

# Legislative Analysis

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## "STOLEN VALOR" LAW

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**Senate Bill 950 with House committee amendment**

**Sponsor: Sen. Randy Richardville**

**House Committee: Judiciary**

**Senate Committee: Senior Citizens and Veterans Affairs**

### **First Analysis (9-7-10)**

**BRIEF SUMMARY:** The bill would create the Stolen Valor Law to prohibit the misrepresentation of current or former military status with the intent to defraud, obtain employment, or be elected or appointed to public office; establish penalties for a violation; and exempt certain individuals or organizations from the act.

**FISCAL IMPACT:** The bill provides that a person who misrepresents his or her military status in a manner described in the bill would be guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$5,000, or both, and not more than 100 hours of community service in a veterans home or for a veterans service organization. To the extent that persons are convicted of this offense, the bill would increase local incarceration costs and penal fine revenue. Local governments would incur the costs of incarceration in local facilities. These costs vary by county. Any increase in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

### **THE APPARENT PROBLEM:**

"Stolen Valor" refers to conduct in which a person makes false claims about his or her past or current military service, falsely claims to have been awarded medals, and/or wears or displays medals or ribbons that he or she did not earn. Some people make such false claims to commit fraud, such as applying for veteran's benefits to which they are not entitled. Others may do so for employment purposes or to garner votes as a candidate for public office. Regardless of the reasons behind an act of stolen valor, many say the practice dishonors veterans, diminishes the value of their service and sacrifice, and fosters mistrust of legitimate service on the part of the public.

Federal law was enacted in 2006 to address the unauthorized wearing, manufacturing, selling, or claiming of any military decorations or medals. Since then, dozens of individuals have been prosecuted under the federal Stolen Valor Act. Some have involved fraud (more than \$1.4 million in just a dozen cases investigated in the northwest within the first year of the act's enactment), where others have ranged from a man posing as a decorated Marine chaplain and performing hundreds of weddings, funerals, and baptisms to a sergeant pretending to be an injured war hero in order to get free tickets to rock concerts and sporting events.

Apparently, there has been a national push by military service organizations for states to also enact Stolen Valor laws. Kentucky was the first to do so. Reasons to enact a state law given by supporters include the need to send a strong message of accountability to anyone contemplating an act of stolen valor, that a state law sends a message to veterans that the public is grateful for their military service, and that the federal government simply can't, or is unwilling to, prosecute each and every case of stolen valor.

Another compelling reason is that on August 17, 2010, a federal appeals court, the U.S. Court for the 9<sup>th</sup> Circuit, struck down the federal Stolen Valor Act as being so broad as to raise concerns of the "potential for setting a precedent whereby the government may proscribe speech solely because it is a lie." *United States v Alvarez RGK*, Docket No. 08-50345. Unlike the federal act, Senate Bill 950 is more narrowly crafted and proponents say it is needed to prohibit and punish false claims of military service.

### ***THE CONTENT OF THE BILL:***

Senate Bill 950 would add a new section, entitled the "Stolen Valor Law," to the Michigan Penal Code (MCL 750.286). The bill would make it a criminal offense to misrepresent current or former military status when making certain claims – either orally or in writing or by false display – with the intent to defraud, obtain employment, or be elected or appointed to public office. As of January 1, 2011, a person would be prohibited from claiming that he or she:

- Is entitled to wear military awards, decorations, or rank.
- Served in the U.S. Armed Forces, the Reserves, or the National Guard.
- Served during a wartime era (whether or not there was a declared war) or served in a combat zone.
- Served or is serving 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.

#### Penalties

A violation of the act would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$5,000 and not more than 100 hours of community service performed in a veterans home or for a veterans organization.

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

#### Exemptions

The bill would allow numerous exemptions to exclude from the penalties a person who, or an organization that, does any of the following:

- Reenacts military history or a military event.
- Acts in the role of a service person in a theatrical, television, or film production or at a patriotic or civic event.

- Currently serves in the Armed Forces and is representing, as part of a military assignment, a service person from another era for ceremonial, recruiting, or training purposes.
- Works or volunteers for a museum and, as part of the duties, represents a service person for ceremonial, historical, or training purposes.
- Owns, displays, purchases, sells, or trades militaria including, but not limited to, medals, ribbons, and rank insignia and does not claim he or she earned them unless legally entitled to do so.
- Uses his or her given name that includes a military rank, so long as he or she does not use the name to defraud another in a manner prohibited by the act.
- Uses a name or honorary military or military-like rank bestowed upon him or her by a public officer, public employee, or public agency, in the name of a public officer or public agency.
- Uses a corporate partnership, sole proprietorship, or other name for a business or product that includes a military rank, so long as the name is not used to defraud another in a manner prohibited by the bill.
- Holds a registered trademark that includes a military rank or honorary rank, so long as the trademark is not used to defraud another in a manner prohibited by the bill.

#### ***HOUSE COMMITTEE ACTION:***

The committee added an effective date.

#### ***ARGUMENTS:***

##### ***For:***

The practice of making false claims regarding military service or receiving military awards is said to be widespread. Apparently, the number of people claiming to have been awarded the Medal of Honor exceeds the actual number of living recipients. People also make false claims of serving in specialized units such as the Navy SEALs or Army Rangers, of receiving a Purple Heart for fake war injuries, and so on. Often, the false claims are intended to commit fraud, such as applying for VA benefits or eliciting free goods or services like tickets to entertainment or sporting events.

Far from being harmless, acts of "stolen valor" take precious resources meant to benefit veterans. For instance, several of the stolen valor crimes prosecuted in the first year after the federal Stolen Valor Act took effect involved applying for or receiving medical or mental health benefits meant for deserving veterans. Millions of dollars of public funds that should have gone to those who sacrificed for their country have instead been paid out in response to these false claims. Others have made false claims of military service to make themselves more attractive to employers or to gain an edge over opponents when running for public office. Whatever the reasons, each act of stolen valor diminishes the sacrifices and true valor of military personnel and veterans.

Thus, the bill would protect and preserve the integrity of military service for the men and women of this state who have served, or are currently serving, in the armed forces and National Guard. The penalty, which would require a court to impose community service and could include up to a year in jail and/or a fine up to \$5,000, would act as a strong deterrent to anyone contemplating making a false claim prohibited under the bill. Requiring the community service to be performed in a veterans home or a veterans service organization is fitting and should help sensitize the offender to the current needs of veterans and the true valor shown by them. Several categories of people who wear uniforms for legitimate purposes would be exempt from the bill's penalties; for example, the bill would not apply to actors in films, plays, TV, or movies wearing military uniforms with medals. Other exemptions would apply for persons having a name that is similar to a military rank, businesses that use a rank in the name of the business (for instance, Admiral Joe's Boat Rentals), and military-sounding ranks given to certain public officers and public employees (e.g., Surgeon General), as long as these titles are not used to defraud the public in a manner prohibited by the bill.

Most importantly, the bill's prohibitions and penalties would fill the gap made by the federal circuit court ruling that recently struck down the federal Stolen Valor Act. (As of yet, an appeal has not been filed). Without the bill, the disgraceful practice of misrepresenting military service or receipt of military awards and medals will go unchecked.

***Against:***

In *Alveraz*, the defendant, after winning a seat on a local water district board, introduced himself at a meeting as a retired marine of 25 years and stated that he had been wounded many times and had been awarded the Medal of Honor. The *Alvarez* court found that the federal Stolen Valor Act, which criminalizes the unauthorized wearing, manufacturing, selling, or claiming of any military decorations or medals, was so broad as to infringe on freedom of speech rights protected by the US Constitution. Specifically, the court held "that the speech proscribed by the act is not sufficiently confined to fit among the narrow categories of false speech previously held to be beyond the First Amendment's protective sweep." The court applied strict scrutiny review to the act and held it "unconstitutional because it is not narrowly tailored to achieving a compelling governmental interest." If it wasn't struck, the court reasoned that "there would be no constitutional bar to criminalizing lying about one's height, weight, age, or financial status on Match.com or Facebook, or falsely representing to one's mother that one does not smoke, drink alcoholic beverages, is a virgin, or has not exceeded the speed limit while driving on the freeway."

The Stolen Valor Law created by Senate Bill 950 is likely to face constitutional challenges as well. Though a decision by the 9<sup>th</sup> Circuit is not binding as to precedent, it is persuasive. Previous case law has established that false claims made with the intent to defraud are not protected under the Freedom of Speech provisions. False claims made with the intent to gain employment are likely not to be protected either. However, the bill's provision relating to false claims made with the intent to be elected or appointed to public office may need further scrutiny to see if it could survive a challenge on grounds it

violates freedom of speech rights. Though indeed most would acknowledge that such a claim is dishonest, disgraceful, and offensive, that is not enough to make such actions criminal or to override free speech rights.

***POSITIONS:***

The Senior Vice Commander and Post Adjutant for VFW Post 3943 testified in support of the bill. (8-25-10)

Legislative Analyst: Susan Stutzky  
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.