

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 399](#)

TITLE: Ethics

SPONSOR(S): Maney

COMPANION BILL: [CS/SB 348](#) (Gaetz)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Rules & Ethics](#)

16 Y, 0 N, As CS

[Judiciary](#)

[State Affairs](#)

SUMMARY

Effect of the Bill:

The bill adds a “Stolen Valor” provision to Florida’s ethics laws through the creation of [s. 112.313, F.S.](#) The provision imposes civil penalties on any candidate, elected or appointed government officer, or public employee that misrepresents aspects of their military service, whether directly or indirectly, and then actually receives or is the intended recipient of a benefit, even if the benefit is intangible or its value is de minimis.

The bill establishes the procedure for collecting penalties imposed by the Commission on Ethics, by authorizing the withholding of 25 percent of an employee’s salary under certain circumstances, and creates a process for referring unpaid penalties to a civil collection agency.

Fiscal or Economic Impact:

The bill may result in increased expenses by the Commission on Ethics, Office of the Attorney General, and the Chief Financial Officer, as well as municipal governments, as a result of the processes related to investigating ethics violations and collecting delinquent civil and restitution penalties. The bill provides that such collection costs may be recouped from the violator. Accordingly, any resulting net-increase in expenses is likely to be insignificant.

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ANALYSIS

EFFECT OF THE BILL:

Expanding the Stolen Valor Provision

The bill creates [s. 112.3131, F.S.](#), titled “Stolen Valor,” which prohibits any candidate, elected or appointed public officer, or any public employee from “misrepresent[ing] by making false, fictitious, or fraudulent statements or representations, directly or indirectly” various aspects of their military service, and penalizes benefitting from such misrepresentations through receipt of a “material gain”. (Section [1.](#))

As defined in the bill, “material gain” includes any gain whether tangible or intangible even if the value of such gain is de minimis. A person is in receipt of prohibited material gain if the gain is given to or received by that person or is intended to be given to or received by that person. (Section [1.](#))

The bill prohibits any candidate, elected public officer, appointed public officer, or public employee from misrepresenting by false, fictitious, or fraudulent statements or representations, either directly or indirectly, if the misrepresentation alludes to the fact that:

Service in The Armed Forces

The person is or was a servicemember or veteran of the Armed Forces of the United States. (Section [1.](#))

Honors or Awards

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The person is a recipient of certain decorations of the armed forces. The section includes a list of combat decorations that are awarded based on participation in a military operation as well as technical criteria, and specifies that the list of awards is not all inclusive. (Section [1](#)).

Qualification or Occupational Specialty

The person is the holder of military qualification or occupational specialty such as aircraft pilot, navigator or crew member, explosive ordnance disposal technician, parachutist, Navy SEAL or diver, United States Special Operations Forces member, United States Army Ranger, or other military occupation specialty. The section specifies that the list is non-inclusive. It may therefore include any of the thousands of military occupational specialties. (See below: Other Resources) (Section [1](#)).

Wartime Service

The person actively served in the Armed Forces of the United States during a wartime era, regardless of whether there was a declared war, or that they served in combat operations in a war zone or were a prisoner of war. (Section [1](#)).

The bill also prohibits anyone subject to the provision from wearing any uniform or decoration awarded to members of the Armed Services that they are not entitled to wear. The bill specifically exempts members of the theatrical profession from this prohibition while they are engaged in such professional activity. (Section [1](#)).

Administrative Procedure for Collecting Penalties

Subsection (2) of [s. 112.317, F.S.](#), regarding penalties imposed for ethical violations, is amended to provide an administrative process for collecting delinquent civil or restitution penalties resulting from ethical violations. A civil or restitution penalty is delinquent if the penalty has not been paid within ninety days of the date it was imposed. This section provides that if the Attorney General determines that a party against whom a penalty has been assessed is a public employee, and said penalty has become delinquent, the Attorney General must notify the Chief Financial Officer (CFO) or the governing body by which the person is employed of the total penalty that the individual owes. Following notification, the CFO or governing body shall withhold the lesser of 25 percent of the violator’s salary or the maximum amount allowed by federal law until the total amount of the penalty and all administrative fees have been recouped. (Section [2](#)).

In the event of non-payment, or when withholding is not available, the Attorney General, as directed by the CFO, may refer the matter to a collection agency or take any action to collect the unpaid civil penalty within 20 years of the date that the penalty is ordered. (Section [2](#)).

The effective date of these changes is July 1, 2025. (Section [3](#)).

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Federal Law

Congress has made two attempts at addressing the misrepresentation of various aspects of military service. The Stolen Valor Act of 2005 made it a misdemeanor to make “false claims about the receipt of military decorations...verbally or in writing.”¹ The 2005 act was found to be unconstitutional by the United States Supreme Court in the 2012 in *United States v. Alvarez*.² At issue in *Alvarez* was the criminalization of “false statements” and whether that amounted to a regulation of speech based on the content of the speech. (See below The Supreme Court & Stolen Valor). The 2005 Act was amended by the Stolen Valor Act of 2013 in order to bring the language of the Act in compliance with the *Alvarez* decision. The 2013 Act amended the language to eliminate “false statements...” and replace it with “fraudulent representations,” adding that the representation be made “with intent to obtain money, property, or other tangible benefit.”³

¹ 18 U.S.C. § 704(b), (2006) As amended by [Stolen Valor Act of 2005](#)

² *United States v. Alvarez*, 567 U.S. 709 (2012)

³ 18 U.S.C. § 704(b), (2013) As amended by [Stolen Valor Act of 2013](#)

Florida Law

Section [817.312, F.S.](#) prohibits a person from misrepresenting their military service in a few specific circumstances. A person must either be representing that they are serving or have served when they, in fact, have not; or wearing a uniform, medal, or insignia authorized for wear by members of the armed services, which the person is not entitled to wear. The misrepresentation⁴ must take place in an attempt to solicit “material gain”⁵, including but not limited to, a charitable contribution, or seeking to obtain an office or position of employment that will result in receiving compensation. A person who violates this section commits a felony of the third degree.

The language of the bill is more expansive than the criminal statute by expanding the scope of the terms “misrepresentation” and “material gain.” (Section [1](#)).

Under the bill’s Stolen Valor provision, a person has committed a misrepresentation if they make a false, fictitious, or fraudulent statement or representation, whether it is made directly or indirectly. This language is broader than the language of Florida’s existing criminal provision as well as the 2005 and 2013 federal Stolen Valor Acts.

The Supreme Court & Stolen Valor:

The United States Supreme Court defines content-based speech regulation as speech or expression that is restricted based on “its message, its ideas, its subject matter, or its content.”⁶ In light of the “substantial and expansive”⁷ threats posed by such restrictions, the Court has held that any such restriction is presumed invalid, and the government bears the burden of proving its necessity.⁸ In the past, the Court has declined to assess content-based speech restriction based on a case-by-case balancing of social costs and benefits, holding that this practice is “startling and dangerous.”⁹ Content-based restrictions are only permitted with regard to a few, select categories of speech¹⁰, and the Court has clarified that “absent from those few categories where the law allows content-based regulation of speech, is any general exception to the First Amendment for false statements.”¹¹

Content-based restriction of free expression was the issue in *United States v. Alvarez* in 2012. *Alvarez* was a member of a public utility board in California – a government official. At a public meeting of the board, Alvarez introduced himself and stated that he had retired from the Marine Corps after 25 years of service, and went on to say that he had received the Congressional Medal of Honor in 1987 after being wounded in action.¹² Alvarez was convicted of violating 18 U.S.C. § 704 (b), (c), as amended by the Stolen Valor Act of 2005. On appeal to the Ninth Circuit Court of Appeals, the Act was held to be unconstitutional and his conviction was vacated. On appeal to the United States Supreme Court, the judgment of the lower court was affirmed.

The Supreme Court began its opinion by reiterating that the statement made by Alvarez about receiving the Medal of Honor was an “intended and undoubted lie.”¹³ Nonetheless, the court went on to note that even in the face of a lie, content-based speech regulation must be judged by the principles of the first amendment, even if those

⁴ “Misrepresentation” is not defined for the purposes of [817.312, F.S.](#), but the section’s inclusion among fraud crimes suggests the requirement that the misrepresentation be made knowingly and willfully.

⁵ “Material gain” is not defined for the purposes of [817.312, F.S.](#), but the language of the statute includes charitable contributions, tangible gain, and efforts directed at obtaining employment or public office.

⁶ See *United States v. Alvarez*, 567 U.S. 709, 715 (2012) (quoting *Ashcroft v. AM. Civil Liberties Union*, 535 U.S. 564, 573 “[A]s a general matter, ‘the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’”)

⁷ See *United States v. Alvarez*, 567 U.S. 709, 715 (2012).

⁸ *Id.* at 717. (quoting *Ashcroft v. AM. Civil Liberties Union*, 542 U.S. 656, 660).

⁹ *Id.* (quoting *United States v. Stevens*, 559 U.S. 460, 570 (2010)).

¹⁰ *Id.* at 717. (Content-based restrictions on speech have been permitted only when the speech belongs to one of the following categories: incitement of imminent lawless action, obscenity, defamation, speech integral to criminal conduct, fighting words, child pornography, fraud, true threats, and speech that presents a grave and imminent threat that the government has the power to prevent).

¹¹ *Id.* at 718.

¹² See *United States v. Alvarez*, 567 U.S. 709, 714 (2012). (Quoting *United States v. Alvarez*, 617 F.3d 1198, 1200: Alvarez: “I’m a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy. I’m still around.”)

¹³ *Id.*

principles are sometimes inconvenient.”¹⁴ The Court elaborated that because Alvarez’s false statement was being punished, not because of what he said, but because of the content that his statement addressed, the government had failed to show that a restriction of such content was “actually necessary” or that the government-imposed restriction was the least restrictive means of achieving the goal of the statute i.e., that counter-speech and confronting lies with the truth would not have been effective.¹⁵

The Court distinguished *Alvarez* from cases that involve false statements made to perpetrate a fraud and obtain money or a valuable consideration, in which case restriction and appropriate penalties may be justified. The Stolen Valor Act of 2005 did not narrowly tailor its restriction to fraud, nor did it offer any definition of what tangible benefit a person would need to receive to be in violation of the Act. The Stolen Valor Act of 2013 more narrowly focused the restrictions of 18 U.S.C. § 704(b) on speech used in furtherance of a fraud, and further required an intent to obtain a “tangible benefit.”¹⁶ Lacking a narrow restriction to fraud and any articulable sense of how receipt of material gain or valuable consideration could be applied to the law, the Court decided the case based on the issue at its core: content-regulated speech. To conclude, the court acknowledged that “few might find [Alvarez’s] statements anything but contemptible, [but] his right to make those statements is protected by the Constitution’s guarantee of freedom of speech and expression.”¹⁷

Justice Breyer, concurring in the *Alvarez* judgment, thought that the application of exacting scrutiny was not necessarily appropriate in the case, and instead chose to apply the more forgiving standard of intermediate scrutiny. The conclusion of the concurrence was that even under a less exacting standard, the Stolen Valor Act of 2005 ran afoul of the First Amendment because its broad terms failed to appropriately limit its application.¹⁸

OTHER RESOURCES:

[Military Occupational Specialties](#)

[Case Brief: *United States v. Alvarez*](#)

[Majority Opinion, Kennedy: *United States v. Alvarez*](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Rules & Ethics Committee	16 Y, 0 N, As CS		Havlicak	Barrineau
THE CHANGES ADOPTED BY THE COMMITTEE:	Defines “delinquent” civil or restitution penalty as a penalty that has not been paid within ninety days of that date that the penalty was imposed.			
Judiciary Committee				
State Affairs Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

¹⁴ *Id.* at 716.

¹⁵ *Id.* at 729.

¹⁶ 18 U.S.C. § 704(b), (2013) As amended by [Stolen Valor Act of 2013](#)

¹⁷ See *United States v. Alvarez*, 567 U.S. 709, 729-30 (2012).

¹⁸ See also, *United States v. Alvarez*, 567 U.S. 709, 730-39 (2012).