

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Military Affairs and Domestic Security Committee

BILL: SB 116

INTRODUCER: Senator Atwater

SUBJECT: Armed Forces Member/Use of Name

DATE: February 8, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pardue</u>	<u>Skelton</u>	<u>MS</u>	Favorable
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits the unauthorized use of the name or image of a member of the armed forces for commercial purposes. In the case of a deceased member, prior consent to use the name or image must be received from the surviving spouse, personal representative, or the closest living relative. The bill provides that any person who violates this prohibition commits a misdemeanor of the first degree.

The bill does not appear to have a significant fiscal impact.

This bill creates an undesignated section of Florida Statutes.

II. Present Situation:

The right to privacy is a long cherished American tradition. The Florida Constitution addresses the right of every natural person to be let alone and free from governmental intrusion into the person's private life.¹

Florida Statutes further address the unauthorized publication of an individual's name or likeness.

No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by the person. Others who can give consent for such use include an agent authorized in writing to license the commercial use of the person's name or likeness or in the case of a deceased person an agent

¹ Article I, Section 23, Florida Constitution.

authorized in writing or the surviving spouse or children of the person.
Florida Statutes provide for a civil cause of action for failure to obtain consent.²

The U. S. Department of Defense (DoD), Joint Ethics Regulation 5500-7R, s. 3-209, prohibits the department or DoD employees in their official capacities from stating or implying endorsement for a non-federal entity, event, product, service, or enterprise. DoD employees include any active duty member of the Army, Navy, Air Force or Marine Corps and any Reserve or National Guard member while performing official duties.

Purely personal, unofficial volunteer efforts to support fundraising outside the federal government workplace are not prohibited where the efforts do not imply DoD endorsement.³

III. Effect of Proposed Changes:

This bill prohibits the unauthorized use of the name or image of a member of the armed forces for the purpose of advertising for the sale of goods, services, or for the solicitation of patronage by any business enterprise. The bill provides for an exception if the member gives prior consent or in the case of a deceased member, prior consent is received from the surviving spouse, personal representative, or closest living relative.

The bill defines the term “member of the armed forces” as an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, or Coast Guard including members of the National Guard, United States Reserve Forces, and any member who was killed in the line of duty.

The bill provides for a criminal violation. Any person who violates the prohibition commits a misdemeanor of the first degree.

The bill provides for an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

² Section 540.08, Florida Statutes (F.S.).

³ DoD 5500.7R, s.3-300, a (2).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be some small fiscal impact resulting from prosecution of violators which would be somewhat offset through imposition of fines and court fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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