

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 821 Reimbursement of Assessments

SPONSOR(S): Civil Justice Subcommittee; Rooney

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Bond	Bond
2) Judiciary Committee	16 Y, 0 N	Bond	Havlicak

SUMMARY ANALYSIS

The Department of Veterans Affairs has a process for an individual to become an "accredited representative." These representatives assist a claimant (a veteran) in applying for veterans benefits or appealing a denial of such benefits. If successful, the department may withhold and pay to the accredited representative the representative's fee. The department assesses and deducts an administrative fee from the representative's fee equal to the lesser of 5% of the representation fee or \$100. The representative is prohibited from directly or indirectly charging the veteran for this administrative fee.

This bill provides that it is a second degree misdemeanor for any accredited representative to request, receive or obtain reimbursement of the administrative fee from the veteran.

This bill may have an insignificant fiscal impact on state or local governments.

The effective date of the bill is October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The United States Department of Veterans Affairs (VA) provides our veterans with various benefits, including disability, pension, health care, and life insurance benefits. Since the VA is an agency of the Federal government, disputes as to a veteran's entitlement to benefits are resolved through an administrative process rather than a judicial process. The VA determines who is qualified to represent or assist veterans in their claim for benefits. Therefore, a person must apply and be approved by the VA in order to assist or advise a person who is considering bringing a claim for benefits before the VA.¹ A representative does not need to be an attorney, though the accreditation requirements for attorneys and non-attorneys are different. Any non-attorney who meets certain character and fitness requirements, passes a written examination, and shows that he or she "is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department" can be approved to assist veterans with claims.² The VA refers to an approved attorney or approved claim agent as an "accredited representative."

An accredited representative may charge and collect a fee for his or her work representing a veteran, but that fee must be reasonable.³ A fee is presumed to be reasonable if the fee is under 20% and presumed to be unreasonable if it's over 33 1/3% of the past due benefits.⁴ The fee agreement between the veteran and the representative may provide for the VA to pay the representation fee directly to the accredited representative out of the benefit award if the fee is 20% or less of the total benefit award.⁵ For making a direct payment of the representative's fee, the VA charges the accredited representative an assessment⁶ equal to the lesser of 5% of the fee award or \$100.⁷ Federal law prohibits an accredited representative from directly or indirectly charging the claimant for this assessment.⁸

The statute also provides that "[w]hoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18,⁹ or imprisoned not more than one year, or both."¹⁰ It is possible that the action of an accredited representative in collecting a reimbursement of the representative's administrative fee would be a criminal offense under federal law.

Effect of the Bill

The bill provides that it is a second degree misdemeanor for any accredited person to request, receive or obtain reimbursement of the administrative fee from the veteran. A second degree misdemeanor is punishable by up to 60 days in jail or a \$500 fine or both.¹¹

B. SECTION DIRECTORY:

Section 1 creates s. 295.24, F.S., regarding prohibited reimbursements.

¹ 38 U.S.C. §§ 5901-04; 38 C.F.R. § 14.629(b)(1).

² 38 C.F.R. § 14.629(b)(1)(i), (b)(2).

³ 38 U.S.C. § 5904(a)(5)

⁴ 38 C.F.R. § 14.636(e) and (f)

⁵ 38 C.F.R. § 14.636(h)(i).

⁶ 38 U.S.C. § 5904(a)(6)(A).

⁷ 38 U.S.C. § 5904(a)(6)(B).

⁸ 38 U.S.C. § 5904(a)(6)(D).

⁹ Title 18 of the United States Code delineates federal crimes.

¹⁰ 38 U.S.C. § 5905.

¹¹ ss. 775.082(4)(b), 775.083(1)(e), F.S.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill may does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article V, section 15 of the Florida Constitution vests the power to discipline lawyers in the Florida Supreme Court, and Florida Bar Rule 4-1.5(a) prohibits fees that are illegal. Since charging the claimant this fee is already illegal under Federal law, the Florida Bar rules regulate this conduct. A court may find that this law is an indirect attempt to discipline a lawyer for what is otherwise an unethical billing practice that subjects the attorney to professional discipline. If so, the court could find the statute to violate the court's exclusive jurisdiction to discipline attorneys.

On the other hand, this law is applied equally to individuals who are not attorneys. An accredited representative does not have to be an attorney. Also, the law does not speak to whether or not an attorney found guilty of charging the administrative fee to the claimant must be professionally disciplined. Therefore, a court may find that the law does not regulate attorneys at all.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected the effective date to October 1, 2016, and reduced the penalty from a felony to a misdemeanor. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.