

**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.)

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Prepared By: The Professional Staff of the Committee on Military Affairs, Space, and Domestic Security

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BILL: SB 390

INTRODUCER: Senator Dean

SUBJECT: Veterans' Organizations

DATE: February 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	<b>Pre-meeting</b>
2.			CJ	
3.			JU	
4.			RC	
5.				
6.				

**I. Summary:**

Senate Bill 390 prohibits a business entity from holding itself out as a veterans' organization without the business entity proving by clear and convincing evidence that it operates primarily for the financial benefit and moral support of veterans and their families. The bill creates a first degree misdemeanor offense for a business entity that holds itself out as a veterans' organization which fails to provide clear and convincing evidence that it operates primarily for the financial benefit and moral support of veterans and their families.

In addition, the bill allows an affected veterans' organization to bring a civil action against a business entity in violation of the provisions in the bill to cease and desist its business practices while holding itself out as a veterans' organization. The bill allows the court to impose a civil penalty of up to \$500 and payment of court costs and attorney fees incurred by the plaintiff.

The bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

Veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans, while also providing opportunities for veterans to get involved with the larger community. Their particular roles and activities vary. 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.<sup>1</sup> Many of these organizations are military veteran services oriented organizations. The corporations listed in Title 36 are not agencies of the United States, and the charter does not assign any governmental attributes.<sup>2</sup> The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to the extent, it may provide them 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,<sup>3</sup> are required to have independent audits annually, and to have the reports of the audits submitted to Congress.<sup>4</sup> 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.<sup>5</sup> A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

- Has 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.<sup>6</sup>

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.<sup>7</sup>

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.<sup>8</sup> This directory also includes other

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

<sup>2</sup> 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. page 5.

<sup>3</sup> 36 U.S.C. Subtitle II

<sup>4</sup> 36 U.S.C. s. 10101

<sup>5</sup> 38 U.S.C. s. 5902

<sup>6</sup> 38 CFR s. 14.628

<sup>7</sup> *Id.*

<sup>8</sup> U.S. Department of Veterans Affairs. *Veterans and Military Service Organizations (Directory)*. Available at: [http://www1.va.gov/vso/VSO-Directory\\_2012-2013.pdf](http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf)

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.

### **Annual Registration with Department of Agriculture and Consumer Services**

Veterans' organizations that intend to solicit donations in Florida must 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 the DACS and provide certain financial and background information as well as pay initial and annual renewal fees.<sup>9</sup> Registration statements must contain prescribed information<sup>10</sup> and be accompanied by the appropriate fee.<sup>11</sup> Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.<sup>12</sup>

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

### **Federal and State Tax Exemptions for Veterans' Organizations**

Depending on its organization or purpose, a veterans' organization may be recognized as tax exempt from federal income tax under the following sections of 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
- 501(c)(2) – title holding corporations<sup>14</sup>

Veterans' organization need to meet specified criteria in order to be granted tax exempt status under the Internal Revenue Code. For example, section 501(c)(19), I.R.C., provides for an exemption from federal income tax for an organization of past or present members of the United States Armed Forces if:

- It is organized in the United States;
- 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

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<sup>9</sup> Chapter 496, F.S.

<sup>10</sup> Section 496.405(2), F.S.

<sup>11</sup> Section 496.405(4)(a), F.S.

<sup>12</sup> Section 496.406(3), F.S.

<sup>13</sup> Florida Department of Agriculture and Consumer Services. *Florida Charities Gift Givers' Guide*. Available at: <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx>

<sup>14</sup> Internal Revenue Service. *Tax Guide: Veterans' Organizations*. Available at: <http://www.irs.gov/pub/irs-pdf/p3386.pdf>

- No part of the net earnings of which 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.<sup>15</sup> 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 in Florida.

### III. Effect of Proposed Changes:

The bill prohibits a business entity from holding itself out as a veterans' organization without the business entity proving by clear and convincing evidence that it operates primarily for the financial benefit and moral support of veterans and their families. The bill creates a first degree misdemeanor offense for a business entity that holds itself out as a veterans' organization which fails to provide clear and convincing evidence that it operates primarily for the financial benefit and moral support of veterans and their families.

In addition, the bill allows an affected veterans' organization to bring a civil action against a business entity in violation of the provisions in the bill to cease and desist its business practices while holding itself out as a veterans' organization. The bill allows the court to impose a civil penalty of up to \$500 and payment of court costs and attorney fees incurred by the plaintiff.

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

#### **Other Potential Implications:**

The bill implies that every business entity doing business in this state currently operating as a veterans' organization must prove that it operates primarily for the financial benefit and moral support of veterans and their families. Business entities that have not provided this proof as of July 1, 2013, upon the bill becoming a law, will not be in compliance with the law. Additionally, the bill does not specify to whom a business entity must provide the proof and does not specify a process to do so.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>15</sup> Section 212.08(7)(n), F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Organizations found guilty of the newly created first-degree misdemeanor offense may be subject to a potential fine of up to \$1,000 and may also be subject to a civil penalty of up to \$500.

C. Government Sector Impact:

The Office of the State Courts Administrator notes a probable, though indeterminate, increase in judicial time and court workload associated with new civil and criminal processes.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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

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<sup>16</sup> Office of State Courts Administrator. 2013 Judicial Impact Statement for SB 390.