

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 Rules Subcommittee on Ethics and Elections

BILL: SB 330

INTRODUCER: Senator Gaetz

SUBJECT: Political speech; military service misrepresentations

DATE: February 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Favorable
2.	Fox	Phelps	RC	Favorable
3.			MS	
4.			GO	
5.			BC	
6.				

I. Summary:

Senate Bill 330 makes it an administrative violation of the Florida Election Code for candidates to misrepresent the fact that they served, or are currently serving, in the U.S. military; a civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or the administrative law judge (ALJ) hearing the case, as appropriate.

This bill creates Section 104.2715 of the Florida Statutes.

II. Present Situation:

Section 104.271, Florida Statutes, makes it a violation of the Florida Election Code for a candidate to knowingly make a false statement about an opposing candidate in an election, an offense punishable by an administrative fine of up to \$5,000:

Any candidate who, in a primary or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this code.¹

This appears to be the only provision in the Code that directly addresses false political speech.

Interestingly, what SB 330 proposes is strikingly similar to the federal Stolen Valor Act, which makes it a crime to falsely represent having been awarded a military honor, declaration, medal,

¹ § 104.241(2), F.S.

badge, etc. There is currently a disagreement among courts in different federal judicial circuits with respect to the constitutionality of that statute.²

III. Effect of Proposed Changes:

Senate Bill 330 subjects candidates to a civil fine of up to \$5,000 for falsely representing in an election that they have served, or are serving, in the nation's military. It provides for the expedited hearing of complaints by the Florida Elections Commission or an ALJ at the Division of Administrative Hearings (DOAH), as appropriate, and further authorizes the Commission to adopt rules to provide for such expedited hearing.

Also worth noting are the facts that any person may file a complaint with the Florida Elections Commission; and, any fine assessed is deposited in the State's General Revenue Fund.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Minimal; may result in some minor, additional revenue from violation penalties.

² See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that Stolen Valor Act violates First Amendment free speech rights); *but see*, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are *not protected* by the First Amendment). Although *Alvarez* is the only *appellate* decision interpreting the Stolen Valor Act, the U.S. Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. Indeed, the federal district judge in *Robbins* expressly refused to follow the 2-1 majority decision in *Alvarez*, choosing instead to adopt the dissent's position that *false speech is not entitled* to first amendment protection.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants specific penalty power to the administrative law judge at DOAH, to account for the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.³

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial 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.

³ 44 So.3d 1211 (Fla. 1st DCA 2010) (ALJ has no statutory authority to institute penalties for election violations originating with the Florida Elections Commission) .