscal impact on a private provider of assistance with securing veterans benefits.

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 295.225, 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 Military and Veterans Affairs, Space, and Domestic Security on January 29, 2024:

The CS narrows the definition of a “person” to exclude an association or a government, governmental subdivision, agency, or instrumentality and restricts an included commercial entity to one that is for-profit.

B. Amendments:

None.