



Committee on Military & Veterans' Affairs

**Wednesday, March 14, 2007
1:45 - 4:00 PM
12 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Military & Veterans' Affairs

Start Date and Time: Wednesday, March 14, 2007 01:45 pm

End Date and Time: Wednesday, March 14, 2007 04:00 pm

Location: 12 HOB

Duration: 2.25 hrs

Consideration of the following bill(s):

HB 435 Rights of Military Personnel by Harrell

HB 1119 Assistance for Dependents of Service Members on Active Duty by Kreegel

HB 1159 Unauthorized Use of the Name or Image of a Member of the Armed Forces for Business Purposes by Grimsley

Budget workshop to finalize FY2007-08 budget recommendations for the Department of Military Affairs

NOTICE FINALIZED on 03/12/2007 15:23 by Villar.Melissa

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides for limited government: This bill prohibits modification of a child custody order while a parent is activated to military service unless there is clear and convincing evidence that modification is in the best interest of the child, and provides further limitation on the courts' ability to modify custody orders related to military personnel.

B. EFFECT OF PROPOSED CHANGES:

CURRENT LAW

I. Current Law Regarding the Custody of Minor Children

a. Rights of Parents

The "parent and child relationship" is the legal relationship existing between a child and his or her natural or adoptive parents, and includes the mother and child relationship and the father and child relationship. The word "father" does not ordinarily apply in a legal sense to a stepfather.¹

Like the law of other domestic relations, state law rather than federal law governs the law of parent and child.² Custody embraces the sum of parental rights with respect to the rearing of a child, including its care. Parents have a natural and a legal right to the custody of their children, but this right is subject to the power of the state and may be restricted by appropriate legislative or judicial action.³

The Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. A child's welfare is presumed to be best served by the care and custody of the natural parent except in cases of clear, convincing, and compelling reasons to the contrary. Although the right to the integrity of the family is among the most fundamental rights, the parent's rights are subject to overriding concern for the ultimate welfare or best interest of the child.⁴ Conditions that might justify relieving a parent temporarily of the custody of a child would not necessarily support absolute and permanent transfer of the child to a stranger or even other near-kin.⁵

b. Determining Custody of Children

The trial court determines the initial custody of children in dissolution of marriage proceedings pursuant to the guidelines in s. 61.13, F.S., which requires all matters related to the custody of a minor child to be determined in accordance with the best interest of the child.⁶ In determining the best interest of a child, the court must consider all factors affecting the welfare and interests of the child.⁷ The prime and controlling consideration in awarding custody is the best interest and welfare of the child, not the rights of the parents.

¹ 25 Fla. Jur 2d, Family Law, s. 87; 59 Am. Jur. 2d, Parent and Child, s. 2.

² 25 Fla. Jur 2d, Family Law, s. 87.

³ 25 Fla. Jur 2d, Family Law, s. 91.

⁴ 25 Fla. Jur 2d, Family Law, s. 94.

⁵ 25 Fla. Jur 2d, Family Law, s. 94.

⁶ s. 61.13(2)(b)(1), F.S.

⁷ s. 61.13(3), F.S.

The Legislature has declared “[i]t is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child.”⁸ The statutes require parental responsibility for a minor child to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child.⁹ The inherent rights of parents to enjoy the society and association of their children, with reasonable opportunity to impress upon them a parent’s love and affection in their upbringing, must be regarded as an important consideration in determining custody.¹⁰

c. Modification of Custody Award

Section 61.13(2)(c), F.S., grants continuing authority to the courts to modify a previous custody order, including orders pertaining to the children of military personnel. The statutes do not, however, specify the circumstances that justify modification of custody orders or provide specific standards for review. Therefore, modifications are governed by tests developed by the courts in case law. Under the current case law, “[a] trial court’s authority and discretion in a modification proceeding are more restricted than at the time of the initial custody determination,” and the party seeking modification has an “extraordinary burden” to show that there has been a substantial change in circumstances and that modification is in the child’s best interest.¹¹

In 2005, the Florida Supreme Court articulated the following two-part “substantial change test” that applies in all modification proceedings: A final divorce decree providing for the custody of a child may be materially modified only if (1) there are facts concerning the welfare of the child that the court did not at the time the original decree was entered and (2) there has been a change in circumstances shown to have arisen since the original decree was issued.¹²

The court concluded that the party seeking modification is not required to prove that the changed circumstances are a “detriment” to the child; rather, the party must show that a change of custody would promote the child’s best interest.¹³ The best interest of the child, rather than the best interest of a parent or relative, is paramount in modification of custody.¹⁴

Therefore, in seeking modification of custody, the party seeking modification must show both that the circumstances have substantially and materially changed since the original custody determination and that the child’s best interest justify changing custody.¹⁵ Further, the substantial change must be one that was not reasonably contemplated at the time of the original determination.¹⁶ In a modification proceeding, there is a presumption in favor of the custodial parent, and the non-custodial parent seeking modification bears an extraordinary burden.¹⁷

d. Rights as Between Parent and Third Person

In a custody dispute between a parent and a third person, the rights of the parent are paramount unless there is a showing the parent is unfit, or that the parent’s custody will be detrimental to the child’s

⁸ s. 61.13(2)(b)(1), F.S.

⁹ s. 61.13(2)(b)(2), F.S.

¹⁰ 25A Fla. Jur 2d, Family Law, s. 797.

¹¹ Wade v. Hirschman, 903 So.2d 928 (Fla. 2005).

¹² Id.

¹³ Id. at 934.

¹⁴ Bazan v. Gambone, 902 So.2d 174 (Fla. 3rd DCA 2005).

¹⁵ Cooper v. Gress, 854 So.2d 262 (Fla. 1st DCA 2003).

¹⁶ Id.

¹⁷ McKinnon v. Staats, 899 So.2d 357 (Fla. 1st DCA 2005).

welfare. The foregoing rule giving preference to the parents holds true even though the third parties are able and willing to provide greater love and affection or better financial and social prospects.¹⁸

The rule that in a custody dispute between a parent and a third person, the rights of the parent are paramount unless there is a showing the parent is unfit, or that the parent's custody will be detrimental to the child's welfare, has been applied where the custody contest is between the parent(s) and either the grandparent(s), stepparent, uncle and aunt, or adult sister of the child.¹⁹ Awarding sole parental custody to a stepparent to the exclusion of the natural parent is unusual, if not drastic relief, and a judgment that makes that ruling should contain findings to support this extreme action.²⁰

II. Clear and Convincing Evidence Standard of Proof

Under current Florida case law, "clear and convincing" evidence is an intermediate standard which requires the evidence be credible, clear, and lacking in confusion such that the trier of fact is convinced of the matter's truthfulness without hesitancy.²¹ "[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."²²

In other words, the quantum of proof necessary must be more than a "preponderance of the evidence," but the proof need not be "beyond and to the exclusion of a reasonable doubt."²³

III. Servicemembers' Civil Relief Act

The Servicemembers' Civil Relief Act²⁴ ("Act") protects the civil rights of persons in the military service of the United States by providing for a suspension of civil proceedings against such persons in state and federal court. The Act supersedes state law and is binding on state courts even if state law does not contain a similar provision.²⁵

The Act vests discretion in trial courts to grant or deny a stay of the proceedings, depending upon whether the service member's ability to prosecute or defend the action is "materially affected" by reason of military service. In determining whether a service member will be prejudiced by denial of a stay, the courts have considered and weighed the nature of the case, the issues involved, the extent to which the service member's rights may be "materially affected" by absence, availability at trial, and the diligence with which the service member takes advantage of the opportunities to preserve rights that might have been afforded during the course of the litigation.²⁶ The burden is on the party who opposes postponement of a trial to show that the service member's ability to conduct a defense is not materially affected.²⁷

Postponement is mandatory unless the trial court expressly finds that the service member is not prejudiced by his or her absence, and the court's findings are supported by the record.²⁸

¹⁸ 25 Fla. Jur 2d, Family Law, s. 95

¹⁹ 25 Fla. Jur 2d, Family Law, s. 96

²⁰ *Plantilla v. Plantilla*, 777 So.2d 978 (Fla. 2nd DCA 2000).

²¹ *W.R. v. Department of Children and Family Services*, 896 So.2d 911 (Fla. 4th DCA 2005), citing *In re Davey*, 645 So.2d 398, 404 (Fla.1994).

²² *Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983).

²³ *In re Davey*, 645 So.2d 398, 404 (Fla.1994).

²⁴ Servicemembers Civil Relief Act, Title 50, Appendix 39 U.S.C. ss. 501 et seq.

²⁵ 36 Fla. Jur 2d, Military Affairs, s. 11

²⁶ *King-Coleman v. Geathers*, 795 So.2d 1092 (Fla. 4h DCA 2001) quoting *Robbins v. Robbins*, 193 So.2d 471, 473 (Fla. 2d DCA 1967) (italics and footnotes omitted). See *Cadieux v. Cadieux*, 75 So.2d 700 (Fla.1954); *Boone v. Lightner*, 319 U.S. 561, 63 S.Ct. 1223, 87 L.Ed. 1587 (1943).

²⁷ *Coburn v. Coburn*, 412 So. 2d 947 (Fla. 3rd DCA 1982).

²⁸ *Id.*

EFFECT OF PROPOSED CHANGES

This bill creates s. 250.85, F.S., to specifically govern the modification of child custody orders pertaining to the children of military personnel who are deployed on active military service. The new provision provides that, if a motion for change of custody is filed during the time a parent is activated to military service, a court may not modify the child custody order that existed on the date the military parent was activated, except that a court may enter a temporary order modifying custody if there is clear and convincing evidence that the modification is in the best interests of the child. If a temporary order is issued, the court must reinstate the custody order in effect at the time of the military parent's activation upon the parent's return.

The new section further provides that a parent's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify modification of custody or visitation orders if the reason for the absence, relocation, or failure to comply is the parent's activation to military service and deployment out of state.

The extent to which this bill alters or supersedes the current tests applied by the Florida courts in modification proceedings is unclear. (Please see previous discussion of modification proceedings.)

C. SECTION DIRECTORY:

Sections 1-7. Amends various sections of law to update a citation to Federal law.

Section 8. Creates s. 250.85, F.S., related to custody of the children of military personnel.

Section 9. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

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 municipal or county government.

2. Other: None.

- B. **RULE-MAKING AUTHORITY:** This bill does not affect any agency required to adopt rules under ch. 120., F.S., the Florida Administrative Procedure Act.
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** In response to a request for comments, The Family Law Section of The Florida Bar provided comments and suggested revisions of the bill.
- D. **STATEMENT OF THE SPONSOR:** The sponsor did not submit a statement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

It is anticipated that the bill sponsor, Representative Harrell, will offer a strike-all amendment in the Committee on Military & Veterans' Affairs to incorporate the suggested revisions from The Family Law Section of The Florida Bar.

1 A bill to be entitled
 2 An act relating to rights of military personnel; amending
 3 ss. 61.076, 63.032, 250.01, 250.82, 250.83, and
 4 250.84, F.S.; conforming provisions to the redesignation of
 5 the Soldiers' and Sailors' Civil Relief Act as the
 6 Servicemembers Civil Relief Act; amending s. 250.80, F.S.,
 7 conforming provisions to the creation of s. 250.85, F.S.;
 8 creating s. 250.85, F.S.; prohibiting modification of
 9 child custody of a parent activated to military service;
 10 providing exceptions; providing for effect on specified
 11 proceedings of a parent's failure to comply with certain
 12 orders due to activation to military service and
 13 deployment out of state; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (b) of subsection (2) of section
 18 61.076, Florida Statutes, is amended to read:

19 61.076 Distribution of retirement plans upon dissolution
 20 of marriage.--

21 (2) If the parties were married for at least 10 years,
 22 during which at least one of the parties who was a member of the
 23 federal uniformed services performed at least 10 years of
 24 creditable service, and if the division of marital property
 25 includes a division of uniformed services retired or retainer
 26 pay, the final judgment shall include the following:

27 (b) Certification that the Servicemembers ~~Soldiers' and~~
 28 ~~Sailors'~~ Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et

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29 seq. of 1940 was observed if the decree was issued while the
30 member was on active duty and was not represented in court;

31 Section 2. Subsection (17) of section 63.032, Florida
32 Statutes, is amended to read:

33 63.032 Definitions.--As used in this chapter, the term:

34 (17) "Primarily lives and works outside Florida" means a
35 person who lives and works outside this state at least 6 months
36 of the year, military personnel who designate Florida as their
37 place of residence in accordance with the Servicemembers
38 ~~Soldiers¹ and Sailors¹~~ Civil Relief Act, Title 50, Appendix
39 U.S.C. ss. 501 et seq. of 1940, or employees of the United
40 States Department of State living in a foreign country who
41 designate a state other than Florida as their place of
42 residence.

43 Section 3. Subsection (20) of section 250.01, Florida
44 Statutes, is amended to read:

45 250.01 Definitions.--As used in this chapter, the term:

46 (20) "SCRA" ~~"SSCRA"~~ means the Servicemembers ~~Soldiers¹ and~~
47 ~~Sailors¹~~ Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et
48 seq.

49 Section 4. Section 250.80, Florida Statutes, is amended to
50 read:

51 250.80 Short title Popular name.--~~This part Sections~~
52 ~~250.80-250.84~~ may be cited as known by the popular name the
53 "Florida Uniformed Servicemembers Protection Act."

54 Section 5. Subsection (1) of section 250.82, Florida
55 Statutes, is amended to read:

56 250.82 Applicability of federal law.--

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57 (1) Florida law provides certain protections to members of
 58 the United States Armed Forces, the United States Reserve
 59 Forces, and the Florida National Guard in various legal
 60 proceedings and contractual relationships. In addition to these
 61 state provisions, federal law also contains protections, such as
 62 those provided in the Servicemembers Soldiers' and Sailors'
 63 Civil Relief Act (SCRA) ~~(SSCRA)~~, Title 50, Appendix U.S.C. ss.
 64 501 et seq., and the Uniformed Services Employment and
 65 Reemployment Rights Act (USERRA), Title 38 United States Code,
 66 chapter 43, that are applicable to members in every state even
 67 though such provisions are not specifically identified under
 68 state law.

69 Section 6. Section 250.83, Florida Statutes, is amended to
 70 read:

71 250.83 Construction of part.--In the event that any other
 72 provision of law conflicts with SCRA ~~SSCRA~~, USERRA, or the
 73 provisions of this chapter, the provisions of SCRA ~~SSCRA~~,
 74 USERRA, or the provisions of this chapter, whichever is
 75 applicable, shall control. Nothing in this part shall construe
 76 rights or responsibilities not provided under the SCRA ~~SSCRA~~,
 77 USERRA, or this chapter.

78 Section 7. Paragraph (b) of subsection (3) of section
 79 250.84, Florida Statutes, is amended to read:

80 250.84 Florida Uniformed Servicemembers Protection Act;
 81 rights of servicemembers; incorporation by reference.--

82 (3) Such documents containing the rights and
 83 responsibilities of servicemembers set forth in this act shall

84 include an enumeration of all rights and responsibilities under
 85 state and federal law, including, but not limited to:

86 (b) The rights and responsibilities provided by the
 87 Servicemembers Soldiers' and Sailors' Civil Relief Act.

88 Section 8. Section 250.85, Florida Statutes, is created to
 89 read:

90 250.85 Child custody modification.--

91 (1) If a motion for change of child custody is filed
 92 during the time a parent is activated to military service, the
 93 court shall not issue an order or modify or amend a previous
 94 judgment or order that changes a child's placement that existed
 95 on the date the parent was activated to military service, except
 96 that a court may enter a temporary order to modify or amend such
 97 custody if there is clear and convincing evidence that the
 98 modification or amendment is in the best interest of the child.
 99 If such a temporary order is issued, the court shall reinstate
 100 the custody order in effect immediately preceding that period of
 101 active military service upon the parent's return from active
 102 military service.

103 (2) A parent's absence, relocation, or failure to comply
 104 with custody and visitation orders shall not, by itself, be
 105 sufficient to justify a modification of a custody or visitation
 106 order if the reason for the absence, relocation, or failure to
 107 comply is the parent's activation to military service and
 108 deployment out of state.

109 Section 9. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 435**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Military & Veterans' Affairs
 2 Representative(s) Harrell offered the following:

Amendment (with title amendment)

5 Strike everything after the enacting clause and insert:

6 Section 1. Section 61.13002, Florida Statutes, is created
7 to read:

8 61.13002 Temporary modification of child custody when
9 custodial parent is called to military duty.--

10 (1) If a supplemental petition to modify or a motion for
 11 change of child custody and parental responsibility is filed
 12 during the time a parent is activated to military service,
 13 deployed, or temporarily assigned as part of the parent's
 14 military service, and the parent's ability to continue as the
 15 primary caretaker of a minor child is materially effected, the
 16 court shall not issue an order or modify or amend a previous
 17 judgment or order that changes custody as it existed on the date
 18 the parent was activated to military service, deployed, or
 19 temporarily assigned as part of the parent's military service,
 20 except that a court may enter a temporary order to modify or
 21 amend custody if there is clear and convincing evidence that the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 temporary modification or amendment is in the best interests of
23 the child. When entering a temporary order under this section,
24 the court shall consider and provide for, if feasible, contact
25 between the military service member and his or her child
26 including, but not limited to, electronic communication by
27 webcam, telephone, or other available means. The court shall
28 also permit liberal time-sharing during periods of leave from
29 military service as it is in the child's best interests to
30 maintain the parent-child bond during the parent's military
31 service.

32 (2) If a temporary order is issued under this section, the
33 court shall reinstate the custody judgment or order previously
34 in effect upon the parent's return from active military service,
35 deployment, or temporary assignment.

36 (3) This section shall not apply to permanent change of
37 station moves by military personnel, which shall be governed by
38 s. 61.13001.

39 Section 2. This act shall take effect July 1, 2007.

40
41 ===== T I T L E A M E N D M E N T =====

42 Remove the entire title and insert:

43 A bill to be entitled

44 An act relating to child custody; creating s. 61.13002, F.S.;

45 prohibiting a court from modifying child custody during the time

46 a parent is activated to military service, deployed, or

47 temporarily assigned as part of the parent's military service;

48 providing a limited exception; requiring reinstatement upon

49 parent's return from military service; limiting application of

50 prohibition; providing an effective date.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides need-based financial assistance to families of Florida National Guardsmen and Reservists for up to 120 days after the service members are released from active duty and return to their home of record. Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Family Readiness Program Generally

In 2005, the Legislature established the Family Readiness Program (“program”) within the Department of Military Affairs (DMA) and appropriated \$5 million to fund the program.¹ The purpose of the program is to provide need-based financial assistance to beneficiaries and dependents of service members of the Florida National Guard (FNG) and United States Reserve Forces, including the Coast Guard Reserves, who are on active duty serving in the Global War on Terrorism and who are federally deployed or participating in state operations for homeland defense.² Currently, approximately 1,200 members of the Florida National Guard and reservists are deployed abroad in the Global War on Terrorism.

Pursuant to s. 250.5206, F.S., Florida residents designated as beneficiaries of an eligible service member on the United States Department of Defense (DOD) Form 93³, or who are otherwise dependents of eligible service members, are eligible for financial assistance under the program.⁴ Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.⁵ Service members who are unmarried and do not have dependents are not eligible for financial assistance under the program.

Requests for assistance are reviewed and validated at the local level by a federal Family Center Support Specialist stationed at a state armory or a reserve facility. Recommendations from the Support Specialist are forwarded to the DMA’s Program Director for review and validation of documents. The Adjutant General or a designee receives the recommendations and is authorized by statute grant requests for assistance.⁶ Assistance may not be approved unless the applicant satisfies the statutory requirements.

Currently, the inspector general of DMA is required to conduct a monthly audit of the program and the DMA must maintain sufficient data to provide an annual report to the Governor and the Legislature on the families served under the program, the types of services provided, and the allocation of funds spent.⁷

¹ Ch. 2005-51, L.O.F.

² s. 250.5206(1), F.S.

³ Beneficiaries are listed on the form by the service member as a record of emergency data. Beneficiaries listed on form 93 include anyone the service member may designate, including persons who are not family members.

⁴ s. 250.5206(4), F.S.

⁵ s. 250.5206(3), F.S.

⁶ s. 250.5206(5), F.S.

⁷ s. 250.5206(6) & (7), F.S.

Florida National Guard Pamphlet 930-4 – Guidelines for Program Implementation

On July 1, 2006, the DMA issued Florida National Guard Pamphlet 930-4 (the "Pamphlet"), which establishes guidelines for implementing the Florida Family Readiness Program. According to the Pamphlet, the Adjutant General designated the Deputy Chief of Staff for Personnel to review recommendations regarding applications for assistance. The Deputy Chief of Staff for Personnel is authorized to determine approval of applications for assistance up to \$5,000; the Chief of Staff of the FNG must review and approve applications for assistance that exceed \$5,000.⁸

The Pamphlet requires the Office of the Staff Judge Advocate to review all applications for assistance prior to the payment of funds, and requires the FNG State Quartermaster to process applications for payment.⁹

The Pamphlet provides application forms for use by persons seeking assistance through the program. The application for assistance requires the following information¹⁰: contact information for the service member; applicant information; the military point of contact for verification; a listing of services needed and the service provider; and the amount of funds being requested. Applicants are also required to provide a financial affidavit listing assets and liabilities, proof of Florida residency, military orders, and proof of dependency on a service member.¹¹

The Pamphlet also requires applicants who have been awarded funds to provide final invoices when work has been completed.¹²

Eligible Services as Defined in FNG Pamphlet 930-40

Section 250.5206(3), F.S., specifically authorizes the use of program funds "in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care." The Pamphlet provides the following definitions of the categories of "eligible services" listed in statute¹³:

- Reasonable living expenses – where critically needed to prevent termination of utilities, to provide food, or furnish similar basic necessities.
- Housing – includes emergency repairs to the Servicemember's primary residence that are critically needed to address health or safety issues, and assistance with mortgage and rent expenses where need-based and determined to be appropriate after review by the Area Family Center Support Specialist.
- Vehicles – repairs essential to maintain one vehicle per family in safe operating condition.
- Disability – equipment or renovations necessary to meet disability needs [medical documentation required].
- Health care – documented by medical authority as essential for the health and welfare of the individual, not elective, and not covered by other medical/dental insurance.

Inspector General Review of the Family Readiness Program

From July 1, 2005 through June 30, 2006, the DMA's Inspector General reviewed application files on a monthly basis to determine whether transactions were conducted in accordance with policy and

⁸ FLNG Pamphlet 930-4, 1-3.

⁹ FLNG Pamphlet 930-4, p.2.

¹⁰ FLNG Pamphlet 930-4, Appendix 2.

¹¹ FLNG Pamphlet 930-4, Appendix 2.

¹² FLNG Pamphlet 930-4, p. 6.

¹³ FLNG Pamphlet 930-4, p. 5.

procedures. At the end of the review period, the Inspector General issued a report that raised several points regarding implementation of the program:¹⁴

- The report noted that s. 295.5206, F.S., requires funds to be used for “need-based assistance”; however, the review found that 59 applicants did not provide adequate documentation regarding financial need. The report recommended that the DMA establish guidelines to request the necessary financial information from the applicant.
- The report also noted that 30 applicant files did not include receipts or invoices to determine that funds were used as intended. The report recommended that applicant files remain open after a disbursement of funds and that DMA personnel follow-up with applicants within an appropriate time frame to ensure that funds are spent as intended.
- In addition, the report noted that s. 250.5206(4), F.S., states that eligible recipients include Florida residents who are designated as beneficiaries on the United States Department of Defense Form 93 or who are otherwise dependents of eligible service members. A review of DoD Form 93 disclosed that any individual residing in Florida who is listed on DoD form 93 is eligible for financial assistance through the program. The report recommended revision of the statutes so that only family members who are dependents of the deployed service member are eligible for financial assistance.

EFFECT OF PROPOSED CHANGES

Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, *while the service members are on active duty* serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.

Pursuant to s. 250.5206(6), F.S., the inspector general of the department must conduct a monthly audit review of the program. This bill removes the requirement for a monthly audit review but requires a semiannual review and an annual audit.

C. SECTION DIRECTORY:

Section 1. Amends s. 250.5206, F.S., relating to Family Readiness Program.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: This bill has an insignificant impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

¹⁴ Inspector General’s Review of the Family Readiness Program, July 1, 2005 through June 30, 2006.

2. Expenditures: None.

- C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, while the service members are on active duty serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.
- D. **FISCAL COMMENTS:** This bill appears to have an insignificant impact on state government. The extension of the eligibility period for assistance may result in an increase in dispersal of funds; however, the funds are in amounts that do not rise to the level of significant impact on state government.

Chapter 2005-51, L.O.F., appropriated \$5 million for FY2005-06 from the General Revenue Fund to the Department of Military Affairs for the Family Readiness Program to provide need-based assistance to family members eligible under s. 250.5206, F.S. From July 1, 2005 through June 30, 2006, \$305,406 was disbursed to eligible members.¹⁵

Chapter 2006-25, Section 48, L.O.F., the General Appropriations Act for FY2006-07, reverted and appropriated to the program the unexpended balance of the non-recurring funds appropriated in ch. 2005-51, L.O.F. The re-appropriated balance was \$4,564,585. From July 1, 2006 through March 6, 2007, \$211,462 was disbursed to eligible members.¹⁶

For FY2007-08, the Governor recommended a reappropriation of \$1 million for the Family Readiness Program. The remaining balance of approximately \$3.35 million will revert back to General Revenue.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. **Applicability of Municipality/County Mandates Provision:** Not applicable. This bill does not appear to affect municipal or county government.

2. **Other:** None.

- B. **RULE-MAKING AUTHORITY:** By letter dated February 13, 2007, staff of the Joint Administrative Procedures Committee (JAPC) asked the DMA to advise whether statements in the pamphlet meet the statutory definition of a rule and whether the statements are exempt from the rulemaking requirements in ch. 120, F.S., the Florida Administrative Procedure Act.¹⁸ The JAPC letter explained that:

The Department has promulgated a document entitled Florida National Guard Pamphlet 930-4, July 1, 2006, which implements s. 250.5206, Florida Statutes, the Family Readiness Program. Upon initial review, statements contained in this pamphlet appear to meet the definition of a rule pursuant to section 120.52(15), Florida Statutes. Each agency statement defined as a rule must be adopted by

¹⁵ 2005-2006 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

¹⁶ 2006-2007 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

¹⁷ Fiscal year 2007-2008 Governor's Recommended General Appropriations Act, page 330, Section 15.

¹⁸ Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee, dated February 13, 2007.

the rulemaking procedure set forth in section 120.54, Florida Statutes, unless expressly exempted. Although s. 120.80(11), Florida Statutes, exempts specific subject areas under the National Guard from rulemaking, the exemptions do not appear to include the subject covered by this pamphlet."¹⁹

On March 2, 2007, the DMA responded to the JAPC's inquiry, explaining that two considerations led the DMA to conclude that adoption of the Pamphlet by the DMA did not circumvent rulemaking requirements in the Florida Administrative Procedure Act.²⁰ First, the DMA asserts that administration of the program is exempt from rulemaking by s. 120.80(11), F.S., which provides a broad rulemaking exemption for the DMA. Secondly, the DMA asserts that the pamphlet established federal procedures for federal employees, not DMA procedures for state employees; therefore, the DMA concluded that rulemaking requirements were not triggered.

Staff of the JAPC is currently reviewing the DMA's response.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

¹⁹ Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee; dated February 13, 2007.

²⁰ Letter to Susan Stafford with the Joint Administrative Procedures Committee with DMA response, dated March 2, 2007.

1 A bill to be entitled

2 An act relating to assistance for dependents of service
 3 members on active duty; amending s. 250.5206, F.S.;
 4 providing that eligibility for the Family Readiness
 5 Program continues for a specified period following
 6 termination of a service member's orders and his or her
 7 return home; requiring the Inspector General of the
 8 Department of Military Affairs to conduct semiannual
 9 reviews and annual audits of the program;; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsections (4) and (6) of section 250.5206,
 15 Florida Statutes, are amended to read:

16 250.5206 Family Readiness Program.--The Department of
 17 Military Affairs shall establish a state Family Readiness
 18 Program headed by a program director and based on the United
 19 States Department of Defense National Guard and Reserve Family
 20 Readiness Strategic Plan 2004-2005 initiative.

21 (4) ELIGIBILITY.--Eligible recipients shall include
 22 persons designated as beneficiaries on the United States
 23 Department of Defense Form 93, or who are otherwise dependents
 24 of eligible service members, and who are residents of the State
 25 of Florida. The period of eligibility to request assistance from
 26 the fund continues for 120 days following termination of the
 27 service member's military orders for qualifying service and
 28 return to his or her home of record.

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29 (6) AUDITS.--The inspector general of the department shall
30 conduct a semiannual review and an annual ~~monthly~~ audit ~~review~~
31 of the program.

32 Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1159
Forces for Business Purposes
SPONSOR(S): Grimsley
TIED BILLS:

Unauthorized Use of the Name or Image of a Member of the Armed

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Military & Veterans' Affairs</u>	_____	<u>Shaffer</u>	<u>Camechis</u>
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Since 1967, Florida law has prohibited the use of a person's name or likeness "for purposes of trade or for any commercial or advertising purpose" without express consent of the person or the person's lawful representative. This provision has long been interpreted by the courts to prohibit the unauthorized use of a person's name or likeness to directly promote a product or service because of the way that the use associates the person's name or personality with something else. The current law lists specific exceptions to the prohibition, including exceptions for uses protected by the First Amendment of the United States Constitution. The statute creates a civil cause of action against any person violating the statute, and allows the courts to award a prevailing plaintiff damages for any loss or injury, reasonable royalties, and punitive damages.

The Florida courts have long recognized the right of privacy, and the tort of common law invasion of privacy, both of which provide protections for the use of private individuals' names and images in certain circumstances.

This bill prohibits "use of the name or image of a member of the armed forces for the purpose of advertising goods or services, or for solicitation of patronage by a business enterprise" without the service member's consent. Use of the name or image of a service member killed in the line of duty is also prohibited unless prior consent is obtained from the surviving spouse, personal representative, or closest living relative by blood or marriage. Violation of the prohibition is a first degree misdemeanor punishable by up to 1 year in jail or a \$1,000 fine.

This bill may have an indeterminate but minimal fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: This bill imposes a criminal penalty for using the name or image of a member of the armed forces for commercial purposes without consent.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Background

Sales of t-shirts and other merchandise with the names and/or pictures of deceased service members, particularly those killed in the recent Iraq War, have prompted the introduction of legislation to prohibit these activities. In recent years, several state legislatures¹ have either enacted or proposed laws that would limit the use, without consent, of service members' and former or deceased service members' names, images, portraits, and/or pictures for certain commercial purposes. In addition, similar legislation has been filed in the U.S. Congress.²

Current Florida Statutory Prohibitions on Unauthorized Use of Name or Image

The Florida Statutes have prohibited the unauthorized use of a persons name or image for commercial purposes since 1967. Under, s. 540.08, F.S., the "commercial misappropriation law", a person may not publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose, the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

- Such person; or
- Any other person, firm or corporation authorized in writing by such person to license the commercial use of her or his name or likeness; or
- If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of her or his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of her or his surviving spouse and surviving children.

A person's "surviving spouse" is defined as the person's surviving spouse under the law of her or his domicile at the time of her or his death, whether or not the spouse has later remarried; and a person's "children" are her or his immediate offspring and any children legally adopted by the person. Consent must be given on behalf of a minor by the guardian of her or his person or by either parent.

The provisions of the commercial misappropriation law do not apply to:

- The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;

¹ Oklahoma has passed similar legislation; Louisiana passed a memorial urging Congress to pass similar legislation; similar bills are pending in at least the following states: Arizona, Georgia, and Texas. North Dakota has legislation pending that proposes a study to review the issue.

² Oklahoma Congressman Dan Boren recently introduced H.R. 269 in the U.S. Congress, which provides prohibitions similar to those proposed in this bill and legislation proposed in other states. H.R. 5772 and H.R. 5755 were proposed in 2006.

- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use of her or his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof; or
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.
- Use of the name or likeness of a person occurring 40 years after the death of such person.

If the required consent is not obtained, the person whose name, portrait, photograph, or other likeness is used, or any person, firm, or corporation authorized by the person in writing to license the commercial use of her or his name or likeness, or, if the person whose likeness is used is deceased, any person, firm, or corporation having the right to give consent may bring a civil action to enjoin unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

The remedies provided for in the commercial misappropriation law are in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of her or his privacy.

This provision has long been interpreted by the courts to prohibit the unauthorized use of a person's name or likeness to directly promote a product or service because of the way that the use associates the person's name or personality with something else.³ In 2002, a federal court in Florida noted that "[t]he names, likeness, and other indicia of a person's identity are used 'for the purposes of trade'... if they... are placed on merchandise marketed by the user".⁴ However, in 2005, the Florida Supreme Court noted that an interpretation that the statute absolutely bars the use of an individual's name without consent for any purpose would raise grave questions as to its constitutionality.⁵ The court also noted that the common usage of the term "commercial" in the commercial misappropriation context is limited to the promotion of a product or service and that "expressive works", such as a motion picture or work of art, should be protected by the First Amendment.⁶

Department of Defense Regulations

The U.S. Department of Defense (DOD), Joint Ethics Regulation 5500-7R, s. 3-209, prohibits DOD employees, in their official capacities, from stating or implying endorsement of a nonfederal entity, event, product, service, or enterprise. DOD employees include any active duty member of the Army, Navy, Air Force or Marine Corps and any Reserve or National Guard member while performing official duties. Purely personal, unofficial volunteer efforts to support fundraising outside the federal government workplace are not prohibited where the efforts do not imply DOD endorsement.⁷

Constitutional Protection

The Florida courts have long recognized the right of privacy, violation of which is redressed by the courts. The right of privacy is defined as the right of an individual to be let alone and to live a life free from unwarranted publicity. However, the court has also noted that:

[T]he right of privacy has its limitations. Society also has its rights. The right of the general public to the dissemination of news and information must be protected and conserved. Freedom of speech and of the press must be protected....'The right of privacy does not prohibit the publication

³ Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 807 (Fla. 2005).

⁴ Lane v. MRA Holdings, LLC, 242 F.Supp.2d 1205 (M.D.Fla.2002).

⁵ Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 807 (Fla. 2005); quoting Valentine v. C.B.S., Inc., 698 F.2d 430 (11th Cir.1983).

⁶ Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 809 (Fla. 2005).

⁷ DOD 5500.7R, s.3-300, a (1).

of matter which is of legitimate public or general interest. At some point the public interest in obtaining information becomes dominant [] over the individual's desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest.⁸

Common Law Tort of Invasion of Privacy

In 1996, the Florida Supreme Court established the four categories included within the common law tort of invasion of privacy: (1) appropriation-the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion-physically or electronically intruding into one's private quarters; (3) public disclosure of private facts-the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye-publication of facts which place a person in a false light even though the facts themselves may not be defamatory.⁹

One of the wrongs constituting the tort of invasion of privacy is appropriation, that is, the unauthorized use of a person's name or likeness to obtain some benefit, or, as otherwise stated, the commercial exploitation of the property value of one's name, or the unwarranted appropriation or exploitation of one's personality. The elements of common-law invasion of privacy based on the commercial misappropriation of a person's likeness coincide with the elements of the unauthorized publication of a name or likeness in violation of the s. 540.08, F.S., the Florida commercial misappropriation statute.¹⁰ The remedies provided under the statute are in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of his or her privacy.

The Florida courts also recognize the tort of invasion of privacy by public disclosure of private facts,¹¹ and define the tort as follows: One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that: (a) would be highly offensive to a reasonable person, and (b) is not a legitimate concern to the public.

EFFECT OF PROPOSED CHANGES

This bill prohibits use of the name or image of a member of the armed forces for the purpose of advertising goods or services, or for solicitation of patronage by a business enterprise, without the service member's consent. Use of the name or image of a service member killed in the line of duty is also prohibited unless prior consent is obtained from the surviving spouse, personal representative, or closest living relative by blood or marriage. Violation of the prohibition is a first degree misdemeanor punishable by up to 1 year in jail¹² or a \$1,000 fine.¹³

The bill defines the term "member of the armed forces" as an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, or Coast Guard including members of the National Guard, United States Reserve Forces, and any member who was killed in the line of duty.

It appears that s. 540.08, F.S., currently protects the names and images of military personnel in a manner consistent with this bill and to the extent permissible under the U.S. Constitution. That section does not, however, impose a criminal penalty for violations as does this bill. This bill imposes a criminal penalty for violations, but it is uncertain that the provisions of the bill are sufficient to support a criminal prosecution for violation of the law created by the bill.

⁸ Cape Publications, Inc. v. Hitchner, 549 So.2d 1374, 1377 (Fla. 1989); quoting Cason v. Baskin, 20 So.2d 243, 251 (1944) (quoting 41 Am.Jur. 935).

⁹ Allstate Ins. Co. v. Ginsberg, 863 So.2d 156 (Fla. 2003).

¹⁰ Lane v. MRA Holdings, LLC, 242 F. Supp. 2d 1205 (M.D. Fla. 2002).

¹¹ Doe v. Univision Television Group, Inc., 717 So.2d 63 (Fla. 3rd DCA 1998); See Cape Publications, Inc. v. Hitchner, 549 So.2d 1374, 1377 (Fla. 1989), appeal dismissed, 493 U.S. 929, 110 S.Ct. 296, 107 L.Ed.2d 276 (1989).

¹² s. 775.082, F.S.

¹³ s. 775.083, F.S.

It appears that this bill will not affect a service member's ability to bring a civil lawsuit alleging violation of his or her right of privacy, invasion of privacy, or commercial misappropriation under s. 540.08, F.S.

C. SECTION DIRECTORY:

Section 1. Prohibits use of the name or image of a member of the armed services under certain circumstances; imposes a criminal penalty for violations; provides a definition of a member of the armed services.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: The bill appears to have an indeterminate but minimal fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: The bill appears to have indeterminate but minimal fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: This bill may result in a small number of additional prosecutions, which may have an insignificant fiscal impact on the state and local governments responsible for paying the costs of prosecutions and incarcerating violators.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not affect any agency required to adopt administrative rules pursuant to ch. 120, F.S., the Florida Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS: The activity this bill seeks to prohibit appears to be prohibited by current law, specifically s. 540.08, F.S., which was first enacted in 1967. That section does not, however, impose a criminal penalty for violations. This bill imposes a criminal penalty but it is unclear whether the provisions of the bill are sufficient to support a criminal prosecution for violation of the new law without extensive judicial interpretation.

Adria Harper, Director of the First Amendment Foundation offered the following comment in response to a staff request: "It is our understanding that the statute you cite, Section 540.08, F.S., already

prohibits the type of activity provided by the bill. Thus, HB 1159 is redundant and could result in a conflict with the current law and presumably, unintended litigation.”

D. STATEMENT OF THE SPONSOR: The sponsor did not submit a statement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

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A bill to be entitled
An act relating to the unauthorized use of the name or
image of a member of the armed forces for business
purposes; prohibiting a person from using the name or
image of a member of the armed forces; providing
exceptions; defining the term "member of the armed
forces"; providing criminal penalties; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Unauthorized use of the name or image of a
member of the armed forces prohibited.--

(1) (a) A person may not use the name or image of a member
of the armed forces for the purpose of advertising for the sale
of goods, wares, services, or merchandise, or for the
solicitation of patronage by any business enterprise, except as
provided in paragraph (b).

(b) A person may use the name or image of a member of the
armed forces if the person obtains the prior consent of the
member of the armed forces or, if the member is deceased, the
prior consent of the surviving spouse, personal representative,
or closest living relative by blood or marriage of the deceased.

(2) As used in this section, the term "member of the armed
forces" means an officer or enlisted member of the Army, Navy,
Air Force, Marine Corps, or Coast Guard of the United States,
including the Florida National Guard and United States Reserve
Forces, including any member who was killed in the line of duty.

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29 (3) A person who violates paragraph (1)(a) commits a
30 misdemeanor of the first degree, punishable as provided in s.
31 775.082 or s. 775.083, Florida Statutes.

32 Section 2. This act shall take effect July 1, 2007.