

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.)

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

BILL: CS/SB 348

INTRODUCER: Ethics and Elections Committee and Senators Gaetz and Collins

SUBJECT: Ethics

DATE: March 3, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Cleary</u> | <u>Roberts</u> | <u>EE</u> | <u>Fav/CS</u> |
| 2. | <u>Proctor</u> | <u>Proctor</u> | <u>MS</u> | <u>Pre-meeting</u> |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 348 makes the following changes to Florida’s ethics laws:

- Adds to the Code of Ethics a “stolen valor” provision prohibiting candidates, elected public officers, appointed public officers, and public employees from knowingly making certain fraudulent representations relating to military service.
- Expands the Attorney General’s existing authority to seek wage garnishment for unpaid fines imposed for failure to timely submit a required financial disclosure to also allow wage garnishment for other violations of ethics laws, if certain conditions are met.

The bill takes effect July 1, 2025.

II. Present Situation:

Commission on Ethics

The Commission on Ethics (commission) was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.¹ The Florida Constitution and state law designate the commission as the independent commission provided for in s. 8(g), Art. II of the Florida Constitution.² Constitutional duties of the

¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited February 14, 2025).

² Section 8(j)(3), art. II, Fla. Const.; s. 112.320, F.S.

commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.³ In addition to constitutional duties, the commission in part:

- Renders advisory opinions to public officials;⁴
- Conducts investigations into potential violations of the Code of Ethics or Florida Constitution based on referrals from select government agencies;⁵
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁶
- Administers the executive branch lobbying registration and reporting Laws;⁷
- Maintains financial disclosure filings of constitutional officers and state officers and employees;⁸ and
- Administers automatic fines for public officers and employees who fail to timely file a required annual financial disclosure.⁹

The Attorney General serves as counsel for the commission.¹⁰

Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)¹¹ establishes ethical standards for public officials and is intended to “ensure that public officials conduct themselves independently and impartially, not using their office for private gain other than compensation provided by law.”¹² The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, investigations and prosecutions of ethics complaints and referrals for alleged ethics violations, and the commission, among others.¹³

Unpaid Fines Imposed for Ethics Laws Violations

Current law prescribes automatic fines for late-filed financial disclosures¹⁴ and authorizes wage garnishment of public officers or public employees for unpaid fines.¹⁵

³ Section (8)(g), art. II, Fla. Const.

⁴ Section 112.322(3)(a), F.S.

⁵ Section 112.324(1)(b), F.S.

⁶ Section 112.322(2)(b), F.S.

⁷ Sections 112.3215, 112.32155, F.S.

⁸ Section 112.3144, F.S.

⁹ Section 112.3144, F.S.; s. 112.3145, F.S.; s. 112.31455, F.S.

¹⁰ Rule 34-5.006(1)(3), F.A.C.; r. 34-17.010(1)(3), F.A.C.

¹¹ See Pt. III, Ch. 112, F.S.; *see also* Art. II, s. 8(h)1, Fla. Const.

¹² Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited February 14, 2025).

¹³ See Pt. III, Ch. 112, F.S.

¹⁴ Section 112.31455, F.S.

¹⁵ *Id.* The law requires the Commission to determine whether the person who owes the fines is a current public officer or current public employee. If the Commission determines that the person is a current public officer or current public employee, then it may notify the Chief Financial Officer or governing body/board of the amount owed. After receipt and verification of the notice, the Chief Financial Officer or governing body/board must withhold the lesser of 10 percent, or the maximum allowable under federal law, from any salary-related payment. Florida’s wage garnishment laws are located in Title XV, Chapter 222, and Title VI, Chapter 77 of the Florida Statutes. But Florida has not imposed any stricter limits, so federal law

For unpaid fines that were imposed as a result of other ethics laws violations, commission counsel must seek judgments from courts.¹⁶ Wage garnishment is not authorized for such other violations.

“Stolen Valor”

Generally, “stolen valor” is the term used to describe the occurrence of an individual falsely representing himself or herself as a decorated military servicemember in an attempt to receive something of value for patriotic service that he or she never completed.¹⁷ Because of the accomplishments and sacrifices of military members, they are often bestowed in society with reverence, honor, and respect and afforded social, economic, and financial benefits for their earned accomplishments, service, and sacrifice.¹⁸ Further, studies have shown, due to the reverence citizens have to those who serve in the armed forces, citizens may be influenced to vote for such a candidate and under certain circumstances that might be determinative in an election.¹⁹

Documented cases involving stolen valor nationwide and in Florida²⁰ have led federal and state governments to attempt to regulate and punish offenders of stolen valor through legislation.

governs in Florida; *See* Consumer Credit Protection Act (“CCPA”) – 15 U.S.C. 1673(a) (The CCPA limits the amount of an individual’s disposable earnings available for garnishment. The limits are different for consumer debts, family support payments (child support and alimony), debts owed for federal or state taxes, and personal bankruptcy. Consumer debts include all debts not covered by the other categories. Garnishment for consumer debts must not exceed the lower of: 25 percent of disposable earnings, or, the amount by which disposable earnings exceed 30 times the federal minimum wage multiplied by the number of weeks (or part of a week worked); *See also Fact Sheet #30: Wage Garnishment Protections of the Consumer Credit Protections Act (CCPA)* United States Department of Labor Wage and Hour Division Web Page (last visited February 14, 2025, <https://www.dol.gov/agencies/whd/fact-sheets/30-cppa>; *Field Operations Handbook Chapter 16 Title III (PDF) – Consumer Credit Protection Act (Wage Garnishment)* United States Department of Labor Website (Last visited February 14, 2025), available at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch16.pdf.

¹⁶ Section 112.317(2), F.S.

¹⁷ *See* 18 U.S.C. § 704. The definition of stolen valor varies by each state depending on the state's stolen valor law.

¹⁸ *See Porter v. McCollum*, 558 U.S. ___, 130 S. Ct. 447 (2009) (per curiam) (The United States Supreme Court recognized the effect of decorated military service on public perceptions and behavior noting, for example in the context of sentencing “[o]ur Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines . . .”).

¹⁹ *See* Jeremy M. Teigen, *Do military veterans really win more elections? Only in ‘purple’ districts*, *The Washington Post*, (July 20, 2017), available at <https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/20/do-military-veterans-really-win-more-elections-only-in-purple-districts/>. Studies conducted showed Americans have a very high confidence in the military as an institution; no other institution enjoys higher levels. Status as a veteran had the biggest impact for candidates in primaries and in districts where the odds of winning are even for both parties “Purple Districts.”

²⁰ *See e.g. Polk man accused of stolen valor facing more charges as second victim comes forward*, News Channel 8 Website, (updated Feb 20, 2017), <https://www.wfla.com/news/polk-man-accused-of-stolen-valor-facing-more-charges-as-second-victim-comes-forward/>; *Stolen Valor: Man accused of impersonating Seal Team 6 member to solicit money outside WaWa*, Tampa Bay Times, (Published Aug. 14, 2015), <https://www.tampabay.com/news/publicsafety/crime/man-accused-of-military-impersonation-while-soliciting-money-for-veterans/2241216/>; Clifford Davis, *Document Jacksonville veteran showed First Coast News, claiming Times-Union error, is fraudulent*, *The Florida Times-Union* (Published 9:31 p.m. ET July 11, 2015), <https://www.jacksonville.com/story/news/2015/07/12/document-jacksonville-veteran-showed-first-coast-news-claiming-times/15671285007/>; Gary Detman, *Stolen Valor: Marine vet accused of misrepresenting the military, grand theft*, 12 News (Updated Mon, November 26th 2018 at 4:08 PM), <https://cbs12.com/news/local/stolen-valor-marine-vet-accused-of-misrepresenting-the-military-grand-theft/>; *St. Lucie County Resident Sentenced for Falsely Claiming Veteran Status and Theft of Government Benefits*, United States Attorney’s Office Southern District of Florida Webpage (Monday February 4, 2019, <https://www.justice.gov/usao-sdfl/pr/st-lucie-county-resident-sentenced-falsely-claiming-veteran-status-and-theft>

Federal Law

Prior to the Stolen Valor Act of 2005, it was only a crime to physically wear an unearned medal of valor.²¹ Courts interpreting that originally enacted language found the prohibition on falsely wearing or displaying military honors is constitutional.²² But, finding that the existing narrow prohibition did not deter individuals from making false claims about receiving medals, Congress in 2005 passed the 2005 Act,²³ which aimed to broaden the law enforcement’s capabilities to pursue not only those individuals who falsely display military medals, but also those who make false claims regarding earning military honors.²⁴ Specifically, section 704(b) of the Act punished individuals for falsely representing verbally or in writing to have been awarded a decoration or medal authorized by Congress for the armed forces.²⁵

In 2012, The United States Supreme Court in the case *United States v. Alvarez* addressed the constitutionality of the 2005 Act’s prohibition on false written or oral statements regarding the earning of an enumerated list of military medals or honors under Subsection 704(b) of the Act.²⁶ Alvarez an elected Director of a local water district board in California, at a public meeting, while introducing himself, lied about serving in the military and receiving the Congressional Medal of Honor.²⁷

The Supreme Court majority struck down Subsection 704(b) of the Act, finding that the false statements made by Alvarez, consisting of lies about being in the military and being awarded certain medals, were protected speech under the first amendment and that Subsection 704(b)’s regulation of such speech constituted a content-based restriction on pure speech.²⁸ Because

government; Jesse Scheckner, *Stolen Valor or smear? Police union PAC says Sheriff candidate lied about Army Service*, (Florida Politics), <https://floridapolitics.com/archives/687697-stolen-valor-or-smear-police-union-pac-says-sheriff-candidate-lied-about-army-service/>; Jacob Ogles, *Tal Siddique worked for the Air Force but never in uniform. Did he cross the ‘stolen valor’ line?* Florida Politics, (August 9, 2024), <https://floridapolitics.com/archives/688875-tal-siddique-worked-for-the-air-force-but-never-in-uniform-did-he-cross-the-stolen-valor-line/>; Ryan Gillespie, *Vets Find Military Records, Including Lake Candidate, Often Embellished*, Orlando Sentinel (Oct. 22, 2016), <http://www.orlandosentinel.com/news/lake/os-groveland-stolen-valor-20161021-story.html>.

²¹ See 18 U.S.C. § 1425 (1949) (prohibiting unauthorized wearing of Army and Navy decorations); *But see* 18 U.S.C. § 704 (1952) (adapting this version of the act from § 1425 “knowingly wear[ing], manufactur[ing], or sell[ing]” any military medal or ribbon without authorization under military regulations.”).

²² See *Schacht v. United States*, 398 U.S. 58, 61-61 (1970) (holding that prohibition against wearing military uniforms without authorization is facially constitutional); *See also United States v. Perelman*, 737 F. Supp. 2d 1221, 1238-39 (D. Nev. 2010) (holding that prohibition against wearing military medals without authorization under 18. U.S.C. § 704(a) is merely an incidental restriction on First Amendment rights that is outweighed by the substantial government interest in protecting the reputation of military awards that Congress has power to pursue through its power to make all laws necessary and proper to raise and support armies).

²³ Public Law 109 - 437 - Stolen Valor Act of 2005, 18 U.S.C. § 704(b) (2006). (“(b) False Claims About Receipt of Military Decorations or Medals. Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.”).

²⁴ *See, e.g.*, 151 Cong. Rec. 12,684, 12,688 (2005) (statement of Sen. Kent Conrad).

²⁵ 18 U.S.C. § 704(b).

²⁶ *United States v. Alvarez*, 567 U.S. 709 (2012).

²⁷ *Id.*, 567 U.S. at 713–14.

²⁸ *Id.*, 567 U.S. at 730-731. (the case was a 6-3 decision, the majority consisting of a Plurality opinion authored by Justice Kennedy and Concurring opinion authored by Justice Breyer).

Alvarez's false statements were protected speech, the government had to show adequate justification for the statute but failed to do so.²⁹

Importantly, the Court suggested how a statute could be drafted to pass constitutional muster if properly narrowed, appearing to link constitutionality to a prohibition against fraud.³⁰

Within a year of the United States Supreme Court's decision in *Alvarez*, Congress passed the Stolen Valor Act of 2013. The revised act narrowed the scope of the prohibition on falsely holding oneself out to be a recipient of certain military decorations by only subjecting those, who with the *intent to obtain money, property, or other tangible benefit, fraudulently hold themselves out to be a recipient* of certain military decorations.³¹ The 2013 Act also added an additional element of specific intent requiring that the fraud was committed for the purpose of obtaining money, property, or other tangible benefit.³² Further, the term "tangible benefit" was intended to cover those "valuable considerations" beyond money or property, such as offers of employment, which Justice Kennedy identified as appropriately prohibited benefits to a fraud.³³ The 2013 Act remains current federal law and has not been constitutionally challenged.

²⁹ *Id.*, 567 U.S. at 724. (within the majority, the Justices disagreed on the proper level of scrutiny to apply, with the Plurality choosing "exacting" scrutiny (strict scrutiny) and the Concurrence applying "intermediate" scrutiny. Both the Plurality and Concurrence found the government had an adequate government interest for the statute protecting the integrity of military honors. Both the Plurality and Concurrence determined that the Act was overbroad and not narrowly tailored enough to pass constitutional muster).

³⁰ The majority held that lies involving objective facts, such as lying about receiving a military medal, were constitutionally protected speech. *Id.* at 722. But the majority held that fraudulent speech is unprotected speech under the First Amendment and laws regulating fraudulent speech are constitutionally permissible. *Id.* at 723. The Plurality held there are a specific list of historically recognized categories of speech that are unprotected by the First Amendment and that fraudulent speech is one of those categories. *Id.* at 717-18. Therefore, regulations of fraudulent speech are constitutionally permissible. *Id.* The Concurrence rejected the Plurality's strict categorical analysis and instead argued each case should be reviewed under an intermediate scrutiny or proportionality review. *Id.* at 732. But the Concurrence agreed with the Plurality that statutes regulating fraud are constitutionally permissible because fraud statutes contain certain characteristics to ensure the law is properly narrowed to only regulate the unprotected fraudulent speech. *Id.* at 738-39. The Court in its reasoning made specific suggestions about how the Act could be amended to become constitutionally permissible. Specifically, Justice Kennedy for the Plurality, found the fatal flaw of the 2005 Act was that it "applie[d] to a false statement made at any time, in any place, to any person . . . And it does so entirely without regard to whether the lie was made for the purpose of material gain." *Id.* at 722-23. He continued that "[w]here false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment." *Id.* at 723. In this reasoning, Justice Kennedy was suggesting that the 2005 Act would be constitutional if it had focused on limiting fraudulent speech. Similarly, Justice Breyer for the Concurrence, reasoned a "more finely tailored statute" would be constitutional, if the statute required knowledge or falsity and "insist[ed] upon a showing that the false statement caused specific harm or at least was material, or focus its coverage on lies most likely to be harmful or on contexts where such lies are most likely to cause harm." *Id.* at 738; *See also United States v. Bonin*, 932 F.3d 523, 536 (7th Cir. 2019) *quoting McBride v. CSX Transp., Inc.*, 598 F.3d 388, 405 (7th Cir. 2010) (Court stating why they were following the Supreme Court's guidance in *Alvarez*, "[a]lthough the Court's observations on § 912 arose in dicta, they inform us where the Court stands. '[W]e must treat with great respect the prior pronouncements of the Supreme Court, even if those pronouncements are technically dicta.'").

³¹ H. Rept. 113-84 (2013).

³² *Id.*

³³ *Id.*

Florida Law

Florida's Military Code prohibits an unauthorized person from wearing a United States military uniform, any part of such uniform, or any similar uniform.³⁴ The prohibition does not require an intent to deceive. A violation of the prohibition is a first-degree misdemeanor. The law was challenged on First Amendment grounds in *State v. Montas*.³⁵ The Florida Fifth District Court of Appeals held that s. 250.43, F.S. was unconstitutionally overbroad and violates due process.³⁶

Under Florida's criminal code, a person may not misrepresent himself or herself as a member or veteran of the military or wear the uniform of, medal, or insignia of the military without authorization while soliciting for charitable contributions or for the purpose of material gain, including, but not limited to, obtaining employment or public office resulting in compensation.³⁷ The law allows individuals engaged in theatrical performances to wear military uniforms, medals, or insignia while performing.³⁸ A person who violates this law commits a felony of the third degree.³⁹

Current law also subjects candidates to a civil fine of up to \$5,000 for falsely representing in an election that they have served, or are serving, in the nation's military.⁴⁰

Stolen Valor Laws in Other States

Half the states today have laws specifically relating to stolen valor.⁴¹ After the United States Supreme Court decision in *Alvarez* and passage of the 2013 Act, the states reformed or drafted

³⁴ Section 250.43, F.S.

³⁵ 99 So. 2d 1128 (Fla. 5th Dist. 2008).

³⁶ *Id.*, 99 So. 2d at 1132. The court held that the statute addressed a compelling state interest in ensuring that the public is not deceived by people impersonating members of the military but failed to be narrowly tailored to ensure that there is no more infringement than is necessary to protect those interests because the statute has the potential to criminalize wholly innocent conduct. Further, the court found that the statute was overbroad and violated due process because it failed to include a specific intent element/requirement therefore the statute did not differentiate between innocent conduct and conduct intended to deceive the public and the court could not read a specific intent element into the statute as it is written.

³⁷ Section 817.312(1)(a) F.S.

³⁸ Section 817.312(1)(b), F.S.

³⁹ Section 817.312(2), F.S.; *See also* Local, Federal, and Veterans Affairs Subcommittee Hearing on HB 205 (November 6, 2019), <https://www.flhouse.gov/VideoPlayer.aspx?eventID=3057> (the original version of s. 817.312 became law in 2010, before the United States Supreme Court's opinion in *Alvarez*. In 2020, in response to the United States Supreme Court decision in *Alvarez*, and the continued documented cases of Stolen Valor in Florida the Legislature amended the law through CS/CS/HB 205. Co-Introducer Representative Sabatini stated that the bill was designed to clarify and further narrow the existing law's scope to further confirm with constitutional precedent. The bill was aimed at preventing candidates for public office from falsely misrepresenting that they had served in or had been awarded certain military awards in order to obtain employment or public office. Representative Sabatini stated that the bill was designed to provide clarity and a message to state prosecutors that s. 817.312, applied to these individuals and that they should be prosecuted under the law, which he suggested was not happening due to the uncertainty of the statute's current language. He stated the refining of the term "material gain" was designed to comply with constitutional precedents to appropriately narrow the statute, balancing the important rights under the First Amendment, while also protecting the public and individuals from harm.).

⁴⁰ Section 104.2715, F.S., This statute was introduced as SB 330 during the 2011 Regular Legislative Session before the Supreme Court's decision in *United States v. Alvarez*.

⁴¹ (**Alabama**) Ala.Code 1975 § 13A-8-10.5; (**Arkansas**) A.C.A. § 5-37-218; (**California**) Cal.Gov.Code § 3003 and Cal.Penal Code § 532b; (**Connecticut**) C.G.S.A § 53-378; (**Delaware**) 11 Del.C § 907C; (**Florida**) F.S.A § 817.312 and F.S.A § 104.2715; (**Georgia**) Ga. Code Ann., § 16-9-63; (**Illinois**) 20 ILCS 1805/101; (**Kentucky**) KRS § 434.444; (**Maine**) 17-A M.R.S.A. § 354; (**Massachusetts**) M.G.L.A. 272 § 106; (**Minnesota**) M.S.A. § 609.475; (**Missouri**) V.A.M.S.

their statutes to meet the Supreme Court's guidance by drafting their statutes to fall under a category of fraud. For example, states have included a knowledge and specific intent requirement to deceive for the purpose of obtaining a material benefit.⁴² Some state statutes mirror the 2013 Act, limiting the prohibition to fraudulent misrepresentations involving medals or honors.⁴³ Other state statutes prohibit further fraudulent representations involving other subject matters beyond military medals.⁴⁴ Some state statutes require that the offender actually obtain the benefit sought as a result of the fraud.⁴⁵ Other state statutes, like the 2013 Act, only require the act of the fraudulent representation with the specific intent.⁴⁶ States, similar to the 2013 Act, have defined the fraudulent benefit sought beyond merely financial to include other valuable considerations.⁴⁷

III. Effect of Proposed Changes:

Stolen Valor

The bill creates a new section, s. 112.3131, F.S., under the Code of Ethics.

This section provides definitions for the terms "Armed Forces of the United States,"⁴⁸ "Servicemember,"⁴⁹ and "Material gain".⁵⁰ The definition of "Material gain" includes a detailed nonexclusive list of material valuable considerations beyond money or property.

570.350; (**Nebraska**) Neb.Rev.St. § 28-645; (**Nevada**) N.R.S. 205.412; (**New Jersey**) N.J.S.A. 38A:14-5; (**New Mexico**) N.M.S.A. 1978. § 20-11-5; (**Oklahoma**) 72 Okl.St. Ann. § 6-1; (**Oregon**) O.R.S. § 162.365; (**Pennsylvania**) 18 Pa.C.S.A. § 6701; (**Rhode Island**) Gen.Laws 1956 §11-70-1; (**South Carolina**) Code 1976 § 16-17-760; (**Tennessee**) T.C.A. § 39-16-301; (**Texas**) V.T.C.A. Penal Code § 32.54; (**Utah**) U.C.A. 1953 § 76-9-706; (**Virginia**) VA Code Ann. § 18-2-177.1; (**Wisconsin**) W.S.A. 946.78.

⁴² See (**Pennsylvania**) 18 Pa.C.S.A. § 6701 (with intent to obtain money, property or other benefit); See (**Delaware**) 11 Del.C § 907C. (with the purpose of obtaining money, property, or other tangible benefit); (**Alabama**) Ala.Code 1975 § 13A-8-10.5 (in order to receive, or attempt to receive, a material gain).

⁴³ See (**Connecticut**) C.G.S.A. § 53-378.

⁴⁴ See (**Kentucky**) KRS § 434.444 (prohibition on misrepresenting: current or former military status, entitlement to wearing military awards, serving in a combat zone, any actual military service); (**Arkansas**) A.C.A. § 5-37-218 (prohibition on misrepresenting: being an active member of military or veteran; being recipient of a military decoration; awarded qualification or military occupational specialty; being a prisoner of war). See also (**California**) Cal.Penal Code § 532b.

⁴⁵ See (**Massachusetts**) M.G.L.A. 272 § 106 (obtains money, property, or another tangible benefit through such fraudulent representation); See also (**Nebraska**) Neb.Rev.St. § 28-645; (**Nevada**) N.R.S. 205.412.

⁴⁶ See (**Connecticut**) C.G.S.A. § 53-378; (**Pennsylvania**) 18 Pa.C.S.A. § 6701; (**South Carolina**) Code 1976 § 16-17-760.

⁴⁷ (**South Carolina**) Code 1976 § 16-17-760 (government benefits, employment or personnel advancement, effect outcome of criminal or civil court proceeding, effect on an election (presumed if the representation is made by a candidate for public office)); (**Texas**) V.T.C.A. Penal Code § 32.54 (government resources, employment preference, obtain license or certificate to practice in profession, obtain promotion, obtain donation, obtain admission in educational program, gain position in government with authority over another person, regardless of whether the actor receives compensation for the position); (**Wisconsin**) W.S.A. 946.78 (financial, an effect on criminal or civil proceeding, an effect on an election, any state benefit for military); See also (**California**) Cal.Penal Code § 532b; (**Georgia**) Ga. Code Ann., § 16-9-63.

⁴⁸ "Armed Forces of the United States" has the same meaning as in s. 250.01 and includes the National Guard of any state ("means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.").

⁴⁹ "Servicemember" has the same meaning as in s. 250.01 ("means any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.").

⁵⁰ "Material gain," ("means anything of value, regardless of whether such value is monetary, remunerative, or tangible, which is received by or given to, or is intended to be received by or given to, an individual. The term includes, but is not limited to, food; lodging; compensation; travel expenses; placards; public benefits; public relief; financial relief; obtaining or retaining employment or a promotion in such individual's current employment or public employment, including gaining a position in state or local government with authority over another person, regardless of whether the individual receives compensation or

This section prohibits a candidate, an elected public officer, an appointed public officer, or a public employee, for the purpose of material gain, from knowingly doing any of the following:

- Making fraudulent representations that he or she is or was a servicemember or veteran of the Armed Forces of the United States.
- Making fraudulent representations that he or she was a recipient of a decoration, medal, title, or honor from the Armed Forces of the United States or otherwise related to military service from a nonexclusive list of medals and honors.⁵¹
- Making fraudulent representations that he or she is a holder of an awarded qualification or military occupational specialty from a nonexclusive list.⁵²
- Making fraudulent representations that he or she actively served in the Armed Forces of the United States during a wartime era, regardless of whether there was a declared war, or served in combat operations, or was a prisoner of war.
- Wearing the uniform or any medal or insignia authorized for use by members or veterans of the Armed Forces of the United States which he or she is not authorized to wear.
 - This subsection does not prohibit individuals in the theatrical profession from wearing such uniforms, medals, or insignia during a performance while engaged in such profession.

Violators of this section are subject to the administrative penalties under s. 112.317, F.S., of the Code of Ethics.⁵³

This section does not preclude prosecution for similar conduct which is prohibited by another law.⁵⁴

Wage Garnishment

The bill creates new paragraphs (b)-(d) to s. 112.317(2), F.S., giving the Commission through the Attorney General's office a greater ability to collect unpaid fines, stemming from judgements of ethics complaints.⁵⁵ Paragraph (b) establishes that a civil penalty or restitution penalty, for

remuneration for his or her service in the position; obtaining or retaining state or local public office through election or appointment; or anything in which or for which a tangible benefit was gained, even if the value of such benefit is de minimis.”).

⁵¹ Nonexclusive list of honors includes: Air Force Combat Action Medal; Air Force Cross; Combat Action Badge; Combat Action Ribbon; Combat Infantryman Badge; Combat Medical Bage, Distinguished Service Cross; Medal of Honor; Navy Cross; Purple Heart; Silver Star Medal.

⁵² Nonexclusive list includes: Aircraft Pilot, Navigator, or Crew Member; Explosive Ordinance Disposal Technician; Parachutist; United States Army Ranger; United States Navy Seal or Diver; United States Special Operations Forces Member.

⁵³ Penalties under the Code of Ethics for public officers may include: impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of no more than 1/3 of his salary per month for no more than 12 months, civil penalty up to \$20,000, and restitution. Penalties for employees may include: dismissal, suspension for up to 90 days without pay, demotion, reduction in salary level, forfeiture of no more than 1/3 of salary per month for no more than 12 months, civil penalty up to \$20,000, restitution, and public censure and reprimand. Penalties for a candidate may include: disqualification from being on the ballot, public censure, reprimand, and civil penalty up to \$20,000.

⁵⁴ See e.g., s. 250.43, F.S.; s. 817.312, F.S.; s. 104.2715, F.S.

⁵⁵ See Kerrie Stillman, Executive Director on Commission on Ethics Memorandum: Legislative Recommendations for 2025 (November 20, 2024), available at

violations of the Code of Ethics, is considered delinquent if the individual has not paid such penalty within 90 days after the penalty is imposed by the commission. Paragraph (b) requires the Attorney General to determine whether the person who owes the fine is a current public officer or current public employee. If the Attorney General determines that the person is a current public officer or current public employee, then the Attorney General must notify the Chief Financial Officer or governing body/board of the amount owed. After receipt and verification of the notice, the Chief Financial Officer or governing body/board must withhold the lesser of 25 percent, or the maximum allowable under federal law from any salary-related payment. Additionally, the Chief Financial Officer or the governing body or board may retain an amount of each withheld payment, as provided in s. 77.0305, to cover the administrative costs incurred.

Under paragraph (c), the Attorney General may refer any unpaid civil penalty or restitution penalty to the appropriate collection agency as directed by the Chief Financial Officer and such collection agency may use any collection method authorized by law.

Under paragraph (d), the bill creates a 20-year statute of limitations for the Attorney General to collect any unpaid civil penalty or restitution penalty stemming from a violation of the Code of Ethics in an ethics complaint.

The bill becomes effective on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has issued numerous opinions defining the constitutional parameters of regulating speech under the First Amendment. Analyzing the constitutionality of a statute regulating speech involves a multistep analysis: Does the

statute regulate speech based upon its content?;⁵⁶ If the speech qualifies as a content-based regulation, does the regulated speech fall into a category of unprotected speech under the First Amendment?;⁵⁷ and, even if the speech qualifies as unprotected speech, is the regulation impermissibly vague⁵⁸ and drafted to be viewpoint neutral?⁵⁹

The United States Supreme Court in *Alvarez*, held, in striking down the Stolen Valor Act of 2005, that mere lies involving receiving honors are protected speech under the First Amendment and that a statute, such as the 2005 Act, regulating such speech is a content-based regulation.⁶⁰ A content-based regulation must pass a higher standard of review to be constitutional.⁶¹ The 2005 Act was struck down as failing that higher standard test because it was overbroad regulating protected speech and not adequately narrowly tailored.⁶² The Supreme Court in *Alvarez* held that a statute regulating fraudulent speech is constitutionally permissible and not subject to the higher standard of review because fraudulent speech is an unprotected category of speech under the First Amendment.⁶³ The Supreme Court in *Alvarez*, suggested a statute regulating fraudulent speech drafted to require a knowledge, and specific intent element, would be constitutionally permissible and not overbroad, so long as the statute was not vague and is viewpoint neutral.⁶⁴ (For further detail refer to the Present Situation “Stolen Valor” section above).

This bill prohibits public officials from making fraudulent representations regarding military service for the purpose of material gain.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵⁶ *Rappa v. New Castle Cnty.*, 18 F.3d 1043, 1053 (3d Cir. 1994) (“[T]he first step in First Amendment analysis has been to determine whether a statute is content-neutral or content-based.”); *See Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 643, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994). “Content-based regulations are defined as those that distinguish favored from disfavored speech based on the ideas expressed.”

⁵⁷ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942).

⁵⁸ *See Alvarez*, 567 U.S. at 572-73; *See e.g. Reno v. ACLU*, 521, ACLU U.S. 844, 871-72 (1997).

(A statute is void for vagueness under a First Amendment analysis because it chills protected speech by encouraging individuals to self-censor their lawful speech for fear of prosecution).

⁵⁹ *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829, 115 S. Ct. 2510, 2516, 132 L. Ed. 2d 700 (1995) (Viewpoint discrimination occurs whenever a government targets “not [a] subject matter, but particular views taken by speakers on a subject....”).

⁶⁰ *Alvarez*, 567 U.S. at 730-31.

⁶¹ *Id.*, 567 U.S. at 724. (within the majority, the Justices disagreed on the proper level of scrutiny to apply to lies involving military awards, with the Plurality choosing “exacting” scrutiny (strict scrutiny) and the Concurrence applying “intermediate” scrutiny.; *See ACLU v. Ashcroft*, 322 F.3d 240, 251 (3d Cir.2003) quoting *Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126, (1989) (“Strict scrutiny requires that a statute (1) serve a compelling governmental interest; (2) be narrowly tailored to achieve that interest; and (3) be the least restrictive means of advancing that interest.”); *See United States v. O'Brien*, 391 U.S. 367, 377 (1968) (Intermediate scrutiny requires that a regulation “(1) furthers an important or substantial governmental interest; (2) the governmental interest is unrelated to the suppression of free expression; and (3) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”).

⁶² *Alvarez*, 567 U.S. at 730-731.

⁶³ *Id.*, 567, U.S. at 723.

⁶⁴ *Id.*, 567 U.S. at 722-23 (Plurality) and 738 (Concurrence).

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate fiscal impact on the commission, Attorney General and the Chief Financial Officer, but most likely any fiscal impact will be insignificant.

Any fiscal impact would be due to increases in expenses and man hours due to potential increases in the number of complaints received, investigated, and enforced, involving the new prohibition under s. 112.3121, F.S., as well as the greater ability to collect unpaid fines stemming from judgements of ethics complaints.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 112.317.
This bill creates the following section of the Florida Statutes: 112.3121.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on February 18, 2025:

- Adds a provision to proposed paragraph (b) of s. 112.317 that a civil penalty or restitution penalty, for violations of the Code of Ethics, is considered delinquent if the individual has not paid such penalty within 90 days after the penalty is imposed by the commission.

B. Amendments:

None.