



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 386 (as passed by the Senate)  
Sponsor: Senator John Moolenaar  
Committee: Veterans, Military Affairs and Homeland Security

Date Completed: 1-30-12

### **RATIONALE**

The false claim of military service or commendations, sometimes referred to as "stolen valor", has long been a problem to the men and women who have served honorably in the military and those who have earned awards for their service. In December 2006, then-President George W. Bush signed into law the Stolen Valor Act, which broadened a Federal law that prohibits the unauthorized wearing, manufacture, or sale of military decorations or medals. Efforts are under way to promote the enactment of similar prohibitions in state laws, and at least one state, Kentucky, has passed stolen valor legislation. Some people believe that Michigan law also should prohibit a person from misrepresenting his or her military service or commendations for purposes of defrauding another, obtaining employment, or securing public office.

### **CONTENT**

**The bill would create the "Stolen Valor Law" within the Michigan Penal Code to prohibit and provide a penalty for the misrepresentation of a person's current or former military status with the intent to defraud, obtain employment, or be elected or appointed to public office.**

Specifically, the bill would prohibit a person from misrepresenting his or her current or former military status when he or she made any of the following claims, orally or in writing or by false display, with the intent to defraud, obtain employment, or be elected or appointed to public office:

- That he or she was entitled to wear military awards, decorations, or rank.
- That he or she served in the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, or the National Guard.
- That he or she served in the military during a wartime era, whether or not there was a declared war, or served in a combat zone.
- That he or she had served, or was serving, in the military at a certain location, with a certain rank or rating, or engaged in a certain mission, or any other claim concerning his or her actual military service.

A violation would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$5,000, or both, and up to 100 hours of community service performed in a veterans home or for a veterans service organization.

A person could be charged with, convicted of, and sentenced for any other violation of law in addition to a violation of the bill.

The bill would not apply to a person who did one or more of the following:

- Re-enacted military history or a military event.
- Played the part of a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, or the National Guard in a play, motion picture, television production, or other dramatic production, or at a patriotic or civic event.

- Served as a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, or the National Guard and, as part of a military assignment, represented a member of the U.S. Armed Forces in a previous war or time period for ceremonial, recruiting, or training purposes.
- Worked as an employee of or volunteer for a museum and, as a part of his or her duties, represented a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, or the National Guard for ceremonial, historical, or training purposes.
- Owned, displayed, purchased, sold, or traded militaria, including medals, ribbons, and rank insignia, and did not claim to have personally earned them unless he or she were legally entitled to do so.
- Used his or her given name that included a military rank, as long as he or she did not use the name to defraud another in a manner prohibited by the bill.
- Used a name or honorary military or military-like rank that had been bestowed upon him or her by a public officer, public employee, or public agency, in the name of a public officer or public agency.
- Used a corporate, partnership, sole proprietorship, or other name for a business or product that included a military rank, as long as the name was not used to defraud another in a manner prohibited by the bill.
- Held a registered trademark that included a military rank or honorary rank, as long as the trademark was not used to defraud another in a manner prohibited by the bill.

Proposed MCL 750.286

## **BACKGROUND**

The Federal legislation that became the Stolen Valor Act amended a section of the Federal criminal code that prohibits a person from knowingly wearing, manufacturing, or selling a military decoration or medal without legal authorization (18 USC 704). The legislation expanded that prohibition, increased the penalty for violations involving certain types of decorations or medals, and added the following language to prohibit false claims about the receipt of military 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."

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The enactment of the Federal Stolen Valor Act addressed the widespread practice in which people falsely claim to have been awarded military awards and exploit their deception for personal gain. Indeed, the number of people falsely claiming to have been awarded the Medal of Honor reportedly exceeds the actual number of living recipients. Evidently, a large number of people also make false claims of having served in the military, or in specialized military units such as the Navy SEALs and Army Special Forces. These misrepresentations attack the honor and integrity of those who actually have served honorably or been awarded commendations. As a Congressional finding in the Federal statute states, fraudulent claims regarding the receipt of military commendations "damage the reputation and meaning of such decorations and medals".

The Federal legislation has resulted in the prosecution of many people claiming military honors not due them, but states also need to address this problem. The Congressional findings specify, "Federal law enforcement officers have limited ability to prosecute fraudulent claims..." and, "Legislative action is necessary to...protect the reputation and meaning of military decorations and medals". To that end, veterans groups and their supporters are promoting the passage of state "stolen valor" laws across the country.

By prohibiting false claims of military service or entitlement to wear military awards, decorations, or rank, with the intent to defraud, obtain employment, or be elected

or appointed to public office, the bill would protect and preserve the integrity of military service for Michigan's men and women who honorably serve, or have served, this nation. The legislation would send a strong message to someone who might contemplate committing an act of stolen valor that he or she would be held accountable for that action. It also would enable State and local law enforcement officers and prosecutors to offer legitimate military personnel, veterans, and award recipients the same degree of protection that U.S. officials afford them under the Federal law. In addition, the bill would send a clear signal to veterans that the people of the State of Michigan honor, respect, and are grateful for their service and sacrifice.

### **Opposing Argument**

The bill could infringe on a person's First Amendment right to freedom of speech. People embellish the truth every day, but their claims are not necessarily criminal, no matter how objectionable they may be to some others. The Federal law has been subject to legal challenges, including a case out of California in which the U.S. Court of Appeals for the Ninth Circuit ruled that the Act is unconstitutional. That decision is currently before the U.S. Supreme Court (*United States v Xavier Alvarez*).

**Response:** Unlike the Federal law, the bill would provide a criminal penalty for false military claims only if they were made with the intent to defraud, obtain employment, or gain public office. In fact, proposed amendments to the Federal law would strike the current language penalizing false claims about receiving medals, and instead prohibit a person from misrepresenting his or her military service (including the receipt of medals or decorations) "with intent to obtain anything of value".

Legislative Analyst: Patrick Affholter  
Suzanne Lowe

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An individual convicted of the offense would be subject to a fine of not more than \$5,000, up to 100 hours of community service, and a jail term of up to one year. Local governments would incur

the costs of incarceration in local facilities, which vary by county. Any additional penal fine revenue collected would benefit public libraries.

Fiscal Analyst: Dan O'Connor

#### **A1112\386a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.