

By Senator Sobel

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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
29 compliance; providing procedures and requirements with

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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 for 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
57 without possessing the required accreditation or credentials
58 from the department, or by charging fees to veterans for filing

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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 to
82 read:

83 295.189 Veterans Protection Act.-

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

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

87 (a) "Authorized person" means a person who has been

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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' Affairs.

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

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

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

115 (h) "Notice of violation" means a written notice of an
116 alleged violation of this section issued to a respondent by an

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117 investigator, as described in subsection (6).

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

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

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

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

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

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

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

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

139 (l) "Secretary" means the Secretary of the United States
140 Department of Veterans Affairs.

141 (3) PROHIBITED CONDUCT.—

142 (a) A person may not:

143 1. Act as a representative, agent, or attorney in the
144 preparation, presentation, or prosecution of any claim on behalf
145 of a veteran of the United States Armed Forces under any law

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146 administered by the secretary unless such person has been issued
147 proper credentials or accredited for such purposes by the
148 secretary pursuant to 38 U.S.C. s. 5902, s. 5903, or s. 5904 and
149 the regulations promulgated thereunder.

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

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

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

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

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

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

171 (4) POWERS AND DUTIES OF THE DEPARTMENT; ENFORCEMENT
172 POWERS.—

173 (a) Any person who witnesses or is subjected to an unlawful
174 practice or conduct in violation of this section may file a

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175 written complaint with the department stating the name and
176 address, if known, of the person alleged to have committed the
177 violation complained of and the particulars thereof, and such
178 other information as may be required by the department.

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

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

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

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

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

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

199 4. Utilize county, state, and federal agencies in an effort
200 to resolve complaints filed under this section.

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

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204 6. Request a hearing officer to issue subpoenas in
205 accordance with the hearing procedures.

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

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

211 b. An order requiring compliance with the order of a
212 hearing officer.

213 c. Investigative costs, attorney fees, and restitution on
214 behalf of the aggrieved complainant.

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

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

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

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

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

231 (5) ASSURANCE OF VOLUNTARY COMPLIANCE.—

232 (a) A notice of violation issued to a respondent shall

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

247 (b) An assurance of voluntary compliance shall be executed
248 by:

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

250 2. The owner of a sole proprietorship, if the respondent is
251 a sole proprietorship.

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

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

258 (c) If upon investigation the agency determines that a
259 violation of subparagraph (3) (a)2. has occurred, any assurance
260 of voluntary compliance must require the respondent to repay all
261 such fees or compensation received or charged by the respondent

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262 to the party who has paid such fees or compensation. The
263 respondent shall make repayment by certified check or cashier's
264 check and the check must be delivered to the agency along with
265 the assurance of voluntary compliance signed by or on behalf of
266 the respondent.

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

273 (e) If the respondent violates any terms of an assurance of
274 voluntary compliance, including, but not limited to, any
275 repayment or payment requirement included therein, the
276 underlying violation shall be deemed to be uncorrected and
277 continuing and the violation of the assurance of voluntary
278 compliance shall be deemed to be a repeat violation of this
279 section. The department may request a hearing before the hearing
280 officer on both the underlying violation and the violation of
281 the assurance of voluntary compliance.

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

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291 the hearing officer.

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

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

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

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

313 (d) Each notice of violation issued shall state the
314 following:

315 1. The name and business or personal address of the
316 respondent.

317 2. The location of the offense.

318 3. The date and approximate time the violation was
319 committed.

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

321 5. The facts constituting reasonable cause for the
322 violation.

323 6. Citation to the specific provisions of the section
324 violated.

325 7. The name and title of the investigator issuing the
326 notice.

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

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

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

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

348 (f) Each notice of violation shall contain a statement that

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

356 (g) If a respondent refuses to accept a notice of
357 violation, the department may take any action provided under
358 subsection (4), including, but not limited to, proceeding to a
359 hearing on the violations cited in the notice of violation. If
360 the department proceeds to a hearing on the matter, the
361 following shall apply:

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

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

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

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

374 (j) This section may not be deemed to require the
375 department to issue a respondent a notice of violation prior to
376 referring the matter to the appropriate federal or state agency
377 for criminal prosecution or administrative action or filing such

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378 criminal or administrative complaints with state or federal
379 agencies as may be required.

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

384 (8) HEARINGS.—

385 (a) The department shall adopt rules for procedures of
386 hearings on violations of this section, which shall include, but
387 are not limited to, rules governing the scheduling, notice, and
388 conduct of such hearings.

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

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

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

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

404 (10) CRIMINAL VIOLATIONS; PENALTIES.—A violation of this
405 section is a misdemeanor of the second degree, punishable by a
406 term of imprisonment not exceeding 60 days or a fine not

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407 exceeding \$500, or both.

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

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

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

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

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