

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1077 Veterans' Charitable Organizations or Sponsors

SPONSOR(S): Veteran & Military Affairs Subcommittee; Steube and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	13 Y, 0 N, As CS	Thompson	De La Paz
2) Judiciary Committee	16 Y, 0 N	Arguelles	Havlicak
3) Economic Affairs Committee	14 Y, 0 N	Thompson	Creamer

SUMMARY ANALYSIS

Florida's "Solicitation of Contributions Act" (Act) requires charitable organizations that engage in solicitation activities in Florida to register with the Department of Agriculture and Consumer Services (DACS) to provide certain financial and background information as well as pay initial and annual renewal fees. DACS has authority to investigate and bring administrative action against individuals and entities that violate the solicitation requirements of the Act. Willful and knowing violations are a third degree felony for the first offense and a second degree felony for subsequent offenses.

The Act provides that it is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to falsely state that he or she represents:

- A charitable organization or sponsor;
- The United States (U.S.) Air Force, Army, Coast Guard, Marine Corps, or Navy;
- The National Guard, or
- A law enforcement or emergency service organization.

The bill revises the Act to prohibit a person in connection with solicitations or charitable or sponsor sales promotions from falsely stating that he or she represents a veteran's charitable organization or sponsor which exists primarily for the benefit of veterans or their families if:

- The organization is not registered with the department as required under s. 496.405, F.S.;
- Having registered under s. 496.405, F.S., the organization did not describe in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families, including a general description of the benefit provided to veterans and their families; or
- Having registered under s. 496.405, F.S., and having described in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families as required, failed to apply the contributions received in a manner consistent with the description in the registration statement.

The bill provides that to solicit contributions from another person or organization while wearing the uniform, regardless of whether rank insignia is displayed, of a member of any branch of the U.S. Armed Forces, the U.S. Coast Guard, or the National Guard, if such person is not, or has never been entitled to wear such uniform, with the intent to deceive persons that he or she is a member of or represents a veterans' charitable organization or sponsor, constitutes a false statement.

The bill creates a new separate subsection with respect to the current prohibition against a person in connection with solicitations or charitable or sponsor sales promotions from falsely stating that he or she is a member of or represents a law enforcement or emergency service organization.

The bill's fiscal impact to the state and private sector is indeterminate.

The bill has an effective date of July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1077e.EAC

DATE: 4/16/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Veterans' Organizations

Generally, veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans. Such groups are dedicated to a wide range of veteran's issues. While the term "veterans' organization" is not defined in Florida Statutes in a broad context, these organizations are treated in much the same way as other charitable and non-profit organizations.

Congressionally-Chartered Veterans' Organizations

Title 36 of the U.S. Code lists national or patriotic non-profit corporations who have been granted corporate charters by act of Congress and whose primary purpose is to promote patriotic, charitable, educational, or other eleemosynary activities.¹ Many of these organizations are military veteran services oriented organizations. In effect, the federal chartering process is honorific in character. As such, the corporations listed in Title 36 are not agencies of the U.S., and the charter does not assign any governmental attributes.² However, the attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to an extent, it may provide prestige and indirect financial benefit.

Currently, federal supervision of congressionally chartered non-profit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II,³ are required to have independent audits annually, and to have the reports of the audits submitted to Congress.⁴ Such organizations are also required to submit annual reports of their activities to Congress.

Nationally Recognized Veterans' Organizations

The U.S. Department of Veterans Affairs (USDVA) is authorized to recognize certain veterans' organizations as national organizations for the purpose of assisting claimants for USDVA benefits in the preparation, presentation, and prosecution of their claims.⁵ A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

- Have a primary purpose of serving veterans;
- Demonstrate a substantial service to veterans;
- Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services; and
- Maintain capability of providing complete claims service to each claimant requesting representation.⁶

In addition, a nationally recognized organization must have the capability and resources to provide representation to a sizeable number of claimants, must be geographically diversified (i.e., one or more posts in at least 10 states), and in the case of membership organizations, must maintain a membership of 2,000 or more persons.⁷

¹ These entities are referred to as "Title 36 corporations" because they are found in Title 36 of the U.S. Code.

² CRS Report for Congress, *Congressionally Charters Non-profit Organizations ("Title 36 Corporations"): What They Are and how Congress Treats Them*; Updated April 8, 2004; Ronald C. Moe, Consultant in American National Government, at page 5.

³ 36 U.S.C. Subtitle II.

⁴ 36 U.S.C. s. 10101.

⁵ 38 U.S.C. s. 5902.

⁶ 38 CFR s. 14.628.

⁷ *Id.*

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.⁸ This directory also includes other congressionally chartered and non-chartered veterans' organizations that are not recognized by the USDVA as national organizations, but which represent the interest of American veterans.

Charitable Organizations

Veterans' organizations that intend to solicit donations in Florida are required to register with the Florida Department of Agriculture and Consumer Services (DACS). Florida's Solicitation of Contributions Act requires charitable organizations that engage in solicitation activities in Florida to register with DACS and provide certain financial and background information as well as pay initial and annual renewal fees.⁹ Registration statements must contain prescribed information¹⁰ and be accompanied by the appropriate fee.¹¹ Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.¹²

While DACS does not oversee the activities of the organizations that are required to register with DACS, it does monitor an organization's activities to ensure compliance with the requirements in the Solicitation of Contributions Act. In addition, DACS provides information to the public on the organizations registered to solicit contributions in Florida via the DACS Gift Givers' Guide.¹³

Tax Exemptions for Veterans' Organizations

Depending on its organization or purpose, a veterans' organization may be recognized as exempt from federal income tax under the Internal Revenue Code (I.R.C.).¹⁴ Veterans' organizations are required to meet specified criteria in order to be granted such tax exempt status. For example, section 501(c)(19), I.R.C., provides an exemption from federal income tax for an organization of past or present members of the U.S. Armed Forces if:

- It is organized in the U.S.;
- At least 75% of its members are past or present members of the U.S. Armed Forces;
- Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
- No part of the net earnings inures to the benefit of any private shareholder or individual.

Florida law exempts qualified veterans' organizations from tax on sales and leases, when used in carrying out customary veterans' organization activities.¹⁵ Veterans' organizations that qualify for this exemption are those that are nationally chartered or nationally recognized as a veterans' organization, which holds a current exemption under s. 501(c)(4) or (19) of the Internal Revenue Code. Additionally, under s. 220.22(4), F.S., certain veterans' organizations are exempt from state corporate income tax.

⁸ U.S. Department of Veterans Affairs. Veterans and Military Service Organizations (Directory). Available at: http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf (last visited April 4, 2013).

⁹ Chapter 496, F.S.

¹⁰ Section 496.405(2), F.S.

¹¹ Section 496.405(4)(a), F.S.

¹² Section 496.406(3), F.S.

¹³ Florida Department of Agriculture and Consumer Services. Florida Charities Gift Givers' Guide. Available at: <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx> (last visited April 4, 2013).

¹⁴ The Internal Revenue Service, *Tax Guide: Veterans' Organizations*, lists the following entities as exempt from federal income tax under the Internal Revenue Code: 501(c)(19) veterans' organizations; 501(c)(4) social welfare organizations; 501(c)(7) social clubs; 501(c)(8) fraternal beneficiary societies; 501(c)(10) domestic fraternal societies; and 501(c)(2) title holding corporations. Available at: <http://www.irs.gov/pub/irs-pdf/p3386.pdf> (last visited April 4, 2013).

¹⁵ Section 212.08(7)(n), F.S.

Civil and Criminal Actions

Organizations that solicit contributions for charitable purposes, including veterans' organizations, are subject to the requirements of chapters 496 and 501, F.S. Chapter 496, F.S., specifically governs solicitation of funds. Section 496.419, F.S., gives DACS the authority to investigate violations of chapter 496, F.S., and to bring administrative action against individuals and entities that violate the solicitation requirements. DACS can issue cease and desist orders and assess fines of up to \$500 per act or omission for 501(c)(3) organizations and up to \$1000 per act or omission for other individuals or entities. In addition, DACS is required to report criminal violations of Chapter 496, F.S., to the prosecuting authority.

Willful and knowing violations of ss. 496.401-496.424, F.S. (the "Solicitation of Contributions Act"), are a third degree felony for the first offense and a second degree felony for a subsequent offense.¹⁶ The intent of the act is to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions. Section 496.415, F.S., provides that it is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(6) Falsely state that he or she is a member of or represents a charitable organization or sponsor, or falsely state or represent that he or she is a member of or represents the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, the National Guard, or a law enforcement or emergency service organization; or to

(7) Misrepresent or mislead anyone by any manner, means, practice, or device whatsoever to believe that the person or organization on whose behalf the solicitation or sale is being conducted is a charitable organization or sponsor, or that any of the proceeds of the solicitation or sale will be used for charitable or sponsor purposes, if that is not the fact.

Section 496.416, F.S., provides that a violation of any provision of the Solicitation of Contributions Act is also an unfair or deceptive act or practice or an unfair method of competition in violation of chapter 501, part II of the Florida Statutes (the "Florida Deceptive and Unfair Trade Practices Act"). Violations of the Florida Deceptive and Unfair Trade Practices Act are enforced by either the appropriate state attorney or the Department of Legal Affairs (Attorney General's Office). Available civil remedies include cease and desist orders and civil penalties of up to \$10,000 per violation.¹⁷

In addition to action taken by an enforcing authority, s. 501.211, F.S., authorizes anyone who has been aggrieved by a practice that is in violation of the Florida Deceptive and Unfair Trade Practices Act to bring a civil action against the violator. In such an action, the aggrieved party can obtain injunctive relief, recover any actual damages, and be awarded attorney fees and court costs. However, the defendant may be awarded attorney fees and court costs if it prevails in defending the claim.

Section 817.312, F.S., provides that it is a third degree felony for a person to solicit for charitable contributions while both (1) misrepresenting himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard (hereinafter referred to as "the United States military"); and (2) wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States military.

Proposed Changes

The bill revises s. 496.415, F.S., of the "Solicitation of Contributions Act" to prohibit a person in connection with solicitations, or charitable or sponsor sales promotions, from falsely stating that he or

¹⁶ See s. 496.417, F.S. A third degree felony is punishable by imprisonment for not more than 5 years and a fine of up to \$5000. A second degree felony is punishable by imprisonment for not more than 15 years and a fine of up to \$10,000. See ss. 775.082 and 775.083, F.S.

¹⁷ Section 501.2077, F.S., provides for an enhanced civil penalty of up to \$15,000 per violation if the illegal practice victimized senior citizens or handicapped persons.

she represents a veteran's charitable organization or sponsor that exists primarily for the benefit of veterans or their families if:

- The organization is not registered with the department as required under s. 496.405, F.S.;
- Having registered under s. 496.405, F.S., the organization did not describe in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families, including a general description of the benefit provided to veterans and their families; or
- Having registered under s. 496.405, F.S., and having described in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families, including a general description of the benefit to veterans and their families, the organization failed to apply the contributions received in a manner consistent with the description in the registration statement.

The bill provides that to solicit contributions from another person or organization while wearing the uniform, regardless of whether rank insignia is displayed, of a member of any branch of the United States Armed Forces, the United States Coast Guard, or the National Guard, if such person is not, or has never been entitled to wear such uniform, with the intent to deceive persons that he or she is a member of or represents a veterans' charitable organization or sponsor, constitutes a false statement.

The bill creates a new separate subsection with respect to the current prohibition against a person in connection with solicitations or charitable or sponsor sales promotions from falsely stating that he or she is a member of or represents a law enforcement or emergency service organization.

B. SECTION DIRECTORY:

Section 1: Amends s. 496.415, F.S., relating to prohibited acts.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impact to the state and private sector is indeterminate. The bill revises a prohibition that is currently punishable as a third degree felony for the first offense and a second degree felony for a subsequent offense. Persons or organizations found guilty of the revised third degree felony offense will be subject to imprisonment for not more than 5 years and a fine of up to \$5000. A second degree

felony is punishable by imprisonment for not more than 15 years and a fine of up to \$10,000. However, the number of additional violations that will occur under the revised prohibition is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Veteran & Military Affairs Subcommittee adopted an amendment and reported House Bill 1077 favorably with committee substitute. The amendment revises the "Solicitation of Contributions Act" to prohibit a person in connection with solicitations or charitable or sponsor sales promotions from falsely stating that he or she represents a veteran's charitable organization or sponsor that exists primarily for the benefit of veterans or their families if:

- The organization is not registered with the department as required under s. 496.405, F.S.;
- Having registered under s. 496.405, the organization did not describe in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families, including a general description of the benefit provided to veterans and their families; or
- Having registered under s. 496.405 and having described in its registration statement a manner of applying 51 percent or more of its contributions to benefit veterans or their families, including a general description of the benefit to veterans and their families, the organization failed to apply the contributions received in a manner consistent with the description in the registration statement.

This analysis is drafted to the committee substitute as passed by the Veterans & Military Affairs Subcommittee.