

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1351 Compensation for Advising or Assisting in Veterans' Benefits
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Eskamani and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1452

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N, As CS	Mwakyanjala	Darden
2) Civil Justice Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida is home to 21 military installations and more than 69,000 military personnel. Florida also has the nation's third-largest veteran population with almost 1.5 million veterans. The United States Department of Veterans Affairs (VA) and the Florida Department of Veterans' Affairs (FDVA) provide various benefits and services to veterans and their dependents.

FDVA employs veterans' claim examiners in order to assist veterans in securing earned services, benefits, and support. Counties and municipalities also may employ veterans service officers who may also assist in such matters. Subject to limitations, an accredited attorney or an agent may receive fees for securing federal veterans' benefits on a claimant's behalf.

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce and is based on federal law.

The bill creates the "Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act," providing a cause of action in order to prevent unethical conduct and improper collection of fees by individuals advising or assisting those filing claims for disability benefits before the VA or FDVA. The bill provides definitions to be used in the GUARD Act.

The bill prohibits any person from receiving compensation for preparing, presenting, or prosecuting a claim or advising, consulting, or assisting an individual regarding a veterans' benefits matter before the VA or FDVA, or for referring an individual to a person who would provide such services and assistance. The bill provides exceptions for permitted practices authorized by federal law and federal regulations and for attorneys.

The bill provides that those who receive compensation for preparing, presenting, or prosecuting a claim or advising, consulting, or assisting an individual regarding a veterans' benefits matter before the VA or FDVA must be held to the same ethical standard to which attorneys are held by in rules regulating a number of practices.

The bill provides that violating the GUARD Act is a deceptive and unfair trade practice and constitutes a violation of FDUTPA.

The bill does not appear to have a fiscal impact on local governments, but may have an indeterminate impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Department of Veterans' Affairs

The Florida Department of Veterans' Affairs (FDVA) is a nearly 1,500-member constitutionally chartered¹ department with a budget of \$201 million for FY 2023-24.² FDVA operates a network of nine state veterans' homes and provides statewide outreach to connect veterans and their spouses with services, benefits and support.³ FDVA is currently required to provide benefits and services in the fields of health care, mental health and substance abuse, claims support, education, employment, housing, burial benefits, and legal assistance to veterans and their spouses.⁴ Current law does not require FDVA to provide these benefits and services to the spouses of veterans.

Each year, about 250,000 servicemembers end military service as veterans and either reenter the civilian workforce or enroll in higher education.⁵ Florida is home to 21 military installations⁶ and 69,290 military personnel.⁷ Florida also has the nation's third-largest veteran⁸ population with almost 1.4 million veterans.⁹ Many of these veterans are recently transitioned servicemembers.

Veterans Claims Examiners

FDVA oversees and operates the Bureau of Veteran Claim Services (Bureau) within the Division of Veterans' Benefits and Assistance.¹⁰ Through the Bureau, veterans' claims examiners assist veterans in securing earned services, benefits, and support.

The FDVA houses claims examiner offices throughout the state, including at the U.S. Department of Veterans Affairs (VA) Regional Office in Bay Pine, each VA Medical Center, and many VA Outpatient Clinics.¹¹ Claims assistance is provided at no cost and covers all state and federal veterans' programs.

City and County Veteran Service Officers

Boards of county commissioners and governing bodies of municipalities may employ veteran service officers and prescribe their duties, compensation, and terms of employment.¹² Any veteran as defined by state law,¹³ or a surviving spouse of such veteran, may serve as a veteran service officer. The

¹ Art. IV, s. 11, Fla. Const.

² Ch. 2023-239, Laws of Fla., pg. 143.

³ Florida Department of Veterans' Affairs, *Florida Department of Veterans' Affairs – Our Vision and Mission*, <https://www.floridavets.org/leadership/> (last visited Feb. 3, 2024).

⁴ Florida Department of Veterans Affairs, *Benefits & Services*, <https://www.floridavets.org/benefits-services/> (last visited Feb. 3, 2024).

⁵ U.S. Department of Veterans Affairs, *Your VA Transition Assistance Program (TAP)*, <https://www.benefits.va.gov/transition/tap.asp> (last visited Feb. 3, 2024).

⁶ Select Florida, *Defense & Homeland Security*, 2, <https://selectflorida.org/wp-content/uploads/defense-and-homeland-security-industry-profile.pdf> (last visited Feb. 3, 2024).

⁷ Data from September 2021. Florida Military & Defense, *Economic Impact Summary* (2022), 2, <https://selectflorida.org/wp-content/uploads/Florida-2022-EIS-Summary-Book-Final.pdf> (last visited Feb. 3, 2024).

⁸ S. 1.01(14), F.S., defines a "veteran" as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions. The definition in s. 1.01(14), F.S., is cited in numerous statutes, including ss. 117.02, 265.003, 292.055, 295.02, 295.07, 295.187, 295.188, 296.02, 296.08, 296.33, 296.36, 409.1664, 548.06, 943.17, and 1009.26, F.S.

⁹ U.S. Department of Veterans Affairs (VA), National Center for Veterans Analysis and Statistics, *VetPop2020 by State, Age Group, Gender, 2020-2050*, available at https://www.va.gov/vetdata/veteran_population.asp (last visited Feb. 3, 2024). The Veteran Population Projection Model 2020 (VetPop2020) provides an official veteran population projection from the U.S. Department of Veterans Affairs.

¹⁰ S. 20.37(2)(b), F.S.

¹¹ Florida Department of Veterans' Affairs, *Claims*, <https://www.floridavets.org/benefits-services/claims/> (last visited Feb. 3, 2024).

¹² S. 292.11, F.S.

¹³ See s. 1.01(14), F.S., providing that a veteran is a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.

applicant must additionally have a minimum of a 2-year degree from an accredited institute of higher education or a high school degree or its equivalent and 4 years of administrative experience.

FDVA provides required training for county and city veteran service officers to assist veterans.¹⁴ Every county or city veteran service officer must pass a test administered by FDVA prior to assuming any responsibilities as a veteran service officer. FDVA establishes periodic training refresher courses with completion a condition of continuing employment.

Federal Law on Paid Services for Benefit Assistance of Veterans

Federal law governs the payment of fees by a claimant to an accredited agent or attorney for representation in securing federal veterans' benefits.¹⁵ An accredited attorney or an agent may receive fees for representation before an agency of original jurisdiction or the Board of Veterans' Appeals, subject to limitation.¹⁶

Fee Agreement

Federal law requires that a fee agreement include:

- The name of the veteran;
- The name of the claimant or appellant if other than the veteran;
- The name of any disinterested third-party payer and their relationship with the veteran, claimant, or appellant;
- The VA file number;
- Specific terms under which the amount to be paid for services is determined; and
- If the VA is to pay the agent or attorney directly out of past due benefits.¹⁷

A fee agreement must also include the following statement, signed by the provider:

I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.¹⁸

Amount of Fees

A fee charged for services must be reasonable, based on:

- The extent and type of services performed;
- The complexity of the case;
- The level of skill and competence required in giving the services;
- The amount of time spent on the case;
- The results achieved, including the amount of benefits recovered;
- The level of review to which the claim was taken and the representative retained;
- Rates charged by other representatives for similar services;
- Whether, and to what extent, the payment of fees is contingent upon the results achieved; and
- If applicable, why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits.¹⁹

A presumption of reasonableness applies if a fee does not exceed 20 percent of a past-due benefit if the representative provided continuous service through the date of the decision awarding benefits. If a fee exceeds 33 and 1/3 percent of a past-due benefit, it is considered unreasonable. Each presumption

¹⁴ S. 291.11(4), F.S.

¹⁵ 38 CFR s. 14.636

¹⁶ See 38 CFR ss. 14.636(c)(1)(i) and (ii), 38 CFR ss. 14.636(c)(2)(i) and (ii).

¹⁷ 38 CFR s. 14.636(g)

¹⁸ 38 CFR s. 14.636(d)(2)(iii)

¹⁹ 38 CFR s. 14.636(e)

is rebuttable upon a showing of clear and convincing evidence.²⁰ For contingent fees, a reasonable fee for an agent or attorney discharged by the claimant or who withdraws from representation before the date of the decision awarding benefits is one that fairly and accurately reflects the agent's or attorney's contribution to and responsibility for the benefits awarded.²¹

Filing of a Notice of Disagreement

A Notice of Disagreement is a filing by a claimant who disagrees with the decision made by the VA on a disability compensation claim. Although the claim decision by the VA becomes certified after 30 days, it isn't final until one year after the date of the decision. Therefore, the claimant can file a Notice of Disagreement at any time up to one year from the date of decision²²

The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.²³ The FDUTPA is based on federal law.²⁴

For example, Florida has determined that the following acts or practices are unfair or deceptive:

- Imposing unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency;²⁵
- Failing to abide by storage requirements for personal information and notice requirements for data breaches of such information;²⁶ and
- Failing to abide by requirements for weight-loss programs.²⁷

The state attorney or the Department of Legal Affairs (DLA) may bring FDUTPA actions, if it serves the public interest, on behalf of consumers or governmental entities.²⁸ The Office of the State Attorney (SAO) may enforce FDUTPA violations occurring in its jurisdiction. DLA has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.²⁹ Consumers may also file suit through private actions.³⁰

DLA and the SAO have powers to investigate FDUTPA claims, which include:

- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.³¹

DLA and the SAO, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;

²⁰ 38 CFR 14.636(f)(1).

²¹ 38 CFR 14.636(f)(2).

²² Veterans Administration, *VA News, How to File a Notice of Disagreement on your VA Compensation Claim*, available at <https://news.va.gov/33909/> (last visited Jan. 22, 2024).

²³ Ch. 73-124, Laws of Fla., and s. 501.202, F.S.

²⁴ D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011), <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1127&context=umlr> (last visited Feb. 3, 2024).

²⁵ S. 501.160, F.S.

²⁶ S. 501.171, F.S.

²⁷ S. 501.0579, F.S.

²⁸ Ss. 501.207(1)(c) and (2), F.S.; see s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period.); see also David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida), http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited Feb. 2, 2024).

²⁹ S. 501.203(2), F.S.

³⁰ S. 501.211, F.S.

³¹ S. 501.206(1), F.S.

- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.³²

FDUTPA may not be applied to certain entities in certain circumstances, including:

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.³³

Effect of Proposed Changes

The bill creates the “Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act,” providing a cause of action in order to prevent unethical conduct and improper collection of fees by individuals advising or assisting those filing claims for disability benefits before the VA or FDVA.

For purposes of the GUARD Act, the bill defines:

- “Compensation” means payment of any money, thing of value, or financial benefit.
- “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, , joint venture, public corporation, or any other legal or commercial entity.
- “Veterans’ benefits matter” means the preparation, presentation, or prosecution of any claim affecting any person who has filed or expressed an intent to file a claim for any benefit, program, service, commodity, function, or status the entitlement to which is determined under the laws and regulations administered by FDVA or the VA pertaining to veterans, their dependents, their survivors, and any other individual eligible for such benefits.

The bill prohibits any person from receiving compensation for preparing, presenting, or prosecuting a claim or advising, consulting, or assisting an individual regarding a veterans’ benefits matter before the VA or FDVA. The bill provides exceptions for permitted practices authorized by federal law and federal regulations.

The bill prohibits a person from receiving compensation for referring an individual to another person who prepares, presents, or prosecutes a claim or who advises, consults, or assists an individual with a veterans’ benefits matter before the VA or FDVA, excluding attorneys dividing fees as otherwise proper pursuant to American Bar Association’s Model Rules of Professional Conduct.

The bill requires individuals receiving compensation for preparing, presenting, or prosecuting a claim or advising, consulting, or assisting an individual regarding a veterans’ benefits matter before the VA or FDVA to be held to the same ethical standard to which an attorney is held in the rules regulating The Florida Bar regarding:

- Advertising;
- Solicitation of new clients;
- Confidentiality;
- Duty of care;
- Duty of honesty; and
- Duty to zealously pursue what is in the best interest of his or her client.

The bill provides that violating the GUARD Act is a deceptive and unfair trade practice and constitutes a violation of FDUTPA.

B. SECTION DIRECTORY:

³² Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into the General Revenue fund. Enforcing authorities may also request attorneyfees and costs of investigation or litigation. S. 501.2105, F.S.

³³ S. 501.212(4), F.S.

Section 1: Creates s. 294.225, F.S., relating to advising or assisting in veterans' benefits matters.

Section 2: Provides severability.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate impact due to the expenses necessary to prosecute any FDUTPA claim that may arise in order to enforce the GUARD Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will prohibit certain individuals from being compensated for preparing, presenting, or prosecuting a claim or advising, consulting, or assisting an individual regarding a veterans' benefits matter before the VA or FDVA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed associations and governmental entities from the list of persons prohibited from receiving compensation for assisting an individual regarding a veterans' benefits matter.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.